

High Court refuses application for strike out and summary judgment in libel and malicious falsehood claim (*Ward v Associated Newspapers Ltd*)

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TMT analysis: The court refused to strike out a libel and malicious falsehood claim brought by Mr Michael Ward against Associated Newspapers Ltd (ANL), or to grant summary judgment against him. Nicklin J considered the authorities on collateral attack and abuse of process, and the scope of an earlier criminal trial involving Mr Ward, and concluded that the action was not a collateral attack on Mr Ward's criminal convictions, or the Court of Appeal's refusal of his later appeal. A failure to provide any evidence, beyond those criminal convictions, that Mr Ward's reputation was already so damaged that he had no real prospect of meeting the test under section 1 of the Defamation Act 2013 (DA 2013), and to satisfy the court that Mr Ward had no real prospect of defeating ANL's qualified privilege defence by demonstrating malice, led the judge to refuse to grant summary judgment on the libel claim. The prospect of Mr Ward demonstrating malice, and his provision of a coherent explanation as to how the statement complained of had caused him pecuniary damage, meant that the malicious falsehood action was likewise not a candidate for summary judgment. Written by Luke Browne, barrister, at 5RB.

Ward v Associated Newspapers Ltd and another [\[2020\] EWHC 2797 \(QB\)](#) (5 October 2020)

What are the practical implications of this case?

This is an interesting judgment, involving an application on which, as Nicklin J put it, '[o]n any view, the factual and legal issues raised[...][were] complex'. Nicklin J held that although the statement complained of by Mr Ward engaged allegations regarding journalists' conduct raised by him during his 1995 trial for making a false statement during a Serious Fraud Office interview, and causing the falsification of a document, Mr Ward's convictions of those offences, and his later failed appeal attempt, had not required or involved any determination of whether the allegations he made were true. Therefore, Mr Ward's civil claim, and any investigation of the journalists' conduct that might ensue, did not amount to a collateral attack on his criminal convictions. Insofar as the soundness of those convictions might become relevant, [section 13](#) of the Civil Evidence Act 1968 would in any event act as an impediment to the court being asked to decide that they were wrong.

Regarding ANL's summary judgment applications, Nicklin J's decision suggests that an argument that a claimant with criminal convictions has no reputation left to be seriously harmed will need to be accompanied by evidence beyond the mere fact of those convictions. Defamation practitioners will wish to note the additional importance placed by Nicklin J on the fact that Mr Ward's convictions were spent, and his emphasis on the value and importance of determining meaning as a preliminary issue in defamation claims.

Finally, practitioners will wish to consider the note of caution expressed by the judge regarding abuse strike-out applications on *Jameel* grounds when proceedings are at an early stage, and have not yet reached the conclusion of statements of case.

What was the background?

The claimant, Mr Michael Ward, brought proceedings in libel and malicious falsehood against the defendant, ANL, over a comment it provided for an article published on 5 March 2019 on the Byline.com website (the article).

The article concerned an unsuccessful attempt by Mr Ward to secure permission to bring a judicial review claim challenging the UK government's decision to cancel the second phase of the Leveson Inquiry. The article recounted how Mr Ward, during a hearing the previous month, had alleged that former Mail on Sunday journalists conspired in the 1990s to pervert the course of justice in respect of both a Serious Fraud Office investigation into him and a libel action he had brought against Associated.

At Byline's invitation, ANL, the publisher of the Mail on Sunday, provided a comment on Mr Ward's allegations. The comment formed the final paragraph of the published article:

'A Mail on Sunday spokesman: "Mr Ward's claims were raised and rejected at the trial, some 24 years ago, where he was convicted of financial crimes. They have subsequently been examined and rejected again at the Court of Appeal and by the Criminal Cases Review Commission. There is no merit in Mr Ward's allegations.'"

ANL's comment referenced the fact that Mr Ward had been convicted in 1995, following two different trials, of conspiracy to defraud, theft, making a false or misleading statement, and causing the falsification of a document.

Mr Ward issued proceedings over ANL's comment on 16 October 2019.

ANL subsequently applied for orders, pursuant to [CPR 3.4\(2\)\(a\)](#) and/or (b) and [CPR 24.2](#), striking out Mr Ward's action, and granting summary judgment against him, on six separate bases:

- first, that Mr Ward's claim was a collateral attack on his previous criminal convictions, and on the Court of Appeal's refusal of his subsequent appeal, and should therefore be struck out as an abuse of process
- secondly, that Mr Ward's reputation had already been irreparably harmed by his convictions, such that he had no real prospect of meeting the serious reputational harm threshold under [DA 2013, s 1\(1\)](#)
- third, ANL's comment was protected by reply to attack qualified privilege, and Mr Ward had no real prospect of defeating that defence by demonstrating malice
- fourth, the lack of a real prospect of demonstrating malice meant that malicious falsehood claim lacked an essential ingredient
- fifth, Mr Ward had no real prospect of relying successfully on [section 3\(1\)](#) of the Defamation Act 1952 ([DA 1952](#)) in his malicious falsehood action
- sixth, any remaining parts of Mr Ward's claim should be struck out as a Jameel abuse of process

What did the court decide?

Nicklin J refused to grant any of the orders sought.

First, though the court had not determined the meaning of ANL's comment in the article, it was 'tolerably clear' that it was a response to the allegations Mr Ward had made during his judicial review permission application in February 2019, concerning the alleged conduct of the former Mail on Sunday journalists in the 1990s. The investigation of that conduct which Mr Ward's civil claim might ultimately entail did not amount to an attempt to undermine his criminal convictions, and did not justify being dismissed as an abuse of process. This was because although Mr Ward had

sought to rely on his allegations against the journalists during his second trial in 1995, they had been raised as having a bearing on the credibility of the prosecution witnesses. —Mr Ward’s conviction had not amounted to a determination by the jury that his allegations were false.

Likewise, the Court of Appeal’s decision to refuse Mr Ward permission to appeal did not amount to any adjudication on the merits of his allegations regarding the journalists. The instant case was different from *Amin v Director General of the Security Service* [2015] EWCA (Civ) 653, on which ANL had principally relied, and in which the issues at play in a civil claim had already been decided in a criminal trial.

Second, ANL had not produced any evidence that Mr Ward’s reputation had been so permanently damaged by his criminal convictions that he had no real prospect of showing that ANL’s comment had caused him serious reputational harm and meeting the requirement under [DA 2013, s 1\(1\)](#). The fact that Mr Ward’s convictions were spent was also an important point in his favour.

Third, Nicklin J was not satisfied that Mr Ward had no real prospect of proving malice on ANL’s part. Mr Ward’s pleaded case was on three bases: improper motive, knowledge of falsity, or recklessness as to falsity. Though proving malice in cases such as this was difficult, the evidence provided by ANL regarding the process of providing its comment to Byline ‘raise[d] more questions than it answer[ed]’—further investigation was required. This meant that Mr Ward’s libel claim was not a candidate for summary judgment on the basis that he would be unable to defeat any qualified privilege defence, and that (fourth) his malicious falsehood action was likewise not suitable for summary judgment on the basis that that action would lack an essential ingredient.

Fifth, though Mr Ward had set out his case on special damage in a witness statement rather than his Particulars of Claim, the judge was nevertheless not satisfied that Mr Ward had no real prospect of showing that the publication of ANL’s comment was, in the context of the article, more likely than not to cause him pecuniary damage. ANL’s application in relation to [DA 1952, s 3\(1\)](#) was therefore refused.

Finally, given his finding that Mr Ward had a viable claim for defamation and malicious falsehood, and in the absence of a clear basis on which the court could assess the issues to be resolved in the case, or the likely cost of doing so (and thereby address questions of proportionality), Nicklin J refused to grant ANL’s *Jameel* application.

Case details:

- Court: High Court of Justice, Queen’s Bench Division (Media & Communications List)
- Judge: Mr Justice Nicklin
- Date of judgment: 5 October 2020

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