



IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (KBDD)
BETWEEN:-

MORGAN HUNT UK LIMITED

Claimant

- and -

GREENHAM IT SERVICES LIMITED

Defendant

PARTICULARS OF CLAIM

A The Parties

1. The Claimant is a UK recruitment agency with offices in London, Birmingham, Manchester and Glasgow providing recruitment services across several industries. The Claimant is the data controller of a large volume of personal data, including sensitive personal data (such as job candidates' equality and diversity form responses and the results of DBS checks).
2. The Defendant is an IT company whose sole shareholder and director is Mr Andrew William Todd.

B The Contract

3. By an Agreement for Services in writing dated 28 November 2019, the Claimant engaged the Defendant to provide IT services to the Claimant. A copy of the contract is exhibited as **Appendix 1** to these Particulars of Claim (the "**Contract**").
4. The Claimant will rely on all material terms of the Contract at trial. The Contract provided:

NOW IT IS AGREED as follows:-

1. The Service Provider shall provide the professional services specified in the Statement of Services ("the Services") at Appendix 1.



2. *The professional services will be performed and delivered by Andy Todd ("the Consultant").*

...6. *The provision of the Services and the payment of the Fee are subject to the terms and conditions contained in this Agreement.*

5. The Services were set out in Appendix 1, which provided:

2. DESCRIPTION OF SERVICES

The following list is detailing the current consultancy requirements which may be subject to change and will be discussed between both parties and reviewed periodically.

- *Support the maintenance and development of the current live and test Pronet CRM systems*
- *SQL maintenance of systems*
- *Provide technical support for the acquisition and integration of new software for the Company e.g. Access Financials*
- *To advise, guide and make appropriate recommendations from a technical consultancy perspective for the procurement of the Company's replacement CRM system*
- *Complete technical consultancy on the ARCRM proof-of-concept project, including to scope and test the system against agreed requirements*
- *To develop and implement the chosen replacement CRM with support from the IT Team*
- *Complete the migration of Candidate, Client and Contact documents from the CRM to the Morgan Hunt Network and establish appropriate data retention processes in line with the Morgan Hunt Data Retention Policy*
- *Scope and develop API for the integration between the new Company website and the CRM*
- *Build required reports in the replacement CRM in line with the proof-of-concept*
- *Maintain the Consent Portal and support integration with the replacement CRM*
- *Maintain the Quality Portal and support integration with the replacement CRM*
- *To lead the AI Automation Project, including to scope, test and manage the project through to implementation*
- *To support the Morgan Hunt IT Team with fulfilling the objectives of current projects from a Technical Consultancy perspective*

6. The terms and conditions were set out in Appendix 2 of the Contract. They provided:

1. SERVICE PROVIDER AND CONSULTANT OBLIGATIONS

1.1 The Service Provider shall render the Services to the best of ability and skill...

...1.4 The Consultant will comply with Morgan Hunt's policies and procedures...



1.5 The Service Provider shall:

...1.5.2 use his best endeavours to promote the interests of the Company and any Group Company and to maintain and enhance their reputation;

...1.5.6 in his capacity as an IT Consultant and with System Administrator Permissions, shall act responsibly with regards to decisions relating to the Company's systems, data and processes...

...5. LIABILITY AND INSURANCE

...5.2 The Service Provider will indemnify, defend and hold harmless the Company... from any and all claims, demands, actions, causes of action or other liabilities related to or arising from any breach of any of the Consultants representations, warranties, or covenants, or otherwise relating to or arising from the Services you perform under this Agreement.

6. CONFIDENTIALITY

...6.2 The Service Provider must not... at any time whether during the course of this Agreement or after its termination disclose or communicate to any person... other than the Company or any Group Company any Confidential Information which may come to her knowledge in the course of providing the Services and the Consultant shall during the continuance of this Agreement use her best endeavours to prevent the unauthorised publication or misuse of any Confidential Information...

...12. DEFINITIONS AND INTERPRETATION

... "Confidential Information" [means] all secrets or confidential information of or entrusted to the Company or any Group Company including but not limited to trade secrets knowledge and information relating to the business technical processes creative processes designs or finances of the Company or any Group Company or their clients customers or candidates (including lists and details of contacts) with or requirements of and/or instructions from any client or candidate of the Company or any Group Company) or relating to know-how inventions or improvements or any other matters connected with the products or services future plans ideas programme information terms of employment competitors productions contracts or terms of contracts and business opportunities of the Company or any Group Company or any of its clients or customers or staff or requirements of the Company.

7. Further, there was an implied term of the Contract (by s13 of the Supply of Goods and Services Act 1984 and/or at common law) that the Defendant would carry out the Service with reasonable care and skill.
8. Further or alternatively, the Defendant owed the Claimant a concurrent duty of care in tort in respect of any losses (financial or otherwise) that would be suffered by the Claimant as a result of the Defendant falling below the standard of a reasonably competent IT supplier in carrying out the Services.



C Performance and the cyber attack

9. The Defendant carried out the Services under the Contract, and the Claimant paid the Defendant's Fees.
10. In summary, the Defendant was engaged in, inter alia, the following activities:
 - 10.1. Maintenance and development tasks on the Claimant's legacy CRM system, Pronet;
 - 10.2. Migration of candidate and client data and contact documentation from Pronet to the Claimant's new CRM system, Mercury; and
 - 10.3. Maintenance of the Claimant's Consent and Quality Portal, supporting the integration with the replacement Mercury CRM system.
11. GitHub is an internet hosting service for software development and version control which is commonly used to host software development projects. From around 2017, GitHub was put in place as a code repository for the code developed by the Defendant and other third parties for the Claimant. The Claimant's GitHub was set up so that:
 - 11.1. its account 'mhukltd' was public (so that code repositories created in 'mhukltd' would be visible to anyone); and
 - 11.2. an organization account 'MorganHuntUK' was by default private (so that it was visible only to organization members with permission). All code repositories were to be stored in the 'MorganHuntUK' organization page.
12. Between January and March 2021, as part of its performance of the Services, the Defendant created two repositories: (i) the E-Reg service 'SharepointToMercuryService' and (ii) the Tempest Export application 'MercuryTempestDataTransfer'. These repositories were created in the publicly accessible 'mhukltd' account.
13. On or around 19 March 2021, the Defendant uploaded the 'MercuryTempestDataTransfer' code to GitHub in the corresponding publicly accessible repository. This had the credentials for 'mhit.mercury@morganhunt.com' in the 'app.config' file. This information could be viewed by any user of GitHub.



14. On 19 March 2021, the Defendant began the data migration exercise from Pronet to Mercury.
15. An unknown third party accessed the publicly available GitHub repository and obtained the credentials for the mhit.mercury@morganhunt.com account (the “**cyber attack**”). This gave the third-party access to the Claimant’s SharePoint and MS-Dynamics/Mercury applications, which would have included access to significant personal data.
16. Between 26 and 30 June 2021, the Claimant received emails from third party email accounts in which the sender claimed to have hacked the Claimant’s IT systems and stolen customer and employee data.
17. The relevant GitHub repository was subsequently set to private access, the password and usernames changed, and the Mercury credentials removed from the config file.
18. As the cyber attack involved the exfiltration of personal data, the Claimant’s obligations under the GDPR and the Data Protection Act 2018 were triggered. Consequently:
 - 18.1. The Claimant notified the ICO of the data breach; and
 - 18.2. The Claimant notified the data subjects of the data breach, in tranches depending on the degree of sensitivity of data held for each data subject and as directed by the ICO. 96,152 candidates data subjects have been notified of the data breach to date.
19. Claims for alleged breaches of data protection legislation and misuse of private information have been intimated against the Claimant by a number of individual data subjects whose data was impacted by the cyber attack.
20. As part of the Claimant’s investigations into the cyber attack, the Defendant produced a report, in which the Defendant acknowledged and admitted that the upload of the ‘MercuryTempestDataTransfer’ code to GitHub in the publicly accessible repository was as a result of the Defendant’s error. The Defendant further admitted that this error allowed third parties, other than the Claimant’s organization members with



permission, to have accesses to the Claimant's credentials, and was "overwhelmingly likely" to have led to the security exposure allowing for the cyber attack.

D Breaches

D.1 Breach of confidence / App 2 cl 6.2

21. The credentials for the mhit.mercury@morganhunt.com account were Confidential Information (as defined) of the Claimant. In breach of Appendix 2 clause 6.2 of the Contract, the Defendant wrongfully disclosed those credentials, by publishing them on a GitHub page with a public setting.
22. Further or alternatively, the personal data stored in the Claimant's system was Confidential Information of the Claimant. In breach of Appendix 2 clause 6.2 of the Contract, the Defendant failed to use its best endeavours to prevent the unauthorised publication or misuse of any Confidential Information because the Defendant published the credentials for the mhit.mercury@morganhunt.com account on a GitHub page with a public setting.

D.2 Negligence / App 2 cl 1 / SGSA s13

23. Further or alternatively, in breach of Appendix 2 clause 1.1, 1.4, 1.5.2 and/or 1.5.6 and/or the implied term of reasonable care and skill and/or negligently, the Defendant failed to carry out the Services with reasonable care and skill and/or to the best of ability and skill and/or using best endeavours to promote the Claimant's interests and/or acting responsibly with regards to decisions relating to the Claimant's systems, data and processes. In particular, the Defendant published the config file containing the credentials in a publicly accessible GitHub page.

E Causation, Loss and Indemnity

24. As a result of the Defendant's breaches, the Claimant has suffered loss and damage. The loss and damage being suffered by the Claimant is continuing to accrue but falls into the following categories or potential categories:
 - 24.1. Investigation costs, consisting of (1) the cost of external consultants investigating the cause of the cyber attack and associated data breach, and (2) the cost of internal staff and management time investigating the same;



- 24.2. ICO engagement costs, consisting of (1) external legal fees associated with engaging with the ICO, and (2) the cost of internal staff and management time associated with engaging with the ICO;
 - 24.3. Any ICO fine made against the Claimant;
 - 24.4. Data subject notification costs, consisting of (1) external PR consultancy (2) external legal fees associated with drafting correspondence with and engaging with data subjects, (3) credit monitoring costs in respect of certain data subjects, and (4) the cost of internal staff and management time associated with notifying data subjects;
 - 24.5. Data subject claim costs, consisting of (1) external legal fees associated with dealing with financial compensation claims made by data subjects, (2) the cost of internal staff and management time associated with dealing with financial compensation claims made by data subjects, and (3) any settlements or sums ordered to be paid by the Claimant to data subjects.
25. The Defendant is obliged to compensate the Claimant for these sums by way of damages for breach of contract.
 26. Further or alternatively, by Appendix 2 clause 5.2 of the Contract, the Defendant is obliged to indemnify, defend and hold harmless the Claimant in respect of these liabilities.

F Relief

27. The Claimant claims declarations that the Defendant is in breach of contract and is obliged to indemnify the Claimant in respect of:
 - 27.1. Its investigation costs;
 - 27.2. Its costs of notifying, and engaging with, the ICO;
 - 27.3. Any ICO fine made against the Claimant;
 - 27.4. Its costs of notifying, and engaging with, data subjects, including the costs of credit monitoring offered to data subjects;



27.5. Any costs associated with defending and/or settling legal claims brought by the data subjects; and

27.6. Any sums paid to data subjects by way of court order or settlement.

28. These declarations have utility because they will enable the Claimant's and the Defendant's respective insurers (and, to the extent that losses are uninsured, the Claimant and the Defendant) to allocate responsibility as between themselves for the above losses in circumstances where they continue to be accrued on a rolling basis.

AND THE CLAIMANT CLAIMS:-

(1) Declarations as set out above

(2) Further or other relief

GIDEON SHIRAZI

Statement of Truth

I believe the facts stated in these Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 

Name: KEITH WIDDOWSON

Position: CHIEF FINANCIAL OFFICER

Dated: 8/8/23