Case No: HQ10D02413

Neutral Citation Number: [2011] EWHC 272 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/02/2011

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

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Between :

David Hunt	**Claimant**
- and -	
Evening Standard Limited	**Defendant**

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- -

Hugh Tomlinson QC and Lorna Skinner (instructed by **Hughmans Solicitors**) for the **Claimant**
Catrin Evans (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing date: 3 February 2011

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Judgment

Mr Justice Tugendhat :

1. In this libel action the Claimant sues the publisher of the Evening Standard, and of the website www.standard.co.uk and another site.

2. By notice dated 10 December 2010 the Claimant asked the court to make a number of orders. The main one with which I am concerned is that certain passages of the Defence be struck out pursuant to CPR 3.4(2)(a) and/or (b). The reasons for the application are for the most part that it is alleged that the passages sought to be struck out are irrelevant, but there are other objections which are referred to in more detail below.

3. The words complained of are headed "Crime Syndicates compete for £20 million Government Cash". They identify land on a site running alongside the Jubilee Line to Canning Town. The words complained of then continue as follows:

> "For years much of the area has been in the grip of a handful of East End Families, led by David Hunt, whose criminal network is allegedly so vast that Scotland Yard regards him as "too big" to take on.
>
> His involvement in the Canning Town site has sparked a turf war and a large-scale police corruption inquiry. Hunt, known in gangland circles as the "Long Fella" has legitimate business interests in entertainment venues.
>
> He was once arrested on suspicion of blackmail, witness intimidation and threatening to kill. The case against him was dropped when no witnesses would give statements.
>
> Underworld sources have told detectives that Hunt was planning to take charge of the entire site and sell it to the Adams Family, the north London gang led by Terry Adams.
>
> The [London Development Agency] said: "Compulsory purchase is a statutory process governed by a compensation code, which means any recognised interest in the land are entitled to compensation". "

4. The meanings of the words pleaded by the Claimant are:

> "1.That the Claimant is the leader of a vast East End criminal network involved in murder, drug trafficking and fraud;
>
> 2. That the Claimant was planning to take charge of a large development site and sell it on to a notorious north London criminal gang".

5. There is no defence raised to either of the meanings complained of by the Claimant. There is a defence of justification to a *Lucas-Box* meaning to the effect that the Claimant was either guilty of blackmail, witness intimidation and threatening to kill, or that there were reasonable grounds to suspect him of this conduct.

6. The particulars pleaded in support of that defence of justification are as follows, with the passages which the Claimant objects to being underlined:

> "6.1 Charles Robert Matthews ("Matthews Senior"), an associate of the Claimant, had convictions for theft, grievous bodily harm, making false statements and forgery. He was involved in drug trafficking and in about 1987 or 1988 he was convicted of the manufacture and supply of amphetamines and sentenced to 10 years in prison. He was released in 1992, his appeal was allowed in 1996 and he died in 2009.
>
> 6.2 Matthews Senior was involved in a dispute with a William Allen over the possession of land at 99a Silvertown Way, Canning Town in East London ("the land dispute"). In March 2006 the Metropolitan police searched those premises and recovered stolen property valued at over £1 million. Matthews Senior's son, Charles Matthews Junior ("Matthews Junior"), Lee James Matthews and Colin John Grant were arrested in connection with the raid and charged and prosecuted for handling stolen goods worth of £1 million.
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> 6.3 The Claimant had agreed to help Matthews Senior in the land dispute with William Allen.
>
> 6.4 To this end, on 7 February 2006, the Claimant attended the Central London County Court ("the Court"), where legal proceedings in relation to the land dispute were being heard. He attended with Matthews Senior, Stephen Hunt (the Claimant's brother), Billy Ambrose and a group consisting of about 15 further men. On this occasion, the Claimant threatened to kill Mr Allen if he did not end his claim for the land against Matthews Senior. The Claimant and the men with him attacked Mr Allen and the men who were there to protect him. One of Mr Allen's minders, Daniel Woollard, sustained injuries during the attack.
>
> 6.5 In early March 2006 the Claimant telephoned Mr Allen and threatened to kill him again.
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> 6.6 On about 21 June 2006 Matthews Senior was arrested on suspicion of blackmail and witness intimidation in relation to Mr Allen.
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> 6.7 On 7 November 2006 the Claimant and Stephen Hunt were arrested in relation to Mr Allen, the Claimant on suspicion of blackmail, witness intimidation and causing grievous bodily harm. The Claimant was also arrested on suspicion of handling stolen goods after 40 cases of stolen champagne were found in an office at Woolston Manor Golf Club (a property owned by the Claimant) His brother, Stephen Hunt, was arrested on suspicion of causing grievous bodily harm to William Allen.

6.8 Subsequently the charges against the Claimant and his brother were not proceeded with because the victim(s) of the attack at the Court were unwilling to provide statements because of their fear of the Claimant.

6.9 This was not the first time the Claimant had been implicated in intimidating a witness. On 19 March 1992 the Claimant was arrested on suspicion of assaulting a journalist, Peter Wilson, when he head-butted him, causing serious injuries after he had attempted to interview the Claimant about his alleged involvement in the murder of Maxine Arnold and Terry Gooderham. On 23 April 1992 the Claimant appeared at Epping Magistrates Court but Mr Wilson did not proceed with his complaint because of his fear of the Claimant

6.10 In or about 1997 the Claimant seriously assaulted Paul Kavanagh, one of his own associates, by slashing his face with a blade.

6.11 In 1999 the Claimant was arrested on suspicion of wounding Mr Kavanagh (and of living off immoral earnings). He was remanded in custody for some months but the case against him was eventually discontinued because Mr Kavanagh was intimidated by the Claimant into withdrawing his statement.

6.12 Further, after the case against the Claimant in relation to Mr Allen was dropped, in about August 2007 Matthews Junior, Lee James Matthews and Colin John Grant were tried in relation to the charges of handling stolen good referred to in paragraph 6.2 above. The Crown successfully applied for jury protection in the case, the application being partly based on the connections between the Matthews family and the Claimant.

6.13 If necessary the Defendant will rely on section 5 of the Defamation Act 1952.

7 It is denied that the Claimant has suffered any damage in consequence of the publication of the article complained of.

8 If necessary the Defendant will rely in mitigation or extinction of damages on the following facts and matters which are relevant to demonstrate the true nature of the Claimant's reputation and/or are directly relevant background facts without notice of which there would be a real risk of the Court damages to the Claimant (if successful) on a false basis.

8.1 The Claimant has a general bad reputation for being the head of an organised crime group and for violent, criminal behaviour. Paragraph 2 above is repeated [… The Claimant's reputation among law enforcement agencies is as the head of

one of the most notorious organised crime groups in the country; he is regarded as extremely dangerous and violent]

8.2 Such of paragraph 6 above as is proved at trial.

8.3 [this paragraph contained allegations which the Defendant has agreed will be deleted provided the Claimant supplies details as to the penalties imposed in respect of each previous conviction and when each conviction became spent].

7. In summary, these particulars relate mainly to three cases. They are referred to by Ms Evans as the Allen case (sub paragraphs 6.1 to 6.8), covering events most of which occurred in 2006, the Wilson case (paragraph 6.9) covering events in 1992, and the Kavanagh case (sub-paras 6.10 to 6.11) covering events that occurred in 1997 and 1999.

8. The passages to which the Claimant objects in relation to the Allen case are mainly attacked on grounds of relevance. In paragraphs 6.7 he objects that the references to the arrests of the Claimant and his brother Stephen are insufficient to justify a *Chase* Level 2 meaning (*Chase v News Group Newspapers* [2003] E.M.L.R. 11) such as is pleaded here. A similar point is made in relation to 6.9, namely that it is insufficient to justify a *Chase* Level 2 meaning. Other particulars of justification are objected to on grounds of lack of particularity.

9. It is the Defendant's case that these three matters, Allen, Wilson and the Kavanagh cases, are instances of the Claimant's conduct which justify the allegation that he was guilty, or at least there were reasonable grounds to suspect that he was guilty, of the offences for which he was arrested in relation to the Allen incident at the Central London County Court, namely blackmail, witness intimidation and threatening to kill.

10. The Defendant relies on the other matters to show similar conduct by the Claimant on previous occasions, namely previous incidents of violence against a potential witness. It is said that they are therefore relevant to show propensity, and to support a case of at least reasonable grounds to suspect that the Claimant had done the same again in 2006 against Allen.

Principles applicable to pleading justification

11. The Particulars of Justification are framed in the light of the so called "conduct rule" and other guidance given in *Musa King v Telegraph Group Limited* [2004] EWCA Civ 613; [2004] E.M.L.R. 23 as follows at para [22]:

> "(1) There is a rule of general application in defamation (dubbed the "repetition rule" by Hirst LJ in *Shah*) whereby a defendant who has repeated an allegation of a defamatory nature about the claimant can only succeed in justifying it by proving the truth of the underlying allegation – not merely the fact that the allegation has been made;

(2) More specifically, where the nature of the plea is one of "reasonable grounds to suspect", it is necessary to plead (and ultimately prove) the primary facts and matters giving rise to reasonable grounds of suspicion objectively judged;

(3) It is impermissible to plead as a primary fact the proposition that some person or persons (e.g. law enforcement authorities) announced, suspected or believed the claimant to be guilty;

(4) A defendant may (for example, in reliance upon the Civil Evidence Act 1995) adduce hearsay evidence to establish a primary fact – but this in no way undermines the rule that the statements (still less beliefs) of any individual cannot themselves serve as primary facts;

(5) Generally, it is necessary to plead allegations of fact tending to show that it was some conduct on the claimant's part that gave rise to the grounds of suspicion (the so-called "conduct rule").

(6) It was held by this court in *Chase* at paras[50] – [51] that this is not an absolute rule, and that for example "strong circumstantial evidence" can itself contribute to reasonable grounds for suspicion.

(7) It is not permitted to rely upon post-publication events in order to establish the existence of reasonable grounds, since (by way of analogy with fair comment) the issue has to be judged as at the time of publication.

(8) A defendant may not confine the issue of reasonable grounds to particular facts of his own choosing, since the issue has to be determined against the overall factual position as it stood at the material time (including any true explanation the claimant may have given for the apparently suspicious circumstances pleaded by the defendant).

(9) Unlike the rule applying in fair comment cases, the defendant may rely upon facts subsisting at the time of publication even if he was unaware of them at that time.

(10) A defendant may not plead particulars in such a way as to have the effect of transferring the burden to the claimant of having to disprove them."

12. Ms Evans also relies on the rule that apparently similar facts may be relevant to prove justification. Mr Tomlinson does not dispute that in principle. The rule is stated in *O'Brien v Chief Constable of South Wales Police* [2005] 2 AC 534 para 4 as follows:

"That evidence of what happened on an earlier occasion may make the occurrence of what happened on the occasion in

> question more or less probable can scarcely be denied. If an accident investigator, an insurance assessor, a doctor or a consulting engineer were called in to ascertain the cause of a disputed recent event, any of them would, as a matter of course, inquire into the background history so far as it appeared to be relevant. And if those engaged in the recent event had in the past been involved in events of an apparently similar character, attention would be paid to those earlier events as perhaps throwing light on and helping to explain the event which is the subject of the current inquiry. To regard evidence of such earlier events as potentially probative is a process of thought which an entirely rational, objective and fair-minded person might, depending on the facts, follow. If such a person would, or might, attach importance to evidence such as this, it would require good reasons to deny a judicial decision-maker the opportunity to consider it. For while there is a need for some special rules to protect the integrity of judicial decision-making on matters of fact, such as the burden and standard of proof, it is on the whole undesirable that the process of judicial decision-making on issues of fact should diverge more than it need from the process followed by rational, objective and fair-minded people called upon to decide questions of fact in other contexts where reaching the right answer matters. Thus in a civil case such as this the question of admissibility turns, and turns only, on whether the evidence which it is sought to adduce, assuming it (provisionally) to be true, is in Lord Simon's sense probative. If so, the evidence is legally admissible. That is the first stage of the inquiry."

The objections to para 6 of the Defence

13. As to para 6.1 Ms Evans submits that the convictions of Matthews Senior indicated the bad character of the person whom the Claimant was assisting in his property dispute with Allen.

14. Mr Tomlinson submits that the particulars do not identify the convictions in question, whether by date or place of conviction, and it is impossible to know what conduct resulted in the convictions. The fact that an appeal was allowed in 1996 means that the offence for which he had been sentenced to 10 years in prison must be considered the equivalent of a verdict of not guilty. No other sentences are pleaded. It is not pleaded that the Claimant knew of any these convictions or of the matters to which they related.

15. Ms Evans submits that the information pleaded about Matthews Senior is part of the narrative or background, and is in any event relevant to the Claimant's reputation. She submits that the convictions are not likely to be in issue at the trial. But without certificates of conviction (which might give some of the missing particularity) that seems unlikely to me.

16. I accept the submissions of Mr Tomlinson. Unless the Defendant can plead that the Claimant knew of the convictions of Matthews Senior, they cannot be relevant to the

Defence of justification, or to damages. And in any event, there is lacking the particularity and other information about the offences such as to show their relevance to the *Lucas-Box* meanings.

17. As to para 6.2 and 6.12 Ms Evans submits again that this is background or narrative, and as such it does not have to be probative. But she submits that it is probative in that the implication of the connection with the Claimant is that it could lead to interference with the jury by the Claimant, just as he assisted Matthews Senior, and so is similar fact evidence.

18. Mr Tomlinson submits that the argument based on background and narrative confuses evidence, which should not be pleaded, with material averments, which should be pleaded. In any event, the arrest of Matthews Junior and others is irrelevant. The only link between Matthews Junior and any other particular of justification is to the plea in para 6.12 as to the Crown's application for jury protection at their trial. But the Defendant does not identify the decision making authority who gave protection to the jury, nor is an explanation given for the application or the decision.

19. Again I prefer the submissions of Mr Tomlinson. There is no information pleaded to support the inference that there was a threat of jury intimidation by the Claimant or anyone connected to him.

20. As to para 6.7 Ms Evans again submits that this was part of the narrative leading to the arrest of the Claimant in respect of the Allen case.

21. Mr Tomlinson submits that this plea offends against both the repetition rule and the conduct rule. It is irrelevant that the Claimant or his brother were suspected by the arresting officer of the offences mentioned, and there is no plea of any conduct by them to found the suspicion independently. The Allen incident and the alleged involvement of Stephen Hunt is pleaded in para 6.4, and no objection is made to that paragraph. The allegation that Stephen Hunt was arrested on suspicion of assault occasioning grievous bodily harm to Mr Allen does not add anything.

22. Again I accept the submissions of Mr Tomlinson.

23. As to paras 6.8 and 6.9 Ms Evans submits what is alleged in each case is serious violence followed by the alleged victims being unwilling to provide statements or to proceed with the complaint.

24. Mr Tomlinson submits that there is a distinction to be drawn between, on the one hand, threats to a complainant (whether by blackmail or intimidation) which produce fear in the minds of the victim, and, on the other hand, violence against the victim (without threats), as a result of which the victim fears that he may become the victim of subsequent threats (whether of blackmail or intimidation). What the Defendant has pleaded is not blackmail or witness intimidation, but complainants refusing to provide statements, or to proceed, because of fear. It is not said that the fear is induced by threats: on the contrary the fear is impliedly said to be induced by the violent nature of the offences of which the complainant stated he was the victim. There is no *Lucas-Box* meaning to the effect that the Claimant has committed acts of violence otherwise than by way of witness intimidation, or threat to kill. Neither of the complainants in paras 6.8 and 6.9 complain of threats to kill.

25. As to para 6.11 Ms Evans submits that this is clearly a case of alleged intimidation of a witness. It is necessary, or at least can cause no prejudice, to plead the offence for which the Claimant was arrested.

26. Mr Tomlinson accepts that this is a matter which could in principle be relied on by the Defendant. But he submits that the plea is so lacking in particularity that in effect it reverses the burden of proof. Mr Tomlinson also objects to the mention of living off immoral earnings as one of the grounds for the arrest.

27. On this point I prefer the submissions of Ms Evans. The pleading is that Mr Kavanagh was intimidated. The Claimant will in due course be entitled to know the evidence supporting this allegation, and perhaps particulars before then. But it is not a case for striking out at this stage.

Principles applicable to general bad reputation

28. There is no dispute that evidence of a claimant's general bad reputation is admissible in evidence in mitigation of damage: see Gatley on Libel and Slander 11th ed paras 35.30 to 35.33. But the scope of the principle is unclear. There is little modern authority on the point, as appears from the paucity of recent authorities in the footnotes to that part of the text. Moreover, as Ms Evans submits, the recent authorities that there are have marked developments in this field of the law: *Burstein v Times Newspapers Ltd* as explained in *Turner v News Group Newspapers Ltd* [2006] 1 WLR 3469 paras [50] to [51] where Keene LJ said:

> "50 My analysis of these lines of authority leads me to conclude that the principle in *Scott v Sampson* and its endorsement in *Speidel's* case were in large part based upon concern about the risks of "trials within a trial", a concern which, as May LJ observed in *Burstein's* case, the court is now better equipped to deal with than in the past because of its case management powers; that the principle has never been absolute; that one of the major exceptions to it, before and since that case, has been in respect of evidence of particular acts of misconduct by the claimant put before the jury in support of a plea of justification or fair comment which has then failed; and that in so far as a rational basis can be found for that major exception, it would seem to lie in the direct relevance such evidence is likely to have to the subject matter of the defamatory words. The problem which arose in *Burstein's* case was that such evidence never got before the jury, because the trial judge struck out the pleaded defence of fair comment before evidence had been called, unlike the situation in *Pamplin's* case and in *Jones v Pollard*. This court was understandably not enamoured of a situation where the question of what evidence could be taken into account in mitigation of damages depended upon a matter of procedure. I share that

> view. It does not make sense for the jury to consider damages in an evidential vacuum in cases where a defence has been struck out before the calling of evidence, when directly relevant background evidence is regularly allowed to be taken into account on damages in cases where it relates to a defence subsequently struck out by the judge or rejected by the jury. Certainly one would wish to identify some underlying principle which would apply in cases where such evidence was not otherwise before the jury, and that, it appears to me, is what this court did in *Burstein's* case.
>
> 51 I therefore do not accept that *Burstein's* case cannot be reconciled with the House of Lord's decision in *Speidel's* case. It represents a development of the common law beyond the point which it had reached in 1961, but there is nothing surprising about that. Such developments are inherent in our system. In my judgment we in the present case are bound by the *Burstein* decision."

29. In this connection Ms Evans referred to *Tesco Stores v Guardian News & Media Ltd* [2008] EWHC B14 (QB); [2009] EMLR 5. In that case, after referring to the developments of the law in *Burstein* and *Turner*, Eady J said at para 56, that:

> "… against that background one has to be very careful as a judge … in shutting out matters which may be arguable in the context of *Burstein* and the principles it expounds…"

The objections to para 8 of the Defence

30. Mr Tomlinson submits that the plea of general bad reputation is wholly unparticularised. The pleading should identify the community or location within which the Claimant's reputation is alleged to be bad.

31. Ms Evans submits that the Defendant has given notice of the area of the Claimant's life in question, in accordance with *Plato Films v Speidel* [1961] 1 AC 1090 pp1138-40, where Lord Denning stated that such evidence often takes the form of a police officer who knows the claimant being called and saying what he knows the claimant as. She points to what is pleaded in para 2 of the Defence and incorporated by reference into para 8:

> "The Claimant's reputation among law enforcement agencies is as the head of one of the most notorious organised crime groups in the country; he is regarded as extremely dangerous and violent"

32. Moreover, Ms Evans submits that this case is unusual in that the Defence puts in issue the description that the Claimant gives of himself in the Particulars of Claim at para 1, namely that he is "a businessman with substantial interests in commercial property in the London area".

33. It is not in dispute that he has such substantial interests: the words complained of say as much. It is whether he is a businessman that is in issue. It is common for a claimant to give evidence as to his status, although that is rarely a matter of dispute: see Gatley paras 34.4 and 34.5. Damages in libel are required, amongst other reasons, to repair the damage to a person's reputation and the injury to his feelings: Gatley para 9.1. It is unheard of (in my experience) for a claimant not to give evidence of his status at the start of a libel action. If he failed to do so, there is a risk that any damages might fail to reach a figure which would provide the vindication that he has brought the proceedings to secure.

34. In my judgment Ms Evans is right on this point, and I decline to strike out those parts of para 8 of the Defence which she has not already conceded.

Conclusion

35. For the reasons given above, there will be struck out of the Defence those parts of the following paragraphs marked with underlining above, but no others: paras 6.1, 6.2, 6.7, 6.8, 6.9, 6.11 (only the words "(and living off immoral earnings)") and 6.12. The Claimant's application succeeds to that extent, and fails as to the remainder.