Neutral Citation Number: [2006] EWHC 637 (QB)

Case No: HQ05X02315

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/03/2006

Before :

THE HON. MR JUSTICE EADY

- -

Between :

Norman Angel	**Claimant**
- and -	
1. Adrian Stainton	**Defendants**
2. Repaircraft PLC	

- -
- -

David Sherborne (instructed by **Harbottle & Lewis**) for the **Claimant**
James Dingemans QC and **Andrew McGuinness** (instructed by **Roche & Co**) for the **Defendants**

Hearing date: 20th March 2006

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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 HON. MR JUSTICE EADY

The Hon. Mr Justice Eady:

1. The Claimant in this libel action is Mr Norman Angel, who is now 81 years of age. He has been associated in one capacity or another with the aircraft and defence business for over 60 years and served as a pilot in the Royal Air Force in the second world war. He is now the director of AEI Systems Ltd ("AEI Systems"), a company which specialises in the manufacture and marketing of defence equipment. He had also been a director of Aircraft Equipment International Ltd ("Aircraft Equipment"), which was placed into receivership on 16 June 2005. The business and assets of this company were acquired by AEI Systems, a few weeks later, on 15 July 2005.

2. The first Defendant, Mr Adrian Stainton, is the managing director of the second Defendant, Repaircraft plc. This is described in his witness statement by Mr Angel as "a rival company to Aircraft Equipment". It appears from the evidence that at various stages, including as long ago as 1994, Mr Stainton had expressed interest in acquiring the Aircraft Equipment business.

3. The claim arises from a letter written by Mr Stainton, on the printed paper of the second Defendant, on 2 July 2005. This was obviously after Aircraft Equipment had gone into receivership and during the period when its business and assets were available for acquisition. At that stage Price Waterhouse Coopers LLP ("PWC") were acting as receivers and were involved *inter alia* in discussions with AEI Systems regarding the purchase of the business and assets with the assistance of its bank (HSBC). Mr Angel explained to me in the course of evidence that they had been his bankers for many years.

4. Although he did not discover the full contents of the 2 July letter at once, Mr Angel eventually obtained it on or about 21 July. At first, he only knew of the particular defamatory allegation of which he complains. That was drawn to his attention within 48 hours by Mr Gercke, the head of the PWC team which was conducting the receivership. He was one of the original recipients. For present purposes, it will suffice for me to set out only part of the three page letter, which will put the words complained of in context:

> "Dear Mr Gercke
>
> AIRCRAFT EQUIPMENT INTERNATIONAL LTD (ARMS DEALERS)
>
> 1. As previously stated during my visit to the AEI premises, 1 Kings Ride Ascot, Berkshire, Repaircraft PLC are most interested in acquiring the assets/business.
>
> 2. Unfortunately, I do not believe that Repaircraft PLC or any other third party will be able to put in a realistic bid against the former management because PWC, in conjunction with the former Shareholders/Managers, have been unnecessarily and gratuitously obstructive.
>
> This means that the only people with access to the essential facts and figures are the former shareholders/management.

> Quite simply without any information on the company, potential buyers will have to “Bid Blind” which will inevitably means (*sic*) that they will bid a very low price to allow for unknown ‘skeletons in the cupboard’ and so lose on price, or alternatively serious ethically managed companies will not submit a bid.
>
> Therefore, PWC are possibly consciously setting up a ‘done and dusted deal’ for the former owners, the Angel family to re-acquire the company clear of the liabilities and leaving many small business creditors high and dry.
>
> Clearly it would appear that this situation has certain parallels to the current ‘Phoenix scam’.
>
> ….
>
> My concerns are partly based on the rumour that Mr Norman Angel received a custodial Prison sentence some years ago for selling certain goods to people that he should not have. This may be untrue … but it may not be? …”

5. The words selected for complaint in the letter are confined to the extract “… rumour that Mr Norman Angel received a custodial Prison sentence some years ago for selling certain goods to people that he should not have”. It is said that the natural and ordinary meaning, when taken in the context of the letter as a whole, was that the Claimant had been convicted and imprisoned for illegal arms trading. Indeed, the Defendants’ solicitors asserted (on 25 July 2005) that “… in a letter by one arms-dealer about another, an allegation of illegal trading is likely to refer to and/or be understood to refer to illegal arms-dealing”.

6. Apart from Mr Gercke, to whom the letter was addressed, it is accepted that copies were sent to a number of other relevant parties:

    i) The Rt Hon Alan Johnson MP, the Secretary of State for Trade and Industry, that department being responsible for issuing export licences which would be necessary for the Claimant successfully to run the business he was planning to acquire.

    ii) HSBC Bank PLC, which was not only the Claimant’s bank but would also be providing AEI Systems with the finance to enable the purchase of Aircraft Equipment’s business and assets to take place.

    iii) The Home Office Firearms Section, which was responsible for providing the necessary licence under the Firearms Act 1968, required for the manufacture, keeping or disposal of prohibited weapons and ammunition (without which, of course, no such business could operate).

    iv) Mr Chris Sambrook, of the Firearms Section of the Thames Valley police, which had the responsibility for issuing firearms licences (a necessary

requirement for obtaining the licence from the Home Office under s.5 of the 1968 Act).

7. Not surprisingly, it is argued on Mr Angel's behalf that the allegation that he had been convicted of and imprisoned for a serious criminal offence, when addressed to the selected publishees I have listed, was likely to cause him considerable damage personally and, potentially, to jeopardise the acquisition of the business and assets for which he was negotiating at that time.

8. The matter now comes before me in accordance with the statutory jurisdiction under s.3(5) of the Defamation Act 1996, which is part of the machinery for implementing the offer of amends procedure:

> "If the parties do not agree on the amount to be paid by way of compensation, it shall be determined by the court on the same principles as damages in defamation proceedings.
>
> The court shall take account of any steps taken in the fulfilment of the offer and (so far as not agreed between the parties) of the suitability of the correction, the sufficiency of the apology and whether the manner of their publication was reasonable in the circumstances, and may reduce or increase the amount of compensation accordingly".

9. It is necessary to consider the background of what happened in a little detail, and especially what occurred between 2 July and 2 September 2005, when the unqualified offer was made in accordance with the statutory procedure.

10. Mr Angel first came to know of the allegation when he was telephoned on 4 July by PWC. Their concern was reiterated in a letter of 5 July, which referred to the words complained of and asked for a written reply "as regards the truth or otherwise of this statement at your earliest opportunity". Mr Angel responded in writing the same day denying the allegation.

11. Mr Gercke wrote to Mr Stainton on 7 July and observed that it was "a very serious allegation to make and one that I do not take lightly". He asked for any evidence to support the allegation to be brought to his attention "and to the attention of the relevant authorities" immediately. That letter was copied to the recipients of the original letter from Mr Stainton. It thus clearly came to their attention that the allegation was being taken seriously by PWC.

12. It was also on 7 July that Mr Angel's solicitors wrote to Mr Stainton complaining of the allegation he had made to PWC (as relayed by Mr Gercke to Mr Angel) in these terms:

> "These comments are grossly defamatory of our client and denigrate our client in a manner which is plainly calculated to cause him maximum damage. These allegations are entirely false.

> The sensational nature of your allegations and the way in which you presented them has led to the defamatory allegations being widely disseminated by your deliberate design.
>
> The damage caused to our client's reputation has been aggravated by your conduct in writing to a number of people making the same defamatory allegations".

Having referred to the harm and distress which the publication had caused, the solicitors went on to call *inter alia* for a full retraction and unreserved apology, an undertaking not to repeat the allegations, and for a statement to be made in open court in terms to be agreed. They made it clear that they were also asking for financial compensation and costs. Having received a "holding" response from Mr Stainton's solicitors (Roche & Co) on 12 July, Mr Angel's solicitors chased the matter on the same day. They were emphasising the harm and distress which had been caused and their need to know, immediately, whether Mr Stainton was prepared to apologise or whether it was going to be necessary to issue proceedings.

13. On 13 July there was a further "holding" response from Roche & Co, who protested that they were unable to take "detailed instructions". They also made the rather feeble point:

> "… of the five publishees, three are in a position to know the truth or falsity of the allegations (namely the DTI, Home Office and Thames Valley police) and the other two (PWC and HSBC) will no doubt take comfort from the fact that your client has instructed lawyers to proceed in defamation".

14. By 15 July, it seems that Roche & Co were not even in a position to admit that Mr Stainton was responsible for disseminating the 2 July letter. It was only on 21 July that a substantive response was received and a copy of the letter of 2 July actually supplied. The response was, however, hardly satisfactory. It was very difficult for Mr Angel to fathom exactly what stance Mr Stainton was taking. On the one hand, there was paragraph 3:

> "As to the issue of justification of the specific allegation of imprisonment with the arguably implicit allegation of conviction, our client accepts that your client was not convicted or imprisoned in relation to the allegation of illegal trading. To that extent the statement was false though we reserve the position as to whether or not defamatory".

On the other hand, there was paragraph 5:

> "In the premises, all the material presently available to us indicates that your client was in fact engaged in illegal exports of military materials but that his prosecution was stopped for political reasons. …"

15. Astonishingly, the letter argued that there was "a strong *prima facie* defence of fair comment". In *Campbell-James v Guardian Media Group PLC* [2005] EMLR 24 at

[7], I described the insulting suggestion that the defamatory allegation in that case was fair comment as "a grave error of judgment". So too here, the absurd suggestion that an allegation of conviction and imprisonment for illegal trading could possibly be susceptible to a defence of fair comment was also an error of judgment. Far from mitigating the impact of the original allegation, the contents of this letter plainly aggravated the hurt to Mr Angel's feelings and his sense of indignation.

16. As at 21 July, the Defendants were not prepared to make an offer of amends under s.2 of the Defamation Act 1996 but, nevertheless, went on to acknowledge that:

> "… it is accepted that Mr Angel was not convicted or imprisoned in the context stated by our client and to that extent our client has made a false statement which should be corrected".

An offer was made that Mr Stainton should write to the original publishees and retract his allegations in terms. It was also indicated that Mr Stainton was prepared to apologise for making the "specific allegations" and to put his name to a "contrite and apologetic retraction". Nonetheless, this was said to be without prejudice to any defence of fair comment, "in other words without any admission that the statement was defamatory"!

17. Mr Angel could, therefore, at this stage be forgiven for not appreciating whether he was on his head or his heels. Furthermore, on 25 July 2005 Roche & Co indicated that they were open to discussion of the terms of an offer of amends, but at that stage did not anticipate that agreement could be reached unless "(1) it was clear that no admission of defamation was made by our client; (2) nothing more than a nominal sum by way of compensation and costs was payable". That was unrealistic, not least because an offer of amends inevitably involves an acknowledgment that the words complained of were defamatory in some sense.

18. Proceedings were launched on 9 August 2005 since no satisfactory proposals had been forthcoming. Then on 2 September, the very last day before the defence was due, an offer of amends was made in accordance with the statutory requirements. Thus, nearly two months had elapsed from the initial complaint before the offer was made, despite the fact that Mr Stainton knew perfectly well that there was no evidence to support the suggestion that Mr Angel had been convicted, let alone imprisoned. So much had been admitted on 21 July. Nevertheless, insult was added to injury by attaching a "schedule" to the offer of amends containing what was described as "relevant background context". This set out a number of matters on which the Defendants proposed to rely, including the remarkable proposition that the Claimant had a reputation within the industry for having been "done" for illegal arms trading, "which is true provided 'done' is understood to mean 'prosecuted' but not 'convicted'". This ridiculous stance amounted to reliance upon a general reputation for *not* having been convicted in order to mitigate the defamatory assertion that the Claimant *had* been convicted and, what is more, sent to prison.

19. The reference to "relevant background context" was no doubt based upon the doctrine developed by the Court of Appeal in *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579. The Defendants through their solicitors were seeking to exploit a prosecution which had apparently been brought in 1988 but subsequently abandoned. Quite how it

was to be exploited, on the other hand, remains something of a mystery. First, it was suggested that it could give rise to a defence of fair comment (obviously nonsense). Then it was contended that the Claimant was in any event guilty (tantamount to a threat of justification). Finally, it was dusted down as the basis of a plea of general bad reputation (albeit for *not* having been convicted). It had been made quite clear in the letter of 25 July that it was the Defendants' intention in resisting any claim for defamation "… that the facts giving rise to the prosecution [in 1988] would form the central material of a trial, before a jury, where the character of your client would certainly be an issue". It was pointed out on Mr Angel's behalf that that threatened attack upon his character only finally disappeared in March of this year, when Mr Stainton's witness statement was served.

20. This background is clearly relevant to the process of assessing compensation, and Mr Sherborne for Mr Angel places considerable reliance upon these matters by way of aggravation.

21. Since the offer of amends procedure under the 1996 Act has begun to be tested in court, over the last three to four years, a fairly well defined methodology has emerged. When exercising this jurisdiction, a judge will generally address the matter in two stages:

> "The first stage is to identify the figure I should award at the conclusion of a hypothetical trial in which the defendant had done nothing to aggravate the hurt to the claimant's feelings (e.g. by pleading justification or by insulting cross-examination) and nothing to mitigate (e.g. by the publication of an apology). At the second stage, I must consider to what extent, if at all, that figure should be discounted to give effect to any mitigating factors of which this Defendant is entitled to take advantage".

That was the approach taken, for example, in *Turner v News Group Newspapers Ltd* [2005] EMLR 25 at [45].

22. I turn to the first stage. An allegation of this kind, made against a senior and respected figure in the industry, is clearly to be taken very seriously. I need to bear in mind, however, that the scale of publication was relatively limited. Plainly a much higher award would be required in the case of publication of a similar allegation in the national media. On the other hand, the recipients of the 2 July letter who were targeted by Mr Stainton were, in the circumstances then prevailing, clearly people who were in a position to do considerable harm to Mr Angel and his business affairs if the allegation of criminality was taken seriously. At that stage, there was clearly a risk that it might harm his chances of acquiring the assets from PWC and, even if he was successful, the allegations might do considerable harm to the new business. I have no doubt, in the light of his evidence, that these concerns caused great anxiety and frustration to Mr Angel. They also caused him personal distress for a considerable period of time, and undoubtedly for longer than was reasonably necessary "in order to investigate the complaint and make a properly informed decision as to what steps to take" (see e.g. *Nail v News Group Newspapers Ltd* [2004] EMLR 20 at [59], QBD).

23. It is common ground that the purpose of libel damages, or of compensation awarded under this statutory regime, is threefold. First, it is necessary to provide *solatium* for distress and hurt feelings. Secondly, one must compensate so far as possible for any actual injury to reputation which has been proved or which may reasonably be inferred. Thirdly, such an award will generally serve as an outward and visible sign of vindication.

24. "In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be": *John v MGN* [1997] QB 586, 607 F-G, *per* Sir Thomas Bingham MR. Applying those criteria, it seems to me that the libel must be treated as very serious in itself although, as was pointed out immediately following the passage I have cited, a libel published to millions has a greater potential to cause damage than a libel published to a handful of people.

25. In the present case, there is fortunately little or no evidence of substantial injury actually incurred to Mr Angel's reputation. I naturally take note of the apparent anxiety of Mr Gercke, as expressed on the telephone on 4 July and in writing the following day. I may safely conclude, however, that the impact was relatively short-lived because Mr Angel was able (albeit not immediately) to put his mind to rest through his unequivocal denial. Also, there is no actual evidence of a tangible reduction in the esteem in which Mr Angel was held so far as any of the other recipients was concerned. Nonetheless, some damage is presumed.

26. In the course of cross-examination, Mr Angel did speak of his perception that HSBC was less enthusiastic and supportive than in the past. This only arose because of the questions asked by Mr Dingemans QC, and it had not been foreshadowed in correspondence or in the witness statements of Mr Angel. It is by now well known that both claimants and defendants should put their cards on the table before an offer of amends is accepted. It is unlikely that permission will be given to introduce new material, on either side, once the parties have committed themselves to this statutory process. I propose in the circumstances to put to one side the possibility of continuing damage in the eyes of HSBC, although I have no doubt that Mr Angel's perception is quite genuine. That is a factor which often arises in this context. When someone has been libelled, and cannot be confident of how far the allegations have penetrated, he will naturally be suspicious of any slight, real or imagined, and tend to attribute it to the influence of the libel. Furthermore, as Mr Dingemans himself pointed out, *if* Mr Angel is correct in perceiving HSBC to be rather luke-warm in the service it has provided recently, there is an alternative explanation in the form of the previous company going into receivership. Mr Angel accepted in cross-examination, I believe, that this was partly at least brought about by debts outstanding to HSBC.

27. In the circumstances of this case, it seems to me that the most important factor in arriving at an assessment of the appropriate compensation is that of the impact on Mr Angel's feelings and the distress caused. I have no doubt at all that this was significant. There is clearly a continuing sense of injustice and indeed genuine outrage on his part. As to vindication, this is less important in a situation where there has been only limited publication and no evidence of any actual diminution in the Claimant's reputation. Nevertheless, if I were to award only a modest sum of compensation in respect of an allegation of criminality, there would remain a real possibility that some

people, coming to learn of the award, might think that there was no smoke without fire. As Lord Hailsham explained in *Cassell v Broome* [1972] AC 1027, 1071 C-D, "… in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a by-stander of the baselessness of the charge". Indeed, the very fact that Mr Stainton through his solicitors has repeatedly tried to extract some mileage from the aborted 1988 prosecution might suggest that a correspondingly greater sum should be awarded to convince relevant by-standers of the baselessness of this particular charge. That would only apply, of course, if it can be shown that Mr Stainton's tactics in this respect were common knowledge among the recipients of the original letter. If this were so, they might have been more inclined to believe the allegation and to require a more convincing vindication. As I have no evidence that this in fact occurred, it is another factor which I am prepared to put to one side.

28. I have come to the conclusion that, having regard both to the gravity of the allegation and to the limited scale of publication, the right starting figure would be of the order of £40,000.

29. I now turn to stage two. That is to say, I must consider how far the resort by the Defendants to the statutory procedure has in fact served to mitigate the damage. It is clear that there is no standard "discount" to be applied in such circumstances, although the court will generally recognise that a willingness to use the offer of amends regime tends to reduce the appropriate level of compensation quite significantly. As was pointed out by the Court of Appeal in *Nail v News Group Newspapers Ltd* [2005] 1 All ER 1040 at [41]-[42]:

> "Each case depends on its own facts and this will apply to the determination of compensation under section 3(5). That said, if an early unqualified offer to make amends is made and accepted and an agreed apology is published, as in the present cases, there is bound to be substantial mitigation. The defendant has capitulated at an early stage without pleading any defence, has offered to make and publish a suitable correction and apology (and has in fact done so in agreed terms in the present cases) and has offered to pay proper compensation and costs, these to be determined by the court if they are not agreed – see sections 2(4), 3(5) and 3(6). The Claimant knows that his reputation has been repaired to the full extent that is possible. He is vindicated. He is relieved from the anxiety and costs risk of contested proceedings. His feelings must of necessity be assuaged, although they may still remain bruised (and he is still entitled to say so, if that is so). He can point to the agreed apology to show the world that the defamation is accepted to have been untrue and unjustified. There may be cases in which some of these features are absent, or in which their impact may be slight. … There may also be aggravating features, although the use of the procedure would generally suggest that there is unlikely to be significant aggravation after the making of the offer to make amends. …

> The adoption of the procedure will have what the judge referred to as a major deflationary effect upon the appropriate level of compensation because adopting the procedure is bound to result in substantial mitigation".

30. The following considerations were highlighted in *Cleese v Clark* [2004] EMLR 3 at [25]-[26]:

> "Everyone knows that nowadays negotiations should be approached constructively in order to save costs and sort the matter out quickly.
>
> … Moreover … if there is a delay in bringing negotiations to fruition which is attributable to the complainant, this will tend to reduce the level of compensation. Any such delay that is properly to be laid at the door of the defendant will tend to increase the award".

31. Here, there are certain particular features which require to be taken into account. First, it can hardly be said that the unqualified offer to make amends on 2 September 2005 was "early" or that the Defendants "capitulated at an early stage". It was left until the last day before the defence was due. Secondly, even after the offer was made and accepted, it remained somewhat unclear as to the way in which the Defendants would present their case in court. In particular, it still remained a possibility that Mr Angel's character would be attacked until, as I have said, Mr Stainton's witness statement was served very shortly before the hearing. Naturally, therefore, he would have been rather less "relieved from the anxiety" than some other claimants. The way in which the Defendants have reacted to his complaint appears to have assuaged his feelings hardly at all.

32. Everything has finally been agreed, including the terms of a statement to be read in open court, but I would not regard the Defendants as having been obstructive in this respect. Also, I must bear in mind that the Defendants did proffer an apology and that it is through no fault of theirs that no apology has actually been published in this case.

33. They are in the present context mainly to be criticised for aggravating the hurt to the Claimant's feelings through the contents of their solicitors' letters, for delaying unnecessarily, and for the continuing uncertainty as to whether his character was to be attacked in court. Their attitude was grudging and not sufficiently conciliatory. For these reasons, I would be inclined to make a less generous "discount" than in the case of *Nail v News Group Newspapers*. I have come to the conclusion that the appropriate reduction is one of 40%. The consequence is that I award Mr Angel £24,000 by way of compensation.