

1 **IN THE MANCHESTER COUNTY COURT**

No.2QT66034

2  
3 1 Bridge Street West  
4 Manchester M60 9DJ

5  
6 30<sup>th</sup> November 2012

7  
8 B e f o r e :-

9  
10 **DISTRICT JUDGE MATHARU**

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14 **COMBINED SOLUTIONS UK Ltd.**  
15 (Trading as Combined Parking Solutions)

Claimant

16  
17 v.

18  
19 **VALLANCE**

Defendant

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23  
24  
25 **JUDGMENT**  
26 (As approved)  
27

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29 -----  
30 **Mr M PERKINS** appeared on behalf of the Claimant  
31 **THE DEFENDANT** appeared In Person

32 -----  
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1 DISTRICT JUDGE MATHARU:

2 1 This is Mr Alexis Vallance's application for summary judgment. This application  
3 notice is dated 12<sup>th</sup> July 2012, in support of which there is a witness statement and  
4 a number of supporting documents. That statement is dated 12<sup>th</sup> July 2012. There  
5 is also a further witness statement filed by Mr Vallance, which statement is dated  
6 20<sup>th</sup> August 2012.

7  
8 2 This matter previously came before the court on 24<sup>th</sup> August 2012 but could not  
9 proceed because the time (inaudible). The claimant has more comprehensive  
10 particulars of claim dated 20<sup>th</sup> June 2012 and has filed evidence in the proposition  
11 dated 12<sup>th</sup> August 2012. There was a preliminary issue before me where Mr  
12 Vallance informed the court the court he had neither seen this proposition or  
13 received it and had, in fact, written to the court seeking provision of the same. I  
14 was provided with a certificate of service and proof of posting. I am satisfied that  
15 this evidence had been posted to Mr Vallance's address. However, in the interests  
16 of justice Mr Vallance was asked if he required time to consider this or an  
17 adjournment, and elected to take some 20 minutes considering this statement in  
18 opposition of his opponent and wished to proceed. So that is where we are today.

19  
20 3 The application made by Mr Vallance is for summary judgment. The application  
21 says under CPR 24 that this claim has no real prospect of succeeding on the claim  
22 or issue, and there is no other compelling reason why the case should be disposed  
23 of at trial. It is only in his witness statement and not in the application notice that  
24 he says or makes reference to the Civil Procedure Rules 3.4 sub-section 2(A) that  
25 the statement of case discloses no reasonable grounds for bringing or defending the  
26 claim.

27  
28 4 It is important, and I make mention of the fact, that both parties are self-  
29 representing, so matters such as not setting out in an application notice what is  
30 sought is something that I would take a more onerous view of if the parties were  
31 represented, but they are not. Equally, subject to the outcome of any application, it  
32 needs to be borne in mind that rules are to be adhered to.

33  
34 5 Let us consider what it is that Mr Vallance has to say. He says that the claimant  
35 has not pleaded any proper grounds or legally recognisable cause of action or  
36 anything that can possibly be identified to which he can respond. (inaudible)  
37 appears to be bringing an action for harassment and any civil claim in respect of  
38 harassment would be for protection from harassment under the Act of 1997, and  
39 for that the claimant must be a person. The Civil Procedure Rules, he says, do not  
40 give a corporate entity the right to bring such a claim in harassment.

41  
42 6 It is also important that I set out from the outset that an application for summary  
43 judgment brought under CPR 3.4 has a minimum threshold of the claimant or  
44 either party having shown that there is some prospect of success. What it is not is  
45 a trial within a trial. The burden of proof is the balance of probabilities, i.e. is the  
46 defendant's application and its grounds more probable than what the claimant has  
47 to say? What, in essence, Mr Vallance is saying is that he has absolutely no  
48 knowledge or understanding of what is being alleged against him, and he says that  
49 what the claimant cannot do is evidence to any standard that it sustained any

1 financial loss. Even if it were able to be established, which it cannot, he says it  
2 cannot be placed at his door, i.e. that it was his fault.

3  
4 7 He makes mention of CRP 31.22 in his first statement. Much of this complaint  
5 arises from provision of documentation by the Daniel Steele to him of terms and  
6 conditions. In his witness statement at paragraph 10 Mr Vallance says it is the  
7 clear intention of CPR 31.22 that once documents have been used at trial, they can  
8 be used for other purposes. I will come to that later. He also continues that the  
9 provisions in respect of disclosure and documentation do not apply to small claims  
10 cases such as this. Ultimately, he says the claimant, by its own actions, has  
11 disclosed or published on the internet the very documentation it now seeks to claim  
12 is privileged. He also continues that there is no malice or harm on his part  
13 intended in any way by any postings. Let me record again the matter that did arise  
14 in submissions to me: that what this court will not tolerate is the guise or protection  
15 of legal privilege, and I will use by way of example the comment at paragraph 25  
16 of the statement of Mr Vallance: "He also just comes across as vindictive to the  
17 point of actually being somewhat deranged." That is a comment directed to this  
18 claimant director.

19  
20 8 Going forward, let me make this clear. By either party, subject to any decision I  
21 make, remarks such as that do not attract the privilege of confidentiality in this  
22 courtroom and in their own right are able to be actionable.

23  
24 9 The other aspect of concern to this court is that what Mr Vallance tells the court is  
25 that there may be targeting of him by Mr Perkins, because there are other websites  
26 with the very same documentation that he is being pursued about. I am a little  
27 unclear what this adds to the legal basis of this application to strike out, but  
28 nevertheless it is mentioned.

29  
30 10 If we best summarise the basis of Mr Vallance's application, it is this. There is no  
31 legally recognisable cause or case or basis for bringing this action against him.  
32 There is no loss. The only singularly recognisable cause of action that is  
33 identifiable is harassment, and a company is not entitled to such action, and the  
34 information that he is being accused of using, i.e. the terms and conditions, were  
35 already in the public domain or are already in the public domain.

36  
37 11 One issue that came to light during the submissions in respect of [client  
38 information removed] – and I will come to that elsewhere in this case – but what  
39 he says is that that individual's details, if I make any such findings, are in the  
40 public domain in any event as a result of the Freedom of Information request made  
41 in or around October 2012, a month before this hearing, certainly not in or around  
42 the time that these issues arose.

43  
44 12 These are matters that Mr Vallance informed me of. He says the relevant  
45 document that is the cause of this complaint is Supporting Evidence (C) in support  
46 of the first statement. He told me – these are his words: "It was passed to me by  
47 Dan Steele." He said as follows: "Mr Steele told me that this is the evidence that  
48 he [i.e. Mr Perkins] has filed against me. Please will you help me in responding?"  
49 What Mr Vallance says is that he gave Mr Steele advice. He also said Mr Steele  
50 may have passed it to others for such advice.

1  
2 13 There was then submission to me in respect of the reason for this exchange which  
3 he says has taken place very much at Mr Perkins' behest, because in relation to the  
4 MoneySavingExpert website Mr Perkins introduced a web-link and he says that:  
5 "My feeling is that he wanted people to discuss the issues." What this claimant  
6 does, he says, is sells a service. These terms and conditions are much like a credit  
7 card. They are out there. And he took me to the link on the (inaudible) website  
8 adduced under his second witness statement.  
9

10 14 So the gist of Mr Vallance's opposition to this case going forward is that the  
11 information to which the claimant takes exception to is in the public domain, has  
12 been, and remains so. He says that when he was approached by Mr Perkins he  
13 removed it promptly. I asked him to check his diary and he told me it was June 1<sup>st</sup>  
14 that the approach was made and it was removed on Tuesday the 5<sup>th</sup>. He also made  
15 reference to other companies having exactly the same information, and he cannot  
16 understand why it is that he is being dealt with in this way. He says there is not a  
17 loss which he can counteract in any way. His words were interesting: "There is no  
18 evidence", he says, "there is a series of allegations, events that constitute  
19 harassment. A company cannot be harassed and there is no evidence of other  
20 extraneous matters." He informed me that Mr Steele had contacted him – this is  
21 the individual who passed the document (c) to him – and he told him: "You should  
22 tell him that you know nothing about this." That is in response to Mr Steele being  
23 contacted by Mr Perkins.  
24

25 15 So what is it that the claimant has to say? The claimant's position is set out in his  
26 statement in opposition. He says it is not a case based on harassment, and what he  
27 also tells the court as a matter of concern is that the Defendant's document (C)  
28 adduced under a witness statement endorsed with a statement of truth is, in fact,  
29 not the document in issue. He says the actual document in issue is not produced to  
30 the court but is the cause of all of this. It has annotations upon it, client signatures  
31 and personal, private, confidential data in respect of his clients. He says the issue  
32 is there is confidential, commercially sensitive, privileged data that has been  
33 misused by this defendant. There is a duty of confidence between the company  
34 and its clients but through the actions of this defendant they have come into the  
35 public domain and he has breached his duties to his clients and it has caused him  
36 indirect loss, and he can evidence that, he says.  
37

38 16 He makes mention of the dates of the postings being removed, not being those that  
39 Mr Vallance gave me. He states that it would be a matter of evidence that his  
40 company were contacted by [client information removed], this specifically  
41 identified individual informed the claimant company that somebody on the forum  
42 had contacted her directly. Going no further than that, Mr Perkins explained the  
43 dissatisfaction on the part of this client.  
44

45 He confirms that they the Claimant contacted Mr Steele and asked him if he had  
46 given any permission to disclose or consent to the disclosure of their legally  
47 privileged binding contract. The answer that was read out was exactly as Mr  
48 Vallance had guided or directed Mr Steele to respond: "I know nothing about this."  
49

1 17 The point that is made by Mr Perkins is: Yes, there are standard terms and  
2 conditions as those produced under cover of the second witness statement of the  
3 Defendant, but they are precisely that, standard. Every contract entered into with  
4 their client is not on the standard basis, it is individually negotiated and it is that  
5 individually negotiated contract that was placed on a public website without his  
6 authority, consent or authorisation.  
7

8 18 Let us turn to this point of CPR 31.22 that Mr Vallance seeks to rely upon, because  
9 this seems to have some relevance to what Mr Vallance (inaudible). It is an entire  
10 misunderstanding on the part of Mr Vallance as to what that specific provision  
11 says. It says as follows: “Subsequent use of disclosed document...” And let me  
12 identify who the parties were in this case: Case No.IQT43440, where the claimant  
13 could be a Mr Steele and Combined Solutions UK Ltd. They are the parties.  
14

15 “A party to whom a document has been disclosed may use the document  
16 only for the purpose of the proceedings in which it is disclosed [the IQT  
17 case], except where

18  
19 (a) the document has been read to or by the court, or referred to, at a  
20 hearing which has been held in public;

21  
22 (b) the court gives permission; or

23  
24 (c) the party who disclosed the document and the person [I will repeat that:  
25 “and the person”] to whom the document belongs agree.”  
26

27 I can make it very clear from everything I have heard today there is absolutely no  
28 agreement from the party to whom the document belongs as to its disclosure, so  
29 there is an entire misinterpretation of those conditions.  
30

31 19 Let us turn to the issue of this being a small claims track case. Whre the Defendant  
32 has relied upon a fundamentally flawed argument, it has no merit whether this is a  
33 small claims track case or not.  
34

35 20 So what are the issues that I need to decide upon? The basis of the claim is that the  
36 particulars of claim show no cause of action, and that is the test that I must  
37 consider. Is there some prospect of success? Is there some identifiable cause of  
38 action? The simplest way and appropriate way is to go through the particulars of  
39 claim by way of example only. Paragraph 6: “Commercially sensitive documents  
40 sent to Daniel Steele.” That identifies what the (inaudible) is. Paragraph 7:  
41 “(inaudible) privilege.” Paragraph 9: “This defendant did not make any  
42 application to obtain those documents.” It is set out, that it was not with his  
43 consent or agreement. Whilst this is not a trial within a trial, what I am being told  
44 is that the documentation adduced under Supporting Evidence (C) is in fact not the  
45 documentation that the claimant says was produced at the particular website.  
46 Paragraph 17: “The defendant knew or should have reasonably known that the  
47 release of these documents was wrong.” which is a perfectly recognisable cause of  
48 action. I will spell it out. “You came into your possession a set of documents that  
49 I did not give you consent to post on the website. Those documents required my  
50 consent. You did not obtain it, as a result of which I have been harmed by my

1 clients taking exception to that. They have terminated their contracts and I can  
2 prove that.” And it is set out clearly within that document.

3  
4 21 However, let us turn to the issue of quantification. This application has been made  
5 very early at this stage, as Mr Vallance the defendant has not filed any defence. I  
6 have also made it very clear that these are self-representing parties. It is not for the  
7 court to give advice but perhaps it would have been appropriate to have sought  
8 clarification if there was any doubt, but rather this defendant sought to strike a  
9 heavy and draconian blow upon the claimant which has been entirely unsuccessful.  
10 Therefore, the defendant’s application is dismissed because matters that I have  
11 heard today warrant a trial on evidence, not least in respect of Mr Steele, his  
12 actions and discussions with this defendant. Mr Vallance attends before the court  
13 without any defence and has effectively heard all the issues that will have come out  
14 in a trial anyway, and perhaps now has the benefit of reviewing his position.

15  
16 22 So I am going to give directions. The defendant’s application is dismissed for this  
17 reason. There are more than some prospects of success; I would go so far as to say  
18 real prospects of success. However, so that he is not prejudiced in any way, Mr  
19 Perkins will further amend his particulars of claim and include a simple paragraph  
20 setting out those particulars he has highlighted to the court today: it is a misuse of  
21 confidential information obtained without consent. He can take advice and refer to  
22 the relevant provisions of the necessary acts – Data Protection, Misuse of  
23 Confidential Information – so that it is crystal clear to the Defendant. He will set  
24 out that it caused him loss, which loss is limited to whatever amount and will be  
25 fully quantified at the appropriate stage. He will do that by 7<sup>th</sup> December as a  
26 simple paragraph.

27  
28 23 Let me also make this clear, one of the causes that Mr Vallance says the Defendant  
29 has no right to is protection of harassment. It is entirely a matter for Mr Perkins if  
30 he is of the view that he is being personally harassed that he can join himself as a  
31 director of the company. But he would have to make an application in that respect.  
32 He has told the court today that he is not making any application under the  
33 Protection from Harassment Act.

34  
35 24 This is a straightforward contractual matter. That is something he can take advice  
36 upon. But let me also say, for the purposes of certainty, that had it been the case  
37 that this had been a Protection from Harassment action, that would not have  
38 warranted a dismissal of the claim. It would have resulted in my giving permission  
39 to amend the claim, under my case management powers.

40  
41 25 The defendant will file a fully pleaded defence to the amended particulars of claim,  
42 which will be sent to the court and the appropriate certificate of posting, please,  
43 being filed and submitted. By reference to the issues that arose earlier, Mr  
44 Vallance will do this by 21<sup>st</sup> December 2012. I am also going to give a further  
45 direction. Allowing for the Christmas period, the parties will then have until 16<sup>th</sup>  
46 January to file any witness statements. So that you are clear, Mr Perkins, I would  
47 expect a quantification of loss by that stage. If there is any contract or  
48 documentation you wish to rely upon, you can redact anything that you consider to  
49 be legally privileged or confidential, because that is what this case is about, and I  
50 give you permission to do that.

1  
2 MR PERKINS: Thank you, madam.  
3  
4 DISTRICT JUDGE MATHARU: Now, gentlemen, I am going to retain case management  
5 of this case because it causes me very real concern the manner in which this case is  
6 evolving. So I appeal to both of you: you treat each other with courtesy and  
7 respect, such as you have shown this court. Do you understand?  
8  
9 MALE SPEAKER: Yes, madam.  
10  
11 DISTRICT JUDGE MATHARU: And in relation to any communications you have with  
12 each other, please have regard to the fact that I will be looking at it. Do you  
13 understand?  
14  
15 MALE SPEAKER: Yes.  
16  
17 DISTRICT JUDGE MATHARU: What are the costs of this application?  
18  
19 MR PERKINS: I have a costs breakdown for you, madam.  
20  
21 DISTRICT JUDGE MATHARU: Have you provided a copy of it to Mr Vallance?  
22  
23 MR PERKINS: No.  
24  
25 DISTRICT JUDGE MATHARU: (inaudible) Where you want to make a claim for costs,  
26 the rules say that with a self-representing party they should have 48 hours' notice.  
27 Have you given him 48 hours' notice?  
28  
29 MR PERKINS: No, madam.  
30  
31 DISTRICT JUDGE MATHARU: What I am going to do is this, Mr Vallance. You are  
32 going to take that document. For the purposes of the tape, it is the statement of  
33 costs that Mr Perkins says he has incurred. Do you understand, because this is  
34 coming back to me? I am giving it to you.  
35  
36 MR VALLANCE: Yes.  
37  
38 DISTRICT JUDGE MATHARU: And I will deal with that issue of the costs of today at  
39 the next hearing. Let me not jump the gun. Mr Vallance, you have been entirely  
40 unsuccessful with your application. Is there any reason why you should not pay  
41 the costs? I do not know what they are; I am not even discussing amounts; it is the  
42 principle I am dealing with, the usual principle being the unsuccessful party pays  
43 the successful party's costs. That is all I am dealing with.  
44  
45 MR VALLANCE: No.  
46  
47 DISTRICT JUDGE MATHARU: Thank you very much. The principle of costs is  
48 established. May I have a copy of that?  
49  
50 MR PERKINS: Yes, madam. (Handed)

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DISTRICT JUDGE MATHARU: The amount of these costs will be dealt with at the next hearing. I do not know when that will be. But if there is any prospect, gentlemen, between the two of you of resolving this by negotiation and/or on a confidential basis, I am (inaudible) – let me also make this clear – to you, Mr Perkins, you have succeeded on the requisite legal threshold. The trial may well be entirely dependent on who says what and there is not any certainty at trial who is likely to succeed because it is entirely dependent on the evidence on the day. There is always litigation risk to parties, and that is as far as I can go, because I am not evaluating the merits of evidence that I have not seen yet.

Gentlemen, it is five past one. That is my decision and a conclusion to the application.

MR PERKINS: Madam, we have not yet received the allocation questionnaires.

DISTRICT JUDGE MATHARU: They will come out.

MR PERKINS: They will come out.

DISTRICT JUDGE MATHARU: The (inaudible) on file.

MR PERKINS: Okay. Thank you, madam.

DISTRICT JUDGE MATHARU: (inaudible) the matter by reference to the witness statements. You have complied with the order that I have made.

MR PERKINS: Madam, thank you.



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