



Neutral Citation Number: [2015] EWHC 3550 (QB)

Case No: HQ15D03843

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/12/2015

Before :

THE HONOURABLE MR JUSTICE DINGEMANS

Between :

Niall Horan	<u>Claimant</u>
- and -	
Express Newspapers	<u>Defendant</u>

Jacob Dean (instructed by **Lee & Thompson LLP**) for the **Claimant**
Christina Michalos (instructed by **Express Newspapers**) for the **Defendant**

Hearing date: 4 December 2015

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 DINGEMANS

Mr Justice Dingemans :

Introduction

1. This is a libel claim brought by Niall Horan, a member of the boyband One Direction, in respect of articles published: (1) on pages 1 and 5 of the Daily Star dated 21st July 2015; (2) on the Daily Star website from 21st to 29th July 2015; and (3) on what was described as the Daily Star YouTube channel.
2. Mr Horan claims that the articles were defamatory of him because, either in their natural and ordinary meaning or by way of true innuendo, “*the articles meant and were understood to mean that during an evening spent with Justin Bieber and Cody Simpson the Claimant had used hard drugs, namely crystal meth or crack*”.
3. Express Newspapers (“the Express”) says that the articles do not bear the meaning alleged or any meaning defamatory of Mr Horan.

The application

4. It is in these circumstances that the Express brings this application pursuant to CPR Part 53 PD 4.1(1) seeking: a ruling that the article is not capable of bearing the meaning pleaded at paragraph 8 of the Particulars of Claim and that the articles do not bear any meaning defamatory of the Claimant.
5. I should note that because this application is made pursuant to CPR Part 53 PD 4.1(1), this is an application about whether the words are *capable* of bearing a defamatory meaning. This is not the hearing of a preliminary issue for a determination as to the *actual* meaning of the words.
6. Applications about whether words were “*capable*” of bearing defamatory meanings were important where trials took place with juries, because if the words were not capable of bearing the defamatory meaning pleaded or any meaning defamatory of the Claimant, the claim could be struck out. However, as Sharp LJ pointed out in *Rufus v Elliott* [2015] EWCA Civ 121; [2015] EMLR 17 at paragraph 28 now that the presumption of a jury trial has been removed by section 11 of the Act 2013 (“the 2013 Act”) the need for such applications has effectively fallen away, and there are many obvious advantages in determining the actual meaning of the published words and any issues about section 1 of the 2013 Act and “*serious harm*” as preliminary issues and at the same time.
7. These points were made by Mr Horan’s legal representatives to the Express by letter dated 22nd October 2015. It is fair to say that the letter referred to the application in terms which were hardly likely to encourage co-operation between the parties, but the Express replied simply by stating that the application would proceed and did not engage in any discussion about the matter. This was an unhelpful approach, and contrary to the requirements set out in the CPR Part 1 which direct both parties to “*help the Court to further the overriding objective*”, see CPR Part 1.3, where the “*Court must further the overriding objective by actively managing cases*”. Active case management includes at CPR Part 1.4(2)(a) “*encouraging the parties to co-operate with each other in the conduct of the proceedings*”.

8. In the Skeleton Argument on behalf of the Defendant it was noted that “*the Claimant has taken various technical objections to the form of the application in correspondence*”. In my judgment the objections were not technical, they went to the substance of what application was being made, and engaged issues about whether a preliminary issue with evidence and disclosure would be ordered. The Defendant’s Skeleton Argument continued that “*this application should be treated as a preliminary issue meaning/serious harm application*”. This was not appropriate in circumstances where the Claimant had not had any opportunity to adduce evidence relevant to the preliminary issues. In these circumstances this application remained a capability application only. As such my task is to “*pre-empt perversity*”, see *Rufus v Elliott* at paragraph 8, and I am not entitled to determine actual meaning or any issues under section 1 of the 2013 Act.

The context

9. In the Particulars of Claim, which at this stage are assumed to be true, it is pleaded that “*Breaking Bad*”, to which reference is made in the articles, is “*a television series centred around the manufacture and sale of crystal meth, and that crystal meth is a hard drug with seriously dangerous, destructive and addictive qualities*”.

The articles

10. The newspaper article was published on page 1 with a headline “**ID NEW DRUG STORM**” over the whole of the front page showing a picture of Mr Horan with Justin Bieber. At the top of the page inset in a box was “*Just Chillin’ Niall, right, and Bieber, centre, with glass pipe on table*”.

11. The text on page 1 was

“One Direction star Niall Horan and pal Justin Bieber are pictured alongside a Breaking Bad-style drugs pipe. They were filmed as the suspicious glass object lay on a table. It is the latest drug claim to hit 1D”. It was stated “Full Story: Page 5”.

12. On page 5 the headline over an enlarged photo from page 1 showing a glass pipe ringed in the photograph was “**NIALL & JUSTIN ENJOY THE CRAIC**”. The article was then set under a smaller headline “**But what’s that stuff in the pipe then lads?**”. The article went on:

One Direction’s Niall Horan and Justin Bieber have been filmed alongside a Breaking Bad-style drugs pipe.

The pop hunks were hanging out in Los Angeles when they were caught on camera with the suspicious glass object on a table nearby.

Niall is staring blankly in the footage while pal Bieber sings along to his friend Cody Simpson’s guitar.

The yellow pipe, commonly used to smoke cannabis, crystal meth and crack, can be clearly seen on the coffee table with a lighter and bottles of water.

Other items are too small to identify in the 10 second clip from 18-year old Aussie singer Cody's snapchat account.

Last night the images sparked rumours the singers were using hard drugs, although there is no suggestion that this is the case.

A One Directioner wrote on Twitter: "I trusted you Niall how could you hurt me like this. I'm literally paying for his drugs".

Others accused Bieber of dragging Irishman Niall into his party lifestyle.

One wrote, "Don't start smoking and doing drugs now because you're part of Justin's squad. PLEASE STAY INNOCENT".

Another added "Niall is hanging out with Justin. Please don't get into drugs Niall.

Niall had earlier met up with footballer Steven Gerrard, 35, for a round of golf to celebrate his goalscoring debut for LA Galaxy.

Cody has been accused of smoking weed in the past after posting a photo of what appeared to be a box of rolled joints on Instagram. A spokesman for One Direction refused to comment last night".

There was then a photograph of a glass pipe, set to the right of the main photograph showing Mr Horan and the pipe on the table with the inset comment "*DODGY A pipe similar to the one ringed on the table left*".

13. The online article on the website showed the same photograph above a headline "**ID Niall Horan and Justin Bieber in drug puzzle over Breaking Bad - style pipe**". It was next to the Daily Star sign and it was said to be published "21 July 2015". There was a sub heading "**The pop hunks were hanging out in Los Angeles together when they were caught on camera with the suspicious glass object on a table nearby**".
14. The article then continued in terms which were similar to the edition published in hard copy, but with underlined parts added:

The pop hunks were hanging out in Los Angeles when they were caught on camera with the suspicious glass object on a table nearby.

Niall is staring blankly into the distance while pal Bieber sings along to his friend Cody Simpson's guitar.

The yellow pipe, commonly used to smoke cannabis, crystal meth and crack, can be clearly seen on the coffee table with a lighter and bottles of water and the TV remote.

Other items on the grubby-looking table are too small to identify in the 10 second clip from 18-year old Aussie singer Cody's snapchat account.

Last night the images sparked rumours the singers were using hard drugs - although there is no suggestion that this is the case.

One horrified Directioner wrote on Twitter: “I trusted you Niall how could you hurt me like this. I’m literally paying for his drugs!!!”.

Others accused Bieber of dragging Irishman Niall into his party lifestyle.

One wrote, “Don’t start smoking and doing drugs now because you’re part of Justin’s squad. PLEASE STAY INNOCENT”.

Another added “Niall is hanging out with Justin. Please don’t get into drugs Niall Niall had earlier met up with footballer Steven Gerrard, 35, for a round of golf to celebrate his goalscoring debut for LA Galaxy.

He posed for a picture at the exclusive Hillcrest Country Club before meeting up with the other two boys.

Bieber got to know 18 year old Cody when they worked on single Home To Mama together – a tribute to the Aussie’s supermodel ex Gigi Hadid, 20.

Cody has been accused of smoking weed in the past after posting a photo of what appeared to be a box of rolled joints on Instagram.

Niall’s 1D bandmate Louis Tomlinson, 23, and Zayn Malik, 22, have also been caught up in drugs accusations in the past.

The pair were filmed smoking a suspicious-looking roll-up and joking about marijuana while on tour in Peru last May, a year before Zayn controversially quit the band.

Justin is no stranger to the drugs scandal, after claims his LA mansion was found littered with cannabis during a police search in January last year.

Three bongs and cookie jars filled with weed were allegedly found in the raid to investigate an egg-throwing incident at a neighbour’s house.

But police were allegedly powerless to act on the find after exceeding the terms of their search warrant.

A spokesman for One Direction refused to comment last night.”

15. The online article was also published on a YouTube channel, and it is alleged that publication was also by the Express. There was a late suggestion in correspondence that this was not a channel operated by the Express, but I cannot resolve this, or any subsequent issues about liability for republication, without evidence.

Applicable legal principles

16. The principles to be applied on applications of this nature are well-established. They were summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited [2008] EWCA Civ 130* at [14]:

"The legal principles relevant to meaning ... may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the product of some strained, or forced, or utterly unreasonable interpretation ...' (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense.'"

17. The submissions before me raised the issue of "bane and antidote". This simply means that in reading the article as a whole if a "stain" is removed in another part of the publication, the bane and antidote must be taken together when considering whether the article is defamatory, see *Cruise v Express Newspapers* [1999] QB 931 at 939. Whether the antidote has removed the bane is very much a matter of impression. In *Cruise* it was suggested that it would be rare that the antidote removed the bane, and reference was made to cases in which the bane had been destroyed by the contents of the article. There is no rule of law to the effect that antidote can never remove the bane, and there is no rule of law to the effect that an antidote will always remove the bane. It is a matter for the hypothetical reasonable reader.
18. The submissions before me also raised the repetition rule. This provides that reporting matters such as there were "rumours the singers were using hard drugs" cannot be defended by showing that there were rumours to the effect reported. It is necessary to prove the truth of the underlying statement, namely that the singers were using hard drugs.
19. There are a number of well-known definitions of the legal meaning of the word "defamatory" in the common law. Sir Thomas Bingham MR in *Skuse v Granada Television Limited* [1996] EMLR 278 at 286 said:

"A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally."
20. It follows that it is not enough that the words should damage the Claimant in the eyes of a section of the public only, see *Modi v Clarke* [2011] EWCA Civ 937. Moreover, it is not in dispute that to be counted as defamatory at common law (quite apart from

the effect of the Defamation Act 2013) an allegation must pass a certain threshold of seriousness: *Thornton v Telegraph Media* [2010] EWHC; 1414 (QB); [2010] EMLR 25 at paragraph 16.

21. The submissions before me raised issues about whether the articles were capable of sustaining the meaning that Mr Horan had actually committed the act and used hard drugs, which is sometimes referred to as a *Chase* level 1 meaning. This is taken from *Chase v News Group Newspapers* [2003] EMLR 11 at paragraphs 45 and 46. A *Chase* level 2 meaning is that there are “reasonable grounds to suspect” that Mr Horan used hard drugs, and a *Chase* level 3 meaning is that there are “reasonable grounds to investigate” that Mr Horan used hard drugs.

The articles are capable of bearing a defamatory meaning

22. In my judgment the article in the Daily Star is capable of bearing the meaning that during an evening spent with Justin Bieber and Cody Simpson Mr Horan had used hard drugs, namely crystal meth or crack.
23. I do not consider that this is a meaning which could only be attributed by an unduly suspicious reader or by a reader who is ignoring the antidote. I make this finding because the banner headline was “*new drug storm*” and there was extensive reference to a “*Breaking bad-style drugs pipe*”, and Breaking Bad was a television series centred around the manufacture and sale of crystal meth, which is a hard drug. The article reported that Mr Horan was “*staring blankly*”. There was express reference to “*rumours the singers were using hard drugs*”, and someone had reported that that person was “*literally paying for his drugs*”. The antidote that “*there is no suggestion that this is the case*” and reported requests that Mr Horan should not get into drugs (which at least carry the implication that Mr Horan was not then currently into them), are proper matters to consider when the actual meaning of the article is determined, but in my judgment they are capable of not having removed the bane of the matters set out above, particularly in circumstances where the report included the comment that someone was “*literally paying for his drugs*”.
24. The fact that the article is capable of bearing the meaning that Mr Horan was using hard drugs being either crystal meth or crack is supported by the facts that: the pipe was described as a Breaking Bad style drugs pipe, and Breaking Bad involved crystal meth; the pipe is said to be commonly used to smoke cannabis, crystal meth and crack; cannabis is a soft drug; and the rumours were that the singers were using hard drugs. I accept that there is reference to cannabis in the article, but this is a reference to Cody and not to Mr Horan.
25. In my judgment the same meaning is capable of attaching to the online articles. Ms Michalos was able to point to the fact that the online article was headed by reference to a drugs puzzle, and there were more references to cannabis in that article, but all the features set out in paragraph 23, apart from the heading “Drugs storm” are present.
26. It is common ground that the meaning set out in paragraph 22 above is capable of being defamatory of Mr Horan.
27. In my judgment the articles are also capable of bearing *Chase* level 2 and 3 meanings, namely that there are reasonable grounds to suspect that Mr Horan used hard drugs,

and reasonable grounds to investigate whether Mr Horan used hard drugs, which meanings are capable of being defamatory of Mr Horan.

Conclusion

28. For these reasons I find that the statement is capable of having the meaning attributed to it in the Particulars of Claim, and that the statement is capable of being defamatory of the Claimant. I will therefore dismiss the application. I am very grateful to both Ms Michalos and Mr Dean for their helpful submissions.