

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Thursday, 23 January 2014

BEFORE:

MASTER EASTMAN

BETWEEN:

REYNOLDS

Claimant

- and -

BOVEY

Defendant

(Representation not supplied)

Approved Judgment

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(Official Shorthand Writers to the Court)

Thursday, 23 January 2014

J U D G M E N T

MASTER EASTMAN:

1. This is an application brought by the defendant to this action to strike out the claim on the grounds that it is said that the claimant's statement of case is fundamentally defective and fails to comply with the provisions of the CPR and the pleadings rules for defamation claims.
2. The background is that both the claimant and the defendant are, as I understand it, cannabis reform campaigners in their own way and have a history of being part of the same organisation, but (for want of a better expression) have fallen out and gone their separate ways, albeit still espousing the same common cause. There has been a measure of internet exchange about them and particularly about Mr Reynolds, the claimant, who claims that he has been defamed on the internet by Mr Bovey, and he has issued a claim form to that effect on 21 January 2013. A defence was filed on 8 March 2013 and a reply to that by the claimant on 1 July 2013. The defendant also put in Part 18 requests for further information, which were responded to by the claimant.
3. From the outset, the defendant has indicated to the claimant, by the pleading of his defence and subsequent correspondence through solicitors, that he considers that the claimant's pleading of his claim is technically inadequate and deficient, and have invited him to amend his claim. He has not done so. He has not made any application to be heard by me to that effect. He has not produced an amended claim form or particulars of claim, and the best that can be said is that at today's hearing he has offered to seek to amend his claim if the court orders it.
4. The claimant is a litigant in person. The defendant has solicitors and counsel acting for him. I have to approach this situation with a measure of care, because it is arguable on one side that the claimant is disadvantaged by not having the benefit of professional advice and, therefore, some would say, needs to be given a measure more latitude than a person who is legally advised. Against that, if a person who is a claimant does not have legal representation, then the person defending the claim is potentially put to greater difficulty and expense in answering the claim, because they may be required to spend more time and effort dealing with an improperly constituted or an inadequately constituted claim and pleadings.
5. Defamation is a particularly difficult area in that regard, because it attracts litigants in person, on the one hand, but, on the other hand, the pleading of defamation cases is a more precise and technical art than many other areas of the law. Tugendhat J, the judge in charge of the Jury Lists and the judge at first instance with more experience than any other currently serving in the area of defamation, considered this situation in the case of O'Dwyer v ITV plc, and he made some observations in a postscript to his judgment in that case about the way in which the court should approach these matters. They effectively refer to the counterbalancing exercise, which I have already referred to, but in conclusion he said that if there are

issues and difficulties and technical issues, particularly bearing in mind that one person is bearing legal costs in dealing with a claim, and it may be that the other would not be in a position to pay costs if they are awarded against him anyway, and the job has been made more difficult by the inadequacy of the work of the unlegally assisted party, it is important for the court to grasp the nettle, if there is a nettle to be grasped, and resolve things as soon as possible.

6. I also take into account that which has taken place in the management of litigation in this court by way of change since the Jackson Reforms in April of this year, whereby the court is required to take, broadly, a firmer line with the way in which cases are managed and prepared, and to be slow to grant relief to any party who is running a case defectively, either by the way in which, for example, they do their pleadings, or the way in which they apply themselves to time limits imposed by the court. In the recent case of Mitchell v Associated Newspapers the Court of Appeal made it very clear that the court should be slow to indulge people unless that which was being sought was trivial. I have all of those factors in mind when considering what I should do in this case.
7. At the heart of the criticism brought by the defendant to Mr Reynolds' pleading is the inadequacy, as it is said, of the way in which he pleads the fundamental element of any defamation claim, namely publication. It is trite law that in any claim for defamation, a claimant must plead properly the identity of the person or persons to whom the material was published and how. In his particulars of claim, Mr Reynolds does not descend to any greater detail than to say, for the most part, in respect of most of the publications, barring the one email as between himself and the defendant, what he says about them is that they were on (depending on the particular case) Facebook, or You Tube, or the Worldwide Weed Website, but says no more than that. When in the defence a point is made that the pleading must go further than that and identify the persons to whom the material was published, the only response to that that the claimant gives is, and I use these immediate examples, to "All 32 million users of Facebook", or "All 26.35 million users of You Tube", or "52.7 million users of the internet". It is argued that that is defective. I agree.
8. The burden of establishing publication is on the claimant. The requirement, as set out in Gatley on Libel and Slander, is that unless there are good grounds for variance, the particulars of claim should allege in respect of each publication relied on as a cause of action that the words were published by the defendant on a specific occasion to a named person or persons other than the claimant. The claimant is not entitled to try and assert a presumption that there has been substantial publication. That is the gist of the Al Amoudi v Brisard case, to which both parties have referred. Therefore, the pleading requirement is that the claimant should give the identities of the person to whom the words were published and, if that is not possible, he must, at least, plead a platform of facts from which an inference of publication can be drawn. The platform of facts in each case has to be specific to each publication, if he wants to go down that route, and has to set out the number of times the particular page was accessed or downloaded, and/or the names of particular individuals who had in fact downloaded it or seen it. In argument before me today, Mr Reynolds says that he has witnesses who can say

they saw these things. That is all very well and good, but I am afraid it does not do him any good, just coming along here today and saying he has witnesses. That is a fundamental part of the pleading, because the defendant has to know precisely what case he is there to meet. The extent of the publication, not just the availability for reception but the actual publication, is a fundamental part of a case, and I accept the submission made by Miss Tagasuki in paragraph 12 of her skeleton argument that, without a proper pleading of publication, the claimant has no viable cause of action. It is fundamental, because the publication dictates the whole basis on which the claimant is entitled to any damages or other remedies which he may or may not be entitled to, and the defendant is entitled to know the scope of the claim they are needing to answer. But that is not the extent of the deficiencies.

9. Another fundamental of pleading defamation cases is the need where that which is complained of does not necessarily contain the name of the claimant, the claimant must make clear in his particulars of claim the basis on which he purports to have been identified as the subject of what is complained of.
10. Both of these points, publication and reference, have been pointed out to the claimant, but to date – and I deal with this matter as it is today and not on any other basis – he has done nothing to remedy that. In respect of other publications, for example Publication 2, namely the image of 3 April 2012 on which the claimant sues over the image and the words, there is a formality where he is required to set out the words complained of verbatim – Gatley at paragraph 26.11 makes this clear – and if he sues over the words he must plead the meaning which he says they naturally bear. The claimant has not done that. The point has been made to him in the defence, but again there is no application to rectify.
11. I am asked to strike out paragraph 7 of the particulars of claim, because it is said that it is not a necessary part of the cause of the action. I do not think that that is Miss Tagasuki's best point.
12. Another example of the inadequacies of the pleadings in this case is at paragraphs 9(d) and 10(d) of the particulars of claim, where the claimant says that the words complained of include hyperlinks to other websites “which contain a large quantity of further defamatory material of a similar nature and meaning about the claimant”. It is argued, and I agree, that this is not a permissible form of pleading. It does not make it clear whether the claimant is seeking to sue for the material on other websites. It does not say precisely which words are complained of, what their natural and ordinary meanings are, or indeed the identities of who is said to have read them. Pleading in defamation cases is not like firing a shotgun and spreading pellets all over the place. It is much more like target shooting – precisely aimed and focused. Again, these points have been made in the defence, but nothing done about them.
13. Putting all of this together, I am satisfied that the particulars of claim in this case are sufficiently technically deficient that the action should be struck out. Mr Reynolds, in argument, asks for my indulgence, and asks that I allow him to make amendments if I consider that amendments are appropriate, but, as I said at the

outset of this judgment, too late effectively. The deficiencies in the claim have been pointed out to me for a very, very long time, and he has made no application to do anything about it. As I observed at the beginning of this hearing, pleading in defamation cases is a minefield for the amateur. I am afraid that Mr Reynolds has not got through the minefield, and I think, following the spirit of what Tugendhat J said in O'Dwyer, in all of the circumstances the right and proper thing for me to do is to put an end to this action here and now, and to strike it out, and I so do.
