Neutral Citation Number: [2006] EWHC 1191 (QB)

Case No: HQ03X01283

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 May 2006

Before:

THE HON. MR JUSTICE GRAY

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Between:

(1) SHEIKH KHALID BIN MAHFOUZ (2) ABDULRAHMAN BIN MAHFOUZ	**Claimants**
- and -	
(1) JEAN-CHARLES BRISARD (2) GUILLAUME DASQUIE	**Defendants**

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James Price QC and Laurence Harris (Solicitor Advocate)
(instructed by **Kendall Freeman**) for the **Claimants**
Adam Speker (instructed by **Reynolds Porter Chamberlain**) for the **First Defendant**
The Second Defendant did not appear and was not represented

Hearing dates: 19 May 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 GRAY

Mr Justice Gray:

1. I should at the outset record the fact that at the commencement of the hearing of this application I made an order under section 4(2) of the Contempt of Court Act, 1981 that publication of any report of the proceedings be postponed until after the determination of another action in which one of the defendants in this action, M. Brisard, is also a defendant, namely *Al Amoudi v. Brisard & others.* The reason for making the order is that that action is to be tried with a jury. Publicity about the present proceedings might result in unfairness to M. Brisard.

2. The Claimants in this libel action, Sheikh Khalid bin Mahfouz and Mr Abdulrahman bin Mahfouz, seek summary disposal of their libel claim against M. Jean-Charles Brisard and M. Guillaume Dasquie pursuant to sections 8 to 10 of the Defamation Act, 1996. Judgment in default has already been obtained against M. Dasquie for damages to be assessed. He has not attended on this application. But M. Brisard has instructed solicitors and counsel, Mr Adam Speker, to oppose the application.

3. The Claimants' claim is for damages for libel and injunctive relief in respect of a book entitled "Forbidden Truth" of which the Defendants are the authors. There are numerous references to both Claimants in chapter 12 of that book and elsewhere. It is not necessary for me to quote the material passages. It is sufficient if I set out the defamatory meanings for which each of the Claimants contends in the Particulars of Claim. The first Claimant contends that the words complained of in the context of the book as a whole bore the defamatory meanings that he knowingly supported and assisted in terrorism by:

    i) acting as banker to the terrorist Osama bin Laden, the first Claimant's brother in law, and to Osama bin Laden's terrorist network Al Qaeda, and acting as the "banker of terror", thus knowingly and willingly participating in the lucrative business of terrorism;

    ii) being one of the principal supporters of Osama bin Laden and Al Qaeda in their terrorist activities:

        a) by contributing millions of dollars in order to support and further the campaign of terrorism and atrocities waged by Osama bin Laden and Al Qaeda;

        b) by playing a prominent role in organising the financing of those terrorist activities and

        c) by knowingly and willingly acting as a main protagonist in their terrorist network;

    iii) conniving at and colluding in the terrorist activities of Osama bin Laden and Al Qaeda and actively facilitating those terrorist activities.

4. The second Claimant contends that the words complained of in the context of the book as a whole bore the defamatory meanings:

i) that he, as manager of the Sudanese branch of Muwafaq, was reasonably suspected of having helped the terrorist Osama bin Laden and his terrorist network Al Qaeda to organise an assassination attempt against Egyptian president Hosni Mubarak in Ethiopia in 1995;

ii) that he, through his connection with Muwafaq, was or is reasonably suspected of having been a screen for Al Qaeda and a source of millions of dollars for Osama bin Laden.

5. I am satisfied, having read the relevant parts of the book, that those meanings would have been conveyed to ordinary reasonable readers of the book. As is abundantly plain, those defamatory meanings are extremely serious.

6. The book "Forbidden Truth" was originally published in French in late 2001. Thereafter an English translation was published in September 2002. According to M. Brisard it was written for the US market. His case was that he did not authorise publication of the book within the jurisdiction. However, on 30 September 2005 Tugendhat J determined that there was no defence to the Claimants' claim that M. Brisard authorised publication within the jurisdiction of this court.

7. I am satisfied on the basis of the evidence before the court on this application that at least four hundred copies of the book were published in the jurisdiction, most if not all of them having been ordered from distributors based outside the jurisdiction. The extent of the circulation is therefore limited.

8. Although at one stage in the proceedings M. Brisard stated an intention to justify the serious imputations made against the Claimants, no plea of justification has ever been placed on the record. There is no affirmative defence pleaded.

9. With that brief summary of the background, I turn to the relevant provisions of the Defamation Act, 1996. I will set them out in full:

> "*Summary disposal of claim*
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> 8.(1) In defamation proceedings the court may dispose summarily of the plaintiff's claim in accordance with the following provisions.
>
> (2) The court may dismiss the plaintiff's claim if it appears to the court that it has no realistic prospect of success and there is no reason why it should be tried.
>
> (3) The court may give judgment for the plaintiff and grant him summary relief (see section 9) if it appears to the court that there is no defence to the claim which has a realistic prospect of success, and that there is no other reason why the claim should be tried.
>
> Unless the plaintiff asks for summary relief, the court shall not act under this subsection unless it is satisfied that

summary relief will adequately compensate him for the wrong he has suffered.

(4) In considering whether a claim should be tried the court shall have regard to—

(a) whether all the persons who are or might be defendants in respect of the publication complained of are before the court;

(b) whether summary disposal of the claim against another defendant would be inappropriate;

(c) the extent to which there is a conflict of evidence;

(d) the seriousness of the alleged wrong (as regards the content of the statement and the extent of publication); and

(e) whether it is justifiable in the circumstances to proceed to a full trial.

(5) Proceedings under this section shall be heard and determined without a jury.

Meaning of summary relief

9.(1) For the purposes of section 8 (summary disposal of claim) "summary relief" means such of the following as may be appropriate—

(a) a declaration that the statement was false and defamatory of the plaintiff;

(b) an order that the defendant publish or cause to be published a suitable correction and apology;

(c) damages not exceeding £10,000 or such other amount as may be prescribed by order of the Lord Chancellor;

(d) an order restraining the defendant from publishing or further publishing the matter complained of.

(2) The content of any correction and apology, and the time, manner, form and place of publication, shall be for the parties to agree.

If they cannot agree on the content, the court may direct the defendant to publish or cause to be published a summary of the court's judgment agreed by the parties or settled by the court in accordance with rules of court.

If they cannot agree on the time, manner, form or place of publication, the court may direct the defendant to take such reasonable and practicable steps as the court considers appropriate.

(3) Any order under subsection (1)(c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Summary disposal: rules of court

10.(1)Provision may be made by rules of court as to the summary disposal of the plaintiff's claim in defamation proceedings.

(2) without prejudice to the generality of that power, provision may be made—

(a) authorising a party to apply for summary disposal at any stage of the proceedings;

(b) authorising the court at any stage of the proceedings—

(i) to treat any application, pleading or other step in the proceedings as an application for summary disposal, or

(ii) to make an order for summary disposal without any such application;

(c) as to the time for serving pleadings or taking any other step in the proceedings in a case where there are proceedings for summary disposal;

(d) requiring the parties to identify any question of law or construction which the court is to be asked to determine in the proceedings;

(e) as to the nature of any hearing on the question of summary disposal, and in particular—

(i) authorising the court to order affidavits or witness statements to be prepared for use as evidence at the hearing, and

(ii) requiring the leave of the court for the calling of oral evidence, or the introduction of new evidence, at the hearing;

(f) authorising the court to require a defendant to elect, at or before the hearing, whether or not to make an offer to make amends under section 2".

10. The first question which I have to decide is whether this claim is suitable for summary disposal. It will be noted that section 8(1) provides that the court "may" dispose summarily of the plaintiff's claim, so that there is a discretion whether or not to follow that route. It is further to be noted that, even if the court concludes that there is no defence to the claim which has a realistic prospect of success, there may nonetheless be some other reason why the claim should go to trial: see section 8(3). As to that, the factors to be considered are listed in section 8(4). As was noted by Pill LJ in *Mosley and another v. Focus Magazin Verlag GMBH* [2001] EWCA Civ 1030 at paragraph 2, "prospects of success" and "reason to be tried" are two distinct tests and the criteria in section 8(4) apply only to the second of the tests.

11. Notwithstanding the submissions advanced by Mr Speker on behalf of M. Brisard, I am entirely satisfied that his client has no defence to the claim which has a realistic prospect of success and that there is no other reason why the claim should go to trial. The reasons for my conclusions can be shortly stated. There can be no doubt that the passages from the book which are complained of are defamatory of each of the Claimants and very seriously so. The evidence establishes that the book has been published within the jurisdiction of this court. Judgment against M. Dasquie has already been obtained in default. There is a finding against M. Brisard that he authorised publication of the book within the jurisdiction. As I have recorded, no affirmative defence is or ever has been advanced by M. Brisard. There is no defence of any kind to the action. The extent of publication within the jurisdiction, although modest, entitles both Claimants to damages.

12. The principal reason why it is suggested on behalf of M. Brisard that there is good reason why the claim should go to trial is that very little is known about either of the Claimants, who are Saudi businessmen, and neither has ever appeared in any court case in respect of the allegations made against them. I am satisfied on the evidence that both the Claimants have reputations in this country which they are entitled to protect and that they are entitled to seek vindication in respect of serious charges affecting those reputations. If they have never appeared in any court in respect of the allegations levelled against them, that is because there has been no need for them to do so. I reject the submission that it is in the circumstances of the present case in the public interest that the public should see and hear from individuals who seek to vindicate their reputations in this country.

13. I must next consider what parts of the relief set out in section 9(1) of the Act are appropriate here. The wording of that sub-section indicates in my judgment that the court may order all of that relief or some or none of it according to the circumstances of the particular case.

14. I start with damages. By section 9(1)(c) the statutory ceiling is £10,000. Mr Speker on behalf of M. Brisard concedes that the libels are very serious. Nonetheless he submits that the damages should be very modest, if not nominal. In support of that submission he draws attention to the limited extent of publication within the jurisdiction. He also points out, with some justification, that the evidence provided by the two Claimants in their respective witness statements is sparse both as to the nature

and extent of their reputation within the jurisdiction and as to the impact which the publication of the libel within the jurisdiction (as opposed to elsewhere) has had on their reputations.

15. There is some substance in Mr Speker's submissions. But I consider that Mr James Price QC, who has appeared on behalf of the Claimants, is clearly right when he says that the libels sued on are so serious and the entitlement of the Claimants to obtain an award which effectively vindicates their reputations is so clear that an award of the statutory maximum, namely £10,000, is justified in the case of each Claimant. Accordingly I award each Claimant £10,000 in damages.

16. An injunction has already been granted against M. Dasquie. I consider that an order should be made restraining M. Brisard from publishing or further publishing the libels complained of or any words to similar effect. M. Brisard has in the past, as I have already pointed out, expressed an intention to justify what he has written about the Claimants. He has not apologised to the Claimants; nor has he volunteered any undertaking against repetition. In these circumstances I see no reason not to grant the Claimants suitable injunctive relief against M. Brisard.

17. By virtue of section 9(1)(a) the relief may include a declaration that the statements complained of were false and defamatory of the Claimants. That is not of course relief which would be obtainable following a trial of the claims. In many cases I accept that it will be appropriate for the court to grant a declaration of falsity as part of the relief granted to a claimant on summary disposal. That was a course taken by Eady J in *Mahfouz v. Brisard & others* [2004] EQHC 1735 (QB).

18. Since that decision, however, the Court of Appeal has delivered judgment in *Jameel v. Dow Jones &Co Inc.* [2005] QB 946. That decision has caused me to consider carefully whether a declaration of falsity is in the circumstances of the present case appropriate. *Jameel* was a case where there was publication to only five individuals. Like the claimants in the present case Mr Jameel is a Saudi businessman. The issue before the Court of Appeal in *Jameel* was whether the claim should be struck out as an abuse of the process of the court. In that context Lord Phillips of Worth Matravers MR, delivering the judgment of the Court, said at paragraph 67:

> "To what extent will this action, if successful, vindicate the Claimant's reputation? English law and procedure does not permit the court to make a declaration of falsity at the end of a libel action. … The presumption of falsity does not however leave the judge in a position to make a declaration to all the world that the allegation was false. In the present case, where the matter will not even be explored at the trial, the judge could not possibly be expected to declare, with confidence, that the Claimant never provided funds to Osama bin Laden. There may well in due course be a finding in relation to this in the *Burnett* action, where the question will be directly in issue".

19. The *Burnett* action to which Lord Phillips referred is an action by which a large number of claimants in proceedings brought in the United States court are seeking damages from numerous defendants sustained as a result of the events of 9 September 2001 in New York. Mr Jameel has been joined as a defendant in that action. Both

claimants in the present action were also been joined as defendants. The Second Claimant has been dismissed from those proceedings and an application by the First Claimant for dismissal is pending.

20. In *Jameel* Lord Phillips posed the question, where there has been a world wide publication on the Internet, can a claimant justify proceeding in a country where publication has been minimal on the ground that this is a good forum in which to seek global vindication? In the course of answering that question Lord Phillips quoted at length from the speech of Lord Hoffman in *Berezovsky v. Michaels* [2000] 1 WLR 1004, including a passage from his speech at pp1024-1025:

> "My Lords, I would not deny that in some respects an English court would be admirably suited for [the purpose of vindicating plaintiffs' international reputations]. But that does not mean that we should always put ourselves forward as the most appropriate forum in which any foreign publisher who has distributed copies in this country, or whose publications have been downloaded here from the Internet, can be required to answer the complaint of any public figure with an international reputation, however little the dispute has to do with England. In *Airbus Industrie GIE v. Patel* [1999] 1 AC 119 your Lordships' house declined the role of 'international policemen' in adjudicating upon jurisdictional disputes between foreign countries. Likewise in this case, the judge was in my view entitled to decide that the English court should not be an international libel tribunal for a dispute between foreigners which had no connection with this country".

21. Mr Price is of course right to remind me that Lord Hoffman dissented in *Berezovsky*. But Lord Phillips pointed out at paragraph 66 that, so far as the question of obtaining global vindication is concerned, there was no conflict between the view of Lord Hoffman and the view of the majority.

22. I bear in mind that in *Jameel* the publication complained of took place on the Internet and that the extent of publication in *Jameel* was exceedingly limited. In the present case the number of copies of the book published in the jurisdiction was, as I have said, about four hundred, which is no doubt a relatively small fraction of world-wide sales. Publication in the present case is broadly speaking comparable with the publication complained of in *Jameel.* I have to bear in mind too that, as the evidence indicates, the connection between the Claimants in the present case and this country are somewhat limited. Both the Defendants are resident outside the jurisdiction. It seems reasonable to infer in these circumstances that one of the reasons why Mr Price on behalf of the Claimants is asking for a declaration of falsity is to deploy it in jurisdictions other than this one. As Lord Hoffman put it in *Berezovsky*:

> "The common sense of the matter is that [Mr Berezovsky] wants the verdict of an English court that he has been acquitted of the allegations in the article, for use wherever in the world his business may take him".

23. The considerations which I have canvassed raise a real doubt in my mind whether in the particular circumstances of this case it is appropriate that a declaration of falsity be granted. There is another relevant consideration: it arises out of section 9(1)(b) which entitles the court to order, where appropriate, that the defendant publish a suitable correction and apology. It may turn out that the Defendants are not prepared to publish a correction or an apology, in which event the court may, if appropriate, direct them to publish or cause to be published a summary of the court's judgment as agreed by the parties or settled by the court. I am satisfied in the present case that it would be right for me to make such a direction. The fact that I am doing so increases my doubts as to the appropriateness of making in addition a declaration of falsity, since the Claimants will in any event be entitled to make such use as they see fit of this judgment which is being delivered in open court.

24. For the reasons which I have endeavoured to express, I am not persuaded that it would be right for me in the unusual circumstances of this case to make a judicial declaration of falsity. Otherwise the relief granted to the Claimants is as I have set out above.