Neutral Citation Number: [2008] EWHC 2487 (QB)

Case No: HQ06X01029

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 October 2008

Before :

THE HONOURABLE MR JUSTICE EADY

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Between :

SAYED AMDAD HUSSEIN — **Claimant**

- and -

(1) CHAUDHRY OMAR FAROOQ — **Defendants**
(2) IMRAN RIAZ SHEIK sued as IMRAN KWAWAJA

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Mr Hussein in person
Kate Wilson (instructed by **Lam & Meerabux Solicitors**) for the **First Defendant**
Anawar B Miah (instructed by **A Z Solicitors**) for the **Second Defendant**

Hearing dates: 13-14 October 2008

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Judgment

Mr Justice Eady :

1. By the time of the trial the primary issue remaining in this slander action was whether the Claimant has been able to prove that either or both of the Defendants spoke the words pleaded. It is also necessary to consider whether any (and, if so, which) of the words would have been defamatory of the Claimant and in what sense. I need further to address whether any of the allegations would, if published, be actionable without proof of special damage. There is also the matter of the claim for special damages.

2. The slander claim was originally coupled with a contractual dispute, but that was separated out and tried separately. For present purposes, therefore, it is not necessary to go into it.

3. There is some confusion over whether the date on which it is said that the words complained of were uttered was 4 or 6 April 2006. The Claimant's principal witness (Ms Lehuede) has worked for him for many years as a typist and assistant. She says in her statement that she was present at a meeting on 4 April at the First Defendant's showroom and that various words were spoken on that occasion. Some of the other witness statements speak of 6 April but, in any event, the Defendants both deny that the words were spoken at all (irrespective of date).

4. The First Defendant did not give evidence personally before me. It seems that he is currently in Pakistan. Recently a Civil Evidence Act statement was served, praying in aid his three written statements, insofar as they relate to the slander allegations. The Claimant says that the reason for the First Defendant's absence is that he is "on the run" from the police and dare not come back to this jurisdiction. The First Defendant, on the other hand, says that he received some injuries as a result of the Marriott Hotel bombing in Islamabad, which took place at approximately 8 p.m. on 20 September 2008. Were it not for that, he would have attended the trial. I do not need to resolve that issue, but I bear in mind that the Claimant is very free with allegations of dishonesty, corruption, forgery and perverting the course of justice against other people (including against professional lawyers). He took the opportunity to make such allegations when he was given the opportunity to open his case and also did so while in the witness box. Nothing has been proved against the First Defendant's character, such that I could discount his written evidence as inherently unreliable. I am left with three written statements which have not been tested in cross-examination and must do the best I can in the light of those.

5. All that is alleged against the First Defendant is that he said "Forget Mr Shah [i.e. the Claimant], he cannot get you any property". In view of the conflict of evidence, I am not persuaded on a balance of probabilities that he did say that. In any event, those words are not defamatory on their face and no innuendo is pleaded; that is to say, any extraneous facts which, if known to a listener, would invest them with a particular defamatory significance.

6. It has also been alleged in a letter that the First Defendant nodded his assent to the allegations attributed to the Second Defendant on the same occasion (to which I shall need to come later). That is obviously an attempt to establish liability on his part for words he did not personally speak. Were it established, on an unequivocal basis, that the First Defendant had indeed expressed his endorsement of the words spoken by another, that would be capable of fixing him with responsibility. Critically, however,

Ms Lehuede did not mention any "nodding" in her witness statement and she was not prepared to add to or subtract from its brief contents. She said that she could only say what was in her statement. That disposes of the allegation of nodding.

7. By contrast, however, the Claimant himself gave evidence from the witness box to the effect that he had seen nodding on the occasion in question. He supplemented this later in his closing remarks. He was not in the room when the words were said to have been uttered, but he says that when he returned to the room he saw the First Defendant nodding. Nothing to that effect was said in his witness statement and, in those circumstances, I am driven to the conclusion that this late and unnotified addition to his evidence is simply not to be relied upon.

8. So far as the First Defendant is concerned, it is unnecessary to go further, since my findings would lead to a conclusion in his favour on liability. I will go on, however, to consider whether the words attributed to him (*if* spoken and *if* defamatory) would have been actionable without proof of special damage. The only relevant exception would be if it could be shown that the words tended to injure the Claimant's reputation in the way of a calling, trade or profession being carried on by him at the time of the publication in April 2006. That, too, is a matter in respect of which the burden lies squarely on the Claimant.

9. He was pressed in correspondence to provide information about his business (in the context specifically of damage) by disclosure of relevant documentation. None was produced. He was asked about a letter dated 30 October 2006, in the course of cross-examination:

> "Please provide proof of previous earnings commensurate with the fees you allege to have lost as a result of the alleged comments made by the Defendants. These could be invoices, receipts, bank statements and/or documents relating to the Inland Revenue to show that you had in fact been commanding the fees you allege to have lost."

The Claimant bridled and said that the solicitors were mentally deficient and that all the relevant people knew full well the nature of his business. He also accused the solicitor in question of being vexatious and dishonest. He added to this, in his closing remarks, that they had been "playing games" with him. That is obviously not a satisfactory approach to an issue where he has to discharge the burden of proof. The requests were entirely reasonable and no more than one would expect.

10. Ms Wilson, for the First Defendant, was particularly concerned in the light of an earlier statement to the effect that the Claimant was a "retired accountant", but he indicated that although his main home is now in Spain, he is still doing some work of a consultancy nature. He described himself as being "semi-retired".

11. To back his claim, he produced in the witness box what appeared to be a lease from 2005, apparently because it was supposed to show some involvement on his part with the underlying transaction. This was vague, to say the least, and the object of the exercise would have been to show that he was still carrying on a relevant business in April 2006. The dearth of supporting documentation, and lack of detail as to the

nature of such a business, leads me to conclude that the burden has not been discharged in this respect.

12. There is a claim for special damages which itself has been lacking in any particularity. It seems to be based on the propositions that one or more of the persons present when the words were allegedly spoken would have done business with the Claimant and, had it not been for the damaging impact of the slander, that he would have earned commissions on the transaction(s) in question. It is, yet again, for the Claimant to prove that there would have been such transactions and to establish a causal link to the loss claimed.

13. None of the persons concerned has given evidence. The Claimant says that they "did not want to know" after they heard the words complained of. But there is no documentary support to evidence the nature of the transactions, nor as to any agreed terms for commission, nor for example any time-sheets or diary entries to show how much time was spent. I asked if he kept time-sheets and he replied that he did: yet he had not disclosed or produced any. Nor was there any evidence of other transactions involving any relevant person, from which a pattern of business might be inferred. Mr Ghaffar, one of the people said to have been present when Ms Lehuede says that she heard the remarks, has provided a lengthy witness statement, but it largely deals with the contractual dispute, and does not even address the alleged publication of defamatory words – let alone suggest that he would have done business with the Claimant had it not been for the slanders.

14. The Claimant alleges that the First Defendant threatened Mr Ghaffar, to the effect that he would not pay him for some cars which had been supplied unless he provided a witness statement. (It emerged at the beginning of the trial that Mr Ghaffar's witness statement had indeed been obtained at the behest of the Defendants rather than, as had originally been assumed by counsel, on behalf of the Claimant.) He also suggested that it would be quite possible for Mr Ghaffar's signature to have been forged. These are serious allegations, thrown out quite casually in the course of evidence, and I am not able to come to a conclusion that they are correct, at least without there being a much fuller investigation of the underlying facts. If the witness statement had been manufactured to assist the Defendants, one might expect it to contain a denial that the slanders were spoken and/or a denial on causation of damage. But it did not. These allegations were not addressed. For present purposes, what is important is that there is simply no convincing evidence that Mr Ghaffar withdrew from any transaction because of defamatory allegations made by either of the Defendants.

15. A Thai gentleman (referred to as "Mr Kit") is said to have expressed interest in acquiring a showroom to display new Japanese vehicles, but after the conversation in April 2006 (at which the Claimant says he was present) he lost interest, and the Claimant has been unable to make contact with him. Again, unfortunately, there is no note or other documentary record which would go to support the loss claimed.

16. It was also alleged that a Mr Singh (also referred to as Sidhu) was present. He had wanted some showrooms to exhibit goods from Singapore and this represented another lost opportunity. By the time of the trial, however, it was conceded by the Claimant for various reasons that his claims in respect of Mr Singh and Mr "Kit" could not be pursued. It was apparently recognised that neither of them had sufficient credentials to enable them to enter into a lease.

17. Thus, apart from Mr Ghaffar, the only remaining claim was in respect of a Mr Prabarah. He is not mentioned by Ms Lehuede as having been present on 4 April 2006. Moreover, neither Defendant appears to have known anything about him. Leaving these formidable hurdles to one side, for the moment, it is a claim remarkably lacking in detail. During the hearing, the Claimant said that he had found some premises for Mr Prabarah in Tottenham Court Road. This was the first time it was mentioned apparently. But, asks, Ms Wilson, if this was so why did the transaction fall through? If her client had uttered words to the effect that the Claimant was not in a position to find premises, surely Mr Prabarah would have been equipped to refute him. If premises in Tottenham Court Road had been found for him, he would have had no reason to believe the comment – still less would he have had reason to withdraw from the prospective transaction. Certainly there is no evidence from Mr Prabarah to show that he withdrew or why. There is no contemporaneous letter or email from him saying, for example, that he had changed his mind. There is absolutely nothing. Thus, even if I assume that he was present, the losses could not be established.

18. The latest assessment by the Claimant puts the total loss claimed (in respect of Mr Ghaffar and Mr Prabarah) at about £24,000. But that really amounts to no more than assertion and the figures are not backed by any documentation.

19. As to the Second Defendant, Mr Miah highlighted the nature of the shifting case against him. He put to the Claimant that he had just launched the proceedings as a means of putting pressure on the Defendants to pay some money. He denied this and said that the only reason he was in court was because they had produced a false witness statement from Mr Ghaffar and had refused him an apology: that was what he really wanted. That is difficult to accept in the light of the substantial claims for special damages originally put forward. The claim was put, variously, at figures between £40,000 and £56,000.

20. The only relevant witness was, again, Ms Lehuede. She did not refer to the Second Defendant by name but spoke of the First Defendant's "partner" (which, strictly speaking, the Second Defendant was not) or of "the fat man" (not a description that fitted the witness I saw). Nevertheless, the Second Defendant was present at a meeting in the First Defendant's showroom on or about 4 April 2006, but he does not agree as to who else was there. There is some overlap, but he claims to know nothing of either Mr Prabarah or Mr "Kit". He does not accept that they were there. His list of those present consisted of the following: "Anna" (a young Polish woman who worked at the showroom), Ms Lehuede, the two Defendants, Mr Ghaffar and the Claimant. There was an additional person he said was present, whose name I did not quite catch, but which sounded rather like Kumar. He was said to be someone who used to work for the First Defendant. How reliable this list is, I cannot tell. It did not appear in the Second Defendant's witness statement.

21. A curious feature of this Defendant's case is that the statement of truth on his pleading purported to carry his signature, but in the witness box he denied that it was his. I asked Mr Miah to take instructions on the explanation for this. None was forthcoming.

22. The Second Defendant does not accept that he contributed anything to the conversation that was defamatory of the Claimant, whether in English or Urdu. Ms

Lehuede says that the conversation started out in "Pakistani" (i.e. Urdu) but was thereafter partly in English for the benefit of the "Chinese" man. The Second Defendant said that he would only have spoken in Urdu: there was no need to change to English. The Claimant suggested that the Second Defendant speaks adequate English, despite the fact that he gave all his evidence through an interpreter. He says that, at an earlier hearing, he gave evidence in English. This was not put to the Second Defendant in cross-examination, however, and was only raised in the Claimant's closing remarks. Nonetheless, I will assume that the Second Defendant speaks and understands at least some English. What is crucial is what he is supposed to have said on the occasion in question.

23. In the claim form what is relied upon as the slander is as follows:

> "The Claimant is not able to deliver and he simply makes up bills and falsely demands payment."

24. In the particulars of claim, arriving about a week later, the words complained of are set out as follows:

> "Mr Hussein is a greedy man. He sends false invoices. Mr Hussein is not able to deliver. He simply makes up bills and falsely demands payments. He did not get us any premises at all. Mr Ghaffar got us the place at Knollys Road – not Mr Hussein."

Clearly, words to the effect that someone "makes up bills" and "falsely demands payment" would be defamatory on their face.

25. By the time he responded to a request for further and better particulars, on 6 May 2008, the Claimant expressed the words complained of on the relevant occasion (i.e. 4 April 2006) as being "Forget Mr Shah [i.e. the Claimant], he cannot get you any property". These are said to be the words of the First Defendant, lending support to the statements made by the Second Defendant. All that was said in the further particulars about the Second Defendant was to the effect that he was "implying dishonesty on my part". But, shortly beforehand, on 18 March 2008, the case against the Second Defendant had been more fully expressed in response to a request from his advisers in a letter of 14 March. The following words were attributed to him: "We know Mr Shah. He cannot get any business property for you. He can't get it for us. He has not got us anything. It's all talk to get money from people. That is all".

26. That ties in with what appears in Ms Lehuede's witness statement of 26 October 2006, so far as the Second Defendant is concerned:

> "The fat man then said 'we know Mr Shah. He cannot get you any business property for you. He can't get it for us'. The Chinese man said 'he got you a very good place I thought'. The fat man said 'No, he has not got us anything its all talk, to get money from people that is all'."

27. It will be observed that the remarks attributed to the Second Defendant by Ms Lehuede do not correspond to those alleged at the time (although they could be said to

be consistent). How reliable her statement is, after the lapse of six months, is unclear. As to the Second Defendant's denials, the Claimant made no progress in cross-examination apart from calling him (several times) a "liar". Insults were exchanged and the Second Defendant said it was the Claimant who was lying; furthermore, this was borne out because he took the oath on the Bible rather than the Koran. None of this threw any illumination on the issues to be resolved.

28. As is well known, the essence of any slander action is the actual words spoken. They need to be proved with a reasonable clarity. According to the Claimant, Ms Lehuede reported to him what had been said at the meeting very shortly afterwards. One would assume, therefore, that what found its way into the pleadings (a matter of days after the meeting) must have been based, in part at least, upon what she reported. Yet her witness statement does not appear to correspond, and it is surprising that she was not asked to reduce her recollection to writing at the time.

29. This was one of those cases where the court is left with the impression that none of the testimony can be accepted with unqualified confidence. After considering the conflict of evidence, and the shifting nature of the Claimant's case, I have come to the conclusion that I am not persuaded, on a balance of probabilities, that the Second Defendant spoke the words attributed to him in the pleadings. That disposes of the case against him. Yet, even if he had done so, the claim for damages would not succeed for the reasons that I have identified already, when addressing the case against the First Defendant.