

Case No: HQ1OD03690

Neutral Citation Number: [2011] EWHC 785 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/04/2011

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

AWDRY BAILEY AND DOUGLAS

Claimants

ADRIAN BRESSINGTON

- and -

RICK KORDOWSKI

Defendant

Miss Victoria Jolliffe (instructed by **Awdry Bailey & Douglas**) for the **Claimants**
Mr Kordowski appeared in person

Hearing dates: 28 March 2011

Judgment

Mr Justice Tugendhat :

1. The Defendant in this libel action describes himself as the “publisher” of the website “Solicitors From Hell” (“the Website”). The first Claimant (“the Firm”) is a firm of solicitors long established in the Wiltshire region. The second Claimant (“Mr Bressington”) is employed as a solicitor by the Firm and is the Head of the Family Law Department. He has an established family practice in Gloucestershire, Wiltshire, Avon and Somerset and is and has been a member of his profession’s Family Law Panel since 2003.
2. On 28 March 2011 I stated that I would grant the application of the Claimants for the Defence to be struck out, and for final judgment to be entered for the Claimants. I issued a final injunction that Mr Kordowski be restrained from publishing the words complained of, or any similar words defamatory of the Claimants, that the Claimants be permitted to apply for damages to be assessed and that the costs of the Claimants be paid by Mr Kordowski. I said I would give my reasons later, and these are they.
3. On and since 2 September 2010 Mr Kordowski has published on the Website words headed with the names of the Firm and Mr Bressington, which then continue as follows:

“This despicable individual...represented my wife for the last 4½ years during our divorce...”.
4. It is unnecessary to set out the full text. The meanings complained of are pleaded as follows:

“The Claimants are guilty of serious professional misconduct, dishonesty and incompetence in that whilst representing a client in divorce proceedings [Mr Bressington] in his capacity as an employee of [the firm]:

 - 1) Repeatedly and knowingly lied in court;
 - 2) Employed disgraceful tactics in order to deliberately harm the client’s children by unwarrantedly damaging their relationship with their father;
 - 3) Contrary to [the firm]’s claims on its website, conducted the litigation in a manner which was not in the interests of the client, but was solely motivated by financial gain for the [the firm]”.
5. The next day, 3 September 2010, the Claimants sent a letter in accordance with the Pre Action Protocol for Defamation. They requested the immediate removal of the article from the Website, an undertaking not to repeat the words complained of and a written apology. At that stage they noted that they did not seek costs or any proposals as to damages. Their concern was with the immediate removal of the words complained of.
6. On 6 September Mr Kordowski replied by e-mail as follows:

“I have had another look at the listing posted at [the Website] about you and your firm. It is a legitimate complaint/opinion and it will stay published as a warning to others. You can of course; issue legal proceedings via the High Court to have a judge order the listing to be taken down. But only if the allegations transpires to be false!

You should also take note that I have been in contact with your former client (Tim) and he has confirmed that the published allegations are indeed true with supporting evidence.

However, your former client has overlooked the fact that he could have his complaint published “permanently” on my site”.

“You still have the option to mitigate your perceived losses/damages by subscribing to my “Administration and Monitoring” scheme.

Subscribers not only enjoy the instant deletion of complaints from my website but also the deletion of links from search engines such as Google. As if it never happened.

Subscribers in addition will have any further complaints either repeat or new, intercepted and deleted immediately. For a one off fee, for life.

Some subscribers have even asked for subsequent customer complaints to be copied to their senior partners as a way of learning prior to permanent deletion.

Details can be found here... Oh, and just so you know. Other firms Tracing Agents have found that I have no money and no assets (thanks to my former solicitors).”

7. It was not correct that the author of the words complained of was a former client: as stated in the words complained of, he was the divorced husband of a former client.
8. On 29 September 2010 the Claimants issued their claim form and served it with the Particulars of Claim. In accordance with CPR Part15 a defence was due within 14 days.
9. On 27 October Mr Kordowski served a document headed “Defence of the Defendant” consisting of three pages accompanied by a one page statement from Mr Tim Line. All but one page of that document consisted of the full text of the Defamation Act 1996 s.1, which Mr Kordowski had copied and pasted into his defence. Apart from that, the purported defence consisted of a general denial and a plea that Mr Kordowski was not the author of the words complained of. That was the only purported defence.
10. On 5 November the Claimants wrote to Mr Kordowski explaining the defects in his purported Defence. They referred to CPR Part 16 and 53 Practice Direction each of which provide what a defence is required to contain.

11. On 2 December Mr Kordowski sent a document headed "Second Witness Statement". In it he said that, having discussed the matter with Mr Line, he was "inclined to conclude that his experiences with the Claimant as explained in the [the words complained of] and published by myself are true". He also claimed that they were "fair (honest) comment". He said that "on this occasion I dispensed with my verification procedure as I naturally assumed that the Claimant's response would be covered by this client confidentiality point as the author of the posting was not a client of the Claimant". The client of the Claimants was of course Mr Line's wife not himself. Further he claimed that the words complained of were published having regard to "duty and interest of others". He said that Mr Line had made a monetary contribution to my website, putting his posting in the "Premium Players List".
12. On 14 December the Claimants issued the application notice which is now before me. It included an application for an order that the Defence be struck out pursuant to CPR 3.4(2)(a), and that judgment be entered for the Claimants, because the defence discloses no reasonable grounds for defending the claim, and that the relief as set out in the attached draft order be granted, together with costs. After some redrafting the draft order, as now sought, includes an application for final judgment, an injunction restraining further publication of the words complained of, and permission to apply for an assessment of damages.
13. CPR 3.4(2) (a) provides that the court may strike out a statement of case if it appears to the court that the statement of case discloses no reasonable grounds for defending the claim. CPR 16.5(2) provides that where the Defendant denies an allegation he must state his reasons for doing so. Practice Direction 53 paras 2.5 and 2.6 provide that a defendant relying on defences of truth or comment must specify the defamatory meanings he seeks to justify, or to defend as fair comment on a matter of public interest, and in each case give details on the matters on which he relies in support of that allegation. Para 2.7 requires that a defendant who alleges that the words complained of were published on a privilege occasion must specify the circumstances he relies on in support of that contention.
14. On 14 February 2011 Mr Kordowski served another document or bundle of documents under a title page headed "Defence". It included a third witness statement from himself, with exhibits, a further copy of the Defamation Act 1996 s.1, the same witness statement of Mr Line dated 27 October 2010 as served before, a copy of the document headed Terms and Conditions of Posting before [the Website]" and the terms of what he described as a "rejected party 36 offer". The so called offer provided that the Claimants should give notice of discontinuance and agree to pay Mr Kordowski's costs in the sum of £1,500 on the grounds that the claim was doomed to fail.
15. The third witness statement enlarged upon the purported defence of qualified privilege. He claimed to have a moral and/or social duty to inform others of the wrongdoing or negligence of some solicitors. He said that members of the public generally have an interest in receiving such information. He also claimed to have had no reason to believe that what was being posted was defamatory (a reference to the 1996 Act s.1(c)), and to have taken reasonable steps to ensure that what was posted was not defamatory (a reference to s.1(b) of that Act), and that Mr Line not himself was the author. Again he claimed to rely on the additional defences of justification and fair comment.

16. Mr Line's statement dated 27 October 2010 contains four substantive paragraphs none of which includes any details which could be said to be particulars of justification or of the facts relied on in support of the defence of fair comment, or of qualified privilege. He says he stands by everything that he wrote as being factual or his honest opinion. But that is as far as it goes.
17. On 7 March 2011 the Claimants wrote a letter explaining the defects in the defence. On 17 March 2011 Mr Kordowski wrote proposing to apply to amend his defence. On 21 March 2011 Mr Kordowski provided a seven page document entitled "Witness Statement of Tim Line (amended)". This referred to and had attached to it, the print out from words on Mr Line's blog. This is similar in form but longer than, the words complained of. The Claimants have not sued Mr Line.
18. This statement purports to set out why he says the words complained of are true and honest comment. But again there is a lack of particularity, notwithstanding references in that document to Practice Direction 53 paras 2.5 and 2.6. He states, as is the fact, that Mr Bressington represented his wife at proceedings which commenced in May 2006. In support of the allegation that it was Mr Bressington who had lied to the court, he refers to information communicated to the court by Mr Bressington in his capacity as Mrs Line's solicitor. He gives no details of how it is that Mr Bressington could know that what he was saying was untrue (if indeed it was) and no details of other matters in relation to which he complains of Mr Bressington's conduct. He simply attributes to Mr Bressington all the grievances he has about the divorce proceedings and his wife's actions in the course of those proceedings.
19. I asked Mr Kordowski why he had the duty and the public the interest that he alleged, given that there was a statutory procedure for complaints against solicitors. He said his site was for members of the public who were not successful with that procedure. It was to get solicitors to make amends. It is obvious that the reciprocal duty and interest for common law qualified privilege does not exist in this case, and the conditions for a *Reynolds* defence of qualified privilege are equally lacking. There is no public interest in the publication of the words complained of, which express the personal grievances of Mr Line, and Mr Kordowski says himself that he did not check before he published. If he had done, what Mr Line has produced by way of evidence would not have given Mr Kordowski any better grounds for a *Reynolds* defence.
20. In these circumstances it is plain and obvious that the Defence or Defences must be struck out. Whether taken together, or separately, none of the documents or witness statements served by Mr Kordowski disclose any reasonable ground for defending this claim.
21. Mr Kordowski submitted that he should have further time and an opportunity to submit a defence which does comply with the rules. He stated that material would be available to him.
22. Miss Joliffe submitted that judgment should be entered without further delay. She referred to the letter of 6 September 2010, sent in response to the letter before action. She submitted that Mr Kordowski was abusing the process of the court by using his own claim to impecuniosity as a means of dissuading claimants from issuing proceedings, while at the same time demanding money as he did both in that letter, and in his so called Part 36 offer.

23. I was able to ask Mr Kordowski some questions. Some of his answers are given above. He appears to be aged about 50, educated and able to speak for himself. He told me that he is a Graphic Designer who is self employed but who has at present no work. He accepted explicitly before me that he was the publisher of the words complained of. He said he had not contacted Mr Line, the author, until after the letter before action. He said that the fee which he demanded in his letter of 6 September was £299, but no solicitor ever pays it. He said he had received payment from Mr Line in the sum of £50 but he was unable to explain to me what he had agreed to provide to Mr Line in consideration for this. He said there were conditions of contract, but not the ones before the court.
24. On 8 December the Claimants had written that they had no intention of paying him any money and “your quest for money in these circumstances is akin to extortion...” When I asked him what he had to say about the Claimants’ response to his demand for money, he said that he had nothing to say. He first claimed that he had not heard any suggestion of extortion until I raised it with him. Then on further questioning he accepted that he had heard that from a number of solicitors. Mr Kordowski is now an experienced litigant. I gave a judgment in the matter of *Farrell v Kordowski* [2010] EWHC 2436 (QB) on 5 October 2010. In the same matter on 28 January 2011 Lloyd Jones J assessed damages in that case in the sum of £10,000. That case concerned a publication on the same Website. The summary of the judgment on the assessment of damages is to be found on Lawtel. Eady J gave judgment against him in *Phillips v Kordowski* on 11 October 2010 (reported in the Media Lawyer and <http://inform.wordpress.com>).
25. In my judgment Mr Kordowski is abusing the process of the court, seeking to cause the Claimants to incur costs which he says they have no prospect of recovering from himself. Whether his motive is to punish them for not meeting his demands for money, or for some other reason, is immaterial. He plainly has a grievance against solicitors, as appears from the last words of his letter of 6 September quoted above.
26. On 24 March 2011 Mr Kordowski issued an Application Notice. He asked to be allowed to adduce as evidence on 28 March the amended witness statement of Mr Line and for the document headed “Defence” dated 14 February to be admitted as his defence. As appears in this judgment, I have read and taken into account the amended witness statement of Mr Line. I also considered whether the document headed “Defence” dated 14 February could stand as a Defence as required by the CPR, and decided that it could not. To that extent the application of Mr Kordowski is dismissed. It is wholly without merit.
27. It is for these reasons that I granted the application of the Claimants, struck out Mr Kordowski’s defence and issued an injunction restraining him from repeating the same or any similar words defamatory of the Claimants.