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Case No: CL-2021-000036

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT

Royal Courts of Justice
Rolls Building
London
EC4A 1NL

Date: 19/02/2021

Before:

MRS JUSTICE COCKERILL DBE

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Between:

(1) EDUCATION INTERNATIONAL SERVICES LIMITED
(2) FOUNDATION FOR INTERNATIONAL EDUCATION LIMITED

Applicants

- and -

JOHN VAHYA JANOUDI

Respondent

- -
- -

MR Q TANNOCK (instructed by **Steptoe & Johnson UK LLP**) for the **Claimants**
MR D NORTHALL (instructed by **Collins Benson Goldhill LLP**) for the **Respondent**

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MRS JUSTICE COCKERILL :

1. I have read and heard the parties' arguments in relation to the costs of this matter. I have taken close account of the authorities which have been cited to me and I note entirely what Mr Northall has to say about the default position in relation to reserving costs in relation to injunction applications. There plainly are sound policy reasons for there being not a default position but a more common position to take and that the authorities are clear that merely acceding to what is sought is not in and of itself enough to take the case outside the usual course.

2. I also take well into account that the position we are in today is not that undertakings were given which effectively entirely mirror the injunction that was sought. One might say that there were limbs on both sides and at least some differences, so this is not a case where there has been an injunction granted by consent in exactly the terms that it was originally asked.

3. Having said that, however, Mr Northall submits that it would be wrong to award costs against his client in a case where the prospects were not overwhelming of an injunction being granted. I cannot ultimately agree with him on that at least to this extent that while the full injunction sought might not have been obtained in all of its particular ramifications, it strikes me, looking at this case, that some form of injunction was more or less inevitable.

4. While there is no direct evidence of misuse, which is incontrovertible, what there is is clear evidence that Mr Janoudi was a long term employee who was privy to important information. There is information that having left the company he has started a company which has the appearance that it could be a competitor. There is clear evidence of his initial refusal to engage for whatever reason, and that does not mean that it was for nefarious reasons but he refused to engage in circumstances which may give an appearance that it was for nefarious reasons. He did download information from the companies' Sharepoint drive. There was information - and there is evidence on this - that there was material within that which was genuinely confidential to his employers. There is information which indicates that he has had contact with clients; that is the sort of behaviour which gives rise to an inference and an argument that there would be misuse of information. There is then the deletion of the files on his own computer; while he has given an explanation of that and that may well be an entirely innocent occurrence, taken with the rest, it certainly gives an unfortunate appearance.

5. It seems to me inevitable against that background that some form of injunctive relief would have been forthcoming.

6. There is also the question of the cause of a data breach and again Mr Janoudi has given an explanation of what he was trying to do. But even if that is right, it has had the unfortunate side effect that it has caused a data breach on the part of his former employers as data controllers which does cause them some form of loss.

7. So I conclude that this is a case where, if there had not been a sensible approach ultimately taken to the provision of undertakings, at least some form of prohibitory injunction and access to documents was overwhelmingly likely to be granted.

8. Turning to the question of whether it would be appropriate to give the claimant its costs in these circumstances, that outcome obviously is a factor in favour of that. I ask myself the questions which Mr Tannock poses which come from *Picnic*: would it be unfair for the claimant to have its costs even if it were to lose ultimately, and of course this is a case where we can see what the potential route to loss might be if Mr Janoudi is right and he was innocently simply trying to download his own personal information and he made a bit of a mess of it. But even if that is the case, and even if that were the outcome at trial, there is effectively no dispute that he did download other confidential files from his employer's computer and that has, as I have indicated, caused a problem and loss. Add to that there was a refusal to engage which led to the circumstances which gave rise to the injunction.

9. So in those circumstances when I ask myself the question, I cannot say that it would be likely that a trial judge would consider it unfair for the claimant to have their costs of this, even if his explanation were found to be a good one.

10. I also have to consider the question about whether there will be a trial at all; which is a factor which was identified in *Picnic*. It seems to me, given the nature of the dispute, given the nature of the answer which was given and given the nature of what is likely to reveal itself following on the inspection of the files, there must be a serious doubt over whether there will be a trial in this case. The authorities suggest that when there may well not be a trial, it can be undesirable to reserve costs. Even if there is a trial it seems to me that, given the cross-arguments which relate effectively to the conduct of the matter on either side in the lead up to the injunction, this is a case where it is actually going to be pretty tricky for the trial judge to do as good a job as I could do. It is also a case where the trial judge would be incredibly unlikely to thank me for reserving the costs to them.

11. I am, therefore, minded to say that I should deal with the costs. I do not think that the size of the costs bill is a reason not to deal with it. It is a chunky bill but we see bills larger than that all the time. It is well within the territory where I would provisionally feel happy to summarily assess it, though I will hear what the parties have to say on that, and there is some time available to do the job on that.

12. We have had a decent argument on what should happen in relation to the costs as a matter of principle and, therefore, I am going to decide costs today.

13. The starting point is, it seems to me, in the light of all of these factors that the claimant should have its costs subject to this one point: I do think that there is some force in the points which Mr Northall has made in relation to the way that the injunction was finally applied for against the background of what was going on.

14. As I have indicated, I do not think that the point that was ultimately taken on behalf of Mr Janoudi was a good one against the background. It was not necessary for Mr Janoudi to seek undertakings, it was not appropriate for Mr Janoudi to seek undertakings against the background of what has been said. It was never clear what "meaningful comfort" was needed by him in excess of what had already been given; and the response which came from him does appear, frankly, to have been a tit-for-tat response which was imprudent and not entirely reasonable.

15. However, I do at the same time accept that against the background where the parties had been making really very decent progress and where the claimant knew that the undertakings themselves had actually been signed off on, it would have been

appropriate to try further to achieve resolution when there had been that level of engagement. In my view, calling that response a continued attempt at obstruction was definitely overegging the pudding. However I do consider when the parties were so close (and I consider they were so close) it was at least appropriate for there to be a further warning.

16. This brings me to reminding the parties of what the court expects in this regard both as to the overriding objective, as to the factors which are taken into account on costs under CPR and the reminder which there is specifically in the Commercial Court Guide for the parties to engage constructively. So I conclude there should have been some level of engagement rather than escalation and on that basis I am going to knock off a percentage of the costs which I am going to give to the claimants to reflect that failure to deal with it in the way that it should have been dealt with at the time of those final steps.

17. Mr Tannock did not press very hard his application for indemnity costs; rightly because it would not have succeeded.

18. I am going to say that the claimants should have 75 per cent of its costs of the application subject always to assessment, so there will be an assessment and whatever comes out on the assessment, his client gets 75 per cent of that.

This judgment has been approved by Cockerill J.