

Neutral Citation Number: [2013] EWHC 462 (QB)

Case No. HQ12D03227

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

Royal Courts of Justice
Strand
London
WC2A 2LL

17 January 2013

Before:
HIS HONOUR JUDGE MOLONEY QC
(Sitting as a Judge of the High Court)

Dilber Hussein and 2 Others **Claimants**
and
Hamilton Franks & Co Limited and Another **Defendants**

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No appearance or representation for the **Respondents**

HTML VERSION OF JUDGMENT

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JUDGE MOLONEY QC:

1. This is my judgment on an application in a libel action for default judgment and for relief in the form of injunction and damages.
2. The claim is brought by three members of the Hussein family. Dilber Hussein. Amtul Hussein and their son Omar Hussein, against an English company. Hamilton Franks and Co Ltd, and its managing director Mr Graham Bennetti.
3. The background is as follows. The parents. Dilber and Amtul Hussein, are both medical doctors. It appears from the evidence before me that they are members of the Kenyan Asian community who in the 1960's or 70's came to this country, studied as medical students in England and then went in about 1979 to the United States of America, where they have lived and practised as doctors ever since. They have, however, retained their UK nationality and passports.
4. The third claimant Mr Omar Hussein, their son, is a man aged 36, who though born and brought up and educated in America also retains British nationality as a result of his parentage and is entitled to a British passport though he may not have a current British passport at present.
5. The parents and the son retain, as is common among people of their background, substantial connections with close members of their family who are settled in the United Kingdom, specifically in England and Wales. The parents also have connections amongst former university friends now practicing medicine in this country.

6. Omar's connections of that sort are somewhat less, though of course he shares the family connections. He is something of an international businessman or at any rate aspires to be an international businessman: he is interested in working in this country and has various friends and connections in well known City firms in London with whom he deals from time to time. They know him and might consider him for a job or recommend him for a job in this country.
7. I recite those matters in order to show how, though the claimants are essentially now Americans, they retain sufficient connections with this country that it may be said that they have a reputation here and would be likely to suffer damage from defamatory publications in this jurisdiction.
8. The defendants, as I have said, are British. The defendant company is a UK registered company and so far as I am aware its principal Mr Bennetti is a British citizen. He has certainly long been a resident in this country.
9. The action relates to publications by Hamilton Franks and Co on their website, for which it is said Mr Bennetti as principal and managing director is also responsible. I have myself searched for that company's website today, following the indications given in the claimants' evidence, and I can say this; that Hamilton Franks and Co maintains to this day a substantial, well presented website (featuring the Union Jack) and that website relates to that company's dealings in international trade.
10. Unusually, a very prominent feature of the website is something called a "blacklist". The blacklist features on the home page with, as it were, headlines, drawing people's attention to the blacklist and the latest people to have been entered on the blacklist. Then of course there is a link to that section within the website, where the blacklist is set out in more detail, and those unfortunate enough to be on it are dealt with.
11. The entry with which this case is particularly concerned is still there, and one can read it simply by searching on Google for the name of Dilber Hussein and the name of the family's American company D and Am Corporation, whereupon instantly Google takes one to the blacklist entry of that person and that company on the defendants' website.
12. The particulars of claim describe how, on or about 15th February 2012, the defendants published on the website blacklist the words complained of. The words complained of are very extensive and they should be annexed to this judgment but they run to several pages. I shall quote now some of the more salient passages in order to indicate their nature.
13. First there is an introductory paragraph which says that:

"Occasionally we come upon organisations who seek to pass themselves off as capable of executing contracts when in fact they cannot do so, which is not acceptable to us by any means. Our purpose is to continue to build our client base and therefore we are open to discussion on transactions. However we require straightforward information on your status, we welcome enquiries from brokers and traders but cannot accept those falsely claiming to be such ".
14. It goes on:

"12 banking groups worldwide use our website for their own DD and credit scoring".

"We list below organisations who have misled us regarding their role or capabilities. Our blacklist provides vital and detailed information regarding these undesirable and dubious clients ".
15. Then under the specific name of D and Am Corporation and under the specific names of Dilber, Omar and Amtul Hussein the following entry appears. It identifies each of the three claimants by their name, their date of birth, and their email addresses and their residential addresses in the United States. It then describes a business transaction entered into by Omar Hussein on behalf of the company, of which his two parents are described as directors and gives a history of that, which it characterises as follows: "So basically fraud, we have been deceived from the outset with lies, there were attempts to gain goods and products by deception, it is fraud without a doubt.

"We have also been informed by Omar Hussein that their attorneys will be in touch. This is highly unlikely as they have attempted fraud. These individuals are pathetic

beyond belief. We are now in the process of contacting business authorities in the UAE as to this fraud.

"You be the judge on who is conducting fraud We also have now contacted the medical bodies boards within the USA as to the conduct of these two doctors, in our opinion avoid these fraudsters as all they will do is waste your time money and efforts all to no avail. Full evidence with our office ".

16. Now suffice it to say that those words are plainly and unequivocally words of the most highly defamatory and damaging nature. As a result of the publication of those words the claimants first issued a defamation protocol letter, which the defendants referred to a firm of English solicitors, though no substantive response was received.
17. They then commenced the present action. They served it upon the company at its registered address at Companies House. They served it upon the second defendant at the same address, which under the Companies Act is given as his address for personal service, and at a residential address in Wisbech which he had declared, some years previously as his personal address, which was therefore his last known personal address for service. I have seen proof of service in the form of an affidavit by their solicitors. In addition they emailed the proceedings to the company and received a somewhat puzzling reply saying that it could not be opened and that the company was off to Scotland but would not disclose where in Scotland it was going. Then they heard again from the firm of solicitors who said that they were acting. I do not think they formally said they were instructed to accept service but they said they were instructed to act for the defendants. They received the documents and said that they would serve a defence and counterclaim within 28 days.
18. I am therefore in no doubt whatsoever that all the proper steps were taken to serve proceedings upon the defendants and that good service of the proceedings has been effected. Having said that, no acknowledgement of service, let alone any defence or counterclaim has ever been received.
19. The claimants at first applied to a Master for a default judgment under what I might call the ordinary procedure, but upon their discovering that that was inappropriate in a claim of the present kind where injunctive relief is important, they withdrew that default judgment as the rules of practice permit them to do, and they renewed the application before me, sitting as a High Court Judge with the power (unlike a Master) to grant final injunctive relief and other non-monetary relief following default..
20. It is clear to me from the foregoing history that the claimants are entitled to a default judgment under CPR Part 12 in default of acknowledgement of service, and indeed in default of defence. We then turn to the question of what reliefs the claimants are entitled to.
21. I shall start with injunctive relief. For this purpose, as for the purpose of assessing damages, it is necessary first to remind myself and to bear in mind so far as it may be relevant that the claimants are Americans. In terms of having lived there and worked there for very many years, the weight of their life is in the USA. But this action is not for publications made in America, nor is it to restrain publication in America (That would very likely not be allowed or enforced under the strong American laws in relation to freedom of speech, though one wonders if even in America a case of this kind might not attract some remedy.) I have to bear that factor in mind in considering what remedy it is just to grant, focussing only on what steps it is necessary and proportionate for me to take to protect the claimants against further libels published in this country.
22. I also remind myself of the need to satisfy myself as to the defamatory meaning and for this purpose I accept without difficulty the defamatory meaning put forward in the particulars of claim which is as follows;

"The claimants had all committed acts of fraud by being involved in the attempted purchase of goods by deception consequently the claimants were such thoroughly disreputable individuals that they were unsafe to do business with and the first and second claimants acts of fraud and dishonesty were so serious that they warranted an investigation by their relevant professional medical regulators' authorities in the United States of America".

23. I have no difficulty in accepting those as proper and reasonable defamatory meanings, which any reasonable person in this country reading the words complained of would attach to those words. The words would plainly have a damaging effect on the reputation of each of the personal claimants in the readers' eyes.
24. So far as injunctive relief goes, though the claimants may substantially be Americans. I have already indicated that there is also plenty of evidence that they have family, and in Omar Hussein's case business contacts, in this country. Their witnesses' statements list some 20 people resident in this country who have read the words complained of, the majority of them spontaneously. In one or two cases, as is not uncommon, people have read the words because they had heard in some way from the claimants about the libel; but the majority of them were people whom the claimants did not want to know about any of these allegations and they were distressed to find that people in this country, in the older claimants' case friends and family, in Mr Omar Hussein's case business people, had found out about this and contacted them, asking in effect what had they been up to, what was going on?
25. The claimants may be Americans, though with substantial contacts in this country: but the defendants are British. Specifically the company is registered in England and Wales and its director is apparently resident or formerly resident so far as anyone knows, in England and Wales. They operate the company and the website within this jurisdiction. Only by granting an injunction against them here can effective redress be obtained against the further publication of these allegations on the internet in this country. That would admittedly have the collateral effect of restricting their ability to publish in other countries. This is a point to be taken into account in the exercise of my injunctive discretion, but not a point to which I give any great weight in the present case, given as I say that they are themselves domiciled in England and Wales and also given, to be frank, the extraordinary nature of this website which appears to devote more attention to defaming other people than to promoting the purported business of the company.
26. (I note Mr Omar Hussein saying in his evidence that he was in effect blackmailed by the company, which asked him for money in return for the taking down of entries against him, I am not called on to make any finding of that sort, but it is sufficient to say that the character of the website meant that I did not find that allegation surprising when I read it in the evidence.)
27. I also bear in mind the Article 10 rights of free expression of the company, and Mr Bennetti personally, to which I should give all due weight. But it appears to me on the basis of the unchallenged material before me that this is a case in which the reputation rights of the Husseins greatly outweigh the free speech rights of the company and Mr Bennetti so far as these allegations are concerned.
28. At this point I should emphasise something else. It is not necessary for those who bring defamation proceedings to prove that the words are false. It is for those who choose to publish libels to prove if they can that the words are true, or an expression of honest opinion, or otherwise protected by some rule of English law. The defendant company makes much in its website of having ample evidence to support its allegations. It has been given every opportunity to defend itself but it has not done so.
29. Mr Omar Hussein has put before me in evidence his version of events by which he seeks to show that the allegations against him are false. I note for the record that he has done that. It is not necessary for me to make any express finding as to truth or falsity because the defendants have in effect not asked me to. So far as this court is concerned the defendants have had the opportunity, which they stated their intention of pursuing, of proving their words to be true: but they have not taken it. In the circumstances the normal presumption that the words are false applies: and it is not an unrealistic presumption in the circumstances of this case. So far as this court is concerned, unless and until the defendants raise a contrary case, the claimants are people of unblemished reputation and the allegations against them are unequivocally false.
30. Bearing all of the above factors into account and bearing in mind as I have said the conflicting human rights issues which this case raises, it appears to me to be a reasonable and proper exercise of my equitable discretion to grant the injunctive relief sought and I therefore do so. I shall deal later with the precise wording of the injunctive relief but it will substantially be to require the taking down of these words and to prohibit publishing any words of the same or similar effect.

31. I now turn to the question of damages. None of the three claimants has given oral evidence before me, but each has set it out in a witness statement which I am entitled to take into account under the Civil Evidence Act as hearsay evidence. The claimants each depose to the distress and damage which the words complained of have caused to them. They do not however seek from me damages at the highest level. Indeed it would be difficult for them to do so given first of all the fact that they are people the bulk of whose life and reputation is in the United States and secondly that for understandable reasons they have preferred not to come to this country to give their evidence orally.
32. As is well known damages in defamation fulfil the purposes of compensating a person essentially in three ways: for the injury to their reputation within this jurisdiction: for the injury done to their feelings from publication within this jurisdiction: and also as a public declaration or *solatium*, underlined by the amount that the court chooses to award, that the words complained of are false. The damages thus operate by means of their size as the only means available for a court to demonstrate the falsity of the words and to go some way towards restoring the reputation of the claimants.
33. The claimants in this case have limited their claim to £15,000 in total; but the court has jurisdiction to award a larger sum Counsel has cited to me various authorities showing how, for allegations of this degree of gravity against persons resident in this country, sums of the order of £80,000 to £100,000 have from time to time been awarded. I accept that; but for the reasons I have given, in this case the sum that is awarded should be lower than that. Not because the allegations are not of equal gravity but because this jurisdiction though significant to the Claimants is not the main locus of their reputations or of those with whom they mostly deal. It would not be right for me to take into account the complaints which they make in their witness statements about some of the problems they have had in the United States in this regard. They may well be justified complaints: but I am afraid that is a matter for the laws of the United States and not for me.
34. It appears to me however that these allegations are of such severity and the ambit of publication in this country is sufficiently large that on the solatium principle I should make an award which in each case is enough to stand as a clear declaration of vindication in relation to each of them. It appears to me that in modern conditions that sum is as follows: for Dilber Hussein and for Amtul Hussein £10,000 each and for Mr Omar Hussein, who is younger and has more active connections with this country. £20,000.
34. Finally this is a case in which the claimants are plainly entitled to their costs, which I shall summarily assess.

End of Judgment

We hereby certify that this Judgment has been approved by His Honour Judge Moloney QC.

Compril Limited