

IN THE HIGH COURT OF JUSTICE,
QUEEN'S BENCH DIVISION,

HQ03X03318

Master EYRE

Thursday the 17th day of March 2005



ALBERTA MATADEEN
v
(1) ASSOCIATED NEWSPAPERS LIMITED
(2) VERONICA WADLEY
(3) CHRIS MILLAR

ORDER

UPON the Defendants' application for an order limiting the costs recoverable by the Claimant

AND UPON hearing Miss. Page, one of Her Majesty's Counsel, for the Defendants and Mr. Barca of Counsel for the Defendant on the 16th day of February 2005

AND for the reasons annexed

IT IS ORDERED that:

- 1 The application be granted.
- 2 That a limit be set to the costs recoverable by the Claimant and (by consent) the Defendants' costs in this action be limited to the same amount (a 'costs-capping order'), and:

- (1) For the purpose of determining that limit:
 - (a) By no later than the 23rd March 2005, the Defendants shall apply on notice to the Senior Costs Judge to fix a hearing, whether before himself or before another Costs Judge nominated by him (“the Costs Judge”);
 - (b) The Costs Judge shall give such directions as may be necessary, including directions as to the filing and service of estimates of costs pursuant to Section 6 of the Costs Practice Direction by the Claimant and Defendants;
 - (2) There be liberty to apply to the Costs Judge for an order varying or discharging the limit.
- 3 The costs of the application be as follows: the Claimant shall pay the Defendants' costs summarily assessed in the sum of £11, 241.76.

REASONS FOR DECISION
given on Thursday, 17 March, 2005
for purposes of Practice-Direction 52, Paragraph 5.6(7)(b)

- 1 Prior to the events described, the Claimant owned a number of nursing-homes.
- 2 The First Defendant publishes the 'Evening Standard', and the Second and Third Defendants are respectively the editor of that newspaper and a reporter for it.
- 3 The First Defendant is in the same respects responsible for the web-site 'This Is London'.
- 4 On the 30th and 31st October and the 8th November 2002, the newspaper and web-site published articles accusing the Claimant of ill-treating patients in one of the homes.
- 5 The articles were re-published by third parties in their newspapers and on a web-site.
- 6 On the 27th October 2003, solicitors for the Claimant:
 - (1) Issued a claim-form alleging that the Defendants had defamed the Claimant, and seeking damages and an injunction;
 - (2) Sent the Second Defendant a letter of claim.
- 7 On the 26th February 2004, the Claimant served her Particulars of Claim, in which she alleged in effect that the publications defamed her in respect of her conduct of all of her homes (as distinct from her conduct of that particular home at that time) without limit of time.
- 8 It is common ground that there is no claim for special damages, even though the local authority subsequently closed the home in question, and that the effect of the authorities is to limit any award of general damages for this tort to £200,000.
- 9 On the 30th April 2004, the Defendants served their Defence, pleading justification and fair comment, and giving particulars of the conduct of the home mentioned going back to 1999.
- 10 In late May 2004:
 - (1) The allocation-questionnaires estimated the Claimant's costs to trial at more than £558,000 and the Defendants at more than £198,000; and
 - (2) The Claimant's solicitors served the Defendants' solicitors with notice that the action was now the subject of a conditional-fee agreement, but stated that she had been unable to obtain after-the-event insurance.
- 11 On the 24th June 2004, the Claimant served her Reply.

- 12 On the 28th June 2004, the Defendants' solicitors notified the Claimant's solicitors that, should the action proceed, the Defendants would seek a 'costs-capping order'.
- 13 On the 4th November 2004, the action was stayed by consent for 1 month to enable the parties to attempt to compromise it by mediation, but that attempt failed.
- 14 On the 21st December 2004, the Defendants served a Request for Further Information in respect of the Reply.
- 15 On the 17th January 2005, the Defendants issued and served this application.
- 16 **Defendants**: for the Defendants, it is contended in essence that:
 - (1) The conditional-fee agreement implies:
 - (a) That a success-fee, which experience shows is likely to be of the order of 100%, will be charged, so as to increase the total costs on the Claimant's side (and assuming no change in the estimate), to some £930,000 (without allowing any success-fee for Counsel);
 - (b) That the Claimant will be unable to meet an award of costs against her.
 - (2) There is thus a huge disproportion between:
 - (a) The value of the largest possible award and the costs of obtaining such an award; and
 - (b) The risk to the Claimant and the risk to the Defendants.
 - (3) The disproportion in risk forces the Defendants to consider an immediate compromise amounting to a surrender, rather than seeking to defend the action.
 - (4) To oblige Defendants such as these to remain in that predicament is to countenance an unacceptable threat to their freedom of expression.
 - (5) On the other hand, to set a limit to the costs recoverable by the Claimant would impose a handicap on the Claimant no greater than that imposed on any ordinary, publicly-funded claimant.
 - (6) There is authority for making such an order, and moreover to do so at the earliest possible stage in the action.
 - (7) The Defendants are willing themselves to submit to any limit (including any additional liability) imposed on the Claimant.

17 **Claimant:** for the Claimant, it is contended in essence that:

- (1) The jurisdiction is a novel one, and the application ought to be made to the Judge, not to a Master.
- (2) The onus of proving that the Claimant would be unable to meet an order for costs is on the Defendants, and they have called no evidence to discharge that onus. On the contrary, the offending publications referred to her as a “millionairess”.
- (3) There is no evidence of extravagance in the conduct of the action on the Claimant’s side, which is indispensable if orders of this kind are not to be made in every action involving a conditional-fee agreement.
- (4) The Defendants’ particulars of justification, though admittedly not demurrable, threaten to make the case unwieldy. Until those particulars have been investigated by disclosure and witness-statements, such an order could obstruct a proper investigation.
- (5) The Defendants are impliedly making a comparison between the rates at which they are able to obtain legal assistance and the rate at which it is available to the Claimant, and account ought to be taken of their favoured position in that respect.
- (6) This is a case in which vindication is of the first importance, and in such a case the court will be less likely to take a restrictive view of a claimant’s need to incur costs.
- (7) The authorities show that such orders ought to be granted only in relatively exceptional cases, and the onus is on the applicant to show that the circumstances are such that justice requires such an order, an onus which these applicants have not discharged.

18 **Finding:**

- (1) There is no good reason not to bring the application before a Master.
- (2) The fact of a conditional-fee agreement creates at least a provisional inference that the Claimant is impecunious, and the Claimant has refrained from calling any evidence to the contrary. The reference to the Claimant as a “millionairess” was made more than 2 years ago, and it is obvious and anyway accepted that her circumstances have changed since.
- (3) Extravagance in any subjective sense is not a necessary condition of making such an order, and in any event the matters referred to above make it all too obvious that the Claimant’s approach to costs is extravagant.

- (4) The Defendants' particulars are in opposition to the Claimant's allegations in her Particulars of Claim, so the responsibility for their far-ranging character is the Claimant's.
- (5) Even if the Defendants' estimate of costs were to be doubled, it still would be lower than the Claimant's estimate; but in any event the Defendants rely primarily on the analysis at 16(2) above.
- (6) The need for vindication may well induce a more liberal approach to any assessment of the Claimant's costs, but scarcely an approach so liberal as to ratify costs on this giant scale.
- (7) The circumstances on which the Defendants rely show that this is precisely the kind of case in which an order limiting the costs recoverable by the Claimant is appropriate.
- (8) The application will accordingly be granted.

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