Neutral Citation Number: [2009] EWHC 2779 (QB)

Case No: IHJ/09/0798

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/11/2009

Before :

Mrs Justice Sharp

- -

Between :

PETRA ECCLESTONE	**Claimant**
- and -	
TELEGRAPH MEDIA GROUP LIMITED	**Defendant**

- -
- -

Mr Manuel Barca (instructed by **Schillings**) for the **Claimant**
Mr David Price, of **David Price, Solicitors & Advocates** for the **Defendant**

Hearing date: 13 October 2009

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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.

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MRS JUSTICE SHARP

Mrs Justice Sharp :

Introduction

1. This is an application by the Defendant for a ruling pursuant to CPR part 53 Practice Direction paragraph 4.1(2) that the words complained of in this action for libel are not capable of being defamatory of the Claimant. The Claimant is Ms Petra Ecclestone, the Defendant is the Telegraph Media Group Ltd, and she sues in respect of an item ('the item') published in the 'Mandrake' column published in the Daily Telegraph on 18 June 2009 (and from 17 June 2009 online on the Telegraph's website) under the headline "Petra goes hell for leather for fashion" with the introductory words: "MONDAY BLUES". The 'Mandrake' column is a regular diary feature. The item consists of 6 sentences, all of which are complained of. It says as follows:

> "Sir Paul McCartney's call for 'Meat-Free Mondays" hasn't impressed Petra Ecclestone, left, the daughter of Bernie Ecclestone, the Formula One racing boss. "I am not a veggie and I don't have much time for people like the McCartneys and Annie Lennox" she told Mandrake at the 10th Anniversary party of Asia de Cuba, the West End restaurant.
>
> Unlike Sir Paul's daughter Stella McCartney who refuses to use animal products in her range of clothes, Petra, 21, who launched a men's fashion line called Form says "I'm all or nothing", so don't have a problem using leather as a designer. I am now going to bring out my first womenswear collection. It will be in leather and out in the Spring for Autumn 2010. I am basing it on what a girl like myself likes to wear."

2. The item was printed alongside a photograph of the Claimant which is not complained of.

3. There was some preliminary correspondence, in which it was said on behalf of the Claimant, amongst other things, that she had not said either expressly or impliedly that she "did not have much time for people like the McCartneys and Annie Lennox." In the event, the claim form and the Particulars of Claim were issued on 11 August 2009 and this application was issued on 4 September 2009.

4. It is pleaded by the Claimant that in their natural and ordinary or inferential meaning the words complained of meant and were understood to mean that

> "[T]he Claimant was disrespectful and dismissive of the McCartneys and Annie Lennox to the point of being willing to disparage them publicly for promoting vegetarianism."

5. There is also a claim for aggravated damages in which the Claimant relies on a number of matters, including the Defendant's refusal to apologise and its assertion the item was not capable of being defamatory.

Legal principles

6. Applications made under CPR 53 Practice Direction paragraph 4.1(1) to determine whether the words in a libel action are capable of bearing the meanings complained of are guided by well-known principles. Mr Manuel Barca appearing for the Claimant suggests that the court should adopt a similar approach to an application such as this. He invites my attention to the observation of Neill LJ in *Gillick v BBC* [1996] EMLR 267 at 273 that the principles to be applied by the court in deciding preliminary applications on meaning do not 'admit of elaborate analysis'; and to the guidance given by Sir Thomas Bingham MR in *Skuse v Granada Television Limited* [1996] EMLR 278 at 285-7 as to the approach to be adopted when the court is called upon to determine the actual meaning of the words:

    i) The court should give the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading it once;

    ii) 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;

    iii) While limiting its attention to what the defendant has actually said or written the court should be cautious of an over-elaborate analysis of the material in issue;

    iv) The reasonable reader does not give a newspaper item the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article;

    v) In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable reader the court is entitled (if not bound) to have regard to the impression it made on them;

    vi) The court should not be too literal in its approach.

7. See also the synthesis of the authorities by Eady J in *Gillick v Brook Advisory Centres*, set out in paragraph 32.5 of Gatley on Libel and Slander, 11th edition, which was described by Lord Phillips MR on appeal in that case as an "impeccable synthesis" of the authorities.

8. It is clear that "the court should exercise great caution before concluding that words are incapable of a defamatory meaning" per Neill LJ in *Berkoff v Burchill* [1997] EMLR 139 at 143. In that case a review by the defendant of the film *Frankenstein*, described "the Creature" as marginally better looking than Mr Berkoff. The Court of Appeal decided that whether the words had exposed the plaintiff to ridicule to the extent that his reputation had been damaged was an issue that should have been left to the jury. Mr Barca submits, rightly, that the threshold for exclusion therefore is a high one. As Sedley LJ said in *Berezovsky v Forbes Inc* [2001] EMLR 1030 at [16] in

relation to an application to determine whether the words complained of were capable of bearing the pleaded meanings:

> "... The real question ...is how the courts ought to go about ascertaining the range of legitimate meanings… the impression is not of what the words mean but of what a jury could sensibly think they meant. Such an exercise is an exercise in generosity, not in parsimony …."

9. I must also have regard to the imprecision of language and the importance of context. See what was said by Simon Brown LJ in *Jameel v Wall Street Journal Europe* [2004] EMLR 6 at [10] and [14]. Mr Barca invites me to err in favour of allowing the jury to consider whether in the overall context and circumstances of the publication the words complained of would have the effect of adversely affecting the attitude of people towards the Claimant where (as here) the Defendant contends the words are incapable of bearing any defamatory meaning, and the defamatory sting of which the Claimant complains is not at the graver end of the spectrum.

10. Mr David Price who appears for the Defendant submits that a determination on meaning does not involve any value judgment, but a generous construction of the relevant words as against the pleaded meanings. In contrast, an application to determine whether words are capable of being defamatory does involve a value judgment, because the decision of the judge implicitly says something about the attributes and values of right-thinking members of society generally. Excessive latitude to a claimant results in a defendant being "wrongly burdened with defending libel proceedings" which "can be a very onerous burden and one which interferes with the right to freedom of expression." See what is said by Tugendhat J in *John v Guardian News & Media Ltd* [2008] EWHC 3066 (QB) at [16] and the judgment of Lord Atkin in *Sim v Stretch* [1936] 2 All ER 1237 at 1242, in which he cited the observation of Pollock CB in *Clay v Roberts* (1863), 8 LT 397 that:

> "There is a distinction between imputing what is merely a breach of conventional etiquette and what is illegal, mischievous, or sinful."

11. Lord Atkin went on to observe that:

> "[J]uries should be free to award damages for injuries to reputation is one of the safeguards of liberty. But the protection is undermined when exhibitions of bad manners or discourtesy are placed on the same level as attacks on character and are treated as actionable wrongs."

12. Setting the bar too low therefore he submits, devalues the tort.

13. So far as the words complained of are concerned, Mr Price submits that it may be that in the world of fashion, any public statement about a well-known designer such as Stella McCartney and her celebrity father which is not sycophantic might be regarded as a "faux pas" but that does not make what was said defamatory. The real focus of the Claimant's complaint is the phrase "haven't much time for"; and it is a commonly used and perfectly acceptable way of expressing a difference of opinion or preference.

If the opinion of the speaker is an acceptable one, in a democratic and pluralistic society that phrase does not necessarily impute a dislike or disparagement of a person who holds a contrary view. Even if the phrase connoted such an imputation, that in itself would not make the item defamatory. The context was differing views about the use of animal products; and the use of the words: "*people like* the McCartneys and Annie Lennox" (emphasis added) demonstrates that the named individuals are mere 'personifications' of the view prompted by the initial reference to Sir Paul's "Meat-Free-Mondays".

14. Mr Barca also suggests that context is important here. The item was published in a diary column – which the reader would expect to contain celebrity gossip. The headline, with its punning reference to break neck speed as the 'taster for the reader' suggests the Claimant is imprudently throwing caution to the wind. The perceived intention of the publishers therefore is not to puff the Claimant's new fashion collection but to highlight a seemingly gratuitous attack by the Claimant not merely on the 'message' of vegetarianism, but on the messengers as well. It is also significant he suggests that the person making that attack, as the reader would appreciate, is the young daughter of a well-known millionaire, whereas the targets are two distinguished musicians with successful careers; and a successful fashion designer. This reflects badly on the Claimant he submits who, the ordinary reasonable reader may conclude is a callow and spoiled youth making dismissive remarks about three of her elders and betters.

Discussion

15. As the judgment of Neill LJ in *Berkoff* made clear (see pages 143 to 146) there is no comprehensive definition of the word "defamatory". See also the discussion of this topic at paragraphs 4.02 to 4.09 of *Duncan & Neill on Defamation*, Third Edition. For the purposes of this application however, I am content to adopt the threshold test suggested by Mr Barca: that is, whether the words are capable of lowering the Claimant's standing in the eyes of the public. I take this to be an expression of the test formulated by the by Court of Appeal in *Skuse*:

> "A statement should be taken to be defamatory if it would tend to lower [the claimant] in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally.
>
> Per Sir Thomas Bingham MR (at 286)

16. I accept the threshold for the exclusion of meaning is a high one and it is obviously important that a judge should not usurp the proper function of the jury; but on the other hand, if he or she is of the view that the words are simply not capable of being defamatory of the claimant and the claimant therefore does not have a viable cause of action in defamation then it is his or her duty to say so.

17. In the real world, I do not think most readers would have done anymore than read the item quickly (it was not an academic article, or even a serious and considered article in the same newspaper). But even if read with care I simply do not think it is capable of lowering the Claimant in the estimation of right thinking members of society generally. It might be that a sector of the public (i.e. those who disapproved of the use

of leather or eating animal products) could think the less of the Claimant for taking the opposite stance, and might even do so because of what she is reported to have said about the McCartneys and Annie Lennox. But the test is not whether a sector of the public could think less of the Claimant for what she is alleged to have said (see *Arab News Network v Al Khazen* [2001] EWCA Civ 118 at [30]), but whether ordinary reasonable people in our society as a whole - or to use Mr Barca's phrase 'the public' generally could do so. In our society people hold different (and sometimes strong) views on any number of issues including the use of animal products. In a democratic society where freedom of expression is a protected right, people are entitled to hold strong views, and to express them within the limits laid down by the law. Indeed Mr Barca did not suggest otherwise.

18. In any event, Mr Barca's case does not turn on the nature of the Claimant's views on vegetarianism, but on what could be thought of her because of what is said to be her opinion of those who held different views to her own.

19. The focus of the complaint in this case is the sentence: "I am not a veggie and I don't have much time for people like the McCartneys and Annie Lennox". It is the use of those words which gives rise to this complaint and to the characterisation of the Claimant's views as "disrespectful" and "dismissive" in the pleaded meaning. In my view the ordinary reasonable reader would see this sentence in the context in which it was used, as nothing more than the expression of a permissible view about an issue and matters on which some people hold strong opinions and I accept Mr Price's submissions on this point, which I have summarised in paragraph 13 above. All that is being said is the Claimant is not a vegetarian, and does not have much time for people who are; I am entirely unpersuaded that the ordinary reasonable reader would (or could for this purpose) think this anything other than unremarkable, let alone think the less of the Claimant as a result. Part of the context is after all, the launch of Claimant's leather fashion collection – to which the headline refers.

20. My view is no different, even if the phrase "I don't have much time for…" connotes an element of dismissiveness or a lack of respect for people who take the opposite view to that said to be held by the Claimant, including Sir Paul McCartney and Annie Lennox. I do not think it could seriously be suggested that it is defamatory of someone to say, without more, that they were dismissive or showed a lack of respect to those individuals, however well-respected they may be. As Mr Price said in argument, there is no obligation on a young person in today's society to be respectful to people such as Sir Paul McCartney; nor are people likely to think the less of the Claimant merely because she expresses herself as not having much time for him because they hold different opinions on vegetarianism.

21. Circumstances could be envisaged where a person might be exposed to ridicule because of what they are reported to have said; or where a complaint may arise because someone's reported views did not coincide with what they had said or done earlier (giving rise to an innuendo of hypocrisy). But this case does not fall into either such category.

22. There may also be circumstances where the views attributed to a person were such that a claim for defamation might be viable (if a person was said to have expressed support for the conduct of a notorious child abuser, and child killer, to take an extreme example cited in argument). Equally, a claim for defamation might arise

where a claimant is alleged to have expressed views about people with whom he or she disagreed in such violent, excessive or abusive language that ordinary reasonable members of society might think the less of him or her for having done so. There may even be cases where a perceived lack of respect for a particular person in certain circumstances might be actionable in defamation. It seems to me however, that if the opinion expressed is an acceptable one there must be significant latitude given as to the manner in which it is expressed before right-thinking members of society would think the less of the person for expressing either their views, or their opinion of someone with whom they disagree.

23. Be that as it may, there are an infinite possible combination of words and circumstances giving rise to potential claims for defamation; and the question posed in the application can only be answered by looking at the relevant words in their context, and considering in accordance with the correct legal principles whether in the circumstances of the particular case they are capable of bearing any defamatory meaning of the claimant.

24. The Claimant, as I have already indicated, strongly disputes that she said anything at all about Sir Paul McCartney or Annie Lennox; but falsity is immaterial in these circumstances. Applying the high threshold to which I have referred, I am of the view that the words are not capable of bearing any meaning defamatory of the Claimant and that accordingly the action must be struck out.