



Case No: JS/03/0108
[2003] EWHC 1787 (QB)

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 July 2003

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

ELVIN ODURO

Claimant

- and -

TIME-LIFE ENTERTAINMENT GROUP LIMITED

Defendant

LUCY MOORMAN (instructed by **CCL Solicitors**) for the Claimant
DAVID SHERBORNE (instructed by **Reynolds Porter Chamberlain**) for the Defendant

Hearing dates : 4 July 2003

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
Mr Justice Tugendhat

Mr Justice Tugendhat :

1. Duwayne Brooks was the victim of the notorious racist attack in which his friend Stephen Lawrence was murdered in Eltham on 22 April 1993. This libel action arises out of a book published by the Defendant “Steve and Me: My friendship with Stephen Lawrence and the search for justice” by Duwayne Brooks with Simon Hatterstone. The Claimant is another childhood friend of Stephen Lawrence. He is now aged 27 and a graphic designer in the music print and fashion fields. Since 1998 he has been a trustee of the Stephen Lawrence Charitable Trust. At the time of the murder, and the preceding times, these young men were all in their late teens.
2. The Particulars of Claim are dated 14 May 2003. By an Application Notice dated 11 June 2003 the Defendant applies for ‘an order pursuant to CPR Part 3 and 53 that: (1) the Claimant’s Particulars of Claim (or parts thereof) be struck out and his Claim dismissed because the words complained in paragraph 5 of the Particulars of Claim are not capable of bearing the meanings contended for in sub-paragraphs 7.1 to 7.5 and 8 of the Particulars of Claim, or any meaning defamatory of the Claimant, and/or the Particulars of Claim fail to disclose a reasonable prospect of successfully bringing a claim and/or are an abuse of process’.
3. The Particulars of Claim include the following:

“5. In the book entitled "Steve and Me: My friendship with Stephen Lawrence and the search for justice", said to be written by Duwayne Brooks with Simon Hattenstone and published for the first time in the jurisdiction of this Honourable Court on 3 April 2003 ("the book"), the Defendant, by Time Warner Books UK, published of and concerning the Claimant the following defamatory words [save for the words in square brackets]:

[page 5:]

"... Stephen and his best friend Duwayne Brooks. We were close friends, the closest. But it was never just the two of us. We had a big social circle. There ,... was a group of us who were close mates. Me, quiet David and mad Bert ...; Tony Mason. ..; Leon. ...And Michael Wheeler. .." Then there were the Marks. Mark Blacky ...and fat Mark Amis ." .. And then there was Steve."

[page 8:]

"There was a kid called Elvin, who was always trying to get in with us"

[page 24:]

"Elvin was tagging along with Steve"

[pages 67 to 68:]

"They tried to smear my name. The family told people it was my fault that Steve was out there; if I hadn't been with Steve none of

this would have happened; if Steve had been with Elvin he would have been OK. The funny thing was that Elvin had always been friendlier with Steve's parents than with Steve. Elvin thought he was better than me because the family took him in and he was buddies with Mr Lawrence.

But Steve felt he couldn't rely on Elvin. Once Steve was at his house and it was late, around 10.30 or 11 pm and Mrs Lawrence phoned Elvin's house. She said to his family that they should kick him out immediately. They never gave him a bus or taxi fare. Elvin didn't even walk him half way home. Steve had to walk from Elvin's house in Charlton to his own in Woolwich Common at the dead of night. Steve never forgot that and made sure he never stayed late with Elvin again.

I never let Steve walk on his own from my house. I always used to walk him to round the corner from his door and I'd watch him go in to his door. I don't know why I felt so protective over him, but I did. I always felt I had to watch him, protect him, and because I rode home on my bike there was less chance of anybody attacking me."

[page 117]

". ..I had never conformed to their expectations, so they didn't want Steve to talk to me. Elvin conformed to how they wanted him to be, so he was their favourite - they approved of him as a friend for Steve."

[pages 130 to 132. The scene takes place while Duwayne is waiting to give evidence at the Old Bailey at the trial of three defendants accused of Stephen's murder. To place the passage in its proper context the Claimant will rely in particular on the preceding text beginning at page 124:]

"Worse was to follow. Elvin came up to me. We'd hardly seen each other in the years since Steve's murder.

'You're going to get punched in your mouth. I should punch you in your mouth now,' was the first thing he said.

I stood there, stunned. I couldn't believe he was talking to me like this. This idiot that used to drive Steve mad with his daft talk was saying to me I was going to get punched in my mouth.

He was ranting. 'How could you say that about me? How could you say I was going out with white girls? You're making me look stupid. I never spoke to white girls. I'd never go out with a white girl.'

'What are you talking about, Elvin?' I said.

'Didn't you give Imran a statement saying I used to go out with white girls?'

'No.'

'So why has Imran written it down then?'

'Don't you think you should ask 'him?'

'I've seen it,' he said. As soon as I came into court this morning I had to make a statement.

Just as with me, Imran had waited three years to get Elvin to make a counter-statement -on the day the case was starting! What kind of operation was he running? I tried to explain to Elvin that Imran had made mistakes, and that I'd also had to give him a new statement over the weekend. But Elvin was too worked-up to listen. I was so mad, but I didn't have the energy to do anything. I just watched him, thinking, What am I doing here, giving evidence that is going to be ripped apart, while this idiot is threatening to punch me in the mouth about a statement I never made?

'That's why the Lawrences don't like you, because you tell lies. All you do is tell lies.'

'Can anybody tell me what lies I have told? I thought. All I said to Elvin was, 'Don't worry about it.'

'When you see me on the street don't talk to me again,' he said finally. 'Just don't talk to me again. I never spoke to white girls, never went out with white girls. You're the white-girl lover.'

What could I say? I hadn't said anything in the statement about him going out only with white girls, but what was the problem if I had and he did? I talk to white girls, I fancy white girls -I don't see the problem. I like anybody who looks nice; I'm not one of those idiots who say, I don't like white girls; I don't like white people; I don't talk to white people when I'm drawing their giro and they're paying my rent because I've not got a job. Idiots.

At court, I didn't want to speak to anyone any more. I told everybody to go. I was stuck. Well and truly stuck."

[at page 174 to 175:]

"It was when I attended the Inquiry that I discovered what Mr and Mrs Lawrence had said about me to Macpherson. I was shocked. Devastated. ...for years I'd heard second - or third-hand that they were bad-mouthing me. And now here it was, all official in their statement. I don't know whether they said what they did because they believed it or simply because they wanted to hurt me, but it certainly made me feel terrible.

Mrs Lawrence had suggested Elvin was Steve's real friend and that I had needed Steve much more than Steve had needed me and that he never really liked me. If that was the case why did she say in her statement to Macpherson that Steve used to complain that it was unfair that he had a curfew when I didn't. Mr Lawrence said that he was

surprised that Steve had been out with me that night, and he presumed it must have been because Elvin wasn't available. If he didn't know it at the time, he certainly realised later that what he said was both unfair and wrong."

[in the index:]

"Elvin (acquaintance), 8, 24, 67-8, 117; and white girls, 123, 131; threatens Duwayne 130-1; in Macpherson Report, 175"

Further the Claimant will rely on the remainder of the book to place the words complained of in their proper context and to give them their correct meaning and effect.

6. The words complained of, where they refer to "Elvin", referred and were understood to refer to the Claimant.

7. The words complained of in their natural and ordinary meaning meant and were understood to mean that:

7.1 The Claimant was prepared to put Stephen needlessly in danger: he allowed Stephen to walk the streets alone at dead of night, when he was liable to be attacked, without taking the most straightforward steps to protect his safety such as giving him a bus or taxi fare or walking him halfway home.

7.2 As a result Stephen did not trust the Claimant to look out for his safety.

7.3 Stephen's parents' assessment of the Claimant - that he was Stephen's real friend and was someone who would have safeguarded Stephen from danger- was wrong and undeserved by the Claimant.

7.4 The Claimant was an aggressive and selfish person who confronted Duwayne at the Old Bailey with unprovoked threats and ranting, with total disregard for the fact that Duwayne was waiting to be called to give evidence in the trial of Stephen's alleged murderers.

7.5 The Claimant is a stupid racist hostile to white people.

8. Further or alternatively, by way of innuendo the words complained of meant and were understood to mean that the Claimant has lied, about being 1) a friend to Stephen and 2) Stephen's best friend or grossly exaggerated the closeness of his relationship with Stephen.

PARTICULARS OF INNUENDO

8.1 The Claimant repeats paragraph 2 above.

8.2 Those facts and matters would have been known to many readers of the book who would have understood the words complained of to bear the meaning set out in paragraph 8 above. Many of those readers

will be unidentifiable. However, the Claimant will provide particulars of any such readers who can be identified in his witness statement. ..'

4. Paragraph 2 of the Particulars of Claim sets out that the Claimant 'believes that he and Stephen were each other's best friend', and recites instances where he and Mr and Mrs Lawrence and others have referred to him publicly as Stephen Lawrence's best friend, and to Stephen Lawrence as the Claimant's best friend.
5. As presented to me, the Defendant's arguments on meaning were focussed on paras 7.1, 7.2, 7.3 and 8, while their arguments on strike out and abuse of process were focussed on paras 7.4 and 7.5.

Meaning

6. The Practice Direction to CPR Part 53 provides:

'Ruling on Meaning

4.1 At any time the court may decide—

- (1) whether a statement complained of is capable of having any meaning attributed to it in a statement of case;
- (2) whether the statement is capable of being defamatory of the claimant; ...

4.2 An application for a ruling on meaning may be made at any time after the service of particulars of claim. Such an application should be made promptly. ...'.

7. Since the exercise of this jurisdiction may involve withdrawing a question from a jury, it is common ground that that must be done only where the judge has decided that a publication is not capable of bearing a particular (or any) defamatory meaning and a jury's verdict to the contrary would be perverse: *Alexander v Arts Council of Wales* [2001] EWCA 514; [2001] 1 WLR 1840 [39]. The correct approach for the Court to adopt on an application for a determination on meaning is largely agreed between the parties in this case. What follows is drawn substantially from the submissions of Mr Sherborne and Ms Moorman.
8. The correct approach was summarised by the Master of the Rolls in *Gillick v Brook Advisory Centre* [2001] EWCA Civ 1263 at [7] (where he cited Eady J at first instance with approval):

"The proper role for the judge when adjudicating a question of this kind is to evaluate the words complained of and to delimit the range of meanings of which the words are reasonably capable, exercising his or her own judgment in the light of the principles laid down in the authorities and without any of the former Order 18 rule 19 overtones. If the judge decides that any pleaded meaning falls outside the permissible range, then it will be his duty to rule accordingly. In deciding whether words are capable of conveying a defamatory meaning, the court should reject those meanings which can only emerge as the produce of some strained or forced or utterly

unreasonable interpretation. The purpose of the new rule is to enable the court to fix in advance the ground rules and permissible meanings, which are of cardinal importance in defamation actions, not only for the purpose of assessing the degree of injury to the claimant's reputation but also for the purpose of evaluating any defences raised in particular justification and fair comment".

9. The following are well-settled principles of construction to be applied in determining the natural and ordinary meaning of words: see for example, *Gillick -v- BBC* [1996] EMLR 267, 272-3 per Neill LJ.

(a) in determining whether a publication is capable of bearing a particular meaning the judge should put himself in the position of the ordinary reasonable reader, reading the particular publication once. The judge should be wary of an over-elaborate and analytical approach.

(b) the ordinary reasonable reader is essentially fair minded and reasonable (but not charitably decent) and is possessed of ordinary knowledge and experience of worldly affairs;

(c) s/he is not unduly naive or suspicious. However s/he can read between the lines and engage in some loose thinking. S/he reads an implication much more freely than a lawyer and is especially prone to do so when it is derogatory. The characteristics of the hypothetical reader of particular relevance here are that he or she should not select a defamatory meaning where innocent meanings are available;

(d) a statement should only be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally (not a limited or specific class of people

10. In *Gatley on Libel Slander* 9th ed para 3.23 n13 there is a helpful explanation of the function of the reasonable reader in this context, as follows: 'He is of course a device to control liability and strike a balance between free speech and reputation'.

11. Ms Moorman particularly relied on the principles to be derived from *Berkoff v Burchill* [1996] 4 All ER 1008, as to which there was also no dispute. That case was unusual in that it concerned remarks about the claimant's personal appearance and not his character or personality. Of particular relevance to the present case are the following:

'...words may be defamatory, even though they neither impute disgraceful conduct to the plaintiff nor any lack of skill or efficiency in the conduct of his trade or business or professional activity, if they hold him up to contempt scorn or ridicule or tend to exclude him from society. On the other hand insults which do not diminish a man's standing among other people do not found an action for libel or slander. The exact borderline may be difficult to define... (*ibid* 1013h)

... in this context the word [reputation] is to be interpreted in a broad sense as comprehending all aspects of a person's standing in the community... (*ibid* 1018b)

.... the question has to be answered in relation to the claim by the plaintiff. But if this is done, one has to look at the words and judge them in the context in which they are published... It is trite law that the meaning of words in a libel action is determined by the reaction of the ordinary reader and not by the intention of the publisher, but the perceived intention of the publisher may colour the meaning.' (*ibid* 1018d-f)

12. The first two contested meanings in Particulars of Claim are in paras 7.1 and 7.2, which are related. '7.1. The Claimant was prepared to put Stephen needlessly in danger: he allowed Stephen to walk the streets alone at dead of night, when he was liable to be attacked, without taking the most straightforward steps to protect his safety such as giving him a bus or taxi fare or walking him halfway home; 7.2 As a result Stephen did not trust the Claimant to look out for his safety '.
13. These meanings are based on the passage at pp 67-8 of the book. Mr Sherborne submits that the criticism that the book contains is directed at the parents of both Steven Lawrence and the Claimant. He points out that while that passage relates to Stephen Lawrence going home at night, in fact, as every reader will know, the murder occurred while Stephen Lawrence was not alone, but was accompanied. This point has been the subject of correspondence between the solicitors, and there is a dispute of fact. I am not concerned with such matters in a ruling on the issue of meaning.
14. Whether or not Mr Sherborne is right about this is to my mind a matter for trial. The meanings pleaded are not ones which I can withdraw from the jury.
15. The next contested meaning is in Particulars of Claim para 7.3: 'Stephen's parents' assessment of the Claimant - that he was Stephen's real friend and was someone who would have safeguarded Stephen from danger- was wrong and undeserved by the Claimant'.
16. Ms Moorman submits that this meaning is to be derived from pp67-8 taken with pp 174-5, as cited above. Consideration of these pages raises a number of sub-questions. There are in fact two sub-meanings in this meaning: (1) that Stephen's parents' assessment that the Claimant would have safeguarded Stephen from danger was wrong and undeserved and (2) that Stephen's parents' assessment that the Claimant was Stephen's real friend was wrong and undeserved.
17. Since the passages relied on are over one hundred pages apart, there is a question in relation to the first of these sub-meanings: would the hypothetical reader read them together? It is only if he or she would read them together that there could be derived the meaning that Stephen's parent assessment that the Claimant would have safeguarded Stephen from danger was wrong and undeserved could arise. This is because pp 174-5 contain nothing about safety.

And even if the two passages are read together, there is the problem, submits Mr Sherborne, that on pp67-8 no significant distinction is drawn between the Claimant and Mr and Mrs Lawrence. It is Mr and Mrs Lawrence who, it is written, ‘never gave [Stephen] a bus or taxi fare’ as a result of which, it is implied, the Claimant was put in a position where should have walked Stephen halfway home.

18. In my judgment the first sub-meaning is over elaborate and analytical in requiring the hypothetical reader to interpret pp174-5 in the light of pp67-8. And even if that be wrong, the sub-meaning still cannot be derived from pp67-8, since that passage is not capable of being understood as referring to any assessment by Mr and Mrs Lawrence of the Claimant as someone who would have safeguarded Stephen from danger.
19. The words ‘Mrs Lawrence had suggested Elvin was Steve’s real friend...’ appear on p175. Immediately after the words quoted in the Particulars of Claim there appears the following passage on p175.

‘At the Inquiry in 1998 he [ie Mr Lawrence] stopped me in the corridor to apologise, but I walked into my room. Later on, I got a knock on my door from the father of Rolan Adams, who had become a friend of Mr Lawrence, and he asked if he could have a word with me. He told me Mr Lawrence had asked him to talk to me, to apologise for all the things he had said about me, and that he had only gone along with it to keep the peace with Mrs Lawrence’.

20. A jury could consider that it was being said that Mr Lawrence did not agree with what Mrs Lawrence is reported as suggesting. Given this, I hold that the words complained of are capable of bearing the natural and ordinary meaning that Stephen’s parents’ assessment of the Claimant – that he was Stephen’s real friend – was wrong and undeserved by the Claimant.
21. The innuendo meaning pleaded in para 8 is in fact three sub-meanings: that the Claimant has (a) lied, about being 1) a friend to Stephen and 2) Stephen's best friend or (b) grossly exaggerated the closeness of his relationship with Stephen.
22. First, I ask myself: is the book is capable of bearing the meaning that the Claimant was not a friend of Stephen Lawrence? It is only if it is capable of this meaning that it could also mean that the Claimant lied about being a friend to Stephen Lawrence. Certainly the passages at pp5, 8 and 24, if read alone, might convey the meaning that the Claimant was not a friend of Stephen Lawrence. But they are to be read in their context, and in particular in the context of the later passages cited above. In the light of those later passages it is impossible to derive the meaning that the Claimant was not a friend of Stephen Lawrence. It is implicit in the Claimant’s own case in relation to pp67-8 that they convey the meaning that he was a friend of Stephen Lawrence (whether good or bad, and whether trusted or not). The passage at p117 is explicit as to the Claimant being a friend of Stephen Lawrence, as is pp 174-5.

23. It follows that the words complained of are not capable of bearing the meaning that the Claimant has lied about being a friend of Stephen Lawrence
24. Next I consider whether the book is capable of bearing the meaning that the Claimant grossly exaggerated the closeness of his relationship with Stephen. Here the Claimant is on stronger ground. This is a meaning which the words are capable of bearing. So I turn to the question whether this meaning is capable of being a defamatory meaning. In my judgement it is. There may be contexts or circumstances where a statement by one man about another that he had exaggerated the closeness of his relationship with a third young man when they were all teenagers would not be capable of bearing a defamatory meaning. But the circumstances surrounding any discussion of the life of Stephen Lawrence are not of that kind. I cannot withdraw this meaning from the jury.
25. Next, I consider whether the book is capable of being understood as saying that the Claimant has lied about being Stephen's best friend. Lying is a strong term. A claim by a young man that, as a child or teenager, he was the best friend of another young man of the same age is not at all precise. Any reasonable person would consider that two young people can each make such a claim in relation to a third, without either of them being untruthful or mistaken. Even if a jury were to hold that the words mean that the Claimant has exaggerated, (as I have held that a jury could find), for a jury to find that lying by the Claimant is a possible meaning seems to me to assume a reader who is unduly suspicious and unreasonable. In my judgment that stronger meaning is not one which the words complained of are capable of bearing.

The strike out application

26. The approach of the court to an application such as this is that where an issue depends on the evaluation of evidence, that is a matter for the jury, and the issue cannot be withdrawn from the jury unless the jury, properly directed, could not properly reach a necessary conclusion: *Alexander v Arts Council* *ibid* [37].
27. Mr Sherborne's submissions under this head are addressed to the following meanings:
 - '7.4 The Claimant was an aggressive and selfish person who confronted Duwayne at the Old Bailey with unprovoked threats and ranting, with total disregard for the fact that Duwayne was waiting to be called to give evidence in the trial of Stephen's alleged murderers.
 - 7.5 The Claimant is a stupid racist hostile to white people.'
28. These are derived from the passages cited from pp 130-132 of the book cited above.
29. Mr Sherborne refers me to the correspondence between solicitors, which has been extensive in this case. In a letter dated 9th April 2003, the Claimant's solicitors give a detailed account of what he says about the incident at the Old Bailey. There are points of agreement, and some differences in the two accounts. Mr Sherborne points to a sentence in the letter: 'Towards the end of

the conversation, Elvin advised Duwayne to get reading his statement because if he goes into Court and gets it wrong, as Elvin feared, then Elvin would punch him in the mouth, because of the damage that the consequences of getting it wrong would have both for the case and the wider black community Whilst it is conceded that Elvin threatened to punch Duwayne in the mouth, he is not a violent person, and used these words from sheer frustration arising from the situation he found himself in, being wrongly named by Duwayne’.

30. Mr Sherborne submits that it therefore common ground that there was a threat of violence, which was on any view aggressive threatening behaviour, when Duwayne Brooks was about to give evidence. Not much is needed, so the argument runs, to get from the facts that are admitted to the Claimant’s pleaded meaning that he was ‘an aggressive and selfish person’. It follows, he says, that a case on those facts could not overcome the pleas of justification or fair comment that will inevitably be raised if these meanings are not struck out.
31. Clearly this argument is one that could be advanced to a jury if the meanings were not struck out. But in my judgment it is not so strong as to entitle me to withdraw these meanings from the jury. The question of whether, on the admitted facts, any defence of justification or fair comment should succeed is one of evaluation of the admitted facts in the context of other facts which are not all admitted. This is the province of the jury.
32. As to the meaning pleaded in para 7.5, Mr Sherborne compares the words complained of (‘I’d never go out with a white girl’), with what the Claimant wrote in a witness statement prepared for the criminal proceedings and dated 17th April 1996. In that statement there appears the sentence ‘The first thing I would like to say is that I have never had a white girlfriend’. That sentence appears in that witness statement because there had been a statement attributed to Duwayne Brooks (wrongly he says) in which he had said that there was a person who knew who the murderers were and who had a white girl friend. The Claimant was denying that he was that person. In that context, no reasonable person could understand that there is anything racist in his saying that he had not had a white girl friend, and a jury could consider the sentence is quite different from the corresponding sentence in the words complained of.
33. The words complained of also contain other words attributed to the Claimant (‘I never spoke to white girls, never went out with white girls’), and to Duwayne Brooks (‘I’m not one of those idiots who say I don’t like white girls’). In my judgment a jury could consider that the words complained of at pp130-132 of the book bear the meaning pleaded in para 7.5.
34. It follows that the pleaded meanings are, as a result of this judgment, as follows:

7.1 The Claimant was prepared to put Stephen needlessly in danger: he allowed Stephen to walk the streets alone at dead of night, when he was liable to be attacked, without taking the most straightforward steps to protect his safety such as giving him a bus or taxi fare or walking him halfway home.

7.2 As a result Stephen did not trust the Claimant to look out for his safety.

7.3 Stephen's parents' assessment of the Claimant - that he was Stephen's real friend [words deleted] - was wrong and undeserved by the Claimant.

7.4 The Claimant was an aggressive and selfish person who confronted Duwayne at the Old Bailey with unprovoked threats and ranting, with total disregard for the fact that Duwayne was waiting to be called to give evidence in the trial of Stephen's alleged murderers.

7.5 The Claimant is a stupid racist hostile to white people.

8. Further or alternatively, by way of innuendo the words complained of meant and were understood to mean that the Claimant has [words deleted] grossly exaggerated the closeness of his relationship with Stephen.