Neutral Citation Number: [2011] EWHC 2667 (QB)

Case No: HQ11X03244

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/10/2011

**Before** :

**THE HONOURABLE MR JUSTICE TUGENDHAT**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **Rick Kordowski** | **Claimant** |
| **- and -** | |
| **Desmond Hudson** | **Defendant** |

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Jonathan Crystal** (**Pro Bono**) for the **Claimant**
**Hugh Tomlinson QC** (instructed by **Brett Wilson**) for the **Defendant**

Hearing date: 12 October 2011

- - - - - - - - - - - - - - - - - - - - -

# 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.

.....

THE HONOURABLE MR JUSTICE TUGENDHAT

**Mr Justice Tugendhat :**

1. This action for slander arises out of a brief verbal exchange on 21 July 2011 between two distinguished lawyers, the Defendant (Mr Hudson), Chief Executive of the Law Society, and Professor John Flood of the University of Westminster. Professor Flood maintains a weblog. On 22 July 2011 he posted the following words:

> "As I came out of the BBC yesterday with Des Hudson the Chief Executive of the Law Society he said Rick Kordowski was a criminal. I reminded Des that the police didn't think so. He wasn't happy.
>
> We'd both been invited to discuss Solicitors from Hell on Radio 4's *You and Yours* consumer affairs programme…".

2. When words are spoken to one person who then publishes what he claims to be an account of those words to all the world, for example in a newspaper or on the internet, a person who claims he has been defamed by those words has a number of choices as to whom to sue for defamation. He may sue one, or all, or only some, of those potentially liable. In the case of a newspaper or book (which was until the invention of the internet the only means by which words could conveniently be communicated to the public at large) claimants would generally choose to sue in libel the publisher of the newspaper. However, in some cases a claimant would choose to join as defendants to the libel action the editor and the author of the words complained of. In rare cases the claimant would also sue, or join as a defendant, the person who is said to be the speaker of the words. In that case the action on the spoken words would be in slander.

3. It is rare for claimants to sue in slander the alleged speaker of the words. The reasons are obvious. In slander there will be a risk that the defendant will dispute that he spoke the words attributed to him (a risk not generally present in a libel action). And even if the claimant succeeds, the damages for a slander to a single publishee are likely to be modest compared to the damages for a libel published to all the world. So it is not surprising that claimants commonly decide that a claim in slander is not worthwhile, even if it is available as a matter of law.

4. A further reason why claimants commonly reach that view is that (for claimants who pay for themselves) bringing proceedings is expensive. The court fees are substantial, lawyers' fees are generally high, and an unsuccessful claimant risks having to pay, not only his own costs, but also the costs of the successful defendant. However, where a claimant does not pay his own costs, this consideration does not apply. Mr Kordowski has publicly stated on a number of occasions that he is bankrupt, so he does not have to pay court fees, and he does not have to fear the risk of being ordered to pay the costs of a successful defendant, in the event that his action were to fail.

5. Mr Kordowski's personal financial circumstances are not a reason why he should be precluded from suing for defamation. A bankrupt has as much right to access to justice as anyone else. But since bankruptcy may mean that a claimant does not have to decide whether or not the costs of proceedings are proportionate to the reputational issues and financial risks involved, the court is more likely to have to make that decision itself, in the exercise of its case management powers, in accordance with the Overriding Objective (CPR Part 1).

6. CPR Part 1 provides:

> "*The overriding objective*
> 1.1(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.
>
> (2) Dealing with a case justly includes, so far as is practicable –
>
> (a) ensuring that the parties are on an equal footing;
>
> (b) saving expense;
>
> (c) dealing with the case in ways which are proportionate –
>
> (i) to the amount of money involved;
>
> (ii) to the importance of the case;
>
> (iii) to the complexity of the issues; and
>
> (iv) to the financial position of each party;
>
> (d) ensuring that it is dealt with expeditiously and fairly; and
>
> (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.
>
> *Application by the court of the overriding objective*
>
> 1.2 The court must seek to give effect to the overriding objective when it –
>
> (a) exercises any power given to it by the Rules; …"

7. In the present case Mr Kordowski has chosen to sue Mr Hudson for slander on the words allegedly spoken by Mr Hudson to Professor Flood. He has not sued Professor Flood for libel. Nor has he sued Mr Hudson for libel on the basis that Mr Hudson is responsible in law for a libel published by Professor Flood. So the claim is in respect of publication to a single publishee only, and not in respect of publication to the public at large.

8. The brief facts of the exchange between Mr Hudson and Professor Flood (as alleged by Mr Kordowski) are set out in the Particulars of Claim, which are a model of clarity and brevity:

> "1. The Claimant who is a man of good character is owner of the " Solicitors from Hell" website.
>
> 2. The Defendant is the Chief Executive of the Law Society.

> 3. On 21 July 2011 at the BBC studios, London, the Defendant spoke and published to Professor John Flood of and concerning the Claimant the following defamatory words:
>
> "That man is a criminal".
>
> 4. In their natural and ordinary meaning the said and were meant and were understood to mean that the Claimant was a criminal and had been guilty of criminal offences.
>
> 5. By reason of such publication the Claimant has been injured in his reputation and has suffered embarrassment and upset.
>
> And the Claimant claims damages for slander."

9. In his Defence Mr Hudson raises an issue as to what was said in the conversation which admittedly took place between himself and Professor Flood on 21 July 2011. The issue as to the words spoken is pleaded in the Defence as follows:

> "…(b) Professor Flood suggested to the Defendant that the legal action which the Law Society was proposing to take against Mr Kordowski in relation to the Website would be seen as muzzling free speech.
>
> (c) The Defendant responded that the Law Society's actions were focussed on an issue which had nothing to do with free speech, namely Mr Kordowski's methods of collecting payment to remove comments from the Website.
>
> (d) The Defendant then spoke and published the following words of and concerning Mr Kordowski to Professor Flood: 'In my view this amounts to criminal behaviour which is why we have reported him to the police'."

10. The Defence also includes a plea of justification.

11. Mr Kordowski and his website have been the subject of a number of judgments in this court in which solicitors have sued him for defamation. The judgments describe how his website is operated. Examples are *Farall v Kordowski* [201] EWHC 2436 (QB), *Phillips v Kordowski* [2010] EWHC 2802 (QB) and [2010] EWHC 2803, *Robins v Kordowski* [2011] EWHC 981 (QB) and [2011] EWHC 1812 (QB)). Mr Kordowski's activities have been the subject of some public debate, of which the appearance on the BBC on 21 July 2011 by Mr Hudson and Professor Flood formed part.

12. For the purposes of this judgment I shall take the description of the website from the Particulars of Justification. Mr Hudson pleads that on that website Mr Kordowski publishes unverified defamatory allegations against solicitors and others, including distressing allegations which have been the subject of successful libel proceedings against Mr Kordowski brought by a number of solicitors who are identified by name:

Adrian Bressington, Stephen Robins, Juliet Farrall, Megan Phillips and Anna Mazzola. It is pleaded that these allegations were published without any attempt at verification or checking of their accuracy, but that the website offered various 'delete' options, that is to say that for a fee of £299 Mr Kordowski offers to ensure that all listings for a firm will be deleted and the firm will never be listed in any way again.

13. Mr Hudson pleads that this conduct on the part of Mr Kordowski constituted the crime of harassment, contrary to the Protection from Harrassment Act 1997 s.2, and the crime of blackmail, contrary to the Theft Act 1968 s.21.

THE APPLICATIONS

14. The claim form was issued on 1 September 2011 and the Defence served on 4 October 2011. In the interval, on 15 September 2011, Mr Kordowski issued an application for summary judgment under the Defamation Act 1996 on the ground that no defence to the claim has a realistic prospect of success and he asked the court to grant relief in the form of (a) a declaration that the Defendant's statement was false and defamatory of Mr Kordowski; (b) an order that the Defendant published or caused to be published a suitable correction and apology and (c) damages not exceeding £10,000 and (d) an order restraining the defendant from publishing or further publishing the matter complained of.

THE LAW

15. Those heads of relief are the ones provided for by the 1996 Act s.9, in cases where summary disposal under s.8 is appropriate. The provisions of s.8 so far as relevant are:

> "(1) In defamation proceedings the court may dispose summarily of the plaintiff's claim in accordance with the following provisions.
>
> (2)….
>
> (3) The court may give judgment for the Plaintiff and give him summary relief (see Section 9) if it appears to the court that there is no defence to the claim which has a realistic prospect of success, and there is no other reason why the claim should be tried…
>
> (4) In considering whether a claim should be tried the court should have regard to –
>
> … (c) the extent to which there is a conflict of evidence;
>
> (d) the seriousness of the alleged wrong (as regards the content of the statement and the extent of publication); …".

16. On 4 October 2011 the Defendant also issued an application notice asking the court to strike out the claim, pursuant to CPR 3.4 (2), as an abuse of the process of the court. That rule provides that the court may strike out a statement of case

> "if it appears to the court (a) that the statement of case discloses no reasonable grounds for bringing … the claim; (b) that the statement of case is an abuse of the courts process or is otherwise likely to obstruct the just disposal of the proceedings….".

17. In support of Mr Kordowski's application Mr Crystal submits this is a case suitable for summary judgment for reasons given by Potter LJ in *Downtex v Flatley* at para 31 as follows:

> "…the summary procedure should not involve the conduct of a mini-trial in a case where the defence advanced is 'fact sensitive' and there is reason to think that further facts may emerge or require investigation at trial before a fair and/or final conclusion can be reached. However, where there is sufficient material before the court on the pleadings or on evidence to allow the court to form a confident view upon the prospects of success for the defence advanced and the case is not fact sensitive in the sense that the essentials have all been deployed and there is no reason to think the defendant will be in a position to advance his case to any significant extent at trial, then the court should not shy away from careful consideration and analysis of the facts relied on in order to decide whether the line of defence advanced is indeed no more than fanciful".

18. In support of the application of the Defendant Mr Tomlinson relies on the ruling of the Court of Appeal in *Lait v. Evening Standard Limited* [2011] EWCA Civ 859. At para 40 Laws LJ cited a passage from the judgment of Lord Phillips MR in *Jameel v Dow Jones* 2005 QB 946 para 55 in which he said:

> "Section 6 [of the Human Rights Act] requires a court, as a public authority, to administer the law in a manner which is compatible with Convention Rights, insofar as it is possible to do so. Keeping a proper balance between the Article 10 right of freedom of expression and the protection of individual reputation must, so it seems to us, require the court to bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the claimant's reputation, which includes compensating the claimant only if that reputation has been unlawfully damaged".

19. At paras 41 and 42 Laws LJ said this:

> "… *Jameel* was also applied by this court in *Khader v Aziz* 2010 EWCA Civ 716 where it was held (para 32) that the appellant 'would at best recover minimal damages at huge expense to the parties and of court time'.

> 42. The principle identified in *Jameel* consists in the need to put a stop to defamation proceedings that do not serve the legitimate purpose of protecting the claimant's reputation. Such proceedings are an abuse of the process. The focus in the cases has been on the value of the claim to the claimant; but the principle is not, in my judgment, to be categorised merely as a variety of the *de minimis* rule tailored for defamation actions. Its engine is not only the overriding objective of the Civil Procedure Rules but also in Lord Phillips' words, ' a need to keep a proper balance between the Article 10 right of freedom of expression and the protection of individual reputation'….".

20. If the words spoken by Mr Hudson were as he alleges, then he would have a defence of comment. But he cannot raise that defence in these proceedings, because it would be irrelevant. It would be irrelevant because if Mr Kordowski fails to prove that Mr Hudson spoke the words alleged by Professor Flood, then Mr Kordowski will fail in his action at that stage. Mr Hudson would have no need of a defence, whether justification or comment or anything else. See *Rassam v Budge* [1893] 1 QB 571.

THE EXTENT TO WHICH THERE IS A CONFLICT OF EVIDENCE

21. I turn therefore to the first consideration to which the court is required to have regard by s.8(4) of the Defamation Act 1996.

22. It was more than a month after the alleged publication of the words complained of, that is on 25 August 2011, that Mr Kordowski sent his letter before action in accordance with the pre-action defamation protocol. Amongst the points taken in response to that letter on 8 September 2011 by solicitors on behalf of Mr Hudson is the following:

> "The words relied on were, not in fact, spoken by Mr Hudson. Professor Flood did not quote the exact words used or their context. The substance of the conversation was as follows. Professor Flood made the point that action against you would be seen as muzzling free speech. Mr Hudson replied that the Law Society's actions were focussed on an issue that had nothing to do with free speech, that is your methods of collecting payment to remove comment. He then said words to the following effect:
>
> > "In my view this amounts to criminal behaviour which is why we have reported him to the police".
>
> Mr Hudson did not say the words set out in your letter".

23. On 13 September 2011 Professor Flood made a witness statement. It includes the following:

> "… We were being led out of the BBC and as we were going through the doors at the BBC, Des Hudson said 'that man is a criminal' referring to Rick Kordowski, to which I replied, the

> police rejected that. Des Hudson further said 'he should be closed down' after that he went his way and I went mine".

24. On 3 October 2011 Mr Hudson made his witness statement. It includes the following:

> "16. Professor Flood suggested that our actions were likely to make Mr Kordowski a martyr and we would be seen as muzzling free speech. I replied that our actions were focussed on an issue that had nothing to do with free speech but rather his methods of collecting payment to remove comment. I believe that I said 'in my view this amounts to criminal behaviour which is why we have reported him to the police'. Professor Flood told me (and by this time I was almost at the main doors of the entrance hall to Broadcasting House) that the police would do nothing, and I remember speaking over my shoulder to him as I walked out of the room 'we'll see'.
>
> I did not say to Professor Flood 'that man is a criminal'. I would add that indeed it is my belief that the actions of Mr Kordowski are criminal in nature…."

25. Mr Crystal submits that the foregoing demonstrates that Mr Hudson has no real recollection of what he said, and therefore that he has no realistic prospect of persuading the court that the witness statement of Professor Flood is not to be accepted by the court.

26. In my judgment it is clear that this is a case where there is a conflict of evidence. It is impossible for me to say on the documents before me that the defence has no real prospect of success on the issue of whether the words spoken by Mr Hudson were as alleged by Professor Flood or not. Accordingly this is not a case for summary relief to be granted to Mr Kordowski.

27. In any event, had I not reached that view I would have concluded that (although no Reply has yet been served) there is likely to be a conflict of evidence on the defence of justification, and that Mr Hudson has a realistic prospect of success on that defence.

28. Mr Crystal urges that Mr Kordowski has not been convicted and that (so he informs me) the police have declined to proceed with a complaint made by the Law Society. I have no evidence as to whether, and if so on what grounds, there has been a complaint to the police, or the police have declined to pursue the matter. Such information would in any event be irrelevant. The fact, if it be such, that the police have declined to proceed with the matter, does not prevent Mr Hudson advancing the case he seeks to advance in his plea of justification in these proceedings. It is not uncommon for defendants to rely in justification upon allegations that a claimant had committed a criminal offence in circumstances where the claimant has not been convicted of any such offence.

THE SERIOUSNESS OF THE ALLEGED WRONG

29. The seriousness of the alleged wrong is a consideration to which the court has to have regard, pursuant to the 1996 Act s8(4)(d). In that context the more serious the alleged wrong, the more likely that factor is to weigh against summary disposal.

30. The seriousness of the alleged wrong is also relevant to the question of abuse of process. In that context, the more serious the alleged wrong, the more likely that factor is to weigh against a strike out.

31. I accept Mr Crystal's submission that an allegation that a claimant is a criminal is a very serious one, as regards the content of the statement. But as regards the extent of publication, the alleged publication of such an allegation only to a single publishee means that the seriousness of the alleged wrong is less than it would be if publication were alleged to be more widespread.

32. Nevertheless, I accept that, in some circumstances, a slander to a single publishee may cause substantial damage, and may justify the pursuit to trial of a claim for slander. So I turn to consider the present case.

33. Mr Tomlinson submits that the publication alleged in the present action is not very serious. He notes that in Professor Flood's weblog, Professor Flood expresses some support for Mr Kordowski. Professor Flood wrote "my view is quite simple. Whatever one thinks of Kordowski or his website, it serves a need…" So, Mr Tomlinson submits, it does not appear that Mr Kordowski's reputation has been materially damaged in the eyes of Professor Flood, the single publishee.

34. Further, Mr Tomlinson points out that Mr Kordowski has not objected to the report of the conversation by Professor Flood in his weblog. On the contrary, in his own website Mr Kordowski has repeated the allegation against himself as follows:

> "Rick Kordowski, the owner of this website has today (01-09-2011) issued proceedings for damages for slander against Desmond Hudson, Chief Executive of the Law Society of England and Wales. Mr Hudson accused me, Rick Kordowski of being 'a Criminal' and has refused to withdraw such an allegation or offer an apology."

35. Those who have suffered injury to their reputations and distress by reason of defamatory words published to the world at large do not commonly choose to repeat those allegations and republish them to the world at large. It is an unusual feature of this case that Mr Kordowski is not concerned to prevent republication, but has himself participated in republication of the words he complains of. That suggests that he does not share the objective that defamation claimants usual have, namely to prevent republication of the words complained of.

36. Although I find that the allegation of criminality is in principle very serious, in the light of the other matters I have referred to I conclude that in the present case the allegation of slander to a single publishee is not of a high order of seriousness. This conclusion tends to support the applications of both parties: it makes the court more ready to find summary disposal appropriate, and more ready to consider that a strike out is appropriate.

37. If I had not held that the extent to which there is a conflict of evidence precluded summary judgment in this case, I would not have been deterred from a summary disposal by the seriousness of the alleged wrong.

THE APPLICATION TO STRIKE OUT

38. For the purposes of this application I assume that the facts pleaded in the Particulars of Claim are true and will be proved at trial (if there is one).

39. For the same reasons as set out above, my conclusion as to the relatively low level of seriousness of the alleged wrong given the extent of publication, is one factor which tends to support the application to strike out.

40. Another relevant consideration is whether it is just to allow the case to proceed further, taking into account the factors referred to in CPR Part 1.

41. Mr Tomlinson accepts that (as discussed above) the fact that a claimant is bankrupt is not in itself a reason why he should not be permitted to pursue a claim in defamation, if it is otherwise a proper claim to pursue. However, he submits that in carrying out the balancing exercise between protecting the Article 10 right of freedom of expression of a defendant and the protection of the individual reputation of a claimant, the matters already mentioned are relevant, as stated in *Khader* and *Lait*. If a claimant would at best recover minimal damage at huge expense to the parties and of court time, and if, in the event that he should lose or faces an adverse costs order of any kind he would not be in any position to meet it, the court must have regard to those facts.

42. I accept the submission of Mr Crystal that in an action for slander a claimant does not have to prove special damage where the words charge that he has committed a criminal offence punishable by imprisonment. But that does not mean that any claim for slander based on an allegation that the claimant is a criminal is necessarily the real and substantial tort which it is required to be, if it is not to be struck out under the *Jameel* principle.

43. Mr Crystal also submits that the trial of the action would be very short, perhaps a day, because it is simply an issue to be resolved on the oral evidence of Professor Flood and Mr Hudson. I accept that if that were the only issue, then it would be a short trial. But if Mr Kordowski succeeds on that issue, there will then be the issues in relation to the plea of justification. It is not likely that those would not be short matters to try.

44. In the present case the fact that the words complained of were spoken to a single publishee in the circumstances set out above, and the fact that there is no evidence of any real or substantial harm to Mr Kordowski, lead me to conclude that the present proceedings are an abuse of the process of the court. It would not be just (within the definition of CPR Part 1) to allow the case to proceed further, and allotting to the case the resources of the court that would be required would not be appropriate.

OTHER MATTERS

45. It is not necessary for me to discuss further a number of other points that were advanced in argument before me.

46. For the avoidance of doubt, I make clear that the reasons why I have reached the decision to strike out this slander action are not reasons which would necessarily have led me to strike out a libel action, if Mr Kordowski had brought a libel action against one or other or both of Mr Hudson and Professor Flood in respect of the words published by Professor Flood on his weblog. Different consideration would have applied to a publication of such a serious allegation to the public at large. If there had been such a libel action, I would have had to consider any application in relation to it quite separately. Of course, I express no view as to whether such an action for libel would be appropriate, or as to what prospects of success Mr Kordowski would have in such an action. Nothing in this judgment should be taken as an encouragement to him to take that course. No doubt there is a good reason for not suing in libel on the words posted by Professor Flood. But whether or not there is a good reason for refraining from suing in libel on the words posted by Professor Flood, that is not relevant to my decision that the action for slander on the words spoken to Professor Flooed is an abuse of the process of the court.

CONCLUSION

47. Accordingly the application by Mr Kordowski is dismissed. The application by Mr Hudson is granted and the action will be struck out.