JULIA MAUREEN CHARLTON — Plaintiff

V

EMAP plc

ALAN BARTER

SEAN ASHCROFT — Defendants

JUDGMENT

In this libel action brought by the Plaintiff, Mrs Maureen Charlton, against three defendants, Emap plc, Mr Barter and Mr Ashcroft, the defendants have paid money into Court which the plaintiff has accepted. The plaintiff now applies to the Judge in Chambers pursuant to RSC O.82 r.5 (1) for leave to make a Statement in Open Court in terms approved by the Judge. The defendants are entitled to be heard as to whether the plaintiff should be granted leave and, if she is granted leave, as to the terms of the Statement. In this case the defendants do not oppose the plaintiff having leave to make a Statement but vigorously oppose the terms proposed by the plaintiff and wish to have included in the statement an explanation of the defendants' reasons for making a very substantial payment into Court.

Mrs Charlton is a dressmaker. She has carried on her business from premises in Gosport, Hampshire, since about 1988. In 1989 the first defendant, Emap plc was the proprietor and publisher

of "Streetlife", a weekly newspaper with a circulation of about 190,000 in Gosport and surrounding areas in Hampshire; Mr Barter was the editor of Streetlife and Mr Ashcroft was a reporter employed on the newspaper. Emap plc are no longer the owners of Streetlife.

Between 15 June and 3 August 1989 the defendants published a series of articles in Streetlife which were highly defamatory of Mrs Charlton personally and of her in her business. Seven articles were complained of in the Writ (which was issued in November 1990) and in the Statement of Claim. The title and first sentence of the first article are typical of the series: "Dossier on rag trade cheat. WE'VE BEEN STITCHED UP ! ". " A CATALOGUE of business chicanery by dressmaker Maureen Charlton reduced brides and their families to despair".

The defamatory meanings ascribed to the articles included meanings that;

- Mrs Charlton is a lying,(thoroughly evil) fraudulent cheat who treats her customers with brutal and venomous contempt (and would stop at nothing - including blackmail) in order to conceal her criminal business dealings at their expense and her total incompetence as a dressmaker;

- Mrs Charlton's grossly abusive and insensitive treatment causes her customers so much untold anguish that one of them has even had to resort to remedial psychiatric treatment;

- when confronted with a specimen of her inept workmanship, Mrs Charlton had unscrupulously blackmailed the dissatisfied customer by threatening her that if she kicked up a fuss Mrs Charlton

would reveal to her newly-wed daughter the fact that the daughter was suffering from multiple sclerosis;

- Mrs Charlton had dishonestly deprived one of her employees of £900, habitually treats her staff and customers like dirt and sought to cow all potential witnesses who might testify against her in court by instructing her solicitors to send them intimidating letters;

- Mrs Charlton's criminal and fraudulent activities at the expense of her customers and staff were now being investigated by the police.

I need not refer to the actual terms of the articles: suffice it to say that in my judgment the articles were certainly capable of being understood by readers to bear the above and other meanings set out in the Statement of Claim.

By their Defence and Re-Amended Particulars of Justification the defendants pleaded justification to each of the articles. Very extensive Particulars of Justification (about 30 pages) and very extensive Further and Better Particulars (about 43 pages) were served in support of this defence. The particulars related principally to about nine dissatisfied customerss of Mrs Charlton, to complaints about her, to her treatment of one of her employees, to intimidating letters sent to customers and to an investigation of complaints against Mrs Charlton by the police. The defendants summarised the allegations which they maintain are true in paragaraph 17 of the Re-amended particulars of justification. I need not refer to this summary because, in substance albeit not in exactly the same words, the defendants

allege that all the meanings of which the plaintiff complains are true.

The particulars of justification were first served in January 1991, were amended in September 1991 and re-amended in May 1992. In August 1991 Mrs Charlton, who acted in person from April 1991, amended the statement of claim to add extensive particulars of special damage relating to cancelled orders amounting, I was informed, to about £176,943,00, as well as claims for general, aggravated and exemplary damages.
The action was ordered to be set down in October 1992 before Judge and Jury with an estimated length of 30 days and was in fact set down by Mrs Charlton on 14 January 1993.

On the hearing of the plaintiff's application an affidavit of Mrs Cassidy,who is a solicitor, was filed on behalf of the defendants. This affidavit had exhibited to it correspondence between the parties and notices of payments into Court. The first offer of compromise was made by the defendants in October 1991. It was pointed out then that the first defendants had sold Streetlife some time ago and were "open to negotiating a reasonable settlement". However it was also said that there might be some difficulty in this course "as both the editor and Mr Ashcroft stand firmly by what was published in the paper".
In this letter Mrs Cassidy said "The way round this problem might be for my clients to make a payment into Court,of the order of £5,000, acceptance of which would entitle you to make a Statement in Open Court". Very properly the letter went on to

explain in detail the provisions of RSC O.22 and O.82 r. 5. Mrs Charlton rejected this offer and stated "I welcome the opportunity of an Action in open Court, where I can demonstrate the true facts and finally clear my name and regain my reputation."

On 20 November 1991 a payment into Court of £15,000 was made on behalf of all the defendants. In a letter of the same date it was pointed out that the payment in was made "entirely for commercial reasons and does not reflect our view of the strength of our clients' case on the merits" and that it was made without admission of liability. The payment in was not accepted.

On 4 September 1992 a payment into Court of a further £15,000 was made. It was stated by letter that "this payment into court is made by our clients entirely for commercial reasons and not because they consider that there is any substance whatever in your claims" and " We are instructed that this is a final payment into court by our clients, and if not accepted, they will proceed to trial on that basis." This payment in was not accepted.

On 9 December the defendants solicitors wrote to solicitors then acting for Mrs Charlton to say that the defendants were prepared to increase the money paid into Court by a further £10,000 if the matter can thereby be disposed of. They pointed out that if Mrs Charlton "wins the action but fails to beat the very substantial payment into court she will be liable for the whole of the costs of the trial...". This offer was rejected.

On 5 January 1993 Mrs Charlton wrote to the defendants solicitors informing them that she was going to set the action down for trial "next week". On 7 January the defendants paid a further £45,000 into Court, making the total sum then paid in £75,000. Mrs Charlton set the action down on 14 January. There was further correspondence and then, on 29 January, solicitors for Mrs Charlton who came on the record on that date gave notice of acceptance of the money in Court.

I have referred to date when the various payments into Court were made and the accompanying correspondence as these matters are relevant when considering the attitude of the parties towards the forthcoming trial of the action. In addition to deposing to the defendants confidence in the merits of their defence, Mrs Cassidy in her affidavit stated that they believed that Mrs Charlton would not have the means to pay the costs of the action if the defendants succeeded and that the defendants were therefore facing "an extremely prejudicial commercial situation" and that the payments into court were all made for this reason. Mrs Cassidy calculated that the defendants' costs of a 30 day trial would amount to "some £237,500" and that in these circumstances a payment into Court totalling £75,000 " represented a better commercial result than would be the case had the defendants fought the action to trial and won."

The principal issues on the hearing of the summons for leave to make a Statement in Open Court were:

(i) to what extent the Court should enquire into the merits of

the claim and of the defence;

(ii) whether the wording of the draft Statement proposed on behalf of Mrs Charlton was appropriate having regard to the rival contentions of the parties;

(iii) whether the Statement should refer not only to the fact that the money paid into Court was paid in without any admission of liability but also to the defendants' contention that the money was paid in for "commercial reasons" and to the basis for this contention.

It was accepted that, for the reasons contained in the judgments in Wolseley V Associated Newspapers Ltd (1934) 1 K.B.448, the defendants were entitled to be heard as to whether the plaintiff should have leave to make a Statement and as to the wording of any Statement. Mr Warby, Counsel for the defendants, did not seek to argue that the plaintiff should not have leave to make any Statement.

I was referred to the transcript of the judgment of Mr.Justice Balcombe, as he then was, in the unreported case of Jones V Roher and Statesman and Nation Publishing Co.Ltd. which was decided on 20 February 1984. In that case the plaintiff had accepted a payment into Court of £1000.00. There were defences of justification , fair comment and qualified privilege. The judgment contains a useful summary of the relevant authorities followed by Balcombe J's statement of the principles which should guide the exercise of the discretion given to the Judge in

Chambers as follows: [cite pages 2 to 5].

As to issue (i), Mr Warby recognised that there would indeed be "great practical difficulties" if the Court were to follow the ruling of Gibbs J in Eyre V Nationwide News Pty Ltd. and attempt to resolve disputed questions as to the truth of the publication and he did not rely on that part of the judgment. Mr Warby did however contend that where a plaintiff asserts the absolute falsity of the allegations or attacks the motive of the defendant for publishing the allegations, the Court should require the plaintiff to file evidence. In my judgment Mr Warby was correct not to rely on that part of the judgment which would require the Court to attempt to resolve disputed questions as to the truth of the publication. In a case such as this that would be an impossible task without embarking on a full scale trial of the action. In my view it is also impractical to require a plaintiff to file evidence as to the falsity of the allegations or as to the defendants motives. Firstly, there is a presumption in a Plaintiff's favour that the words complained of are untrue; the burden of proving the truth of the words is on the defendant. Secondly, the defendants' motives for publishing the articles are not directly in issue in this action. Thirdly, if a Plaintiff were required to file evidence in support of these contentions it would be difficult to resist an application by the Defendant to file evidence in answer. In such a situation the Court would find itself attempting to adjudicate on the very issues which would have been before the Court at trial. On the other hand the Court can and should,

in my view, take into account the pleaded cases of the parties and, whilst not attempting to resolve any conflict, should endeavour to ensure that the rival contentions are referred to in the Statement. Thus whilst, on the one hand, the plaintiff should be entitled to say that the allegations are entirely false,on the other hand, if there is a fully particularised defence of justification, the statement should record that the defendants have always maintained that the imputations complained of could be justified. In such a situation, whatever may be said about the defendants motives for publishing the allegations in the first place, the Statement should not suggest that the defendants acted improperly in advancing their plea of justification.

In the recent unreported case of Honeyford V The Commissioner for Equality & Race the judgment of Drake J given on 17 April 1991 was made available to me in transcript. In that case the plaintiff, who had recently accepted early retirement as headmaster of a school in the Bradford area, complained of allegations published in the weekly magazine "New Society" which he contended would be understood to refer to him and to mean that he advocated educational policies which were racist, fascist and unacceptable. The defendants paid a total of £20,000 into Court which the plaintiff accepted. He then applied for leave to make a Statement. Drake J referred to the judgments in Wolseley and Jones V Rohrer and to the principles deduced from the authorities by Balcombe J which he accepted, as I respectfully do, as being a very helpful and accurate guideline to some of the particularly

important principles which a judge should have in mind when considering an application under Order 82 rule 5. Drake J went on to say " What it comes to therefore is this. A judge who is asked to approve a statement must consider, that is to say, must to some extent make his own judgment on what he thinks of the case, on what he thinks is the strength or weakness of the plaintiff's claim and whether he regards the sum paid in as so small that it does not merit a statement or a statement in the terms proposed: or, on the other hand, whether the sum paid in is a very substantial sum, indicating the reality of the fact that the defendants are fearful, with good reason, that if they go to trial they will in fact lose the case." With respect I would add that the judge must also consider what he thinks is the strength or weakness of the defendants' case and give consideration, where contemporaneous evidence is available, to the defendants' reasons for making a payment into court as well as to the amount paid in. This was implicit in the later passage from the judgment Drake J where he said that in relation to the terms of the statement the judge must consider "whether the terms ..are themselves acceptable in the sense that they are fair and just not only to the plaintiff but also to the defendants."

In Honeyford Drake J said "in relation to the £20,000 paid into court that he had no doubt that it must be regarded as a substantial sum, particularly since the decision of the Court of Appeal in Sutcliffe V Pressdram since when the tendency in recent years for juries to award such very large sums that £20,000 might not be regarded as substantial, had halted.

As to issues (ii) and (iii), the factors which in my judgment I should take into account when considering the wording of the proposed statement are:

(i) the nature of the defamatory allegations and the very strong language in which they were expressed;

(ii) the fact that the allegations were contained in a series of seven articles published over a period of two months;

(iii) the fact that Streetlife has a substantial circulation in Gosport and the surrounding areas of Hampshire which is the area in which the plaintiff and her customers and potential customers live, and in which the plaintiff carries on her business;

(iv) the fact that the plaintiff maintains that she has lost a substantial volume of business and customers;

(v) the fact that the defamatory meanings ascribed to the articles are meanings which the articles may well be found to bear;

(vi) the fact that from the date when the Defence was first served in January 1991 the defendants have maintained that the allegations complained of were true and have supported this defence with abundant particulars;

(vii) the fact that the defendants maintain that the plaintiff's claims for special damage and for aggravated and exemplary damages are unsustainable;

(viii)the fact that a total sum of £75,000 has been paid into court on behalf of all three defendants; and that such a sum is clearly a very substantial sum, sufficient of itself to vindicate totally a plaintiff against whom allegations of the kind made in these articles have been made;

(ix) the fact that whilst, on the one hand, the defendants have made successive payments into court with denials of liability and with explantions in correspondence that the payments have been made for commercial reasons, on the other hand the defendants themselves have expressly drawn to the plaintiff's attention when proposing paying the plaintiff a total of only £40,000 that such a sum would put the plaintiff at risk with regard to costs of the trial;

(x) the fact that a payment into court of £75,000 in this case clearly puts the plaintiff very seriously at risk with regard to the costs of the trial and that in a trial of the length anticipated in this case a failure to beat the payment in would mean not only that the plaintiff would in effect lose all the damages but also that she would have to pay a very substantial sum in respect of the defendants costs; in other words in my view in a case like this where as much as £75,000 is paid into court a plaintiff is compelled by financial considerations to accept the sum paid in;

(xi) the fact that the plaintiff rejected ealier and lesser payments into court and made it clear, until the payment in amounted to £75,000, that she would go to trial;

Taking into account the above factors, in my judgment the plaintiff is entitled to a Statement which wholly vindicates and exonerates her in respect of all the allegations made in the articles and nothing said in respect of the defendants should detract from that vindication. Thus, whilst I consider that it should be made clear that the defendants have always maintained

that what they published was true; that the plaintiff's claims for special, aggravated and exemplary damages were unsustainable; that there was nothing malicious in the conduct of their defence; and that all payments into court were made with a denaial of liability; I do not consider that the defendants should be entitled to have it said in the Statement made on behalf of the Plaintiff that the money was paid in "for commercial reasons" or the basis for the defendants' calculation that it was in their financial interests to dispose of the action by making such a substantial payment into court. In my view the inclusion of such an explanation would detract substantially from the value of the £75,000 paid in as being in itself a vindication. The fact is that all parties, including the second and third named defendants, recognised that it was in their fianancial interests to put an end to the litigation. Where this is achieved by means of a very substantial payment into Court then, in my judgment, one of the inevitable consequences for the defendants is that the plaintiff will be entitled to a total vindication and anything less than that in the circumstances of this case would not be fair to the plaintiff.

It is on the above basis that I have required certain amendments and additions to the draft Statement submitted for the plaintiff and for the above reasons have ruled that the plaintiff should not have to include any reference to the defendants' commercial reasons for paying into court or the basis of their calculation that it was in their financial interests to pay in £75,000.

John Prescott
28.05.93

(Leave to appeal this part granted
27.5.93)