

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/05/2014

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

(1) TULISA CONTOSTAVLOS (2) DANIEL
PETER SIMPSON

Claimants

- and -

NEWS GROUP NEWSPAPERS LTD

Defendant

Manuel Barca QC and Aidan Eardley (instructed by Lewis Silkin LLP) for the Claimants
Gavin Millar QC and Adam Wolanski (instructed by Simons Muirhead & Burton) for the
Defendant

Hearing dates: 11 April 2014

Judgment

Mr Justice Tugendhat :

1. The Defendant in this libel action (“NGN”) applied to the court pursuant to CPR Pt 53 Practice Direction para 4.1 for a determination that the words complained of are not capable of bearing the meanings attributed to them by the Claimants. The claim form was served on 24 February 2014, which was after the Defamation Act 2013 came into force, but the words complained of were published before that date, so that Act does not apply. However, the parties waived their right to apply for trial by jury, and they have agreed to ask that I should treat the hearing of NGN’s application notice as the trial of a preliminary issue in the action to determine the actual meaning of the words complained of. They have also agreed that if I decide that the words complained of bear any meaning defamatory of the First Claimant, then I should also decide whether that meaning is a statement of fact or of opinion (or comment). I so directed.

2. The First Claimant is a well known singer and television personality. The Second Claimant is a professional footballer who, at the material time, played for Newcastle United.
3. The words complained of were published in hard copy in the issue of *The Sun* dated 16 November 2012 on pages 1, 4 and 5, and online on the Defendant's website from that date onwards. The claim form named 13 Defendants (who no doubt each published different words), but the claims against the other Defendants have been resolved or not pursued, with one exception apart from NGN. The issue I have to decide relates only to the words published by NGN.

THE WORDS COMPLAINED OF

4. The words complained of in the two types of publication differ in certain respects, but not in any respect material to the issues I have to decide. It is sufficient to set out the hard copy version (with paragraph numbering added):

“[on the front page]

[Headlines]

EXCLUSIVE: PREM STAR'S LOVER TALKS

Tulisa's stolen my bloke...and I'm 3 months pregnant

[Text]

Soccer ace Danny Simpson's girlfriend lashed out last night after learning of his dates with TV's Tulisa Contostavlos.

Stephanie Ward, 25, branded the X Factor judge a home-wrecker for romancing the Newcastle star. Stephanie also revealed she is three months pregnant with her and Simpson's second child.

Full story – Pages Four & Five

[Picture caption, beneath a picture of the Second Claimant holding and kissing Miss Ward and next to a picture of the Claimants together]

Loved-up... Simpson with Stephanie and, left, with Tulisa

[And on pages 4 & 5]

[Headlines]

MUM-TO-BE RAPS 'HOME-WRECKER' TULISA

As far as I'm concerned, we were still together..I'm numb

[Text – with paragraph numbers added for ease of reference]

[1] Danny Simpson’s girlfriend told of her shock last night over his dates with Tulisa Contostavlos and said: “He’s cheated. We never broke up.”

[2] Pregnant Stephanie Ward, 25, was left “numb” after snaps emerged of the Premier League ace checking into a Manchester hotel with the X Factor judge.

[3] And her pain was compounded yesterday when she discovered the footballer had spent Wednesday night with Tulisa at **THEIR** mansion on the outskirts of Newcastle.

[4] *Stephanie is the mother of Simpson’s baby girl Skye-Lorena and is expecting their second child in six months.*

[5] She said of Tulisa: “She’s been sleeping in *my* bed! Danny has humiliated me in front of my family, friends and the whole nation.

[6] “We’ve been off-and-on for the last seven years – but absolutely solid for the last two. As far as I’m concerned he has cheated on me because we hadn’t broken up or anything.

[7] “I am numb and I’ve gone through the emotions in the last 24 hours. At first I was upset, then angry.”

Perfect

[8] “She was at my house last night, so I think they are going to start seeing each other.

[9] “But what I’d say to Danny is. I don’t know how he can throw away his perfect family for someone who is constantly pictured with different guys.

[10] “I loved Danny for Danny, not Danny the footballer – I can’t see it lasting

[11] “I have a baby on the way and a little girl who’s 1½. If he wants to leave that, then that’s up to him.

[12] “But I won’t be here for him if he comes back. I don’t care anymore. He’s made his bed so he can lie in it

[13] “She’s a home-wrecker and has destroyed my family”

[14] Stephanie’s tearful gran Jean Smith said: “They were very much still together. I saw the newspapers this morning and was totally devastated.

[15] “As far as I knew everything was fine – they were in love.”

[16] *Tulisa, who recently declared herself single and voiced fears she may never find Mr Right, was introduced to 25-year-old Newcastle United defender Simpson through mutual friends.*

[17] The Sun told yesterday of their Tuesday tryst in Manchester and how they were later seen in a Tesco store.

[18] Yesterday, N-Dubz singer Tulisa was seen gazing lovingly at Simpson after spending the night at his £1million home in Darras Hall, Northumberland.

[19] The couple rose early and laughed and joked as they headed to Newcastle Airport in the footballer’s £130,000 Bentley so Tulisa, 24, could fly to London to catch up on her TV work.

[20] Her flight was cancelled due to fog in the capital so the pair went to the British Airways ticket desk to arrange another flight. And as staff re-booked her on a later plane, Tulisa and Simpson had eyes only for each other. An onlooker said: “They may have only been together a short time but it looked like they were in love, the way they were staring at each other.

[21] “Danny clearly adores her and it appeared to be mutual. It looks like they’ve really clicked.”

[22] Tulisa, wearing tight jeans and a white hoodie, popped back to Simpson’s house before returning for her later flight. She refused to comment on her new romance as she boarded.

[23] Simpson, who earns around £25,000 a week, bedded Natasha Gigg – Ryan Gigg’s sister-in-law – when he was trying to break into the Man Utd team before joining Newcastle.

[24] His Magpies team-mates were clearly impressed with his new girlfriend after news of the romance broke on Wednesday. Striker Nile Ranger tweeted: “Simo’s a LEGEND.”

[25] A pal close to Simpson said Tulisa proved “a really good listener”. The friend said: “There’s lots of things Danny likes about her. She’s sexy, attentive, and a really good listener. They’re very comfortable in each other’s company.”

[26] The new couple were said to have sat up listening to each other’s woes on one of their first dates.

[27] A source said: “Danny is worried about his contract and spent the night talking to Tulisa about it. She was amazing. She really gave him a shot in the arm.”

[28] Simpson’s pal added: “Danny’s easy-going but reckless. He likes to take risks. Tulisa is his kind of woman.” Little Skye-Lorena was born six weeks premature in July last year and suffered serious health problems. Simpson was disqualified from driving for six months after being caught speeding near Newcastle’s training ground last year. He told magistrates that his daughter’s ill health had put a strain on his relationship with Stephanie.

[29] Last Saturday the footballer came out in support of Tulisa’s only remaining X Factor act Ella Henderson.

[30] He tweeted: “I liked that version of Tines song @Ella_Henderson just did.” He later added: “Wow Gary going in on Tulisa, that’s below the belt, lol.”

[31] Simpson and Tulisa got together after the TV star’s split with Skin actor Jack O’Connell, 22.

[32] *Tulisa will be praying this romance works out after a string of break-ups.*

[33] She had an on-off relationship with DJ Adam Bailey in 2009, then in February this year ended a two-year affair with N-Dubz co-star Fazer.

[34] Then she took her ex Justin Edwards to court after an X-rated video of her appeared on the internet.

[35] Tulisa said just days ago: “I’m single. If I stand near a guy people think I’m dating them. I’m honestly not seeing anyone. It’s so tricky dating working in the industry I do.

[36] “I guess I have to work out whether I need to date somebody in the industry or whether I just need a strong man who doesn’t care about it all.

[37] “Maybe I need to spend some time living with Tibetan monks at the top of a mountain.

[38] “Until I get my head straight and recharge my batteries I’m not going to be able to meet somebody and be happy.”

[Picture caption, above a picture of the Second Claimant with Miss Ward]

Together ... Simpson and girlfriend Stephanie

[Picture caption, beneath a picture of a page from a previous edition of The Sun carrying a report about the Claimants' relationship]

Affair...Sun yesterday”.

5. The defamatory meaning which the First Claimant attributes to the words complained of in para 7 of the Particulars of Claim are:

“(a) The First Claimant entered into a romantic relationship with the Second Claimant knowing that he was in a stable, long-term and committed relationship with Stephanie Ward, who lived with the Second Claimant and their daughter as a family, and who, as the First Claimant knew, was pregnant with their next child;

(b) The First Claimant has thereby wrecked the home and family life of Miss Ward, the Second Claimant and their child;

6. The defamatory meaning which the Second Claimant attributes to the words complained of is:

“(c) By entering into a romantic relationship with the First Claimant, the Second Claimant was unfaithful to his partner Stephanie Ward, with whom he was in a stable, long-term and committed relationship, living together with her and their daughter as a family, and who, as he knew, was pregnant with their next child.”

7. There is as yet no Defence. But in his skeleton argument Mr Millar for NGN contends that the words complained of, in so far as they refer to the First Claimant, bear no meaning which is defamatory of her. He submits that they mean no more than that the First Claimant, who is not alleged to be married or in any other relevant relationship, has, by having an affair with the Second Claimant, wrecked the relationship which Ms Ward had with her domestic partner the Second Claimant.

8. Mr Millar similarly contends that the words complained of, in so far as they refer to the Second Claimant, bear no meaning which is more gravely defamatory of him than that, by having an affair with the First Claimant, he has been unfaithful to and had thereby humiliated his domestic partner.

THE LAW

9. The law in this case is not contentious. The principles governing a meaning application are as summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at [14]:

“(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a

certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) (8) It follows that 'it is not enough to say that by some person or another the words *might* be understood in a defamatory sense.'"

10. The natural and ordinary meaning may include implications or inferences which the ordinary reasonable and fair minded reader would draw. Principle (6) required the court to take account of the type of newspaper or website in question and of the characteristics of the individuals making up the likely readership. *The Sun* is a tabloid with a mass readership.
11. Mr Millar submits that the court should proceed on the basis that an allegation that two people are having a love affair, when neither of them is at the same time in a relationship with anyone else, is not defamatory. But if the meaning is that one (or both) of them is in a relationship with another person at the same time, then that is defamatory only of the one(s) who is said to be in a relationship with someone else. He also accepts that, even if the meaning is that one of the couple having an affair is not engaged in a relationship with anyone else, but the other one is, and that fact is known to the first one, then an allegation that the unattached one is having the affair with such knowledge is defamatory of him or her. I accept those submissions are correct in the context of the present case.

SUBMISSIONS

The First Claimant

12. In relation to the First Claimant, Mr Millar submits that there is nothing in the words complained of which expressly states, or which a reasonable reader would understand to mean, that the First Claimant was either herself in a relationship with a third party, or that she knew that the Second Claimant was in a relationship with Ms Ward, still less that she knew that Ms Ward was pregnant. In the words "Tulisa's stolen my bloke..." the word "stolen" does not imply that the First Claimant knew anything about the Second Claimant and Ms Ward, but merely that the First Claimant has taken him as a lover. The words complained of are reporting Ms Ward's reaction to the story, published in *The Sun* the previous day, in which it was reported that the First Claimant was having an affair with the Second Claimant (the image of the previous day's story is reproduced on page 5 of the words complained of). The words attributed to Ms Ward include "As far as I am concerned, we [that is the Second Claimant and herself] were still together", and these words leave open the possibility that, as far as the Second Claimant was concerned, his understanding of his relationship with Ms Ward might be different from hers. The reasonable reader would not infer that the Second Claimant agreed with Ms Ward's assessment of the state of their relationship. The gist of the article is all in words attributed to Ms Ward or members of her family. In so far as these words are so attributed, then they are

statements of fact, but as spoken by Ms Ward and her family they are statement of opinion, not of fact. They are plainly adverse judgments by Ms Ward upon the behaviour of the Second Claimant and the First Claimant. Whether the First Claimant is, for example, a “home wrecker” is a statement of opinion, not objectively verifiable, based on the statement of fact that she has been engaged in an affair with the Second Claimant.

13. In relation to the Second Claimant, Mr Millar accepts that the words complained of are defamatory of him, but he submits that no reasonable reader could infer that he knew that Ms Ward was pregnant, or that he considered that he was in a stable long-term and committed relationship with her.
14. Mr Barca submits that the reasonable reader of *The Sun* would understand the words complained of to mean that the First Claimant knew what she was doing to the Second Claimant’s relationship with Ms Ward. The report was focussed on the role of the First Claimant, rather on of the Second Claimant: “Tulisa’s stolen my bloke...” She is referred to as a “homewrecker”. Paragraphs [3], [5] and [8] focus on the fact that the First Claimant and the Second Claimant spent the night in the home, and even in the bed, of the Second Claimant and Ms Ward. The reasonable reader would understand that the First Claimant would not have been able to do that without seeing evidence that it was the home of another woman, his domestic partner, and their young child. In paragraphs [20], and [43]-[49] the First Claimant is portrayed as a woman looking for a long term relationship who was introduced to the Second Claimant through mutual friends, who (by implication) were people who knew the Second Claimant’s relationship with Ms Ward and their young child. In paragraphs [32]-[34] there are attributed to a friend of both of them the statement that the First Claimant is a good listener with whom the Second Claimant has spoken at length. The implication is that they did not just talk about his contract and other business affairs.
15. In my judgment the submissions of Mr Millar are unrealistic. When I read the words complained of on receipt of the papers, and before reading any submissions, it did not occur to me that there could be an argument that the words complained of are not defamatory of the First Claimant. It is a tribute to Mr Millar’s skill that he could advance the argument at all, but he cannot do so consistently with principles (2) and (3) of *Jeynes*.
16. But it does not follow that I adopt the First Claimant’s meanings. They are in substance one meaning. As Mr Millar submits, there is nothing in the words complained to give rise to the meaning that the First Claimant knew that Ms Ward was pregnant. And whether the First Claimant had in fact wrecked the relationship between Ms Ward and the Second Claimant was not, at that early stage of the story, a matter of fact, but may have depended on what Ms Ward herself would do.
17. In my judgment the meaning of the words complained of, in so far as they refer to the First Claimant, are:

“The First Claimant entered into a romantic relationship with the Second Claimant knowing that he was in a stable, long term and committed relationship with Stephanie Ward, and knowing that he lived with Ms Ward and their young daughter as a family, and that in doing so she knowingly encouraged the

Second Claimant's betrayal of his family, and thereby engaged in conduct likely to cause the breakdown of the Second Claimant's relationship with Ms Ward and their daughter".

18. In my judgment that is defamatory of the First Claimant and it is all a statement of fact, not opinion or comment.

The Second Claimant

19. There is no dispute that the words complained of are defamatory of the Second Claimant. The main difference between the parties is that on NGN's submissions the meaning in relation to the Second Claimant does not include any suggestion that his conduct was made worse by reason of his having a young daughter and an unborn child.
20. In my judgment NGN's submissions are again unrealistic. A reasonable reader would understand that the Second Claimant knew that Ms Ward was pregnant. As described in the words complained of, she was his domestic partner, with whom he had already had one child, and with whom he was living in a family home.
21. I accept that the words complained of, in so far as they refer to the Second Claimant, bear a meaning which is substantially that attributed to them by the Second Claimant in para 7(c) of the Particulars of Claim.

CONCLUSION

22. In my judgment the answers to the questions raised on the trial of this preliminary issue as to the meanings of the words complained of in both the hard copy and online versions are that:
- i) In so far as they refer to the First Claimant they mean that the First Claimant entered into a romantic relationship with the Second Claimant knowing that he was in a stable, long term and committed relationship with Stephanie Ward, and knowing that he lived with Ms Ward and their young daughter as a family, and that in doing so she knowingly encouraged the Second Claimant's betrayal of his family, and thereby engaged in conduct likely to cause the breakdown of the Second Claimant's relationship with Ms Ward and their daughter;
 - ii) In so far as they refer to the Second Claimant they mean that, by entering into a romantic relationship with the First Claimant, the Second Claimant was unfaithful to his partner Stephanie Ward, with whom he was in a stable, long-term and committed relationship, living together with her and their daughter as a family, and who, as he knew, was pregnant with their next child, and thereby engaged in conduct likely to cause the breakdown of his relationship with Ms Ward and their daughter.