



Neutral Citation Number: [2009] EWHC 1481 (QB)

Case No: HQ09X00832

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 June 2009

Before :

THE HONOURABLE MR JUSTICE EADY

Between :

GLEN JOHNSON

Claimant

- and -

MGN LIMITED

Defendant

David Sherborne (instructed by **Teacher Stern**) for the **Claimant**
Anthony Hudson (instructed by **Davenport Lyons**) for the **Defendant**

Hearing date: 12 June 2009

Judgment

Mr Justice Eady :

1. On 12 June 2009, I heard an application by MGN Ltd for a ruling under CPR 53, PD 4.1 to the effect that the words complained of in this libel action are not capable of bearing either the natural and ordinary or the innuendo meanings pleaded in the particulars of claim. Indeed, the Defendant submitted that the article complained of is incapable of conveying any defamatory meaning at all.
2. The publication in question took place on 28 December 2008 in *The People*. The Claimant is a professional footballer who currently plays for the Portsmouth Football Club, as he did also at the time of publication. He had signed from Chelsea Football Club in August 2007 and was working under a four year agreement. At the time of the publication he was in the midst of negotiations about extending his contract with Portsmouth.

3. There is no doubt that the article complained of was published with considerable prominence. It was the lead story on the back page of the newspaper, where it was described as an “exclusive”. Alongside a photograph of the Claimant there appeared the heading “Rafa’s magic Johnson”. Underneath there appeared a sub-heading “BENITEZ IN £9M SWOOP FOR POMPEY STAR”.

4. The text beneath, such as it was, was in these terms:

“Rafa Benitez will sign England’s defender Glen Johnson for £9 million. Liverpool boss Benitez has agreed a deal to buy the Portsmouth right-back. People Sport understand that former Chelsea star Johnson who did not play over Christmas because of a knee injury has been given a tour of the club’s Melwood training ground. Full story page 50.”

5. Also on the back page, towards the bottom of the photograph, there appeared the caption “WANTED: Glen Johnson is on his way to join Rafa Benitez (left) at Anfield”.

6. If the reader turned to page 50 of the same issue, he would find the main article:

“Glen Kops a return to big time

EXCLUSIVE

Glen Johnson will complete a sensational move to Liverpool this week. People Sport understands the Portsmouth right-back was given a tour of the Merseysiders’ Melwood training complex in the build-up to Christmas.

Reds’ boss Rafa Benitez is keen to land him as soon as possible and Liverpool will pay cash-strapped Pompey £9 million.

Johnson missed the Boxing Day 4-1 home thrashing by West Ham reportedly through injury, but his appearance on Merseyside will fuel suspicions that a deal is already done.

The move will complete a return to the big time for the 24-year-old, whose career has been revitalised since his switch from Chelsea two-and-a-half years ago. Johnson was the first signing of the Roman Abramovich era and was hailed as Gary Neville’s long-term successor as England right-back.

However, he failed to live up to the promise he had shown as a youngster at West Ham and the Blues let him join Pompey after an initial year-long loan.

Johnson worked hard to rebuild his reputation under former Portsmouth boss Harry Redknapp.

That earned him a return to the England set-up and he proved his worth with an impressive display in the 2-1 victory over Germany in November.

His efforts have been rewarded, with Benitez offering him the chance to re-join a Big Four side in a move which will further dismay Portsmouth fans. They have already lost Lassana Diarra to Real Madrid for £20m as the break-up of their FA Cup-winning team continues.

The club are massively in debt and boss Tony Adams is bracing himself for even more of his players to follow those two out of the exit door in the next month.”

There was another photograph of the Claimant, towards the top of page 50, with the caption “SORTED: Boss Rafa will net Johnson”.

7. These words complained of are said to bear the following meanings, in paragraph 4 of the particulars of claim, namely to the effect that:

“4.1 although he had claimed to be injured, the Claimant had in fact missed Portsmouth’s Boxing Day match against West Ham because he had already decided to leave the club and had agreed in effect to join Liverpool Football Club, having arranged a tour of Liverpool’s Melwood training ground prior to Christmas, and therefore the Claimant had lied (or agreed to lie) publicly about the true reason for him being absent at Portsmouth’s 4-1 thrashing;

4.2 by taking steps and/or negotiating or agreeing in effect to join Liverpool (including by undergoing a tour of its Melwood training ground), the Claimant had breached Premier League Rules prohibiting undisclosed or unauthorised approaches by a player to another football club during the currency of his contract.”

The words are said to convey these somewhat convoluted imputations by way of natural and ordinary and/or inferential meaning, alternatively by way of innuendo.

8. The extraneous particulars pleaded in support of the innuendo meaning were as follows:

“(1) Paragraphs 1 and 2 above are repeated. [*These merely introduced and described the parties.*] The Claimant has at all material times been under contract to play for Portsmouth.

(2) Clause 5 of Rule K of the Premier League Rules provides that ‘an Out of Contract Player, or any Person on his behalf, shall be at liberty at any time to make an

approach to a Club (or club) with a view to negotiating a contract with any such Club (or club)’.

- (3) Clause 6 of Rule K provides that: ‘A Contract Player, either by himself or by any Person on his behalf, shall not either directly or indirectly make any such approach as is referred to in Rule K.5 without having obtained the prior written consent of his club’.
- (4) At no point in the article did it state that prior written (or any) consent had been obtained from Portsmouth before the Claimant agreed to tour Liverpool’s training ground and/or agreed in effect to join Liverpool.
- (5) The above facts and matters were known or obvious to a substantial but unquantifiable number of persons who read the words complained of and would therefore have understood them in the meanings set out above.”

During the course of the hearing, Mr Sherborne appearing on behalf of the Claimant recognised that sub-paragraph (4) was inappropriately worded and indicated that he would prefer to have it re-drafted in the following terms:

“At no point was any or any prior written consent obtained from Portsmouth by Liverpool to approach the Claimant with a view to negotiations.”

This was intended to reflect the wording of Rule K of the Premier League Rules.

9. At this stage, in order to understand the nature of the dispute, it is necessary for me to set out the relevant parts of Section K of those Rules (under the heading “Players’ Contracts”):

“Approaches to Players

1. A Club shall be at liberty at any time to make an approach to a Player with a view to negotiating a contract with such a Player:
 - 1.1 if he is an Out of Contract Player, or
 - 1.2 in the case of a Contract Player, with the prior written consent of the Club (or club) to which he is contracted.
- ...
3. Any Club which by itself, or by any of its Officials, by any of its Players, by its Agent, by any other Person on its behalf or by any other means whatsoever makes an approach either directly or indirectly to a Contract Player except as permitted by either Rule K.1.2 or

Rule K.2 shall be in breach of these Rules and may be dealt with under the provisions of Section R.

...

Approaches by Players

5. An Out of Contract Player, or any Person on his behalf, shall be at liberty at any time to make an approach to a Club (or club) with a view to negotiating a contract with such Club (or club).
 6. Subject to Rule K.7, a Contract Player, either by himself or by any Person on his behalf, shall not either directly or indirectly make any such approach as is referred to in Rule K.5 without having obtained the prior written consent of his Club.”
10. It is appropriate also to have in mind the provisions of Section M of the Rules, which deal with the matter of “Transfer Windows”. This term “ ... means the 2 periods in a year during which, subject to Rule M.4, a Club may apply for the New Registration of a player or to have the registration of a player transferred to it or for a Temporary Transfer”. What is material, at least potentially, for the present case is the provision contained in Rule M.3:
- “The second Transfer Window in any year shall commence at midnight on 31st December and shall end on 31st January next if a Working Day or, if not, on the first Working Day thereafter, at a time to be determined by the Board.”
11. There has been no suggestion that the allegations contained in the Defendant’s article were true. The issues are simply focused upon the meanings to be attached to the words.
 12. As will be apparent, there are really two distinct meanings alleged. First, it is said that the words, in their natural and ordinary meaning, convey to the reader the defamatory imputation that the Claimant had lied, or at least perhaps was a knowing party to a false announcement, to the effect that he had been injured so as to prevent his playing in the Boxing Day match. Secondly, there is the innuendo meaning that depends upon the reader’s knowledge of extraneous facts; namely, to the effect that he had been in breach of the Rules when he made an approach to Liverpool. It is fair to say, however, that the article does not indicate on its face, one way or the other, whether it was Liverpool that was supposed to have made the approach or the Claimant. Nevertheless, that is how the matter stands in the pleading at the moment.
 13. Mr Hudson, on the Defendant’s behalf, submits that both these meanings are simply fanciful and that no reasonable reader (even allowing for knowledge of the relevant rules) could possibly come to either of those conclusions on a fair reading of the article.

14. There was no disagreement at the Bar as to the principles to be applied on an application of this kind. They are conveniently summarised by the editors of *Gatley on Libel and Slander* (11th edn) at para 32.5. The court has jurisdiction to enable the ground rules and permissible meanings to be fixed in advance, since these are of cardinal importance in defamation proceedings, not only for the purpose of assessing the degree of injury to the claimant's reputation but also for the purpose of evaluating any defences that may be raised. Where a judge decides that a particular pleaded meaning falls outside the permissible range, then it would be his duty to rule accordingly. The court should reject any meanings which can only emerge as the product of some strained or utterly unreasonable interpretation. The exercise is one of pre-empting perversity; that is to say, the judge should only exclude a pleaded meaning if satisfied that a jury would actually be perverse to uphold it: see *Jameel v Wall Street Journal* [2004] EMLR 6 at [6], [9-16], CA. It has also been said that it is "an exercise in generosity, not in parsimony": *Berezovsky v Forbes* [2001] EMLR 45 at [16], CA, *per* Sedley LJ.
15. Bearing these considerations in mind, I turn to the submissions of Mr Sherborne. He argued that loyalty is a valuable commodity in a football player which is expected both by club supporters and employers. An allegation, therefore, to the effect that a footballer has been engaged in unauthorised talks, or has feigned injury to conceal that such talks are taking place, is very damaging.
16. I accept that such an allegation could well be defamatory and cause considerable damage to a player's reputation. All depends on the context. It is quite likely that a reader who knew that this Claimant was in the middle of negotiating with Portsmouth for an extension of his contract, and who inferred from the article that he had been engaged in secret talks with Liverpool, might well think the worse of him. For most readers, however, I find it difficult to understand what would have led them to the conclusion that the Claimant had gone behind the backs of the Portsmouth management and was conducting talks in Liverpool *in secret*.
17. It is true that there is evidence before the court from Mr Peter Storrie, the Portsmouth Director and Executive Chairman, to the effect that he was shocked when he read the suggestion that the Claimant had been shown around the Liverpool training ground prior to Christmas and that he was about to be bought by Liverpool. On the other hand, Mr Storrie is in a rather special position, as he explained:

"At this time, as I said, I had started negotiations with Glen. He had not suggested at any time that he was considering a transfer to Liverpool and had not been agitating for a transfer away from the club.

As I understood it from negotiations, Glen Johnson was committed to Portsmouth hence the fact that we were in negotiations about a new contract. However, the article certainly caused me to consider whether these allegations could have been true and whether Glen might have been trying to conceal this from me.

As I read it, had these stories been true it would also have meant that Glen was in breach of Section K of the Premier

League Rules. At that time he still had 2½ years left on his existing contract with Portsmouth. Section K prohibits a player approaching or negotiating with a potential new club without the prior written consent of his present club save for after the third Saturday in May of the final year of his playing contract with that club. I would therefore have expected Liverpool to have contacted Portsmouth if they were interested in making an offer and certainly for the player to have sought my permission to approach Liverpool. The allegations made in the article therefore suggested a particularly way [*sic*] that Glen was prepared to conduct his affairs.”

He added later that, when it transpired that the stories had been fabricated, he accepted that the Claimant remained committed to Portsmouth.

18. I think it most unlikely that the average reader of the article in question would have drawn the same inferences as Mr Storrie. It is possible that a reader might conclude that there had been discussions between Liverpool and Portsmouth, with a view to contractual arrangements being completed after 31 December (in accordance with the second “transfer window” permitted by the Rules). Mr Storrie, however, was in the special position of knowing that Portsmouth’s negotiations with the Claimant were still on foot and, what is more, that no mention had been made of interest on his part in a transfer to Liverpool. It seems to me that the category of readers who knew the relevant facts and were able to derive the same meaning as Mr Storrie would be very small indeed. The burden in this respect lies, of course, on the Claimant. It may be that he will establish a small cadre of persons who, like Mr Storrie, had the relevant facts at their fingertips and drew a similar inference. In so far as others drew that inference, I suspect that any damage done to the Claimant’s reputation would have also been fleeting, as was the case with Mr Storrie.
19. After some hesitation, I have come to the conclusion that it would be wrong for me to rule that the innuendo implication of disloyalty is one which the words are not capable of bearing. I acknowledge, however, that the relevant class of readers is likely to be very small indeed.
20. As to the natural and ordinary meaning, it seems to me that the critical words are those appearing on page 50 of the newspaper:

“Johnson missed the Boxing Day 4-1 home thrashing by West Ham, *reportedly* through injury, *but* his appearance on Merseyside will fuel suspicions that a deal is already done.”
(Emphasis added)
21. The sentence is not unambiguous or easy to understand. That being the case, submits Mr Sherborne, the benefit of the doubt should be given at this stage to the Claimant. As I commented in *Lowe v Associated Newspapers Ltd* [2007] QB 580, at [3], allowance has to be made when an article is opaquely written. Thus, one has to err on the side of generosity (in accordance with the dictum of Sedley LJ). This time, that works in the Claimant’s favour.

22. Despite the fact that the words published on the back page of the newspaper appear to accept that the “knee injury” explanation for the Claimant’s absence on Boxing Day is genuine, doubt is certainly cast on this by the sentence I have quoted from page 50. The allegation appears to be that the report of a knee injury *may* not be genuine. Moreover, for reasons which are not entirely clear, it appears to be suggested that the possible motivation for putting out a false story was in some way connected with a deal “already done”. It is probably true to say that such a “deal” could only have been done between Portsmouth and Liverpool. The Claimant could hardly enter into a binding contract with Liverpool on a bipartisan basis without any reference to Portsmouth. If that is so, it is difficult to see why it would be necessary for either the club or the Claimant to put out a false story about a knee injury. Mr Sherborne thinks the answer is simple – that if a deal had been done with Liverpool the Claimant’s heart would no longer be in playing for Portsmouth and he would be looking for an excuse. (Yet, if a reader inferred that a deal had been done, surely he would also conclude that Portsmouth were not being kept in the dark by the Claimant.)
23. Nor, it seems to me, would a reader necessarily infer that if the Claimant chose to put forward a false claim about his lack of fitness, as an excuse for not playing, it would be accepted by the Club without demur.
24. Mr Hudson submits that it is far more likely, in the eyes of the reasonable reader, that any explanation about the Claimant’s absence on Boxing Day would be given by the club, rather than by the individual player. If so, any reader would be likely to decide that, if the public were being misled, Portsmouth must have been a party to it. I find that persuasive, although Mr Sherborne submitted that there was no conceivable reason for the club to put out a false story. All of this, however, to my mind serves to underline the ambiguity of the sentence in question.
25. I find that I am unable to conclude that a juror would be perverse to draw the inference that the Claimant was responsible for, or at least party to, a decision to put out a false announcement as to the reason for his absence on Boxing Day. Some readers might draw that inference and others not. As it happens, I think a more reasonable meaning could be framed in these terms:

“that there were reasonable grounds to suspect that the Claimant was responsible for, or a party to, a decision to put out a misleading announcement by way of explaining his absence from the West Ham match on Boxing Day 2008.”

It is not for me, of course, to plead either party’s case, but I have articulated this particular meaning in order to give substance to my conclusion that the words are at least capable of bearing some defamatory meaning. Furthermore, given the ambiguity of the sentence in the article, I do not feel justified in ruling that no reasonable reader could understand the words in the sense already pleaded on the Claimant’s behalf. It may be that a jury will ultimately conclude that it is indeed far-fetched, but I would be exceeding my function at this stage if I were to shut it out entirely.

26. In the result, I have decided that I must reject the Defendant’s applications in respect of both meanings (albeit with rather greater hesitation in the case of the innuendo).