



Neutral Citation Number: [3150] EWHC (QB)

Case No: HQ09X02848

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 December 2009

Before :

THE HONOURABLE MR JUSTICE EADY

Between :

PETER WILLIAMS

Claimant

- and -

MGN LIMITED

Defendant

The Claimant in person (appearing by video link)
Victoria Jolliffe (instructed by **Davenport Lyons**) for the **Defendant**

Hearing date: 19 November 2009

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.

.....
THE HONOURABLE MR JUSTICE EADY

Mr Justice Eady :

1. In this libel action the Defendant, MGN Ltd, applies by way of its application notice dated 29 July of this year for an order that the claim be struck out or, alternatively, for summary judgment.
2. The Claimant, Mr Peter Williams, sues over an article in the *Daily Mirror* published on 3 August 2007. It was primarily about a man called Colin Gunn, described as “the ruthless crime boss whose fondness for extreme violence turned Nottingham into the gun capital of Britain”. The article is headed with the pun “UNDER THE GUNN”. There is also a subsidiary heading, “How one evil man’s rule of terror and killings kept a city in fear for decades”. There is a large full face photograph of Mr Gunn dominating the article and, alongside, a series of other smaller photographs, including one of the Claimant under the caption “The henchmen”.
3. In the body of the text there is a passing reference to the Claimant in the following context:

“Innocent mum Marian Bates was killed at her shop in Arnold in September 2003. Gunn is rumoured to have supplied the fatal weapon.

But Gunn had not authorised the shooting and he was furious at James Brodie, who pulled the trigger. The young lad disappeared the following day.

Brodie’s accomplice, Peter Williams, 18, later confessed to police about the botched jewellery raid: ‘It was set up by Colin Gunn, who funded it’. One of the suspects for Brodie’s disappearance is hitman and Gunn henchman John McSally, 50. He was jailed for life for 35 years earlier this year for the murder of debt collector Patrick Marshall.

Yesterday police revealed that gun crime in Nottingham dropped dramatically after police smashed Gunn’s gang....”

4. As the article records, Ms Bates was murdered during an armed raid on her shop in September 2003. On 21 March 2005, the Claimant was convicted of her murder and of other offences (including conspiracy to rob, having a firearm with intent to commit an indictable offence, and causing grievous bodily harm with intent). He is serving a prison sentence at the moment following upon those convictions. The minimum term was set at 22 years.
5. 18 months after publication of the newspaper article, and several months after the expiry of the primary limitation period, a letter was sent by the Claimant on 9 February 2009, whereby he intimated a claim for libel. Proceedings were subsequently issued in the Durham County Court on 30 April of this year.
6. It is pointed out on the Defendant’s behalf that the particulars of claim do not actually include the words complained of. That may be a breach of the rules, but of itself it

would be capable of cure by amendment. It is assumed, however, that complaint is made of the passage I have cited above together with the photograph caption.

7. It emerges from the particulars of claim that the Claimant's case is that the article led to his being identified as a "grass", or police informer, by fellow prisoners. He also complained of the allegation that he was a henchman of Colin Gunn.
8. On 5 June of this year the proceedings were transferred to the High Court.
9. I understand that the Claimant challenges the accuracy of the article both in respect of the suggestion that he was a "henchman" of Colin Gunn and with regard to the quotation attributed to him. I am not able on the present application to determine the truth or otherwise of the factual allegations about the Claimant. It may seem curious, but that is no part of the application now before me. If the Claimant wishes to challenge the accuracy of the allegation or the quotation, it would be open to him to complain to the Press Complaints Commission that there has been a breach of its code.
10. The application seeks a variety of alternative remedies. First, I am asked to strike out the claim pursuant to CPR 3.4(2)(a) on the basis that there are disclosed no reasonable grounds for bringing the claim. In particular, it is said that in so far as the words convey the meaning that the Claimant is a police informant, that would not be defamatory. As a matter of public policy, it is argued, the allegation would be incapable of a defamatory interpretation.
11. Secondly, I am invited to strike out the claim pursuant to CPR 3.4(2)(b). Ms Jolliffe suggests on the Defendant's behalf that the claim is an abuse of the court's process because of the Claimant's conviction for murder. She says that he has, effectively, no reputation capable of being damaged. Perhaps a better way of putting this part of the case might be to say that the circumstances fall within the principle identified by the Court of Appeal in *Jameel (Yousef) v Dow Jones Inc* [2005] QB 946; that is to say, that these proceedings are an abuse because they cannot serve the legitimate purpose of protecting the Claimant's reputation. If he were to achieve a modest award of damages, it would be out of all proportion to the cost of the proceedings to the Defendant and to the public purse. Furthermore, any potential vindication that could be achieved can be characterised as minimal. As it was put in the judgment of Lord Phillips MR, at 969-970, "the game would not have been worth the candle".
12. Thirdly, reliance is placed on CPR 3.4(2)(c) because of failure to comply with the requirements of CPR 53PD 2.3(1) which requires that any defamatory meaning should be identified in the particulars of claim. Again, however, this defect taken by itself could be cured by amendment.
13. Fourthly, it is suggested that summary judgment should be granted pursuant to CPR 24.2 because there is no real prospect of succeeding, by reason of the expiry of the primary limitation period, and there is no other compelling reason why the case needs to be disposed of at trial.
14. Where a court exercises the jurisdiction contemplated in CPR 53PD 4.1(2), and rules that the words complained of are not capable of bearing any defamatory meaning of the claimant, it may strike out the claim under CPR 3.4 in consequence.

15. It would appear that there are two aspects of the article to be considered in determining whether or not it is capable of bearing a defamatory meaning. These need to be addressed separately. I turn first to the imputation that the Claimant is or was a police informer, which he says has caused great embarrassment to him and to his family.
16. Ms Jolliffe submits that if words only damage a claimant's reputation in the eyes of "the criminal fraternity", that is not sufficient to establish a cause of action. An allegation needs to lower the relevant claimant in the eyes of right-thinking people generally: see e.g. *Gatley on Libel and Slander* (11th edn) at para 2.14.
17. My attention was drawn to the Court of Appeal's decision in *Byrne v Deane* [1937] 1 KB 818, 832-833, where Slesser LJ ruled as follows:

"Now, in my view, to say or to allege of a man – and for this purpose, as my Lord has said, it does not matter whether the allegation is true or is not true – that he has reported certain acts, wrongful in law, to the police, cannot possibly be said to be defamatory of him in the minds of the general public.

We have to consider in this connection the arbitrium boni, the view which would be taken by the ordinary good and worthy subject of the King, and I have assigned to myself no other criterion than what a good and worthy subject of the King would think of some person of whom it had been said that he had put the law into motion against wrongdoers, in considering that such a good and worthy subject would not consider such an allegation in itself to be defamatory."

Reference was then made to an earlier decision in Ireland in *Mawe v Pigott* (1869) Ir. R. 4 C.L. 54, 62. It was there observed by Lawson J that:

"The very circumstances which will make a person be regarded with disfavour by the criminal classes will raise his character in the estimation of right-thinking men. We can only regard the estimation in which a man is held by society generally."

18. In the light of these statements of the law, it seems to me to be plain, as Ms Jolliffe suggests, that at least in the present context the allegation of being a "grass" is to be regarded, as a matter of public policy, as being incapable of bearing a defamatory meaning.
19. I turn next to deal with the allegation to the effect that the Claimant was a "henchman" of Colin Gunn, as alleged in the caption to the photograph.
20. It is argued on the Defendant's behalf that there would be no point in granting the Claimant an adjournment or further opportunity to plead his case, so as to identify the words complained of and/or the defamatory meaning relied upon, since any such claim would constitute an abuse of process. It is said that, in accordance with the principles identified by the Court of Appeal in the *Jameel* case, it would be impossible for the Claimant to demonstrate that a "real and substantial tort" had been

committed. It would accordingly be regarded as disproportionate, unjust and contrary to the overriding objective of CPR 1.1 to put the publisher to the cost of defending the claim. At [54] Lord Phillips MR made the following comment, which is of general significance:

“An abuse of process is of concern not merely to the parties but to the court. It is no longer the role of the court simply to provide a level playing field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements for justice.”

He continued at [55] as follows:

“There have been two recent developments which have rendered the court more ready to entertain a submission that pursuit of a libel action is an abuse of process. The first is the introduction of the new Civil Procedure Rules. Pursuit of the overriding objective requires an approach by the court to litigation that is both more flexible and more proactive. The second is the coming into effect of the Human Rights Act 1998. Section 6 requires the court, as a public authority, to administer the law in a manner which is compatible with Convention rights, in so far as it is possible to do so. Keeping a proper balance between the article 10 right of freedom of expression and the protection of individual reputation must, so it seems to us, require the court to bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the claimant’s reputation, which includes compensating the claimant only if that reputation has been unlawfully damaged.”

21. A little later, at [69], the Master of the Rolls addressed the possibility of theoretical vindication:

“If the claimant succeeds in this action and is awarded a small amount of damages, it can perhaps be said that he will have achieved vindication for the damage done to his reputation in this country, but both the damage and the vindication will be minimal. The cost of the exercise will have been out of all proportion to what has been achieved. The game will not merely not have been worth the candle, it will not have been worth the wick.”

22. The abuse of process doctrine has not been used very much in libel cases, at least successfully, but a recent example is to be found in the judgment of Tugendhat J in *Lonzim Plc & others v Sprague* [2009] EWHC 2838 (QB). Having considered the Court of Appeal’s decision in *Jameel*, he went on to strike out the claim, holding that there was no evidence of any substantial tort committed within the jurisdiction. He observed at [34]:

“It is the duty of the court to bring to an end proceedings that are not serving the legitimate purpose of defamation proceedings, which is to protect the claimant’s reputation. I have no hesitation in categorising this part of the claim as an abuse of the process of the court. The claim is vexatious.”

He also took into account, at [31], the fact that the opinions of any of the alleged publishees would be unlikely to be influenced one way or the other by any verdict to be given by a jury or a judge. Any damages could in the circumstances only be very small. They would be totally disproportionate to the very high costs that any libel action involves. The judge added, at [33], that the fact of being sued at all is a serious interference with freedom of expression. In the light of the modern jurisprudence following the enactment of the Human Rights Act 1998, that is clearly an important consideration for the court to have in mind on any abuse application. It is one that is closely linked to Ms Jolliffe’s submission that the Defendant would be likely to incur very substantial costs in mounting a defence and that it would be most unlikely ever to recover them in the event of success.

23. I have come to the conclusion that this is one of those cases where it is right for the court to rule, having regard to the Claimant’s background and serious criminal convictions, that it would be inappropriate to regard the article in the *Daily Mirror* and its references to him as constituting a “real and substantial tort”. I would, therefore, uphold the application based on abuse.
24. Nevertheless, I go on to consider the alternative argument based upon limitation. The claim was clearly brought out of time and, for reasons that have already been developed in the context of abuse of process, there is no reason why the court would exercise its powers under s.32A of the Limitation Act 1980 (as amended) for the purpose of disapplying the limitation period. In any event, no such application has been made.
25. In all the circumstances, it seems to me right to exercise the jurisdiction under CPR 3.4 and to strike out the claim.