

Investigating the Investigators: Civil Claim Launched Against Private Investigators Alleging Espionage, Harassment

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KEY POINTS

- Law firm executive discovers he is being spied upon, and retaliates by commencing civil suit against private investigation firm for violating his rights under new data protection laws.
- The suit is part of a growing trend of litigation alleging misfeasance in the conduct of private investigations.
- Katten will host an event focusing on ‘investigating the investigators’, which examines the specific legal risks private investigators, and those that hire them, may encounter in their practice.

The head of investigations for law firm Dechert LLP (Dechert) has commenced legal proceedings against a private investigation firm, Diligence International LLC (Diligence)¹, accusing it of spying on him and his wife. While media reports have not cited the parties behind the hiring of Diligence, Dechert has been engaged in a long-running and very public dispute with a former client, with allegations of misconduct being levied by both sides. This latest salvo is emblematic of an emerging trend in litigation, with a number of recent stories in the media about litigants bringing satellite actions for investigative misconduct.

The claims against Diligence involve trespass, breaches of the Data Protection Act 2018 (DPA 2018), misuse of private information and harassment. The proceedings are an example of the ways in which those being investigated are turning to civil litigation remedies as a recourse against private investigators hired by counter-parties, and in particular using their new rights under the DPA 2018 or the General Data Protection Regulation (GDPR).

The claim

According to the claim, Mr Gerrard, the co-head of white collar and securities litigation at Dechert, first suspected that he and his wife were being spied on during their two-week long holiday on a private St Lucian island. Travel to the exclusive island is not permitted without pre-booked accommodation, yet a group of men allegedly acting for Diligence attempted to gain access to the island by simply claiming to know the Gerrards. Suspicions were raised by the men referring to the Gerrards by their first names David and Elizabeth, rather than the Gerrard's middle names, Neil and Ann, which they are generally known by. Upon identifying that their claims were false, the men were denied access to the island.

The next day, police intercepted a different man carrying surveillance equipment, including a night-vision camera after he had made last-minute travel and accommodation arrangements to stay on the island.

¹ Note: We are advised that Diligence International LLC has no connection to Diligence International Group LLC of Texas, USA.

Mr Gerrard also alleges that on his return to the UK, he was alerted to individuals surveilling and taking pictures of Dechert's offices. A few weeks later, he was aware of other individuals tailing him to a lunchtime meeting at a local London restaurant. According to the claim, the restaurant manager believed the men to be "very interested" in Mr Gerrard.

A few months later, the Gerrards reported to the police their discovery of a covert video camera system that had been placed at their home, apparently in order to monitor and record his movements. According to the claim, the video camera was a tied to a tree branch above the driveway and obscured from view by "sophisticated camouflage".

Although the claim does not connect Diligence's instruction to any ongoing cases — in fact it specifically requests the court require Diligence to provide information on whom it passed any information collected on the Gerrards — Mr Gerrard is currently defending himself in actions brought concerning his work at Decherts. In one action, Eurasian mining company ENRC alleges that he and other partners passed the media confidential information resulting in the Serious Fraud Office (SFO) beginning a formal investigation, thereby increasing the firm's fees. The allegations are denied by both Mr Gerrard and Decherts.

New rights under the DPA 2018 and GDPR

An interesting feature of the claim (*Gerrard & Gerrard v Diligence International LLC* [QB-2019-003176]), is use of the claimants' new rights under data protection laws. On the basis of alleged breaches of four of the data protection principles of the GDPR, the Gerrards claim compensation under section 168 DPA 2018 for the aggravated distress that the unlawful processing of their data caused. In addition, the claim requests a compliance order under section 167 of the DPA 2018 to force Diligence to comply with subject access requests (previously served by the Gerrards on Diligence under the DPA 2018), and to prohibit Diligence from any further processing of the Gerrards' data.

A new litigation tool?

The Gerrards' action isn't the first — and likely won't be the last — time that a party to litigation brings a satellite claim against a counter-party alleging misfeasance in the conduct of private investigations. Other examples include:

- *Hughes v Carratu International plc* [2006] EWHC 1791 (QB): The applicant was alleged to have defrauded a third party in civil proceedings but discovered that his personal data had been unlawfully accessed by Carratu, and two private investigators working for it. Hughes successfully obtained an order for Carratu to reveal who its client was. The Court held that Carratu had received information which had been obtained unlawfully. Carratu was required to disclose to Hughes the names of individuals to whom his personal information had been communicated and an explanation as to the use of the information.
- *Saab & Saab v Dangate Consulting Ltd and others* [2019] EWHC 1558 (Comm): Private investigators were retained to perform an internal investigation into allegations of regulatory impropriety for FBME Bank. After a dispute over fees, it was alleged that the investigators made unauthorised disclosures to regulatory authorities, an investigative journalist and media outlets. The Defendants denied disclosing confidential material to media outlets and the court agreed with this position. However, the Defendants unsuccessfully argued they were compelled to disclose information in response to requests from the Attorney General and the Governor of the Central Bank of Cyprus and in the public interest. As a result, the court held that the Defendants had breached their confidentiality obligations owed to their client.

Gerrard & Gerrard v Diligence demonstrates that investigative misconduct can expose civil litigants to criticism, counter-claims and unpredicted liabilities. Risks of these satellite actions are on the rise given the new powers and claims available under GDPR.

‘Investigating the investigators’ event

Katten will host an event focusing on ‘investigating the investigators’, which examines the specific legal risks private investigators, and those that hire them, may encounter in their practice. To receive an invitation to this event, please contact Sarah Court, Corporate Crime Administrator, at sarah.court@katten.co.uk.

CONTACT

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