



Neutral Citation Number: [2011] EWHC 3472 (QB)

Case No: HQ11D02797

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2011

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

NANCY DELL'OLIO **Claimant**
- and -
ASSOCIATED NEWSPAPERS LTD **Defendant**

William Bennett (instructed by **Collyer Bristow**) for the **Claimant**
Mark Warby QC (instructed by **Reynolds Porter Chamberlain**) for the **Defendant**

Hearing dates: 21 December 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 is an application by the Defendant (“ANL”) for a ruling pursuant to CPR PD53 para 4.1(1) that the words complained of in this libel action are not capable of bearing the meaning attributed to them by the Claimant in her Particulars of Claim, nor any other meaning defamatory of her. If that application is successful, ANL ask for an order that the action be dismissed.
2. The words complained of were published in the issue of the Daily Mail dated 30 April 2011 in a double page spread on pages 50 and 51, and online. The Claimant describes herself as a well known Italian lawyer. The words complained of are part of an article made up of 49 paragraphs. The words complained of are in paras that have been numbered for convenience 1-11, and 23-39. They include a heading “RETURN OF THE MAN-EATER” and a sub-heading “A conveniently leaked story, staged photos and two women at war over a much older man. It can only mean Nancy Dell’Olio’s got her claws into ANOTHER high-profile millionaire”. They read as follows:

“[1] For a man who looks like a scruffy geography teacher, Sir Trevor Nunn certainly has a way with the ladies. How else can one explain his ability to juggle two alluring younger women, each two decades his junior and as different as chalk and cheese?

“[2] There he was on Monday morning, basking in the Cornish sun, with the unmistakable figure of Nancy Dell’Olio by his side posing for the cameras in knee-high boots and aviator sunglasses.”

[3] The unlikely couple were out again the following night for dinner in London's Knightsbridge, Sir Trevor in his trademark battered plimsolls while his heavily made-up companion teamed a pair of strappy wedge heels with some seriously bling costume jewellery.

[4] The next morning, however, the 71-year-old theatre director was in his dressing gown on the doorstep of his London home chatting happily with another woman: his wife, Imogen Stubbs.

[4] What a difference 12 hours makes.

[5] It is hard to imagine Nancy appearing in public, as Imogen did on Wednesday morning, in a scruffy pair of pyjamas, sans make-up, and with un-brushed hair.

[6] Yet the contrast between the two women in Sir Trevor's life runs far deeper than mere aesthetics. On one hand there is the renowned classical actress Imogen, 50, the daughter of a retired naval commander, with her double first in English from Oxford.

[7] On the other is Italian firebrand Nancy, a controversial 49 (no birth certificate has ever been located), once a lawyer but now known almost exclusively for her tempestuous relationship with Sven Goran Eriksson, the former England football manager.

[8] Somehow, Sir Trevor, described as a 'charming flirt' is managing to keep both of them happy, yet for how much longer remains to be seen. For at the heart of this extraordinary ménage à trois lies a fundamental problem: the women can't stand the sight of each other, with each determined to oust the other.

[9] It goes some way towards explaining Imogen's inconsistent statements this week. In 24 hours she went from insisting that she and her husband were very much together, though admitting they were going through 'a difficult time', to stating that they were separating 'after 21 wonderful years together'.

[10] So why the sudden change of tune?

[11] The truth, I have learned from a close friend of Nancy's, is that Imogen's hand was forced by her rival's determination to make her affair with Sir Trevor public. After two months of secretly meeting at her Belgravia house, Nancy grew tired of the secrecy and decided to take action. Cue a suspiciously well-informed newspaper article lifting the lid on how Sir Trevor was 'smitten' with his Italian lover.

...

[23] 'In all honesty I think they would have carried on merrily with the same arrangement if it weren't for Nancy. She's landed in the middle of them like a hand grenade, threatening to blow everything apart.'

[24] Certainly it is hard to imagine a more different woman from Imogen, yet in recent months Sir Trevor has developed something of an obsession with the raven-haired Italian.

(Photograph of the Claimant with Sven-Goran Eriksson followed by the following caption): Nancy's former millionaire: dell'Olio with old flame Sven-Goran Eriksson during his time as England manager

[25] They first met in 2004 when Nancy attended a production of Hamlet at the Old Vic theatre. She was still in a relationship with Sven Goran Eriksson at the time, and it was not until last year that she renewed her acquaintance with Sir Trevor.

[26] Nancy's circle are adamant that it was Sir Trevor who 'vigorously' pursued her after they bumped into each other at the Ivy Club — a private member's club above the famous Ivy restaurant, on a number of occasions earlier this year. He invited her to join his table, bought her champagne and a flirtation unfolded over a period of several months.

[27] Initially, Nancy was far from convinced, but gradually declared herself to be 'enchanted' with his 'intelligence and old school manners — plus the fact that he is very generous'.

[28] No small matter for a woman who had become accustomed to the finer things in life through her relationship with the well-remunerated former manager of the England football team. This is a woman who dresses exclusively in designer clothes and eschews taxis in favour of a chauffeur-driven Bentley, despite having no obvious source of income.

[29] 'Sir Trevor would never let her pay for anything, and Nancy is very old fashioned in her attitude to that sort of thing,' one of her closest friends told me this week. It was a slow-burn flirtation but he loves her Geisha-like way of making him the centre of her attention at all times. I get the impression that's not really Imogen's style.

[30] 'They would always meet up at the Ivy Club because it's a discreet place for celebrities to hang out without attracting attention. 'Then after a couple of months the relationship moved on to the next level and they started meeting at her place although he was still very nervous about going public.

[31] 'Nancy isn't like that. When she's with someone then she is completely committed, and she was never going to be happy about being hidden away. 'It's no secret that her friends leaked the story with her consent and it suits Nancy down to the ground that it's all out in the open now.'

[32] Sir Trevor, who has been entitled to draw an old-age pension for six years, is a laid-back character and was happy to take his new relationship slowly. Yet last weekend he bowed to growing pressure from Nancy and introduced her to a group of friends during a bank holiday break at his £750,000 cliff-top holiday cottage in Cornwall.

[33] One can only wonder how she fits in with his theatrical cronies — the likes of Kevin Spacey, Sir Tom Stoppard and Dame Judi Dench, with whom he dines regularly when in London.

[34] But as was seen during her relationship with the perpetually philandering Sven, Nancy is nothing if not committed.

[35] 'Anyone who knows the real Nancy will tell you she's looking for a happy ever after,' adds the friend. 'She desperately wants to settle down. Trevor's age doesn't worry her in the slightest. It's the power of a man which attracts her, and he is a huge figure in British theatre. Don't be fooled by his scruffy exterior, either. We're talking about a man who dyes his hair and his beard — he doesn't want to grow old gracefully any more than Nancy does.

[36] 'Plus it doesn't do any harm that he's got a healthy bank balance. As far as Nancy is concerned Trevor is definitely a "keeper", though by the sound of things Imogen isn't particularly thrilled about it.' Their whirlwind romance continued apace on Thursday night when they were, again, spotted enjoying an intimate dinner at the Ivy Club.

[37] Fellow diners reported that Nancy was eagerly introducing her new man to every passing acquaintance, while Sir Trevor sat stroking her leg for much of the evening.

[38] 'They certainly weren't hiding their light under a bushel,' remarked one highly amused observer. 'It was like watching a couple of smitten 18-year-olds in action. Bordering on inappropriate at times.'

[39] No wonder that Imogen who, earlier this week said she was 'happy about any new friendships [Sir Trevor] is forming', is privately understood to be bewildered by his dalliance with a woman so far removed from the intellectuals he normally associates with, as well as being deeply concerned about how the relationship will affect their children.

...”

3. The meaning attributed to the words complained of by the Claimant is:

“In their natural and ordinary meaning the words complained of meant and were understood to mean that the Claimant is, or is reasonably suspected of being, a serial gold-digger who cynically seeks out relationships with men not for genuine emotional reasons but because they are millionaires and therefore capable of funding her conspicuously lavish and ostentatious lifestyle”.

THE LAW

4. The Practice Direction PD53 para 4.1 reads:

“At any time the court may decide –

(1) whether a statement complained of is capable of having any meaning attributed to it in a statement of case;

(2) whether the statement is capable of being defamatory of the claimant;

(3) whether the statement is capable of bearing any other meaning defamatory of the claimant.”

5. In *Modi v Clarke* at para [23] the Court of Appeal stated:

“As the court must under CPR PD 53 para 4.1 consider not only the pleaded meaning but also "whether the statement is capable of bearing any other meaning defamatory of the claimant", the court must consider any meanings that can properly be advanced”.

6. Also of relevance is the requirement of the Pre-Action Protocol for Defamation. One of the aims of that Protocol, as stated in para 2 is: “It aims to encourage both parties to disclose sufficient information to enable each to understand the other’s case and to promote the prospect of early resolution”. Para 3 requires that a claimant send a Letter of Claim, which should include (amongst other details):

- “factual inaccuracies or unsupported comment within the words complained of; the Claimant should give a sufficient explanation to enable the Defendant to appreciate why the words are inaccurate or unsupported;
- the nature of the remedies sought by the Claimant.”

7. The legal test to be applied on an application of this kind is well established. In deciding what meaning words are capable of bearing for the purposes of libel the court must have in mind the guidance given in *Skuse v Granada Television*, summarised most recently by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at paragraph 14:

"The legal principles relevant to meaning ... may be summarised in this way: (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) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation..." (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."

8. Mr Bennett emphasises that the exercise was described as one in "generosity, not parsimony" in *Berezovsky v Forbes* [2001] EWCA Civ 1251 [2001] EMLR 45 at para [16].
9. Mr Warby emphasises principle (5) from *Jeynes*: particularly in point in the present case is the requirement that the words be read in their context, and that they be read as a whole, so that the meaning cannot be taken for example simply from a headline: *Charleston v Newsgroup Newspapers Limited* [1995] 2 AC 65.
10. Mr Warby also cites from *John v Guardian* [2008] EWHC 3066 (QB):

"16. I do not read these authorities as saying that a judge hearing a meaning application may more safely err on one side than on the other. That would not be consistent with the overriding objective. If the judge does err in holding words to be incapable of bearing a meaning pleaded by a claimant, then he deprives the claimant of his right to vindicate his reputation before a court. If the judge errs in holding words to be capable of a meaning pleaded by a claimant, then the defendant is wrongly burdened with defending libel proceedings. This can be a very onerous burden and one which interferes with the right of freedom of expression.

17. ... There is a real risk of a violation of Art 10 if a claimant strains to attribute to words complained of a high factual meaning, which cannot be defended as true..."
11. He also cites *Norman v Future Publishing* [1999] EMLR 325, 331-2 where Peter Gibson LJ said:

"... laboured attempts to find a meaning which the words could reasonably bear ill accords with the guidance given by this court in *Skuse v. Granada Television Ltd* [1996] E.M.L.R. 278 at 285. There it was said that the court should be cautious of an over-elaborate analysis of the material in issue. ... the meaning should be one gained by the reader as a matter of first impression."

12. Further, he submits that there is a threshold of seriousness which must be passed before it can be said that words are defamatory. He adopts the formulation of the test in *Thornton v Telegraph Media Group* [2010] EMLR 25 at para [95]:

“it substantially affects in an adverse manner the attitude of other people towards him, or has a tendency so to do.”

13. The principle was derived in that case from common law libel authorities. But where words reflect on the personal qualities of an individual, the question for the court is now viewed in the light of rights under Art 8 and Art 10. As Laws LJ said in *Terluk v Berezovsky* [2011] EWCA Civ 1534 para 28 (in relation to a different principle in the law of libel):

“the modern law in this area should more visibly occupy the legal territory of privacy and free expression, and the tensions between them...”

14. Those words are particularly apt in a libel claim such as this one where the words complained of relate to the personal or private life of the claimant and not to her professional life or any public function. This is the legal territory in which a claim can be advanced either in libel or for misuse of private information.
15. From that perspective, there are now a number of authorities to the effect that “that intrusions must reach a certain level of seriousness to engage the operation of the Convention”: *R (Gillan) v Commissioner of Police for the Metropolis* [2006] 2 AC 307 para [28]; *Wood v Commissioner for Police for the Metropolis* [2009] EWCA Civ 414 paras [22]-[23] and *M v Secretary of State for Work and Pensions* [2006] UKHL 11[2006] 2 A.C. 91 para 83. I am indebted to Sir Brian Neill for drawing my attention to these cases after the publication of my judgment in *Thornton*.
16. If a claimant cannot complain of an interference with her rights under Art 8, the reputational rights of the claimant must still weigh with the court in accordance with Art 10(2), but a non-Convention right may weigh less heavily in the balance than a Convention right.

PRE-ACTION PROTOCOL CORRESPONDENCE

17. When the Claimant’s solicitors first complained by letter dated 5 May she set out the meaning she complained of, and required “a full and unequivocal public retraction and apology in terms to be approved” by her solicitors, an undertaking not to repeat the allegations, and substantial compensation for the injury to her reputation and feelings. The meaning that they complained of was:

“Any reasonable reader would be left in no doubt that our client is a serial ‘gold digger’ and has deliberately set out to snare herself a wealthy man by making their adulterous affair public thereby destroying his marriage for her won personal gain”.

18. In its letter of 20 June 2011 rejecting this interpretation ANL argued that the article made clear that Ms Stubbs had volunteered that she was unfaithful to Sir Trevor first, that the marriage had already broken down, and that it was Sir Trevor who

pursued the Claimant, not the other way round. It is following that letter that the new meaning attributed to the article in the Particulars of Claim was formulated.

SUBMISSIONS

19. Mr Warby submits that the phrase 'gold-digger' does not appear in the article, and that article contains no reference to the Claimant acting "cynically" or "not for genuine emotional reasons". What the first 11 paragraphs of the words complained of do is to explain why she wished her relationship with Sir Trevor to be made public. Paragraphs 12-22, which are not complained of, include an account of how Sir Trevor is separated from his wife, although they are living together (which they are able to do, because their house is a large one). Paragraph 12 includes a quotation attributed to Imogen Stubbs: "There has been someone else in my life for a while". Paragraphs 24-39 (which are complained of) contain an account of the Claimant's developing relationship with Sir Trevor. It is attributed to friends of hers. Mr Warby submits that, as stated in the letter of 20 June 2011, these paragraphs make clear that the relationship was initiated and pursued by Sir Trevor, and not by the Claimant ("... it was Sir Trevor who 'vigorously' pursued her... Initially Nancy was far from convinced, but gradually declared herself to be 'enchanted'... 'Anyone who knows the real Nancy will tell you that she's looking for a happy ever after ... She desperately wants to settle down' ...").
20. He submits that the phrase "man-eater" does not itself convey the meaning attributed to the words complained of, and the text of the article makes clear that she is not alleged to be the hunter, but, if the metaphor is to be used, she is portrayed as the prey. Whether or not the title accurately conveys the meaning, it is to the whole article that the reader must look to derive the meaning. The article may be regarded as unflattering, or even (as Mr Bennett submits) insulting, but that is not enough for the Claimant to succeed.
21. Further, Mr Warby submits that the words complained of do portray the Claimant as having engaged in an adulterous relationship, but she evidently does not wish to complain of that meaning. She did not do so in her Particulars of Claim, and Mr Bennett has not done so at the hearing.
22. Mr Bennett emphasises the references in the words complained of to money. In particular, there is the title saying she has "got her claws into ANOTHER high-profile millionaire". For those members of the public who do not already know this very well publicised fact, para 34 identifies her previous relationship as being with Sven, and the online version has a photo of her with Mr Eriksson who is described as "Nancy's former millionaire..." Mr Bennett notes the references to Sir Trevor's wealth and generosity, to the Claimant's expensive lifestyle, to difference in the ages of the couple, to the personal appearance of Sir Trevor, and to the Claimant's apparent lack of interest in the theatre, which is the world in which, it is said, his other friends are interested (... a woman so far removed from the intellectuals he normally associates with...). The words complained of are not just insulting: they are defamatory within the meaning of the law. The fact that the source of the article is attributed to friends of the Claimant weakens the force of the points which are supposedly favourable to the Claimant.

23. In response to questions from the court, Mr Bennett submitted that the contents of the Letter of Claim were of little relevance to the task before the court on the present applications. The court should be concerned only with meaning, not whether there are factual inaccuracies or unsupportable comment. Those are matters for a later stage, if raised in a defence by ANL. What the Claimant would require by way of vindication is a statement from ANL that she has not pursued Mr Eriksson and Sir Trevor for their money.
24. Mr Warby responds that the court should look at the Letter of Claim. At least in a case such as this, the court should be cautious before finding (in accordance with PD53 para 4.1(3)) a defamatory meaning which is not contended for by the Claimant. There may be such meanings, but also good reasons why a claimant would not wish to advance them. In the Letter of Claim there is little to indicate what exactly the Claimant would regard as vindication. He submits that it appears that what she would require is a statement from ANL that her motivation includes an element of emotional commitment.
25. In response to questions from the court, both counsel replied that it is not easy to recall a recent case where a claim based on the publication of information about a sexual relationship has been pursued in libel, although there are a number which have been pursued as misuse of private information.

DISCUSSION

26. I accept that the title to the words complained of is unflattering and even insulting, as are the other references to money. But that is not the same as being defamatory.
27. The question is whether the words complained of are capable of substantially affecting (or tending to affect) in an adverse manner the attitude of other people towards this Claimant, whether in the meaning advanced by the Claimant, or in some other meaning.
28. I add the emphasis. The Claimant is very well known to the public, and has been for a number of years. The public position or character of a claimant is relevant to whether words complained of bear a defamatory meaning: Gately on Libel and Slander 11th ed para 2.4.
29. The words complained of in the present case do not introduce the reader to the Claimant. The article assumes that the reader already knows who she is. See paragraph 2: “There he was ...with the unmistakable figure of Nancy Dell’Olio by his side posing for the cameras ...” The Claimant is best known for her past association with Mr Eriksson, who himself is one of the most prominent figures in the world of sport. That is how she has come to be an “unmistakable figure”. The Claimant is known to be a lawyer by profession, but that is not the source of her celebrity, nor the subject of the words complained of.
30. The Letter of Claim is in my judgment relevant to the question of meaning, not only in so far as it sets out the meaning complained of, but also in so far as it identifies (or omits to identify) “factual inaccuracies or unsupportable comments”. A court considering “whether the statement is capable of bearing any other meaning defamatory of the claimant” cannot be required to proceed in a vacuum. There may be

obvious potentially defamatory meanings (such as that a person is carrying on an adulterous relationship) which it would be pointless for the court to consider, if the claimant does not raise them.

31. I accept Mr Warby's submission that, at least in the present case, it would be futile for the court to consider every possible defamatory meaning of the words complained of. The point has been raised by Mr Warby. The Claimant has had an opportunity to advance another meaning. If she chooses not to do so, the court should respect that choice, but not permit her to advance another meaning, at least without a satisfactory explanation for her taking that course. I have regard to the fact that the Claimant has advanced a second meaning for the purposes of her Particulars of Claim, after advancing an earlier meaning in the Letter of Claim.
32. In my judgment the references to lifestyle, money and wealth in the words complained of, insulting though they may be, do not elevate the matter to the level of seriousness required to overcome the threshold of seriousness required if a publication is to be capable of being defamatory.
33. One useful cross-check in the present case is to consider the terms of the statement or apology that the Claimant would regard as vindication. Since these are not to be found in the Letter of Claim, I take them to be along the lines submitted by Mr Bennett. It is only necessary to consider those to question whether such a statement from ANL would amount to relief worthwhile for the Claimant to obtain. In my judgment they would not. So I take the real object of the Claimant to be to prevent repetition of similar words by ANL.
34. If that is so, the court must consider whether it is necessary or proportionate for the court to require (by injunction or otherwise) ANL to refrain from publishing articles about the Claimant which refer to the wealth of her associates, or her own lifestyle, in terms which might suggest that financial concerns form a significant factor in her motives. In my judgment the answer must be in the negative.

CONCLUSION

35. For the reasons given above, in my judgment the words complained of are not capable of bearing the meaning attributed to them by the Claimant in her Particulars of Claim, or any other defamatory meaning of which she might complain. It follows that the claim must be dismissed,