IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Claim No. KB-2023-001205

[2023] EWHC 2639 (KB)

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 4 October 2023

Before:

MR JUSTICE NICKLIN

B E T W E E N :

DARTFORD BOROUGH COUNCIL & Anor. — Claimants

- and -

NIGEL GOLDING — Defendant

ADAM SOLOMON KC and SAMUEL DAVIS (instructed by the Legal Department of the local authority) appeared on behalf of the Claimants.

THE DEFENDANT appeared In Person.

J U D G M E N T

MR JUSTICE NICKLIN:

1. The Claimants are Dartford Borough Council and a representative Claimant, Sarah Martin. They have brought a claim for harassment against the Defendant, Nigel Golding. In summary, the Claimants claim that Mr Golding has harassed the employees of Dartford Borough Council by what they say is an oppressive campaign of unwanted communications which the Claimants contend is a course of conduct amounting to harassment.

2. The Claim Form was issued on 6 March 2023. It was issued using the Part 8 procedure. As a result, although the Claimants filed evidence in support of their claim, there were no Particulars of Claim.

3. At a hearing on 17 March 2023 the Claimants applied for, and were granted, an interim injunction until a return date that was to be fixed within 14 days. Mr Golding did not attend that hearing. Although I am satisfied that he was notified of the hearing, Mr Golding has told me today that he was not well enough to attend. The fact that he was not present at that hearing is likely to have contributed to the court's decision to grant the injunction for only a short period until the court could reconsider the matter at a return date.

4. The material part of the order granted on 17 March was an injunction restraining Mr Golding from:

> "... pursuing a course of conduct which amounts to harassment of the Protected Persons within the meaning of the Act, in particular ... from doing, causing, permitted or encouraging any of the following:
>
> (1) threatening, intimidating or otherwise interfering with any Protected Person;
>
> (2) knowingly making –
>
> (a) any communication to any Protected Person whether orally, by telephone, in writing, by facsimile, by email or other electronic means which will include for the avoidance of doubt any emails, texts, letters, communication through social media or telephone calls to a Protected Person;
>
> (b) any communication whatsoever to any protected person at their private home or on their private telephones; email addresses or social networking sites;
>
> (3) compelling or coercing any Protected Person against his will from doing something he is under no obligation to do or not do something which he is entitled or required to do;
>
> (4) attending the offices of the first Claimant which are known as Civic Centre, Home Gardens, Dartford DA1 1DR without the written agreement of the Claimant."

5. The interim injunction contained a proviso in the following terms:

> "Save that nothing in this Order shall prevent the Defendant from communication in writing and in a manner which complies with [sub-

para.(3)] and which does not harass the Claimant with a single point of contact, Sue Cressall, using the email address [email address given] or any other individual whom the first Claimant confirms in writing shall replace Cressall as the single point of contact

And save that nothing in this Order shall prevent the Defendant from communication in respect of this litigation in writing and in a manner that complies with [sub-para.(3)] and which does not harass the Claimants with Sue Cressall using [the given email address]."

"*Protected persons*" were defined in the order as the second Claimant and "*the current and former officers, employees, councillors, and agents of the First Claimant*".

6. On 31 March 2023 there was a further hearing, which was attended by Mr Golding. After hearing submissions on behalf of the Claimants and from Mr Golding himself, the interim injunction was continued in the terms set out above until trial or further order.

7. Mr Golding did not at that stage file either an acknowledgement of service to the Part 8 claim or any evidence in answer to the evidence relied upon by the Claimants.

8. The claim was then listed for a final hearing on 11 May 2023. HHJ Howells, sitting as a High Court Judge, adjourned the trial and referred the claim to a Judge of the Media and Communications List for consideration of whether the claim should be allocated to that list and for any further directions. The interim injunction was ordered to continue until further order.

9. On 12 May 2023, without a hearing, I made an order transferring the claim to the Media and Communications list and transferred the claim to Part 7. The order directed the Claimants to file Particulars of Claim (complying with CPR Practice Direction 53B, para.10.3) and to serve that statement of case, together with a response pack, on the Defendant. The response pack would have included the standard Acknowledgement of Service Form to a Part 7 claim.

10. The order also provided as follows:

> "4. The Defendant must file and serve an Acknowledgement of Service indicating whether he admits or disputes the Claim by 4.30pm on 9 June 2023.
>
> "5. If, in the Acknowledgment of Service, the Defendant indicates an intention to defend the claim then, by 4.30pm on 16 June 2023, he must file and serve a Defence that complies, inter alia, with CPR PD53B §10.4..."

11. CPR Practice Direction 53B, para.10 is in the following terms:

> "10.1 This paragraph applies to claims for harassment arising from publication or threatened publication via the media, online, or in speech.
>
> "10.2 Rule 65.28(1)(a) shall not apply, and the claim should be commenced under the Part 7 procedure.

"10.3 The Claimant must specify in the particulars of claim (in a schedule if necessary) the acts of the Defendant alleged to constitute a course of conduct which amount to (and which were known or ought to have been known by the Defendant to amount to) harassment, including specific details of any actual or threatened communications.

"10.4 A Defendant must in any defence specifically admit or deny each act alleged in the particulars of claim to constitute part of a course of conduct amounting to harassment."

12. Directions were also given for a hearing to be fixed between 26 June and 28 July 2023 at which I directed the court would reconsider the terms of the interim injunction that had been granted.

13. The reasons in the order explained the various orders that I had made:

"(A) This appears to be a claim for harassment by speech arising from allegations that the Defendant has sent unwanted communications to the Claimants that they contend amount to a course of conduct amounting to harassment under the Protection from Harassment Act 1997.

(B) Such claims are (a) to be brought by Part 7 Claim (not Part 8) (see CPR PD 53B §§10.1-10.2); and (b) within the jurisdiction of the Media & Communications List. I have therefore transferred the Claim to the MAC List and reallocated to Part 7 with corresponding directions for Particulars of Claim and a Defence.

(C) If the Defendant intends to defend the claim, then he must file an Acknowledgement of Service indicating that and then he must file and serve a Defence that complies with CPR PD 52B §10.4. That practice direction provides:

"A defendant must in any defence specifically admit or deny each act alleged in the particulars of claim to constitute part of a course of conduct amounting to harassment."

CPR 16.5 contains general requirements as to Defences.

(D) Once the Statements of Case have been filed, the case will be listed for a Case Management Hearing. The interim injunction will remain in place until that Hearing – unless any Application is made to very discharge before then. The Court will want to revisit the terms of the interim injunction in light of the fact (a) s.12 Human Rights Act 1998 applies (and does not appear to have been cited to the Court when the interim injunction was granted – it is not mentioned in the Skeleton Argument dated 17 March 2023); and (b) the terms appear to conflict with authorities requiring a harassment injunction to identify specifically the conduct that is prohibited: see e.g. ***Canada Goose -v- Persons Unknown*** **[2020] 1 WLR 417** [78]. Harassment by speech is a complex area of the law and care needs to be adopted in framing injunctions that restrict freedom of expression. It may be that this is simply a matter of amending the terms so as to bring the

injunction into line with these principles. The Claimants can reflect on this and put forward their proposals at the Hearing.

(E) I have directed sequential exchange of skeleton arguments because the Defendant is a litigant in person.

(F) The procedural reallocation that this Order has affected, and the directions I have given, should not deter the parties from seeking to resolve the claim by discussion in the meantime. It may be, from the limited I know about the case at this stage, that it will prove possible for the parties to reach an agreed position. I would encourage such discussions. If they bear fruit, then the parties can submit a consent order.

(G) As this Order has been made without giving the parties and opportunity to make submissions, the usual provision enabling any party to apply to vary or discharge is included."

14. No application was made to vary or discharge that order, and in due course the directions hearing was fixed for 26 July 2023.

15. The Defendant sent to the court an Application Notice, dated 19 May 2023, seeking to discharge the interim injunction.

16. The Claimants duly filed Particulars of Claim dated 26 May 2023. They set out the Claimants' particularised case of the alleged course of conduct amounting to harassment.

17. On 12 June 2023, again without a hearing, I made an order directing that: "*providing that the Defendant ensures that the application notice is properly issued by the court*", his application to discharge the injunction would be heard at the directions hearing on 26 July 2023. The reasons for that order included the following:

> "The copy of the Application Notice sent by the Defendant to the Court has not yet been issued. I note a Help-With-Fees reference has been given. The Defendant needs to make sure that the Application Notice is issued by the Court.
>
> "If the Defendant intends to defend the claim (which I infer from the Discharge Application he does), then he must file an appropriately completed Acknowledgement of Service, a copy of which would have been included with the Response Pack served with the Particulars of Claim. That was ordered to be filed and served by 9 June 2023. The Defendant must remedy that default."

18. The Defendant had been advised by the court in response to emails he had sent, that he needed to file an Acknowledgement of Service and a Defence. For example, in an email sent to Mr Golding by the court on 26 June he was told the following:

> "An Acknowledgement of Service is an important document. If you intend to defend the claim brought by the Claimants, you must file a completed Acknowledgement of Service. Details can be found here: [a link to the form was provided]. The Claimants should have served on you a response pack which included an Acknowledgement of Service form when they served the Particulars of Claim.....If you fail to file an Acknowledgement of Service

indicating you intend to defend the claim, the Claimants may apply for judgment in default against you."

19. The Defendant did not effectively file an Acknowledgement of Service, or a Defence, by the deadlines imposed by the order of 12 May 2023. The Defendant did not make an application to extend the time for doing so. As a result, on 5 July 2023, the Claimants duly did issue an application for judgment in default. In the alternative they made an application to amend the Particulars of Claim to add further particulars of alleged acts of harassment.

20. On 6 July, without a hearing, I made an order directing that the judgment in default application would be heard at the hearing on 26 July 2023. The order contained a prominent warning in bold red letters in the following terms:

> "NOTICE TO THE DEFENDANT NIGEL GOLDING
>
> "YOU ARE THE DEFENDANT IN THESE PROCEEDINGS. THE CLAIMANTS HAVE MADE AN APPLICATION SEEKING JUDGMENT AGAINST YOU AS A RESULT OF YOUR ALLEGED FAILURE TO FILE AN ACKNOWLEGEMENT OF SERVICE AND/OR DEFENCE. THE COURT WILL CONSIDER THE APPLICATION AT THE HEARING ON 26 JULY 2023
>
> "IF YOU FAIL TO ATTEND THE HEARING, THEN THE COURT MAY HEAR AND DETERMINE THE APPLICATION IN YOUR ABSENCE AND MAY MAKE ORDERS AGAINST YOU INCLUDING A FINAL INJUNCTION. YOU ARE ADVISED TO TAKE LEGAL ADVICE."

21. The "reasons" section of the order contained the following:

> "The Defendant has been warned by the Court (more than once) of the potential consequences of failing to file an Acknowledgement of Service. If, as is alleged in the Default Judgment Application, he has failed (and continues to fail) to file an Acknowledgement of Service, then at the Hearing the Court may enter judgment for the Claimants against the Defendant and consider what consequential orders should be made.
>
> "If the Defendant wishes to defend these proceedings, he MUST file an Acknowledgement of Service indicating that he wishes to defend the proceedings. This is the last warning that the Defendant is likely to receive."

22. On 24 July, the court adjourned the hearing that was due to take place on 26 July. Mr Golding had sought the adjournment on medical grounds. He also sent to the court an Application Notice, which was not issued, seeking disclosure from the Claimants. The Claimants consented to the adjournment. The hearing was ordered to be refixed between 2 October and 3 November 2023. From the documents available on CE-File, I noted that Mr Golding had, it appeared at that stage, still not filed an Acknowledgement of Service effectively with the court or a defence. In the reasons section I included the following:

> "(B) The Defendant has still not filed an Acknowledgement of Service. He has been directed by the Court to the relevant form. I do so again. If the Defendant wants to defend the Claimants' claim, then he needs to file this completed form with the Court. It is not enough

to have told the Claimants and the Court that he intends to defend the claim. There will be no further warnings. What he is required to do could not have been made any clearer. The form is here: [a direct link was provided]. If, by the time of the Adjourned Hearing, the Defendant has still not filed an Acknowledgement of Service, then he may find that it will be difficult to resist the Claimants' application for default judgment.

"(C) The Defendant is also in default of the requirement to serve a Defence. If the Defendant has not sent to the Claimants and filed with the Court his Defence before the Adjourned Hearing, again he may find that it will be difficult to resist the Claimants' Application for default judgment. Any Defence the Defendant files must comply with CPR PD 53B §10.4. The rule can be found here: [direct link provided].

"(D) The Defendant has today sent to the Court a further Application Notice. The accompanying witness statement demonstrates a misapprehension on the Defendant's part, but as the Application has not been issued, I am not going to deal with it. I will observe the following. Until an Acknowledgement of Service (indicating an intention to defend the proceedings) and a Defence are filed by the Defendant, the Court is unlikely to entertain any Applications by the Defendant for any sort of disclosure. Nor will the Court require the attendance of witnesses at the Adjourned Hearing. That hearing is not the final trial of the Claim. At present, the Defendant has not filed an Acknowledgement of Service or Defence. If he wants to defend the claim, he needs to do so.

"(E) The Claimants have set out details of their Claim in the Particulars of Claim. If the Defendant intends to defend the proceedings, he needs to go through that document and, in his Defence, set out whether, paragraph by paragraph, he admits or denies the claim made against him. That process will establish what are the issues in dispute.

"(F) Finally, the Court requires that Application Notices are issued by the Court. An issued application bears the Court's seal. Issuing an application requires the relevant fee to be paid, or for the applicant to demonstrate that s/he qualifies for fee waiver. So far, it appears to me that the Defendant has not managed to issue any Applications. Up to this point, I have been prepared to deal with matters on the basis that the Defendant will regularise the position (see Paragraph 1 of the Order of 12 June 2023) or that there has been some urgency. Ultimately, if the Defendant has not properly issued applications that he wants the Court to deal with, the Court may well refuse to deal with them."

23. Mr Golding apparently sent a further application notice to the court, dated 22 July. It was not issued, so the court has not dealt with it. It was an application that sought to have witnesses attend the directions hearing. As Mr Golding has been advised subsequently in emails, the court would not, at this hearing, be considering evidence from any witnesses.

24. It is fair to record that I have today been shown an email that Mr Golding sent to the Claimants (and the court), on 6 June 2023, attaching a completed Acknowledgement of Service. He sent that email, as I have said, to the court but it was sent to a KB listing email address. That was not the correct email to send that document, and in consequence it was not filed on CE-File. In fairness, however, to Mr Golding I am prepared to accept that that does show that he did try to file with the court an Acknowledgement of Service, that was dated 5 June 2023, and it did indicate an intention to defend the claim. I will therefore treat him as having properly filed an Acknowledgement of Service with the court indicating an intention to defend on 6 June 2023. However, he has still not filed a Defence.

25. Mr Golding has corresponded extensively with the court since the hearing in July was adjourned. Most recently, he sought to have the hearing today adjourned. Mr Golding was advised that if he wanted to seek an adjournment, he would need to issue an Application Notice and provide evidence in support explaining the basis of the application.

26. On 25 September 2023, the court sent an email in response to further emails from Mr Golding in answer to Mr Golding's renewed request that witnesses be required to attend. Under the heading: "*Matters to be resolved at the hearing on 4 October 2023*" the email stated as follows:

> "The principal purpose of the case management hearing originally fixed for 26 July (now refixed for 4 October) was for the court to consider the terms of the interim injunction that had been imposed and then for the court to give further directions as to the steps to be taken by the parties. See paragraphs 6 and (D) of the order of 12 May. You then sent the court an application seeking to discharge the interim injunction. Although that application does not appear to have been issued by the court, the judge directed that the application would be dealt with at the case management hearing. See Order of 12 June 2023.
>
> "Since then, the Claimants have issued an Application Notice, dated 5 July 2023, seeking (a) default judgment and (b) permission to amend the schedule and particulars of harassment annexed to the Claimants' Particulars of Claim. The application for default judgment arises because the Claimants allege that you have failed to file an Acknowledgement of Service and/or Defence. The court has not yet determined those applications. The judge's order of 6 July directed that these applications would be dealt with at the case management hearing.
>
> "The judge suggests that you re-read the important information contained in the Order of 6 July 2023 before the hearing on 4 October. At that hearing on 4 October the court will consider whether judgment should be entered against you on the Claimants' claim."

27. On Monday this week, 2 October 2023, the court received, by email, two further Application Notices from Mr Golding (neither of which has been effectively issued) and two witness statements. The first was an application for an adjournment of the hearing today. The basis of the application was that Mr Golding had had insufficient time to prepare for the hearing. He complained that he had received more than 1,500 pages of documents from the Claimants' solicitors on 28 September 2023.
28. The second application was an application for "*default judgment against the Claimant*" and for him to be awarded "*costs, compensation and damages*" against the Claimants. As I have explained to Mr Golding today, that application misunderstands the position. Mr Golding is

the defendant in the claim. He has not advanced a counterclaim against the Claimants; indeed, he has still not filed a Defence. So, there can be no question of him being granted any sort of default judgment against the Claimants.

29. On 3 October 2023, Mr Golding sent to the court another Application Notice, which has not been issued. It simply stated:

> "Attached is an N244 application witness statement that was sent to the court on 22 July 2023, more than 70 days ago. This N244 brings the court's attention to outstanding information that is required in the interests of justice for the defence of the case."

30. The witness statement accompanying this further application set out the information that Mr Golding sought. Continuing his misapprehension as to the nature of the hearing, Mr Golding ended his witness statement with the following:

> "The proposed hearing on 4 October 2023 will be the fourth hearing and the Defendant is yet to see or hear anything from any of the referenced witnesses, or to read one shred of evidence to support the Claimants' position. All the Defendant has read is the ranting of Sarah Martin."

31. I turn to consider, therefore, the first application which is to adjourn the hearing today. During the course of the hearing today, I refused that application and indicated that I would give my reasons later.

32. I am satisfied that Mr Golding has had a proper opportunity to deal with the matters that are going to be addressed today. I do not consider that there would be any unfairness to him in the hearing continuing today.

33. I accept that the bundle for today's hearing contained a substantial number of documents, but it is not fair or accurate to suggest that he only received them for the first time on 28 September 2023. Substantially the same documents were sent to him in advance of the hearing on 26 July 2023, that was adjourned. He has therefore had many months to consider the contents of this bundle. Further, none of those documents in the bundle will have come as a surprise to Mr Golding. The bundle simply comprises a paginated and index collection of documents Mr Golding will already have seen.

34. More importantly, the hearing today is principally concerned with the Claimants' application for default judgment. That application requires consideration of very few documents indeed. Mr Golding told me he had not read Mr Solomon's skeleton argument that was provided to him some days ago. That is unfortunate because it was a fair summary of the position that Mr Golding faced today and the issues that the Court was being asked to resolve. As I will go on to explain in the next section of the judgment, the ambit of the application for default judgment is very narrow indeed. It concentrates on whether the claim has been properly served on Mr Golding, which he does not dispute, and then whether or not he has filed a Defence, which, again for reasons I will go on to explain, substantially Mr Golding does not dispute either.

35. Therefore, I am not satisfied that Mr Golding has been caused any unfairness by the court proceeding today. As it has turned out, he has been able to make the submissions he wanted to in answer to the application for default judgment. I do not detect that he has faced any difficulty or unfairness by a lack of time for preparation. The points are very short and easy

to comprehend, and Mr Golding has been able to make such points as he wants in answer to them.

36. Turning therefore to the substance of the application for default judgment, CPR 12.3 provides the circumstances in which default judgment can be granted to a Claimant. The relevant rule provides as follows:

> "12.3(1) The Claimant may obtain judgment in default of an acknowledgment of service only if at the date on which judgment is entered –
>
> (a) the Defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
>
> (b) the relevant time for doing so has expired.
>
> "(2) Judgment in default of defence (or any document intended to be a defence) may be obtained only –
>
> (a) where an acknowledgement of service has been filed but, at the date on which judgment is entered, a defence has not been filed;
>
> ...
>
> And, in either case, the relevant time limit for doing so has expired."

37. At the foot of the rule it says this, in brackets:

> "Rule 6.17 provides that, where the claim form is served by the Claimant, the Claimant may not obtain default judgment unless a certificate of service has been filed."

38. Rule 6.17(2) provides:

> "Where the Claimant serves the claim form, the Claimant –
>
> (a) must file a certificate of service within 21 days of service of the particulars of claim, unless all the Defendants to the proceedings have filed acknowledgments of service within that time; and
>
> (b) may not obtain judgment in default under Part 12 unless a certificate of service has been filed."

Sub-rule (3) sets out what the certificate of service must include.

39. Mr Solomon KC accepts that the Claimants have not complied with rule 6.17(2). The required N215, certificate of service, was not filed within the 21 days of the service of the Particulars of Claim. He accepts that, therefore, that requirement has not been met. Nevertheless, he has argued that, substantively, there has been compliance with the rule because, although not in the prescribed form, a witness statement from a process server, dated 13 March 2023, has confirmed personal service of various documents on Mr Golding, which included the Claim Form and the application for the interim injunction.

40. Mr Golding does not challenge that he has been served with the Claim Form. He knows all about the proceedings, and he has attended all but one of the hearings that have taken place.

41. The question that then arises is whether the failure to comply with CPR 6.17, by failing to file the N215 certificate of service, is fatal to any application for default judgment. In my judgment, it is not.

42. Mr Solomon KC referred me to two authorities. In ***Plekhanov -v- Yanchenko*** **[2020] EWHC 1201 (Comm)**, Cockerill J said this:

> [89] CPR r. 12.3 sets out the conditions a Claimant must satisfy to obtain default judgment.
>
> [90] One of these is (at least by implication and by reference to PD12) that the claim has been served on the defendant. Mr Yanchenko in his connection submits that this is not satisfied because the certificate of service on the Court file was filed late, pointing (in an example of the sophisticated points he has been capable of making) to CPR 6.1 and the requirement for such a certificate to be filed within 21 days of service. However, I am satisfied that late filing of the certificate of service cannot render an application invalid, so long as service is proved. Mr Scott referred me to the case of ***Henriksen -v- Pires*** **[2011] EWCA Civ 1720** where a failure to file such a certificate at all was held not to render the application for default judgment invalid or the judgment itself irregular.
>
> [91] The relevant considerations in the present case are those set out in CPR r. 12.3(2): "*Judgment in default of defence may be obtained only – (a) where an acknowledgment of service has been filed but a defence has not been filed; … and … the relevant time limit for doing so has expired*".
>
> [92] Mr Yanchenko has (or is to be taken as having) filed an Acknowledgment of Service but has not filed a Defence. The key question is whether the relevant time limit for doing so has expired."

43. In ***Henriksen -v- Pires***, to which Cockerill J, the Court of Appeal noted:

> [26] … CPR 12.3(2) specifies that the claimant may obtain judgment in default of defence if an acknowledgement has been filed but a defence has not been filed within the relevant time limit. CPR 12.3(3) specifies circumstances in which the claimant may not obtain judgment in default of acknowledgement of service or defence, namely (a) where the defendant has applied for the claim to be struck out or for summary judgment; (b) where the claim has been satisfied; and (c) where a claimant seeking a money judgment has received from the defendant an admission and a request for time to pay. Inserted within brackets at the foot of the rule are reminders of further rules which are relevant to the context of CPR 12.3, including CPR 6.17(2). The judge resolved the issue as to the meaning of CPR 12.3(2) as follows:
>
> "The reference to the requirement of rule 6.17 in rule 12.3 is discrete and simply because it is referred to in parenthesis at the end of that

other rule does not in my view make it such a condition"
(see paragraph 24).

> [27] [The defendant] submitted that if the judge's construction was correct, a claimant could always obtain judgment in default, notwithstanding a failure to comply with a strict requirement of the rules that he file a certificate of service before making the application. It is plain in my judgment that CPR 6.17(2) does, while CPR 12.3 does not, make it a requirement for a request to enter a default judgment that the claimant has filed a certificate of service. Rule 16.17(2) creates a free-standing requirement, independent of CPR 12.3, which does not itself require a certificate of service as a pre-condition for a default judgment. It follows that a failure to file a certificate of service will not lead to a mandatory order setting aside the default judgment. This construction of the rule does not mean that a failure to file a certificate of service renders CPR 6.17(2) of no effect…
>
> [28] It seems to me that a failure to file a certificate of service may or may not have a significant impact upon the merits of an application to set aside a default judgment under CPR 13.3(1)(b)(i) or (ii). The judge hearing an application to set aside will undoubtedly approach it with the absolute prohibition against applying for default judgment without first having served a certificate of service well in mind. However, the failure may have occasioned the defendant no meaningful prejudice because it is established by evidence that the claim form was undoubtedly served at a specific time and on a specific date and by a specific means or, as in the present case, that the claimant has filed a document which, while not a certificate of service in form N215, contains all the information required of a certificate of service. I conclude that the judge was right to reject the technical argument as to form...

44. Drawing those threads together, those two authorities establish the proposition that whilst the Court will usually expect the requirements of CPR 6.17 to be complied with, the failure to file a certificate of service under CPR 6.17(2)(b) may not be fatal to an application for default judgment under CPR 12.3. The court will look at the substance of the matter. If the court is satisfied that the Claim Form has been served on the Defendant, and if the other conditions for default judgment are met, then default judgment may be granted.

45. In this case, Mr Golding has been served with the Claim Form. He is fully aware of the proceedings, and has attended, now, three hearings. After the claim was transferred to Part 7, he was served with the Particulars of Claim. Thereafter, by the orders that I have identified, he was required to file a Defence by 16 June 2023. As I have indicated above, I shall treat Mr Golding as having filed an Acknowledgement of Service with the court by the required deadline. Therefore, the default judgment application falls under CPR 12.3(2), and the question is therefore whether Mr Golding has failed to file a Defence by the required deadline.

46. As Mr Golding himself has frankly accepted today, in so far as he was required to file a document as described in the order of 24 July, he has not done so. He has not filed any document which, even if not called a 'Defence', nevertheless discharges the function of a Defence. The time for doing so has expired.

47. Mr Golding has argued before me today that he regards the Claimants' application for default judgment as a step taken by them because they know that their claim has no substance. That is to misunderstand the position. The Claimants are entitled to apply for default judgment if the Defendant has not filed a defence. Mr Golding has fairly recognised today that he has not filed a Defence or provided any document that could fairly be said to discharge the important functions of a Defence. He submits that he has sent documents, principally emails, in which he has disputed the claim. I am prepared to accept that may be so, but that is not good enough. What Mr Golding has been required to do has been explained clearly to him more than once, and no more clearly than in the order of 24 July 2023. Granting a default judgment is not in any way a punitive response. If Mr Golding wishes to dispute the Claimants' claim, the court cannot fairly progress the matter without a proper Defence. The Defence must respond point by point to the allegations in the Particulars of Claim. That is a requirement of any Defence in a civil claim, but it is a particular requirement under Practice Direction 53B §10.4, which was clearly explained in the orders the court has made.

48. The only remaining question is whether there is any reason that the Court should not grant default judgment. The Court should consider the Particulars of Claim to ensure that they disclose a proper cause of action. A court might well refuse to grant default judgment if the Particulars of Claim were incoherent, or it was impossible to ascertain the nature or legal basis of the claim being advanced. That is not the case here. Having reviewed the Particulars of Claim, I am satisfied that they disclose a properly pleaded claim for harassment.

49. In my judgment, the conditions for default judgment are met and it is appropriate to grant default judgment.

50. The next matter to consider is what remedy the Court should grant having entered default judgment. CPR 12.2(1) directs that where the court grants default judgment it shall give such judgment as the Claimant is entitled to on the statement of case. The court will need to consider the Particulars of Claim. In this claim, the statement of case discloses a proper claim for a harassment injunction. That is the only remedy sought by the Claimants. The next stage will be to decide the terms of that injunction.

51. Even after I have determined what remedy the Claimants should be granted, matters do not necessarily end there. If Mr Golding considers that he has a defence to the claim, he can apply, under CPR Part 13, to set aside the judgment in default that I have granted. If he does so, he will have to meet the requirements for setting aside default judgment. Perhaps most importantly, Mr Golding will need to satisfy the court that he has a real prospect of successfully defending the claim or that there is some other good reason why the judgment should be set aside or varied. I have suggested to Mr Golding, during the hearing, that if he is considering making an application to set aside the judgment in default, he should prepare a Defence – that complies with CPR PD53B §10.4 – setting out his case in answer to the Claimants' claim.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.