

Neutral Citation Number: [2015] EWHC 2021 (QB)

Case No: HQ1XD04187

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/07/2015

Before :

THE HONOURABLE MR JUSTICE DINGEMANS

Between :

**His Highness Prince Moulay Hicham Ben Abdullah
Al Alaoui of Morocco**

Claimant

- and -

Elaph Publishing Limited

Defendant

Justin Rushbrooke QC and Richard Munden (instructed by **Lee & Thompson**) for the
Claimant

David Glen (instructed by **Payne Hicks Beach**) for the **Defendant**

Hearing date: 8 July 2015

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.

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THE HONOURABLE MR JUSTICE DINGEMANS

Mr Justice Dingemans:

Introduction

1. This is a libel claim brought by the Claimant His Highness Prince Moulay Hicham Ben Abdallah Al Alaoui of Morocco (“Moulay Hicham”) against the Defendant Elaph Publishing Limited (“Elaph”) in respect of an article published in Arabic on its news website on 8th and 9th October 2014. Elaph is a company incorporated in England and Wales. The article was removed following a complaint by Prince Moulay Hicham’s solicitors on 9th October 2014.
2. I gave judgment on 24 April 2015 in relation to certain pleaded meanings of the article. The judgment is at [2015] EWHC 1084 (QB), and I will not repeat the contents of the article or that judgment.
3. After that judgment the Claimant sought permission to amend the Claim Form and Particulars of Claim to plead a new meaning set out in paragraph 6.1 of the proposed amended Particulars of Claim, and to add in a claim under the Data Protection Act 1998. The issues addressed by this judgment are: (1) whether the Claimant should have permission to amend to plead the new meaning; and (2) whether the Claimant should have permission to amend to add in the claim under the Data Protection Act.

No permission to amend to plead new meaning

4. The legal principles relevant to meaning were set out in my first judgment and I have not repeated them. In my judgment the new suggested pleaded meaning is not capable of bearing a meaning defamatory of the Claimant. This is because it is not enough that the words should damage the Claimant in the eyes of a section of the public only, see *Modi v Clarke* [2011] EWCA Civ 937. The article does suggest that Moulay Hicham, a cousin of the King, was plotting, scheming and weaving machinations against the King of Morocco, and suggests that such conduct was wrongful. However whether such conduct is wrongful depends on the views of that section of the public interested in the politics of Morocco. It is not, in my judgment, capable of being defamatory of someone to say that they are plotting, scheming or weaving machinations against the King for the reasons given in *Modi v Clarke*.
5. In my judgment both the original suggested meanings in paragraphs 6.1 and 6.3 and the new meaning have the appearance of contrived meanings, fashioned so that an action in defamation can be pursued when (as appears from paragraph 22 of the original judgment) Moulay Hicham’s real complaint is that the article was inaccurate.

Permission to amend and bring Data Protection Act claim

6. Moulay Hicham applies to bring a claim under the Data Protection Act claiming that there has been unfair and unlawful processing of data because the story was inaccurate and infringed relevant data protection principles. Claims for damages pursuant to section 13 of the Data Protection Act and claims for other orders pursuant to section 14 of the Data Protection Act are made.
7. It is common ground that, for the purposes of this application, I should assume that the article was inaccurate as alleged by Moulay Hicham. However Mr Glen on behalf

of Elaph, resisted the application to amend saying: that the claim was not legally sustainable because it was an attempt to fashion a remedy for damage to reputation under the Data Protection Act where the law of defamation did not provide one, and he relied on *Quinton v Peirce* [2009] EWHC 912 (QB); (2009) FSR 17; that the amendment was late; and finally that there was no real and substantial tort and that the litigation would “not be worth the candle” and the amendment was therefore abusive.

8. In my judgment Moulay Hicham should be granted permission to amend the Particulars of Claim to bring a claim under the Data Protection Act. It is right that in *Quinton v Peirce* Eady J said that he was “*by no means persuaded that it is necessary or proportionate to interpret the scope of the [Data Protection Act] so as to afford a set of parallel remedies when damaging information has been published about someone, but which is neither defamatory nor malicious*”. However that was in the context of a case involving election leaflets which included statements which were comment. Eady J. did not state that a claim under the Data Protection Act could never be made when a claim for defamation had been made, and he did not give any reasons why such a claim should not be made. There have been other cases, of which *Law Society v Kordowski* [2011] EWHC 3185 (QB); [2014] EMLR 2 is an example, where claims for defamation and claims under the Data Protection Act have been made. It is arguable that such a claim might be made when a claim for defamation has been made. The extent and reach of the Data Protection Act is a matter which is still being considered, see generally *Google Inc v Vidal-Hall* [2015] EWCA Civ 311.
9. It is right to record that the proposed amendment was made after there had been an application to determine whether the article was capable of bearing the defamatory meanings pleaded, when some of the meanings were not sustained. However that application was made before a defence had been served and, in the general terms of this action, the application is not very late.
10. In my judgment the claim under the Data Protection Act is also capable of being “a real and substantial tort”, meaning that the action might not be an abuse of process and impermissible interference with freedom of expression. It must be noted that Elaph have important interests as publishers of information relating to events in, among other countries, Morocco. However it is arguable that Moulay Hicham has a principled interest in ensuring that there is an accurate record of his political activities in France relating to the Moroccan regime. Such an interest might justify pursuing an action at a proportionate cost. This is in circumstances where there does not appear to be any voluntary body which could provide a binding adjudication relating to the accuracy of the article.
11. Mr Glen did in the course of submissions refer to a statement which had been made by Elaph on the website, suggesting that some of the inaccuracies in the article might have been corrected. Mr Rushbrooke objected to the point being raised without evidence and it was apparent that there was some dispute between the parties about the extent of the statement, and Mr Glen did not make any application to adduce evidence of the statement. In these circumstances I am not able to take any such statement into account when determining this application for permission to amend.

Conclusion

12. For the reasons set out above I refuse Moulay Hicham permission to amend the Claim Form and Particulars of Claim to plead the new meaning, but I grant him permission to amend the Claim Form and Particulars of Claim to bring a claim under the Data Protection Act.