Neutral Citation Number: [2010] EWHC 642 (QB)

Case No: HQ09D05634

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 March 2010

Before :

THE HONOURABLE MR JUSTICE EADY

- -

Between :

JACQUI LAIT MP **Claimant**

- and -

EVENING STANDARD LIMITED **Defendant**

- -
- -

Richard Rampton QC and **Ian Helme** (instructed by **Carter-Ruck**) for the **Claimant**
Mark Warby QC and **Victoria Jolliffe** (instructed by **Taylor Wessing LLP**) for the **Defendant**

Hearing date: 10 March 2010

- -

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 EADY

Mr Justice Eady :

1. The Claimant is the Member of Parliament for Beckenham and complains of an article appearing in the *Evening Standard* for 9 November 2009 under the heading "Women MPs will be put off by Kelly reforms". The article is attributed to Paul Waugh, Deputy Political Editor. It appears alongside photographs of two members of Parliament, one of whom is the Claimant.

2. For present purposes I need only set out four paragraphs of the article:

> "But today women MPs attacked one of the Kelly Report's key proposals – a ban on second homes for those who live within an hour of Westminster.
>
> Labour's Claire Curtis-Thomas, Kali Mountford and Phyllis Starkey, as well as Tory MPs Jacqui Lait and Eleanor Laing, said that the proposals 'will discourage women who might otherwise seek their party's nomination, as well as exposing MPs to unnecessary risk'.
>
> 'On Mondays and Tuesdays, we are expected to remain at the House of Commons for 10pm votes. The voting process is slow and means we are often unable to leave Westminster until 10.45pm,' the MPs said in a letter to The Times. 'Trains are slower and less frequent at night and some MPs will not be able to reach their home stations until after midnight. In some cases, they will have to alight at unstaffed stations and walk to their cars … or wait for taxis. The risk of mugging or sexual assault is obvious and is likely to deter women'.
>
> However, the criticism may risk the ire of some. Ms Lait claimed large sums to travel to her family home in Sussex, even though her constituency home was 11 miles from Westminster. She was forced to pay back nearly £25,000 after it emerged she had made a major capital gain on the sale of a home funded by the taxpayer … "

3. As it happened, the article got its facts wrong, in that the Claimant was not forced to pay back £25,000. Nor did she do in fact do so. This was acknowledged in a very small correction published on 26 November 2009 in these terms:

> "Jacqui Lait MP
>
> In an article on Monday 9 November ('Women MPs will be put off by Kelly reforms') the name of Ms Jacqui Lait MP was due to a mistake wrongly connected with the sale of a home funded by the taxpayer. We apologise for this error."

4. That is, however, by the way. The present applications by the Defendant are concerned with issues of meaning and whether any parts of the claim should be struck out.

5. It is fair to say that the meanings put forward on the Claimant's behalf have varied from time to time, but all of them would appear to hinge on the third sentence in the ninth paragraph of the article (i.e. the last sentence of the above quotation).

6. Before I turn to the meanings identified at different stages on the Claimant's behalf, it is perhaps appropriate for me to record my own opinion of the relevant passages. That is part of a judge's function on meaning applications of this kind: see e.g. *Gatley on Libel and Slander* (11th edn) at 32.5. I should bear in mind the need to form an impression, as an ordinary reader, before hearing legal argument and analysis. The references to the Claimant are clearly critical of her. That seems to me to be obvious at least from the statement that her comments about the reform proposals may risk the "ire", or anger, of some onlookers. Allegations of a factual nature are then made to explain why this should be so. First, there is a reference to travel expenses, of which no complaint is made: I need say no more about that. It is important as context, of course, but I need to focus on the third sentence, in particular, in order to see what, if any, defamatory sting it bears. Why would the allegation give rise to anger?

7. It is said that the Claimant was forced to pay back £25,000 after it emerged that she had made a capital gain on the sale of a house funded by the taxpayer. It does not say who forced her. For all the reader knows, it might be her party leader or someone authorised to do so within the parliamentary structure. Be that as it may, the word "forced" is capable of meaning that she was unwilling at first to "pay back" the considerable sum of "nearly £25,000". There is nothing to suggest in the article that she was under a legal obligation to repay, although some readers perhaps may have thought so. It is certainly arguable that the article conveys the impression that she had a *moral* obligation to repay and that she was, at least initially, reluctant to comply with that obligation. The suggestion is, or may be, that she behaved badly and that, in the light of this, readers of the newspaper might be legitimately cross at her stance on the proposed reforms. The impression could be conveyed that she had profited herself from the existing system of expenses and was resisting reform for that reason. I gather that she is not standing at the next election, and would have no opportunity thereafter to take advantage, but that is not spelled out to the readers.

8. In the light of all that has taken place over the past 12 months, it is in my judgment unreal to suggest that readers would not think the worse of a member of Parliament who had taken advantage of (or "milked") the expenses system simply because he or she had stayed within the letter of the law or of the rules. Everybody knows that some members of Parliament have been forced to "pay back" sums of money, either by party leaders or by media pressure, even though the payments had originally been made in accordance with the prevailing rules. That is because they are perceived now as having behaved disreputably.

9. I have, therefore, come to the conclusion that the article is critical of the Claimant and that it is capable of bearing one or more defamatory meanings of her – although the overall message of the article is unclear and confusing.

10. It is true, as Mr Warby QC submits on the Defendant's behalf, that under the system operating hitherto members have been entitled to make a profit from the onward sale of houses notwithstanding the fact that they were purchased with assistance from the taxpayer (usually by way of meeting mortgage payments). They have been able to obtain also benefits in the form of furnishing and other expenses in respect of second

homes. By judicious "flipping" (i.e. changing which is the secondary and which the primary residence), it has been possible to maximise these benefits.

11. Most readers will know, therefore, that much of that conduct was lawful and recognised as being within the system. So why, asks Mr Warby, would anyone think the worse of the Claimant? That is all well and good, but the fact remains that the article uses the words "forced" and "emerged", which are capable in my judgment of suggesting something to her discredit. She had to be forced to "pay back" sums of money to which, at least morally, she is now thought not to have been entitled. She had initially tried to avoid doing the right thing and, what is more, it did not "emerge" for some unspecified time. This introduces connotations of concealment and being underhanded. All I say is that these are *possible* defamatory meanings.

12. On the other hand, I see nothing capable of suggesting to the reasonable and fair minded reader either tax evasion or other unlawful conduct.

13. I turn to the Claimant's natural and ordinary meaning, as pleaded at paragraph 4 of the particulars of claim:

> " … that the Claimant deliberately failed to account for a large profit that she had made on the sale of a taxpayer-funded home, a deception so serious that the Parliamentary Fees Office ordered her to pay back almost £25,000."

14. There is no innuendo pleaded. It will be noted, however, that in the article itself there is no mention of the Parliamentary Fees Office. Somebody is alleged to have "forced" the Claimant to pay back money – but there is no reference to the Fees Office. Nor do I see how one can, by way of natural and ordinary meaning, extract from the article the existence of a duty to account – still less breach of it; nor yet that she has been accused of "deception". The article does not go so far as to identify a *duty* of accounting or disclosure. Nor does it say that anyone was deceived. The word "emerged" is used, which suggests no more than the fact that certain information had not been revealed earlier. This is in itself might appear to be morally neutral. On the other hand, as I have observed, it is also capable in the context of suggesting that the Claimant was underhanded or had "something to hide" (although it is not spelt out exactly what).

15. Therefore I conclude that paragraph 4, as it stands, is over-pleaded and sets out a meaning which the words are incapable of bearing. As I have already made clear, however, I reject the submission that the words are incapable of bearing *any* defamatory meaning at all.

16. That might have concluded matters, save for the fact that Mr Warby, in seeking to make good his overall submission that the words bear no defamatory meaning, has had to traverse a number of the meanings put up by the Claimant, at different times, for various purposes.

17. In a rather curious way, other natural and ordinary meanings seem to have been pleaded later in the particulars of claim, although purportedly confined to aggravation of damages. These too have come under challenge.

18. I turn first to paragraph 6.2, which is in these terms:

> "The allegation was used in the article specifically to undermine the Claimant's concerns that the proposals to reform funding for Members of Parliament risked deterring women who might otherwise seek their party's nomination. In so doing the article not only obscured a concern shared by numerous Members of Parliament but also, critically, called into question whether the Claimant's stance was genuine. Given that the Claimant is an elected public servant who depends on the trust of her constituents, the implication is potentially hugely damaging."

19. This introduces what Mr Warby characterises as the "hypocrisy" charge in relation to the Claimant's stand on the proposed reforms. As I have already indicated, I think that this is a legitimate meaning – at least for the purposes of argument at trial. But it is confusing (especially, potentially, for a jury) to have to address a different defamatory meaning in respect of aggravation of damages from the primary meaning. They would have to decide whether the words bore the meaning in question and I cannot see why it should be pleaded in a different place. If it belongs anywhere, it belongs in the conventional meaning paragraph (in this case, paragraph 4 of the particulars of claim). If the opportunity is taken to amend the pleading, no doubt that can be embraced within it.

20. The plea in aggravation of damages should be about the Defendant's conduct, at or after the time of publication. It is muddling to rely on a different meaning as aggravation in respect of the damage supposedly occasioned by the publication of the words themselves.

21. I turn next to paragraph 6.3(2):

> " … As the Defendant must be aware there is a world of difference between the Claimant's historical error and the allegation that the Claimant has deliberately (and dishonestly) sought to avoid tax and/or claim excessive expenses to which she is not entitled by registering her residence as primary for tax purposes and secondary expense purpose."

The reference to a "historical error" relates to the fact that the Defendant had relied in correspondence upon the fact that the Claimant had in the past been required to repay more than £7,000 in over-claimed mortgage interest (although this is not something addressed in the article). The central criticism made by Mr Warby, however, is that this paragraph introduces yet another meaning. As he points out, paragraph 6.3(2) is significantly different from the meaning already pleaded, in the following respects:

i) It makes no reference to

   a) any failure to account; or

   b) any deception; or

c) the Claimant being forced to pay back money, whether by the Fees Office or anybody else.

ii) It introduces into the complaint for the first time:

a) an imputation of tax avoidance; and

b) an imputation of excessive expenses claims "to which she is not entitled"; and

c) the notion of "registration" as a primary or secondary residence (nowhere mentioned in the article).

22. He goes on to argue that this is not only different from, but also inconsistent with, the meaning pleaded already in paragraph 4 of the particulars. He submits that the one sentence on which the meanings are based says nothing about dishonesty, tax avoidance, or about registration as a primary or secondary residence. He says, therefore, that this meaning should be struck out.

23. It is argued on behalf of the Claimant that it is perfectly legitimate to plead a different meaning in aggravation of damages, since, in this context, the ordinary rules about meaning have no application. I have never heard this argument raised before. As I have pointed out, the purpose of a claim for aggravated damages is to focus on conduct, on the part of the Defendant, which has made worse the situation created by the publication of the original words complained of.

24. I would address this new meaning in accordance with the usual principles applying to arguments raised in the context of CPR Part 53 PD 4.1. For the reasons Mr Warby has set out, it seems to me to be clear that the meaning in paragraph 6.3(2) is one that the words are not capable of bearing and should, for that reason, be struck out. It is not saved merely by being pleaded under a different label.

25. Yet a further meaning has emerged in the Claimant's response to a request for further information, served as recently as 10 March 2010. It purported to set out the "essence" of the original meaning pleaded at paragraph 4, but in the following terms:

> " … that the Claimant dishonestly 'flipped' her second home, which was funded by the taxpayer, by converting it into her principal residence so as to avoid paying capital gains tax when she sold it."

26. Mr Warby points out that this new version appears to have dropped the imputation that the Claimant had "dishonestly sought to … claim excessive expenses to which she is not entitled". Despite this, the meaning pleaded in paragraph 6.3(2) is said to convey the same meaning as in paragraph 4 – which is now also equated to the "flipping" meaning raised on 10 March.

27. The new "essence" is, however, different from the original meaning to which it is supposed to be equated, in that it drops:

a) deliberate failure to account

b) deception;

c) being ordered by the Fees Office to repay nearly £25,000.

28. What is more, the new 10 March meaning adds the following elements:

a) dishonesty;

b) tax avoidance;

c) "flipping" and the conversion of a second home to be the Claimant's principal residence.

29. Since the Claimant is to be given a further opportunity of pleading a defamatory meaning, her advisers will no doubt decide whether or not any of this new meaning is to be salvaged. Meanwhile, however, it seems to me at least to be clear that the words complained of in the article are incapable of bearing the meaning of tax avoidance or of "flipping".

30. A further problem arises over paragraph 6.4 of the particulars of claim, also pleaded in support of a plea of aggravated damages:

> "The article was particularly aggravating coming as it did very shortly before it was made clear that files relating to four unidentified MPs had been passed to the Crown Prosecution Service to consider whether they should be charged with fraud or false accounting. This news was published widely throughout the media on or shortly before 23 November 2009 and before any correction had been made by the Defendant, leading to the possibility that readers would believe that the Claimant might well be facing criminal sanction."

This, too, I have found confusing. If the true position (which has not yet been made clear) was that the Claimant was anxious over the Defendant's continuing refusal, prior to 26 November, to acknowledge that it had made an allegation about her which truly related to someone else, then that would be a legitimate matter to plead in the context of damages (albeit not aggravated damages as such). If it be the case that her anxiety was increased, specifically in relation to the absence of an apology, because she feared that readers might link her with the prospect of criminal charges, then that would be a legitimate matter to take into account in assessing damages. On the other hand, what is not permitted is to plead an additional meaning (whether for purposes of aggravated damages or anything else) which is said to have arisen by reason of facts occurring subsequent to publication. As it stands, therefore, it seems to me that this paragraph should also come out.

31. At the end of the hearing on 10 March, I indicated the general effect of the order I was proposing to make and said that I would set out my reasons in writing. Meanwhile, I acknowledged that the Claimant should have a further opportunity of pleading one or more defamatory meanings.