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Undertakings are no guarantee of permanent injunction (Ranger v Pycraft)

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TMT analysis: This claim concerned breach of undertakings which had been given in order to avoid defamation proceedings. Having accused Mr Ranger of serious allegations of financial crimes and misconduct, other dishonesty and being a ‘modern day grave robber’, Mr Pycraft agreed to give the four undertakings having been threatened with a claim in defamation. The court found that Mr Pycraft had probably breached the undertakings, but nonetheless, did not find ‘the risk of future breach [was] sufficiently high to indicate the granting of injunctive relief’ due to the nature of the breaches. The first was a mistaken belief that his action was not in breach, and the second a likely oversight born from the complicated technical process of permanently deleting defamatory material online. Written by Dominic Crossley, partner and head of dispute resolution at Payne Hicks Beach, and Evelyn Collins, trainee solicitor.

Ranger v Pycraft [\[2021\] EWHC 502 \(QB\)](#)

What are the practical implications of this case?

Mrs Justice Collins Rice identified two points to consider when advising clients on defamation settlements restraining further publication. She held ‘it is inconsistent with business common sense to read limitations of form into a defamation settlement which does not specify any. No reasonable person would think, reading these undertakings, that the parties agreed that Mr Pycraft was free to publish his allegations so long as he did not use his own website and avoided social media.’ She went on to emphasise that the content of any statement is important and that ‘a limitation to public-domain postings cannot be inferred from the fact that only specific postings of that kind were identified in the solicitors’ letters’.

Those advising defendants to defamation claims should therefore ensure that their clients realise that any undertaking they give not to republish may be capable of broad interpretation.

For the meaning of ‘publication’ the court provided:

‘where defamation proceedings are settled on the basis of restraining the publication of defamatory material...if there is any doubt about the meaning of ‘publish’ then at least the starting point is the meaning of that word in defamation law.’

While the court applied a wide interpretation of the undertakings and decided that breach of the undertakings was likely to have occurred, in the circumstances of this case the judge accepted the defendant’s explanations and that he had understood the seriousness of the undertakings. On that

basis it was determined that there was insufficient risk of a future breach to require a permanent injunction.

What was the background?

Mr Ranger is a practising solicitor and managing director of a global fiduciary company based in Switzerland, which offers professional trust, legal and business services. Mr Pycraft posted allegations online, stating among other things, that Mr Ranger had committed fraud and was a ‘modern day grave robber’.

Mr Ranger threatened to bring a defamation claim. In order to avoid litigation, Mr Pycraft undertook to:

- not now or in the future publish any further defamatory statement of the same or similar nature
- immediately delete all identified publications and posts, together with any and all similar posts
- use his best endeavours to contact organisations to delete said posts if deletion was out of Mr Pycraft’s control, and
- to pay Mr Ranger’s legal costs in the event of breach

Mr Pycraft committed two likely breaches. The first was that he contacted an investigative journalist with similar allegations. That journalist in turn, as Mr Pycraft’s agent, posted his story to other investigative journalists.

The second breach was three tweets that had not been deleted. Mr Pycraft argued that the brief to the journalist and posting to other journalists was not a ‘publication’ and/or not ‘of the same or similar nature’. He also argued that there was no real proof that he failed to delete the remaining tweets.

What did the court decide?

Breach of undertaking

Collins Rice J found that on any of the factual bases put to her, that there was ‘probably a breach of the undertakings’ but this issue was ‘not determinative of liability in this case’.

Permanent injunction

Collins Rice J held that defamation law did not provide ‘an absolute right to restrain these allegations permanently’. She considered whether there was a ‘real and substantial risk of continuing or further publication in the future’ if no injunction was granted.

The judge acknowledged Mr Pycraft had initially ‘engaged in an extensive and vehement campaign of allegations’. However, she noted that, upon signing the undertakings, Mr Pycraft removed:

‘all the material specifically complained of and anything else he could think of. The burden of the undertakings was considerable, and he was not a technical expert; the process of cleansing the internet was understood from the outset to be likely to be a complicated one...And he did otherwise desist...’

The two breaches were unrelated; the first was a mistaken belief he was ‘seeking help with pursuing legitimate lines of inquiry and redress’ and the second was more likely an oversight. As such,

Collins Rice J did not find that ‘the risk of future breach [was] sufficiently high’ to grant injunctive relief. She did, however, state that a judge would have an ‘additional perspective’ if considering any further application for a restraining injunction against Mr Pycraft.

Case details

- Court: Queen’s Bench Division
- Judge: Collins Rice J DBE
- Date of judgment: 8 March 2021

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