Neutral Citation Number: [2005] EWHC 3064 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/12/2005

Before:

MR. JUSTICE LAWRENCE COLLINS

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Between:

ASCENSION SECURITIES LIMITED	**Claimant**
- and -	
THE MOTLEY FOOL LTD.	
And Another	**Defendants**

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MR. BEN PHESI of **Ormerods** for the **Claimant**
MR. ADAM SPEAKER (instructed by **Taylor Wessing**) for the **Defendant**

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Approved Judgment

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MR. JUSTICE LAWRENCE COLLINS
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Mr. Justice Lawrence Collins:

1. This is the third time this matter has come before me. The claimants, Ascension Securities Limited, from my recollection, although the papers are not any longer with the court, is a relatively recently-formed brokerage firm authorized by the FSA. They first came before me represented by the father of one of the directors asking for an injunction to restrain or require the removal of some postings on a website run by the defendants Motley Fool Limited. The gist of the postings was that in some way Ascension Securities was a reincarnation or connected with another company called Pacific Continental which was said to have been involved in fraudulent transactions.

2. I was concerned by the fact that although I was told that Ascension Securities Limited had a compliance officer or in-house lawyer and also that it had solicitors, I think at that time identified as Ormerods, nevertheless the application was being made not by the company itself or by its solicitors and counsel or even by its in-house lawyer but by the father of one of the directors. Accordingly, I said that the application ought to be made by professionals and properly served on the proposed defendants so that the court could consider whether there was anything in the application. It also emerged at, I think, the first of those hearings that Mr. Fucilla, a director of the claimants, had in fact previously been employed by this company, Pacific Continental, which only emerged on my questioning.

3. This is the inter partes hearing of the application and the claimants no longer wish to pursue it because they consider that they have been given adequate undertakings by the Motley Fool Limited, the respondents, to remove the offending material. The only question is that of costs. The applicants say that in essence the respondents have conceded what the applicants ask for and therefore they should be entitled to the costs.

4. The respondents say that this application was misconceived, that it could not have succeeded for a number of procedural defects including it being in the wrong division, no claim form having been issued and other less important procedural defects.

5. In addition, the respondents point out that the principles in cases of this kind, particularly in relation to defamation if that is the cause of action which obviously it must be, have not been complied with. They point out that the applicant has to show that the statement is unarguably defamatory, that there are no grounds for concluding that the statement may be true, there is no other defence which might succeed and there is evidence of an intention to repeat or publish the defamatory statement. They point out that the applicant has not identified on the application notice or on a claim form the individual causes of action, the particular words complained of or of their meaning.

6. In addition I was shown correspondence about which I was not told at either of the two hearings in which it is apparent that the respondents were acting reasonably in asking the applicants to identify precisely about which matters they complained of. I have been shown a series of e-mails, but I do not consider these are the kind of e-mails which a responsible business organisation ought to be sending if it is intending to identify properly what matters it complains of.

7. Indeed, from first to last the behaviour of the applicants has not been one which I would associate with a properly-run/regulated brokerage firm. I hope that they will learn from this experience that they do have to take professional advice and use professional assistance if they are going to engage in this type of operation. They are not the ordinary unassisted individual litigant who cannot afford professional assistance. I recall, although I no longer have the document with me, that their turnover for the year was in excess of £250,000 so lack of financial capability cannot be an excuse for the extraordinarily lax way in which this matter has been dealt with.

8. So far as the discretion as regards costs is concerned I was referred to **Picnic at Ascot v. Derigs**. It seems to me that it cannot be said that the applicants have really been successful. They have got what they wanted but I do not think that the costs of the way in which they got what they wanted should be visited on the respondents. It seems to me that the applicants would not, in all probability, have obtained an injunction, given the procedural errors that they committed and the numerous ways in which I was not given the whole picture. They obtained the undertakings not because of the proceedings but because they eventually provided the requested details of the material to which they objected. In those circumstances I have not the slightest hesitation in saying that the applicants should pay the respondent's costs.
