

Neutral Citation Number: [2009] EWHC 2546 (QB)

Case No: HQ09X01648

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 October 2009

Before :

THE HONOURABLE MR JUSTICE EADY

Between :

ROBERT DEE

Claimant

- and -

TELEGRAPH MEDIA GROUP LIMITED

Defendant

Jacob Dean (instructed by **Addleshaw Goddard**) for the **Claimant**
David Price, Solicitor Advocate (instructed by **David Price Solicitors & Advocates**) for the
Defendant

Hearing date: 8 October 2009

Judgment

Mr Justice Eady :

1. There is an application now before the court on the part of the Defendant, Telegraph Media Group Ltd, for further information from the Claimant, Mr Robert Dee. It is necessary to consider, first, the background which gives rise to the claim.
2. The Claimant is suing over an article published on the front page of the *Daily Telegraph* on 23 April 2008 under the heading “World’s worst tennis pro wins at last”. It consists of the following three paragraphs:

“A BRITON ranked as the worst professional tennis player in the world after 54 defeats in a row has won his first match.

Robert Dee, 21, of Bexley, Kent, did not win a single match during his first three years on the circuit, touring at an estimated cost of £200,000.

But his dismal run ended at the Reus tournament near Barcelona as he beat an unranked 17-year-old, Arzhang Derakshani, 6-4, 6-3. Dee, below, lost in the second round.”

Immediately below this article is published a photograph of the Claimant, apparently playing tennis, and what would appear to be an invitation to turn to the “Full story: S20”. This is drawing attention to an article on page 20 of the Sport supplement of the same issue.

3. The meaning attributed on the Claimant’s behalf in the particulars of claim to the words complained of is that “ ... until his win at the Reus tournament near Barcelona, the Claimant had lost 54 consecutive professional tennis matches during his three years on the professional tennis circuit, and had therefore proved himself to be the worst professional tennis player in the world”.
4. Perhaps unsurprisingly, the Defendant denies that the words complained of are defamatory and also disputes the pleaded meaning. It is an important part of the Defendant’s case that the short front page article should be read together with the longer article appearing in the Sport supplement (the “full story”) as part of its context. This is headed “A British tennis sensation – the world’s worst”. Like the briefer article on the front page, it is attributed to the authorship of Mark Hodgkinson. There is also a sub-heading “British globetrotter Dee ends his losing streak at the 55th time of asking”. In order to make sense of the Defendant’s case on meaning, it is appropriate to set out the terms of this article also:

“IN the history of British tennis failures, and it’s been a long and rich history, no one had previously come close to the serial defeats that have flowed from the racket of Robert Dee, a 21-year-old from Bexley, Kent. Perhaps Dee has earned the right to be bracketed with such global sporting icons as ski-jumping’s Eddie the Eagle or swimming’s Eric the Eel.

Dee said last night he had found his new fame 'a bit odd', but raise a glass of Pimm's to him, as when it comes to losing, he's absolutely world class.

Dee equalled the world record for the longest run of consecutive defeats, after his first three years on the international professional circuit saw him lose 54 matches in a row, and all of them in straight sets. That's 108 lost sets in succession.

But he even failed in his efforts to make the record his own, after he last week won a first-round match in qualifying at a lowly Futures tournament in Spain. He soon returned to form, losing in the next round ... and in straight sets.

Dee sounded baffled yesterday as he reacted to claims that he might just be the world's worst professional tennis player. 'I honestly didn't know about the record so all the attention is a bit odd,' he said. 'Obviously it was great to get my first win but I can't believe that people don't have anything better to write about. I'm just going to keep on playing and improving and working hard with my coaches. Hopefully that will mean more wins at these sorts of tournaments.'

His father, Alan, said that describing him as a total no-hoper 'was laughable and incorrect', adding: 'The Lawn Tennis Association have given him a rating of 4.2 and that is very impressive.'

Paul Henderson, his former head teacher at Eltham College, said: 'Rob was never the school champion but he was very methodical about his tennis. We often wondered if we would hear of him again.'

Dee has lost around the planet, in Iran, Senegal, Colombia, Botswana, Venezuela, Rwanda, Kenya, Sudan, Mexico, the United States, Norway, Holland and Spain. Almost all of his tennis has been played at Futures tournaments, which are the lowest rung of the proper professional circuit. Dee's travel expenses must run to hundreds of thousands of pounds. And yet he has won a fraction of that back in prize-money.

Why didn't he just give up, you might ask. But you also have to admire Dee's perseverance as his losing record went on and on and expensively on. A spokeswoman for the LTA confirmed yesterday that Dee had not received any official funding, and instead received money from his parents, with his father a managing director of a shipping firm.

Dee's lack of success means that he doesn't have a proper world ranking, and until this week the LTA knew next to

nothing about him. Even the Kent county office were largely in the dark, regarding Dee as something of a jet-setting man of mystery, whose long-awaited win came in Spain last week when he beat American Arzhang Derakshani 6-4, 6-3. But he was brought down to earth when he immediately lost 6-3, 6-1 to Poland's Artur Romanowski.

Dee is now living and training in La Manga, Spain, and in recent months has been playing tournaments on Spain's national tour. Apparently, he's even threatening to break into the top 500 of players based there. Roger Federer, beware."

There is also a box alongside the article drawing attention to other "National failings", such as Eddie "the Eagle" Edwards, the England cricket team of 2006-2007, Devon Loch (the Queen Mother's horse which slipped and collapsed yards from the winning line in the 1956 Grand National) and England's Euro 2008 squad.

5. The claim is confined to defamation and no reliance is placed on the tort of injurious falsehood. The object of any libel action is to restore reputation. It is difficult to see what the Claimant hopes to gain from this litigation. It may be true that the newspaper was "having a laugh" at his expense, but it is not immediately apparent how the claim is likely to restore or enhance his reputation. Nonetheless, the solicitors have lodged a costs estimate of over £500,000 (not including success fee or ATE premium). To an outside observer, it may seem difficult to understand how the case could give rise to such expenditure. Nevertheless, against that background, it is especially important to see to what extent the issues can be effectively narrowed and both sides' cards placed on the table as soon as possible.
6. The Defendant seeks to justify the words complained of (i.e. those published on the front page) on the basis that the Claimant "... lost 54 consecutive matches in straight sets in tournaments on the international professional circuit" and/or that he "... lost 54 consecutive matches in straight sets in tournaments that contribute to a player's world ranking". They seek also to justify the conclusion that "... in consequence he merited or deserved being ranked or described as the world's worst professional tennis player".
7. The Defendant does not deny that the allegations were literally untrue, in the sense that the Claimant did not lose 54 consecutive professional matches, but the defence seeks to put to one side the professional matches which the Claimant won during the period in question – for the reason that they were played in Spanish tournaments which had no relevance to a world ranking under the auspices of the Association of Tennis Professionals (the ATP). It will be noted that the article on the front page actually refers, in the first line, to the Claimant's being "ranked" as the worst professional player. It is thus submitted that tennis matches having nothing to do with a world ranking would be irrelevant to the central thrust of the article (whether one takes into account the "full story" or not).
8. The original plea of justification relied on definitions and rules contained in the ATP Rulebook. Attention is drawn to the definition of the phrase "international professional circuit", which appears in the *Lucas-Box* meaning, although not on the front page of the newspaper, to be found in ATP rule 1.01. On the other hand, this

was pleaded by reference to the 2009 rules, which were not in effect at the time the article was published or during the period when any of the relevant matches were being played. At all events, the defence purports to define “the international professional circuit” as consisting of “ATP World Tour tournaments, Grand Slams, Davis Cup, ATP Challenger Tour tournaments and Futures tournaments”. These are the five categories of events in official men’s professional tennis identified in rule 1.01 of the 2009 Rulebook.

9. The Claimant made the point in the reply that the current ATP Rules had no application during the relevant period. Although, for the Defendant, Mr Price argues that this makes no difference, there is now a somewhat reformulated case in a document sent on the Defendant’s behalf on 17 July of this year. It was, in effect, supplied as “voluntary further information”. Reliance was now to be placed on “common usage” for the meaning of “international professional circuit”. Similar points were made in relation to “the circuit” (which did appear in the article of the front page of the newspaper) and “the world circuit”. The Defendant also sought to clarify certain matters with the Claimant’s advisers by serving a request for further information. Some of this was uncontroversial, but it is part of that request which has given rise to the present application.
10. What the Defendant now seeks is an order that the Claimant provide answers to two particular requests for information which he had declined to answer on 24 July of this year:
 - “16. Does the Claimant admit or deny that his 54 consecutive defeats were in tournaments on the ‘international professional circuit’ and/or ‘world circuit’ and/or ‘the circuit’?”
 17. Does the Claimant admit or deny that the Spanish tournaments referred to in paragraph 5.25 of the defence are not part of the ‘international professional circuit’ and/or ‘world circuit’ and/or ‘the circuit’?”
11. It may seem odd that significant expenditure should be incurred over such a narrow point, but Mr Dean, on behalf of the Claimant, seeks to resist the application on a number of grounds.
12. First, he says that permission has not yet been obtained to plead the Defendant’s case in accordance with the voluntary further particulars. Important though it is to plead clearly and accurately in defamation proceedings, this seems a somewhat technical ground on which to resist clarification on what appears to be a potentially significant point in the case. It could always be cured by amendment.
13. Secondly, Mr Dean submits that this is a pleading relating to meaning and that claimants are not required to debate meaning in a reply, unless there are facts in support of an innuendo that need to be addressed. That is not the case here.
14. Thirdly, Mr Dean argues, leaving the strict requirements of pleading to one side, that a response was given on his client’s behalf in the course of correspondence which states his position to a sufficient extent.

15. Mr Price's objective here, on the Defendant's behalf, is not to be difficult, but he says that it is desirable to attempt to narrow the issues and thus to save time and money. He wants to know, in particular, whether it is going to be necessary for him to instruct an "expert" who can give evidence about the use of these various terms (the "world circuit", "the circuit" and "international professional circuit") among those who follow professional tennis. It must be possible to establish, in particular, whether the Spanish tournaments formed part of any such circuit. It is a question of fact.
16. It is true that no innuendo is pleaded and that the test for meaning is going to be that of the ordinary fair-minded reader of the article or articles in question. It will be for the judge or jury, as the case may be, to decide what meaning(s) the words bear, but if the Defendant succeeds on that front, it will be necessary then to prove that the Spanish matches did not affect the central message of the *Telegraph* story. For that purpose, the question needs to be resolved of whether they formed part of the international professional circuit. Thus, the issue that Mr Price now wishes to address is not as to the meaning of the words. That case has been pleaded already on both sides. Rather, he is seeking to establish the extent of the factual dispute as to whether the Spanish matches were on "the circuit" (however defined). The answers given so far in correspondence do not appear to shed any light on that matter. By answering the queries raised, there would be no question of the Claimant conceding the Defendant's case on meaning. The object is merely to address the scope of the issues which would be outstanding at trial *if* the Defendant succeeded on meaning.
17. I see no reason why the Claimant should not offer further clarification on these matters. It has not been suggested that he is unable to do so. It is important to place as many cards as possible on the table at this stage. There is nothing to be gained from arguments about whether a request for further information is the right mechanism to adopt. I shall simply direct that the questions are to be answered constructively, rather than merely by way of non-admission, so that the Defendant can know the full extent of the real dispute.