Neutral Citation Number: [2008] EWHC 627 (QB)

Case No: HQ07X02392

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 April 2008

Before :

THE HONOURABLE MR JUSTICE EADY

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Between :

(1) GENTOO GROUP LIMITED
(formerly known as SUNDERLAND HOUSING COMPANY LTD)
(2) PETER WALLS **Claimants**

- and -

STEPHEN HANRATTY **Defendant**

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Hugh Tomlinson QC and **Lorna Skinner** (instructed by **Olswang**) for the **Claimants**
David Price (of **David Price Solicitors & Advocates**) for the **Defendant**

Hearing dates: 17 March 2008

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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 HONOURABLE MR JUSTICE EADY

Mr Justice Eady :

1. There is now an application before the Court, developed by Mr Tomlinson QC on the Claimants' behalf, for an order that the one-year limitation period applicable to libel claims be disapplied in accordance with the discretion recognised by s.32A of the Limitation Act 1980 (as inserted by the Defamation Act 1996).

2. The First Claimant (formerly known as Sunderland Housing Company Ltd) is a registered social landlord providing rented social housing in the Sunderland area. The Second Claimant, Mr Peter Walls, is its Chief Executive Officer. He is well known in that part of the country and especially as the public face of the company. There is little doubt that its activities have been the subject of controversy and publicity over a considerable period of time. That is to an extent inevitable, given the nature of its business, which involves the acquisition of run-down properties and the regeneration of large parts of the area.

3. There is other closely related litigation (Claim No. HQ06X01972) in which the Claimants proceeded against other defendants in respect of conduct alleged to constitute defamation and harassment, much of which overlaps with that complained of in the present action. It has proved difficult, time-consuming and expensive for the Claimants to pin down responsibility for the relevant activities, which were carried on anonymously over a period of approximately two years between the summer of 2004 and the summer of 2006. The group of individuals concerned called themselves "Dads Place" and are said to have carried on an unpleasant campaign against the Claimants in the form, mainly, of a series of defamatory publications through a website (www.dadsplace.co.uk) and its associated chat forum. There is no need to rehearse the allegations. Suffice it to say that they were wide-ranging and, for the most part, very serious. No evidence has been produced to establish any foundation for them.

4. The first action was commenced by issue of the Claim Form on 7 July 2006, after a prolonged period of investigation into the identities of those responsible for the website and its published content, against Messrs John Baines, John Finn, John Edward Smith and a company called Pallion Housing Limited ("Pallion"). On 14 December 2006 the Claimants obtained judgment in default against Mr Smith and also, after a strike-out application, against Mr Baines. There was some delay in arranging for the assessment of damages, since there remained an issue as to responsibility for publication on the part of Mr Finn and Pallion. That was to be resolved by way of a preliminary issue, but prior to the third day of the hearing those parties admitted responsibility and an agreed order was made by me on 18 October 2007. The next stage was for the damages to be assessed against all four defendants at a hearing fixed for 1 April 2008, but just beforehand I was informed that this had been compromised.

5. Back in 2006, *Norwich Pharmacal* applications were made against various persons, including Mr Hanratty, the defendant in the present proceedings, with a view to identifying the people responsible for the activities of "Dads Place" and, in particular, for the offending website and chat forum publications. The application against Mr Hanratty was withdrawn in the light of unequivocal denials on his part of any relevant knowledge or personal involvement, which were verified by a statement of truth, in a

statement dated 22 July 2006. His costs were paid, having been agreed in the sum of £16,500.

6. Meanwhile, some further information came to light and a second claim was launched against a Mr Shaun Purvis on 10 January 2007. These focused on defamatory allegations contained in a newsletter known as "The Wearsider", which had been associated with the website. Judgment was obtained against him following a strike-out application on 10 July 2007 for a final injunction and damages to be assessed. That claim was compromised. The Claimants have made it clear throughout that their rights were being reserved in relation to any other tortfeasors. It was only in June 2007, as a result of a *Norwich Pharmacal* order against AOL, that the Claimants were able to identify Mr Hanratty as the owner of an email account via which communications had apparently been sent to Mr Baines in May 2005. This discovery led the Claimants to conclude that Mr Hanratty (and I can certainly put it no higher at this stage) may not have been telling the truth in his witness statement in July 2006, when he denied all knowledge of the persons responsible for the website campaign.

7. The Claimants were then able to move with reasonable expedition and launched these proceedings against Mr Hanratty on 12 July 2007. As far as they are aware, the last postings on the dadsplace website took place exactly one year before (on 12 July 2006). The day on which a cause of action accrues is excluded from computation in arriving at the limitation period: see e.g. *Pritam Kaur v. S Russell & Sons Ltd* [1973] 1 QB 336. Thus, it so happened that the Claimants were able to sue in respect of any publications that could be proved to have taken place on that last day. As to any earlier publications (i.e. up to and including 11 July 2006), they would need to seek an order under s.32A. Hence the present application.

8. As I have already pointed out, in respect of publications on the Dadsplace website, or the associated forum, up to 7 July 2006, those already formed the subject-matter of the first action. What is now said is that Mr Hanratty was jointly responsible for those communications along with the defendants in the related action. No such publications between that date, however, and 12 July 2006 are yet sued upon. It follows that the Claimants are seeking to disapply the limitation period partly in respect of causes of action over which they are already claiming compensation, and partly over the five days falling outside the existing litigation. All this, of course, is highly technical, but it is necessary to recognise the background against which the application is made, although it is unlikely that the outcome will turn upon arid distinctions of this kind.

9. It may prove difficult to establish exactly which allegations were accessed, on which days, and how many people actually read them. In reality, what the Claimants are seeking to do in their various claims is to prove responsibility and to "nail" these serious allegations once and for all by the only means which the law allows; that is to say, by obtaining compensation and injunctive relief. As so often, it is establishing the entitlement to compensation which achieves the objective rather than actual recovery. It is only in the limited circumstances allowed under ss.8-10 of the Defamation Act 1996 that a claimant can obtain a declaration of falsity. Vindication, in the ordinary way, depends either upon an apology or, where that is not forthcoming, upon an award of damages.

10. I turn now to the statutory context. Following the recommendation of Sir Brian Neill's committee on defamation law and practice, in July 1991, Parliament enacted

s.4A of the Limitation Act 1980 and prescribed a one-year limitation period for defamation and malicious falsehood claims. Somewhat greater flexibility was introduced, on the other hand, by permitting the court a discretion to disapply this strict regime where it was deemed "equitable" to do so.

11. It was thus provided in s.32A, by way of amendment, that the court might direct that the 12-month time limit should not apply to any specified cause of action, and that in exercising that discretion regard should be had to the degree to which the operation of the section would prejudice either party: s.32A(1). It was acknowledged by the Court of Appeal in *Steedman v. BBC* [2002] EMLR 17 at [17] that this discretion is "unfettered" and that all the circumstances need to be taken into account.

12. It would follow that the mere absence of prejudice, and in particular the continuing availability and cogency of evidence, would not necessarily be determinative of any such application. I accept the submission of Mr Price, for the Defendant in this case, that "the defendant's ability to defend the claim is simply one of the factors to consider", and it should not be regarded as "a trump card for a claimant".

13. In the course of argument Mr Price highlighted the following matters. First, in view of the existing claims against other parties, it is right to take account of the fact that this action against Mr Hanratty does not represent the only means open to the Claimants of obtaining vindication.

14. On the other hand, the Claimants argue that it is important to demonstrate, so far as possible, that those responsible, insofar as they can be identified, should not be allowed to "get away with it". That is a factor addressed in the evidence of the Claimants' solicitor, Mr Tench. I naturally recognise that this is not a quasi-criminal jurisdiction and that the Court is concerned only with civil remedies. It may be thought that if the Claimants obtained remedies against some of those responsible, that should suffice to achieve their purpose.

15. Nevertheless, there is sometimes a perception in the context of defamation that apologies are given under economic pressure and are not to be taken as entirely genuine; likewise, even, that awards of damages against "the little man" have been obtained through financial muscle and do not necessarily represent genuine vindication in accordance with the justice of the case. It may, therefore, be correspondingly important for a claimant to bring as many of those responsible before the court, so that it cannot later be said that those who manage to "escape" stand by their allegations. If they are sued, they have the opportunity to plead defences such as justification and, if they do not do so, it becomes correspondingly more difficult for them to be perceived as standing by their allegations. There is nothing either disreputable or disproportionate about seeking to identify and challenge anyone responsible, especially in the case of allegations as serious as those complained of in the present case. It is a question of seeking to demonstrate as convincingly as possible that the defamatory charges are baseless.

16. I would therefore conclude that the mere fact of other claims against other defendants, in respect of the same or similar allegations, does not determine the present application in the Defendant's favour.

17. Secondly, it is said that there would be no prospect of Mr Hanratty "being able to pay the costs of the claim, let alone any damages". Such an argument has to be approached with caution, since it comes perilously close to suggesting that a poor man is free to defame with impunity. It is well settled that the means of a party, as such, are irrelevant both on liability and on quantum of damages.

18. Thirdly, Mr Price submits that there is not enough material to justify suing Mr Hanratty as someone who is responsible, in law, for publication on the website (or the forum) of the specific material complained of. In other words, I believe it is argued that (irrespective of any limitation point) the case against his client is so lacking in substance that it would justify the claim being struck out or obtaining summary judgment under CPR Part 24.

19. Mr Price attempted to list all or most of the ways in which a person can be held responsible for publication of a libel and argued that his client cannot be shown to fall into any of these categories. He made reference to *Bunt v. Tilley* [2007] 1 WLR 1243, and asked that the Court focus on what Mr Hanratty can be shown to have done, or to have failed to do, in the process of publishing the various words complained of.

20. I must be wary in this context of conducting a mini-trial and of attempting to resolve contested issues of fact more properly left to trial.

21. Much weight is placed on the submission that no evidence has been adduced to show that Mr Hanratty posted anything specific on the website, using any of his known user names, after April 2005. Four of the six publications selected for complaint post-date this watershed; moreover, it is said, even in respect of the two publications attributed to "late 2004", there is nothing to tie them to Mr Hanratty. The case is primarily put by Mr Tomlinson, on the Claimants' behalf, on the basis that Mr Hanratty was "in it" (i.e. the campaign of vilification) together with the other individuals who have been identified and have either been held responsible or, in some cases, have made admissions. It is put, in other words, as a case of joint enterprise or perhaps, although it is not pleaded in this way, conspiracy to damage the Claimants. That is unusual in the context of libel. But this is an unusual case on its facts. There clearly seems to have been a joint enterprise, although how far it extended is yet to be determined. What is more, there have been elaborate steps taken to hide the identities of those responsible – in some cases dishonestly.

22. The Claimants may have taken upon themselves an ambitious task, and it may be that they will ultimately fail in persuading the fact-finding tribunal to draw the necessary inferences from the material they have been able to piece together. Much of this is discussed in the evidence of Mr Tench, who argues that there are certain "telltales" which point to this Defendant's involvement, but it is not for the Court at this stage to come to a conclusion on those matters, or even to comment upon how likely they are to be accepted as valid. Reliance is also to be placed on expert handwriting evidence to establish links with Mr Hanratty. I need not go in any detail into the chain of argument addressed in Mr Tench's two witness statements of 28 January and 3 March 2008. As I say, now is not the time to decide whether he is correct. I should only shut out this material, and the inferential arguments based upon it, if I am satisfied that it would be perverse (after the evidence is taken and arguments fully developed) to attribute responsibility for the publication to Mr Hanratty. That stage has not been reached.

23. I should add that there is no principle or rule of law which would justify striking out a defamation claim *ab initio* for the sole reason that the case on liability is based on joint enterprise.

24. Fourthly, it is argued that it has yet to be determined whether the claimant company even has capacity to sue for defamation. That was not developed in argument before me, because I imagine it is recognised by the Defendant that it is at least arguable that a corporate entity can pursue such remedies – not least because of the way in which corporate reputation was addressed in *Jameel v. Wall Street Journal Europe* [2007] 1 AC 359.

25. If it is not a case in which matters are so clear as to justify summary judgment, or for that matter a finding of abuse of process, I do not consider that such an argument becomes stronger merely because it is deployed on an application under s.32A.

26. Fifthly, the Defendant submits that there is no point in seeking an injunction, as there is no reason to apprehend further publication; nothing has happened, so it appears, since July 2006. In any case, Mr Hanratty has offered an undertaking to the Court (which would be as enforceable, by process of contempt, as a final injunction). That is certainly a relevant factor to take into account and, if all the Claimants were seeking was injunctive relief, it would no doubt be conclusive. As I have made clear, however, that is not the case.

27. Sixthly, Mr Price dismissed the prospect of the Claimants ever recovering their payment of £16,500 to Carter-Ruck, the solicitors acting for Mr Hanratty at the time the *Norwich Pharmacal* application had to be abandoned. It went straight to that firm in respect of costs incurred and, it is said, Mr Hanratty received no financial benefit from the payment. This is not put in the forefront of the Claimants' case for having the limitation period disapplied, but it is one reason put forward in Mr Tench's evidence.

28. I must assume for present purposes (contrary to Mr Hanratty's case) that the Claimants may succeed at trial in demonstrating that the denials contained in the earlier witness statement, repudiating any knowledge of those participating in the dadsplace website, were dishonest. Again, it would not be appropriate for me to rehearse the evidence in detail, but there is some material to suggest that Mr Hanratty was communicating with Mr Baines via a private email address (jack9012@hotmail.com) not available to those who merely accessed the website; and, moreover, that he used an "instant messaging service" available only to registered users of the forum. It appears also that he may have been aware of Pallion's involvement in 2005, some two-and-a-half years before that company dropped its denials. He offers the explanation that the Claimants' identification of Pallion may have received publicity, and that his knowledge of its involvement derived from that. This explanation would, however, appear not to hold water, since the Claimants did not make the link with Pallion until significantly later. All this would require to be carefully investigated during a trial. Nevertheless, I need to bear in mind that it was only in the light of the unequivocal denials in July 2006 that the Claimants agreed to pay Mr Hanratty's costs.

29. If (and I accept that it is a substantial "if") it is the case that the payment was obtained by a dishonest representation to the Court, that is a potentially serious matter. On that

hypothesis, the Claimants would be entitled to have the record put straight and to obtain at least an order for recovery (notwithstanding difficulties of enforcement).

30. Indeed, Mr Tomlinson places reliance on these supposedly dishonest denials by Mr Hanratty more generally, since it ill becomes a defendant to claim prejudice in this statutory context, where the limitation period has gone by partly as a result of dishonest assurances on his part. It is one thing for a prospective defendant merely to remain silent; he is under no obligation to help the claimant to establish a cause of action against him. It may be thought, however, quite another matter if he succeeds in putting him off the scent by dishonest statements (especially in the form of evidence placed before the Court and verified by a statement of truth).

31. Mr Tomlinson has also submitted that, where the Court comes to assess the relative impact of prejudice on the parties (as contemplated in s.32A(1) referred to above), it is necessary to have well in mind that the action can proceed against Mr Hanratty without the Court's permission if publication (with his involvement) can be demonstrated to have taken place on 12 July 2006 and that, in any event, he will be the subject of a harassment claim in respect of which the limitation period is six years. The prejudice occasioned to Mr Hanratty if the Court permits him to be sued, additionally, over earlier defamatory publications would thus be correspondingly less. That is plainly a material factor.

32. There is no convincing case that any relevant evidence has, through the passage of time, become unavailable or less cogent than if the action had been brought within the limitation period.

33. There is some evidence that the Defendant has disposed of his computer. What he said in his witness statement of 13 February 2008 is:

> "Evidence that may have assisted my defence, for example the disclosure of material on the computer that I was using in 2004-2005, is no longer available because I have since replaced it."

I cannot attach great weight to this rather guarded statement for a number of reasons. I am not told what became of the computer; when it ceased to be available; whether data had been transferred from the hard disk to his replacement computer; if not, whether it was relevant material; or how it might have assisted his defence. In any event, as Mr Tench has pointed out, Mr Hanratty was first notified of the Claimants' interest in his knowledge of those involved in Dads Place as early as March 2006 and would have received legal advice thereafter as to the need to preserve evidence. It was expressly mentioned in a letter from Mr Tench's firm on 10 July 2006, served with the *Norwich Pharmacal* application. If the computer was disposed of after these matters were drawn to his attention, he would be responsible for that. Furthermore, there is no reason to suppose that prejudice would be caused to Mr Hanratty by any such disposal any more than to the Claimants. There is simply not enough information to form a judgment one way or the other.

34. After considering these rival contentions, I have come to the conclusion that the balance comes down in favour of the Claimants. They should be permitted to canvass before the Court the extent to which (if at all) the Defendant was involved in and responsible for the campaign of vilification over the two-year period in question, and

not be confined, artificially, to what was published on 12 July 2006. I cannot see that the Defendant will suffer any significant prejudice, especially as he will be embroiled in litigation come what may.

35. In this case neither the Claimants nor their advisers can be held responsible for any material delay. Indeed, it *may* emerge at trial that the Defendant escaped being sued within the limitation period only by reason of lying to the Court. As I have already emphasised, I am not in a position to decide that now. It is a very serious allegation to make against anyone (not least in respect of someone so apparently law-abiding and respectable) and it needs to be thoroughly investigated.

36. Similar arguments were advanced by Mr Price in support of his alternative case, put forward against the possibility that the Court refused relief under s.32A. An application was issued for the claim, in that event, to be struck out for abuse of process.

37. It is said that the Claimants could gain no legitimate or tangible advantage by bringing these claims against Mr Hanratty: see e.g. the reasoning of the Court of Appeal in *Jameel (Yousef) v. Dow Jones & Co Inc.* [2005] QB 946 at [57]-[59] and [69]. Yet, as Mr Tomlinson has submitted, that jurisdiction is to be exercised sparingly: see e.g. the observations of Sedley LJ in *Steinberg v. Pritchard Englefield* [2005] EWCA Civ 288 and those of Gray J in *Steedman v. BBC* [2005] EWHC 1509 (QB) at [18].

38. These are very serious allegations of which the Claimants complain and the evidence suggests that they have been extensively and persistently published. There are various strands of evidence (albeit hotly contested) which require analysis and appraisal in order to decide whether, on a balance of probabilities, this Defendant has been jointly involved in their promulgation. I am not in a position at this stage to say that the Claimants' case on publication is bound to fail, any more than I was able to do so in *Bataille v. Newland* [2002] EWHC 1692 (QB). As I said on that occasion (as cited in Gatley on Libel & Slander, 10th edn, at 30-28):

> "If the defendant's case is so clear that it cannot be disputed, there would be nothing left for a jury to determine. If, however, there is room for legitimate argument, either on any of the primary facts or as to the feasibility of the inference being drawn, then a judge should not prevent the claimant having the issue or issues resolved by a jury. I should not conduct a mini-trial or attempt to decide the factual dispute on first appearances when there is the possibility that cross-examination might undermine the case that the second defendant is putting forward."

39. Some libel cases concern relatively trivial matters, either in terms of the substantive allegations themselves or because of limited circulation, but this is not such a case. I would not find myself able to conclude that these proceedings can be characterised as an abuse of the Court's process. As it happens, in the light of my earlier conclusion as to the exercise of the Court's discretion under s.32A, the abuse application does not have to be addressed. Nevertheless, since both parties have made submissions on that issue, I thought it appropriate shortly to state my conclusions upon them in any event.