



Case No: HQ05X01343

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/03/2006

Before

MR. JUSTICE EADY

Between :

ANTHONY JOHN PURNELL
- and -
BUSINESS F1 MAGAZINE LTD (1)
And
THOMAS RUBYTHON

Claimant

Defendants

MR. BENNETT for the CLAIMANT
MR. RUBYTHON(In person) for the DEFENDANTS

Hearing dates: 14th March 2006

Approved Judgment

Mr. Justice Eady :

In this libel action, the claimant, Mr. Anthony Purnell, is a businessman who has been involved for some years in Formula 1 racing. The defendants are respectively Business F1 Magazine Limited and Mr. Thomas Rubython, who are responsible for publishing the magazine Business F1. Mr. Rubython has this morning represented both himself and the company.

2. The background to the matter is that Mr. Purnell founded and ran the PI Group Limited, which was sold in 1999 to the Ford Group. Ford also owned Jaguar Racing. It was not until 26th November 2002, according to the evidence, that the claimant became principal of Jaguar Racing. However, he had apparently done some consultancy work for that company between April 2001 and September 2002.
3. In the April 2005 edition of the defendant's magazine, an article was published which was headed 'Purnell bribed top journalist to puff achievements.' It was written by Mr. Rubython. There is in fact very little dispute between the parties as to the meanings which can legitimately be attributed to that article. In particular of course, there can hardly be any dispute that it is defamatory of the claimant, since it refers expressly to his having supposedly bribed a journalist. The journalist was not named in the article, but it is now accepted on all sides that the person to whom Mr. Rubython was referring was Mr. Matthew Bishop, whose witness statement is before the court. He is a well known journalist in the field of Formula 1 racing.

The meanings attributed to the article on the claimant's behalf are to be found in the Particulars of Claim as follows.

"The claimant improperly used a substantial amount of his employer's money dishonestly and corruptly to bribe at least one journalist to give him unquestioning and favourable press coverage."

Secondly,

"In order to cover his tracks, the claimant dishonestly fabricated a number of contracts with the journalist in order to deceive people, including his employer and fellow Jaguar racing executives, into believing that the bribes were in fact payments for legitimate work."

The defence, to all intents and purposes, admits those meanings at paragraphs 4 and 5. At paragraph 6, however, there is set out further or alternatively, some Lucas Box meanings which the defendants propose to justify. Those are in these terms:

"1. The claimant, the former team principal of Jaguar Racing, later Red Bull racing, paid the well known journalist, Matt Bishop, Editor in Chief of F1 Racing Magazine and Auto Sport

Magazine, £10,000 to give him favourable press coverage, when in fact he was making a poor job of running the team. In so far as the payments were properly recorded in Jaguar Racing's books and accounts and approved by the auditors, they were not dishonest and corrupt. In so far as the fact that they breached normal business and journalistic ethics, they were dishonest and corrupt.

2. That in order to disguise the true nature of the payments, the claimant instructed Mr. Bishop to prepare material for inclusion in the Jaguar Racing Team's 2003 Media Pack, and agreed to pay him £10,000 for this work, in order to deceive his employer and his staff that the payment was honest and legitimate and in fact not a bribe."

- 5 The meanings put upon the article by the claimant and the Lucas Box meanings which I have just read, clearly represent seriously defamatory allegations of the claimant.
6. It is elementary that a defendant who seeks to justify allegations in a libel action, has the burden of proof upon him to do that, first of all by clearly setting out his case in a Statement of Case which makes out a cogent case of justification, and latterly of course, by adducing evidence which is capable of proving, on the balance of probabilities, the defamatory allegations. It is all the more important, of course, when the allegations to be justified are serious ones, and allegations of dishonesty or corruption, that the defendant should set out the nature of the case with clarity and without ambiguity. Of course, any state of mind in the dishonest acts must be clearly identified, and any acts attributable to the claimant similarly.

The claimant submits that there is a fatal void at the heart of the defendant's case, and seeks before me summary judgment under Part 24 of the CPR, on the basis that on the Pleadings or Statements of Case, and on the evidence, a jury would be perverse to uphold the defence of justification. The trial is currently due to take place on 2nd May of this year, with a jury.

- 8 It is emphasised by Mr. Bennett on the claimant's behalf, that the alleged payment of a bribe in the sum of £10,000 lies at the heart of the words complained of, and is the crux of the case. So much is uncontroversial. It was pointed out for the avoidance of doubt, in paragraph 5 of the claimant's reply, that if the defendants were not in a position to prove that a payment was made or authorised by Mr. Purnell to Mr. Bishop, the plea of justification would be bound to fail. Having now seen the totality of the evidence relied upon by the defendants, Mr. Bennett submits that it is not capable of discharging the burden of proof, and to put it another way, that a jury would indeed be perverse to come to the conclusion that Mr. Purnell paid or authorised the payment of a bribe.

9. The claimant's case is that Jaguar Racing did pay Mr. Bishop two payments amounting in all approximately to £10,000, as remuneration for writing its 2002 and 2003 media packs. Those contracts were, on his case, entered into, respectively, in 2001 and 2002. Putting it shortly, the purpose of the media packs, as one might expect, was to promulgate material which promoted Jaguar Racing, setting out its stall, so to speak, and in particular forthcoming activities in the relevant year. It is also the claimant's case that the use of specialist journalists to carry out work of that kind is normal within the world of Formula 1 racing. He places particular emphasis upon the evidence adduced on his behalf, that the relevant contracts with Mr. Bishop had been entered into before he assumed a management role at Jaguar Racing, on 26th November 2002. Up to that point, although he had done consultancy work, it would follow that he was not in a position to authorise payment or payments by that company. He was not an employee or executive of that company.

10. Putting more flesh on the bones of the claimant's case, what is said is that £3,850 was paid to Mr. Bishop on 31st January 2002, and that £6,250 was agreed towards the end of October 2002, with a view to his contribution to the 2003 media pack, and that those agreements were entered into before Mr. Bishop had met or even heard of, on his evidence, Mr. Purnell. It is accepted that they were introduced at a press conference on or about 26th November 2002, when Mr. Purnell took up his appointment with Jaguar. The second payment was made in response to Mr. Bishop's invoice, submitted in January 2003 according to the claimant's evidence. Although that payment was made after he took up his appointment with Jaguar, his case, and the evidence which he adduces in support of it, is to the effect that he had no knowledge or involvement in the authorisation of those payments. It is said that both those commissions were arranged by Mr. Nav Sidhu on behalf of Jaguar. He is apparently a very distinguished PR expert in the field of Formula 1 racing, and Mr. Rubython tells me that he is also a personal friend of his, and that his involvement in this case will have been, for that reason, with a heavy heart. Nevertheless, the claimant's case is that the payments to Mr. Bishop were organised and authorised by Mr. Sidhu for the reason I have given, and that he, Mr. Purnell, had no personal involvement with that.

1. The claimant's case is supported by witness statements served not only from himself, but also from Mr. Matthew Bishop, the journalist supposedly bribed, Mr. Nav Sidhu, who actually entered into the contracts with him, Miss Jane Stewart of the PR team at Jaguar Cars Limited, and a Mr. Alan Henry, a freelance motoring journalist. That evidence, on its face, would appear to make clear what happened. There is, importantly, no evidence adduced so far on the part of the defendants, which would contradict their evidence. The second defendant has made it very clear, with his usual frankness, that he intends to rely upon cross-examination of those witnesses at trial, with a view to demonstrating that they have not been telling the truth. His evidence consists of two witness statements from himself, in which he asserts that the contracts entered into between Mr. Sidhu and Mr. Bishop must have been shams, but of course assertion in itself will not do to support a plea of justification. There is no independent evidence adduced which would contradict the evidence set out in some detail on the claimant's behalf.

- 2 The defendant's case will be, as I understand it, to invite the jury to infer from the totality of evidence, including cross-examination at trial, that the claimant's witnesses have been telling lies, and that the payments to Mr. Bishop were in fact a bribe, the contracts in connection with the media packs being to that extent a sham.
13. The defendant's pleaded case needs to be considered first. It does not allege directly, and indeed in the absence of any evidence could hardly do so, that the claimant paid or arranged payment himself of the money in question. The only reference to that payment in the Particulars of Justification, as opposed to the Lucas Box meanings, is to be found in the introductory words, where it is said that, "Following the payment of £10,000" the claimant and his second in command, a Mr. Pitchforth, were given by Mr. Bishop unquestioning and favourable press coverage over a considerable period of time in the F1 Racing magazine. He, Mr. Rubython, therefore seeks to argue that the only possible explanation for that favourable coverage must be that it was bought from Mr. Bishop, and that it did not represent his true opinions.
14. The particulars for the main part consist of a large number of examples of Mr. Bishop's articles, in which it is said by Mr. Rubython that he lavished praise upon Mr. Purnell which was unjustified. It is submitted on the claimant's behalf that the Particulars of Justification are not capable of supporting the plea, and are liable to be struck out, partly because they lack any particularity about the payment of £10,000, and partly because they lack any particularity of the involvement of the claimant in any such payments or in their authorisation.
15. Having addressed briefly the nature of the defendant's pleading, I turn to the evidence, which it is submitted adds nothing, in effect. As I have said, the evidence consists of statements by Mr. Rubython himself. The first was served on 19th December 2005. The second was served, first of all in unsigned form on 8th March, and then signed on 10th March. Mr. Rubython has confirmed that the primary purpose of that second witness statement is for today's purposes rather than at trial, although I do not understand him to be limiting the second witness statement to that purpose.
16. The evidence which Mr. Rubython has submitted does not contain any direct evidence of payments by Mr. Purnell himself or involvement on his part in corruption. That is perhaps not surprising, in the light of the fact that the defendant's case is based upon inference, primarily from the favourable publications about Mr. Purnell over the years 2003 and 2004 in particular. The question is, perhaps essentially, whether or not a jury would be perverse to draw that inference in the light of the totality of the evidence which is now before the court.
- It is true that Mr. Rubython's evidence confirms his own no doubt sincere belief that there was here bribery on Mr. Purnell's part. But belief, of course, in itself, is not sufficient.
18. My attention was invited to a particular paragraph in Mr. Rubython's evidence, paragraph 17 of his first witness statement, in which he refers to a meeting in early

2004, so apparently more than two years ago, with a former employee of Jaguar Racing's Public Relations Department, who had worked at some stage for Mr. Purnell. It has been made clear that the person concerned was female, although she has not been identified. Mr. Rubython has made clear this morning that the circumstances of his meeting were these: she had come to be interviewed by him for a job. It was in the course of that interview, to his surprise, that she described how Mr. Bishop had been paid £10,000 by Mr. Purnell by way of a commercial contract to write some text to be included in the 2003 Jaguar Racing Media Pack. Mr. Rubython was I think a little embarrassed at this, because he described how he was wearing two hats, one as a prospective employer and one as a journalist. His journalist's ears pricked up at this information that he was given. He told me this morning that he has chosen not to reveal the identity of the person concerned, because in his journalist's hat he regarded her as a source to whom he owed a duty of confidence in the usual way, having regard to a journalist's professional obligations of confidence. He does not propose to call her to give evidence, but he seeks to introduce her evidence by way of hearsay. It is important to note, however, that the evidence which he would thereby introduce would consist not of an allegation of bribery, but of an allegation consistent with the claimant's case save in one respect; namely, that the money was paid by way of a commercial contract. The one respect in which it is not consistent with the claimant's case is, of course, that she apparently told Mr. Rubython, if he understood her correctly, that the payment had been made by Mr. Purnell, or at least authorised by him. She does not, importantly, implicate him in corruption or bribery.

19. The evidence, as I have already made clear, indicates that the payments to Mr. Bishop were in two stages rather than one, and that they related to the media packs for two years, namely 2001 and 2002. To that extent, it may be that the hearsay evidence from the unidentified woman was either misunderstood or mistaken. It matters not, however, because the primary point is that she does not in any way support the case of corruption. It is Mr. Rubython who draws the inference and who would wish to invite the jury to draw a similar inference, that the contracts with Mr. Purnell were bogus. It is his case that three staff, namely Mr. Sidhu, Miss Stewart and a Miss Michelle Tomlin, were employed to do such work as was involved in contributing text to the media packs. That is addressed in the claimant's evidence. There is no statement from Miss Tomlin, but she is referred to in Miss Stewart's evidence. The evidence of Miss Stewart and that of Mr. Sidhu is not consistent with the assertion in paragraph 17 of his witness statement by Mr. Rubython.
20. I need not be distracted, I think, by arguments about the weight to be attached to hearsay evidence from an unidentified witness, although Mr. Bennett, on the claimant's behalf, has set out his case on that very fully. I say that because the defendant does not even allege corruption, she merely asserts that the money was paid to Mr. Bishop by way of a commercial contract.
2. The question is whether or not the totality of the evidence will bear the inference which Mr. Rubython seeks to draw from it, or to put it another way, if a jury were to agree with his inference, would they be perverse.

22. Much is made of the point by Mr. Rubython, that the witnesses, or some of the witnesses to be called on the claimant's behalf, would or might crumble in the course of their evidence when cross-examined by counsel. That is not quite the right way to look at the burden upon a defendant who seeks to justify allegations of corruption. It may be that if the matter went to trial, the trial judge would order that the defendant should go first rather than second, because the burden of proof on the crucial issue or issues lay upon him or it -- in this case, of course, effectively Mr. Rubython. It is not open to a defendant who seeks to justify defamatory allegations, serious or otherwise, to rely upon something turning up at trial. Needless to say, disclosure of documents has not disclosed anything which would support Mr. Rubython's case. He depends upon undermining the claimant's evidence in cross-examination and inviting an inference from what he hopes would be the ruins.
23. It is trite learning, of course, that a defendant must not only plead the case in dishonesty, or whatever the form of justification may be, but must also introduce evidence to support it. Nowadays, because of the modern procedure whereby witness statements are exchanged, it is possible to assess whether the defendant's evidence is capable of achieving that objective at a much earlier stage. That is why the application is made now. In the old days, one had to wait until trial to see whether anything had been introduced, and then make a submission to the trial judge that the case should not be permitted to go forward. The modern procedure is of course aimed at placing cards on the table and enabling the parties to understand the nature of the case against them. If a case is defective in so far as it is supposed to support a plea of justification, then an application to challenge it may be made at an earlier stage, thereby saving money for the parties and as a matter of fact also for the public.
24. I have come to the conclusion that the evidence placed before the court on the defendant's behalf, is not capable of overturning the case which is advanced by the witnesses I have identified, on the claimant's behalf. A jury would indeed be perverse, in the light of that evidence, making all factual assumptions in the defendant's favour, to come to the conclusion that Mr. Purnell paid Mr. Bishop a bribe or bribes.
25. It is perhaps a measure of the readiness with which Mr. Rubython is prepared to make very serious allegations of corruption and dishonesty, that he has, as Mr. Bennett would submit, out of desperation, gone to the lengths in his second witness statement to which I have referred, of accusing the solicitors for the claimant of being involved in exerting pressure, which by implication was improper pressure, upon the witnesses, to introduce evidence in this case. He submits also that Mr. Sidhu cannot have read or willingly put his name to the witness statement which he has placed before the court. That is a matter which is referred to in paragraph 18 of the second witness statement. I should perhaps, for the avoidance of doubt, quote what is said.

"The Mr. Sidhu I know would never sign such a sloppy document, and for that reason I believe he has been pressured by the claimant and the claimant's solicitors to write what they wanted and has done so. I do not believe he has even read this

statement, and was faxed through the last page of the statement to be signed unread.”

Other criticisms are made of the witness statements of the other witnesses. That again is assertion, and does not in my judgment amount to a sufficiently cogent attack upon the claimant’s witnesses and their statements to undermine the case put forward. The defendants must produce something. They cannot rely upon the hope of breaking down witnesses in cross-examination.

- 26 It follows therefore that the pleading and the witness statements served on the defendant’s behalf are not up to the challenge of justifying this very serious allegation of corruption or bribery, however one wishes to describe it.
- 27 It is right to say that there was also, at one point in the defendant’s case, an allegation to the effect that other payments had been made for similar purposes on the part of Mr. Purnell and/or Jaguar, amounting it was thought to some £50,000 or so. Mr. Rubython has admitted however, in his witness statements, that he is not in a position to prove those allegations either.
- 28 In these circumstances, it seems to me right that the claimant should obtain summary judgment on the issue of justification. I am conscious, of course, of the tests to be applied on such an application. I have referred briefly to the need to discharge the burden of showing that a jury would be perverse to uphold the plea, but I am satisfied that in this particular case that heavy burden has been discharged on the claimant’s behalf. Accordingly, there will be summary judgment on that issue.