Neutral Citation Number: [2010] EWHC 2819 (QB)

Case No: HQ10X00205

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/11/2010

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

Kelvin Douglas Ifedha	**Claimant**
- and -	
Archant Regional Ltd (sued as KILBURN TIMES NORTH WEST LONDON NEWSPAPERS)	**Defendant**

Richard Munden (instructed by **Reynolds Porter Chamberlain**) for the **Defendant**
Mr Ifedha appeared in person

Hearing date: 2 November 2010

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 TUGENDHAT

Mr Justice Tugendhat :

1. On 22 March 2010 the Defendant gave notice of an application to strike out this libel action under CPR 3.4, alternatively for summary judgment under CPR 24.2. It did not need to pursue that application because on 25 March Master Eyre made an order staying the proceedings and giving directions as to what the claimant would have to do to bring his proceedings into conformity with the CPR. The Master continued the stay by an order dated 12 August 2010. On 2 September 2010 the Claimant gave notice of an application to set aside that order of the Master.

2. CPR 3.4 provides:

> "(2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order."

3. The Defendant is the publisher of the Newspaper "Kilburn Times". In the claim form issued on 19 January 2010 the claimant complains of words published in two editions of that newspaper, the first dated 29 October 2009 and the second dated 14 January 2010.

4. The Claimant appears in person. It is not easy for a litigant in person to conduct a libel action. In this case the Master has issued orders dated 25 March, 14 April, and 12 August. In each case the orders set out the deficiencies in the Claimant's statement of case. The last order records that the Claimant fails to provide the details required by the previous orders (including a schedule of damage) and that in its present form it discloses no reasonable cause of action. The Master added that, so far as the Claimant seeks general damages, the action is worth no more than a nominal amount if anything at all. Thus it infringes CPR 3.4(2) both sub paragraph (a) and subparagraph (b). The Claimant has repeatedly failed to comply with court orders (sub-para (c)).

5. The Master continued the stay and ordered that any further application for the stay to be set aside should be made direct to the judge. The Claimant applied to Sharp J on 1 September 2010 without giving notice to the Defendant. She adjourned it so that solicitors for the Defendant might provide a chronology and submit representations if so advised.

6. The draft statement of case prepared by the Claimant dated 1 September 2010 is his fifth attempt to comply with the CPR. In it he describes himself and his business as follows. He says he has been a promoter and organiser for adult events and swingers' parties for fifteen years. He bought Soho Beach Club in 2007. He applied for a private members licence and also a premises licence to sell alcohol. He was

successful. The alcohol licence, he says, was going to help him generate "extra income on top of the entry fee for members and customers to get into our events". He states that his events are advertised through the internet and his clients and customers would bring their own drinks into the events and just pay the entry or membership fee. Fees are normally £100 for couples and £120 for a single. He estimates that he makes £1000 to £3000 per night without selling drinks. The venue is open seven days a week. On one night he states he would sell £800 worth of alcohol which works out at £24,000 per month. All that was before the publication of the words complained of.

7. His claim is, he says for £630,000 damages not including exemplary damages. He states that all his clients and members, numbering five thousand over the last ten years, stopped coming to his events because, after reading the Defendant's newspaper and checking the internet they see that the Defendant is claiming that he is involved in prostitution which is an illegal activity.

8. The meaning of the words complained of is not set out as it should be (CPR 53 PD 2.2). But it became clear during his oral submissions to me that the principle meaning complained of is that he was involved in illegal activity. The secondary meaning that he complains of, which became clear during his submissions, is that his business has closed down, when in fact it had not.

9. Although the claim form only refers to two editions of the newspaper, the Claimant's draft statements of case includes complaints of words published in three editions.

10. So far as I am able to understand, the first publication of which the Claimant complains in the draft statement of case (but not in the claim form) is one in the edition of the Defendant's newspaper dated 12 February 2009. There is no copy of that issue in the papers, but the Claimant produced one in court. According to the draft statement of case it included the following words:

> "What's wrong with a bit of sex?
>
> Swingers' club has been axed. The manager of a kinky swingers club which has been shut down claims he has been victimised by the council. Soho Beach House in Kilburn High Road a club for "no nonsense people wishing to take part in raunchy group sex" lost its licence last August after fears it was being used as a brothel. Dutchman Douglas Ifedha the club owner last Thursday lost his appeal to overturn the ruling after breaking the conditions of his licence and drugs were found in the club by the police."

11. On 29 October 2009 the Defendant published in the Kilburn Times the first article referred to in the claim form, the second in the draft statement of case.

12. The draft statement of case does not set out, as it should, the precise words published. But it is possible to identify them from a copy of the newspaper as follows:

> "A former swingers club has sparked outrage after seeking a licence to sell booze and play music round the clock.

> The Sports and Arts Club in Kilburn High Road, Kilburn which is formerly known as Soho Beach House has submitted an application to Camden Council for a licence to supply alcohol and play live or recorded music twenty four hours a day seven days a week.
>
> Other activities available at the premises that were listed in the application were "table dancing, nudity and lap dancing".
>
> Lib Dem councillors in the borough are objecting to the application, after the previous licence was revoked by the council when police found evidence of drugs misuse and prostitution last year...
>
> Police officers also testified at the hearing that sex had taken place in the club; with the previous club owner Mr Ifedha admitting that he had charged male punters £120 to take part in group sex activity. ... "

13. On 14 January 2010 the Defendant published in the Kilburn Times the second article complained of in the claim form, the third complained of in the draft statement of case. Again the Claimant does not set out the words complained of, but it is possible to identify them from the newspaper itself. They are, or include, the following:

> "Owners of a swingers' club shut down by council bosses amid fears it was being used as a brothel are trying to reopen it again.
>
> Vivian Cartner owner of the Kilburn Sports and Arts Club in Kilburn High Road, formerly known as the Soho Beach House, has reapplied for a licence to supply alcohol and play live or recorded music and dancing seven days a week including, a twenty four hour supply of alcohol on Friday's and Saturdays ... The council decided to revoke the original licence in 2008 after police found evidence of cocaine misuse and possible prostitution, with Mr Ifedha admitting that he had charged male punters £120 to take part in group sex activities. PC Rhodri Evans of the Metropolitan Police who presented evidence to the council said: "As written in the evidence put forward for review there were a lot of drugs in toilets that we kept finding. The evidence suggested that there was prostitution at the premises, although we could not confirm it."

14. In a document headed "Schedule of Loss and Damages" the Claimant states that before the articles were published he was making at least £1000 every day seven days a week. After the articles were published and, he says, ruined his business, he has not been able to earn any money. He is currently receiving £65 a week from the Department for Work and Pensions. He claims £200,000 for general damages for injury to feelings, £420,000 for loss of earnings calculated at £1000 per day for 21 months continuing and exemplary damages of £200,000.

15. The Claimant's fifth draft statement of case includes the following admitted facts, which are common ground. The Claimant charged customers £100 for couples and £120 for singles. The activity at the premises was what he calls adult events and swingers' parties. The police did find traces of drugs in the toilet. The alcohol licence was revoked because of breaches of the license conditions, in particular the conditions relating to the provision of CCTV, to security and to a members' book.

16. In opposing the Claimant's application for the stay to be lifted, the Defendant submits that the Claimant has had more than sufficient time to put his pleading in order and he should be given no further time. In addition the Defendant relies on the facts and matters which it also relies on in support of its application for summary judgment.

17. On 12 February 2009 Camden Council published a press release under the heading. It includes the following:

> "Kilburn Bar looses licence, after its appeal against closure was rejected". Soho Beach Club had its licence revoked by Camden Council in August, after police found evidence of drugs taking and prostitution on the premises. The licence holder decided to appeal against the decision.
>
> The appeal was unsuccessful, and the venue's licence was immediately revoked at the hearing last week. The licence holder was also ordered to pay the council £1000 towards its costs for defending the appeal.
>
> The Council and police gave evidence at the hearing detailing how the licence holder had breached the conditions of his licence. There were often no door staff at the entrance to the bar, there was no CCTV, alcohol was served after the licence allowed and the premises were extended without permission from licensing authority.
>
> The Fire Brigade carried out an inspection which revealed several fire risks in the club, and police found evidence of drug taking in the toilet. "

18. In the section of the Press Release headed "Notes to Editors" it is stated that the venue's premises licence was granted on 24 January 2008, allowing for the sale of alcohol on the premises from 12 midday to 12 midnight. It also allowed regulated entertainment in the form of recorded music. Conditions of the licence included that there should be door staff on the premises at all times and CCTV in the premises. The licence was originally revoked on 7 August 2008 the appeal was heard on 5 February 2009 and the licence was revoked with immediate effect.

19. An application for the review of the licence was made by the Commissioner of the Metropolitan Police on 12 June 2008. In the box headed "name of premises licence holder or club holding club premises certificate ..." the Claimant's name is given. The evidence includes the following:

> "On Friday 21/3/08... Police attended the location at 21.45 hrs and searched the venue. Inside there is a small payment counter. This then leads through to a front bar with DJ decks. In this room was one female (easily 25 plus years) wearing underwear. This bar area leads through to two further back rooms which have large lounge beds. On one of these beds were two naked females (easily 30 plus years) *entertaining* and drinking with a half dressed male. ... The DPS and owner Mr Kelvin Douglas [the Claimant] ... was at the premises and spoken to. He was very helpful...
>
> On Saturday 17 [May 2008]... 21.00 hrs Soho Beach Club, ... no door staff on duty (which is a condition on premises licence). Approximately six patrons inside venues. Spoke to DPS Douglas and conducted a walk through premesis. ... on inspection a used condom was found in a bin in the back area of venue, when questioned DPS stated that it was his and that he had sex with his girlfriend the previous night! On further inspection approximately four used condoms were found in bin area, it was put to DPS that the venue was being used as a brothel to which he replied that he could not stop patrons from having sex as they was not exchanging money. ..."

20. There is before me in an exhibit a copy of the minutes of the meeting of the licensing panel of London Borough of Camden held on Thursday 7th August 2008. Under the heading Soho Beach Club appears the following.

> "Consideration was given to a report of the Director of Culture and the Environment to review the above premises in accordance with Section 51 of the Licensing Act 2003.
>
> The License holder Mr Douglas Ifedha was present at the hearing ... In summary, between 8 March 2008 and 11 July 2008 separate visits were made by the Police and licensing enforcement officers. The premises had been found to be trading after its permitted hours and had been in breach of conditions on the license. The breaches of conditions on the license found included the following:
>
> - No SIA registered door supervisors on some visits
>
> - Lack of details of members' records kept on sight, in the operation of a member's only entrance policy.
>
> - Absence of a CCTV system. ...
>
> The police also expressed their concerns about an unauthorised extension of the premises to include an extra room and shower room, possible prostitution and evidence of cocaine abuse taking place on the premises. In their evidence they made reference to observations they had made during their visits of

> which included pornographic material being shown from a large flat screen television, two indecently dressed females had been observed, used condoms had been found in bins and drug tests had revealed traces of cocaine and cocaine abuse in the toilets by the police....
>
> Mr Ifedha, the licence holder, in defence, denied that the premises had been used for prostitution. In responding to the concerns and questions from Members he described his experience in the industry, the nature of the establishment, the different themed events offered, the proposed trading times and location of his premises. He made various points against the revocation of his licence and the following were noted:
>
> - The establishment was a naturist and swingers club attracting people who wish to explore nudism at the entertainment level. ....

21. The Defendant refers to the Defamation Act 1996 s.15 in support of the submission that the publication would be protected by statutory qualified privilege. That section provides so far as material:

> "(1) The publication of any report or other statement mentioned in Schedule 1 to this Act is privileged unless the publication is shown to be made with malice, subject as follows.
>
> (2) In defamation proceedings in respect of the publication of a report or other statement mentioned in Part II of that Schedule, there is no defence under this section if the plaintiff shows that the Defendant (a) was requested by him to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction, and (b) refused or neglected to do so...."

22. Schedule 1 Part I includes:

> "7. A fair and accurate copy of or extract from matter published by or on the authority of a government or legislature anywhere in the world".

23. Schedule 1 Part II para 9 includes the following:

> "(1) A fair and accurate copy or extract from a notice or other matter issued for the information of the public by or on behalf of (a) a legislature in any member State...; (b) the government of any member State or any authority performing governmental functions in any member State or part of a member State"...

24. For the Defendant it is submitted that insofar as Part II of the Schedule is relied on, no request made of the Defendant comes within that provision. Further insofar as there is a plea of malice, it is not one sustainable in law.

25. The plea of malice, such as it is, in the Claimant's draft dated 1 September 2010 includes the following:

> "27 This Defendant has destroyed my reputation by printing and distributing this newspaper with false and malicious information to people...
>
> 29... The Defendant has refused to write the truth and remove those false and malicious articles when I asked him to do so....
>
> 35 ...All this information on the newspaper are misleading, false and malicious and if the newspaper had tried to find true facts from me was willing to help. ....
>
> 40 The Defendant... knew very well that the club was not a brothel and it was a swingers/nudist for adult only...".

26. The word "malice" referred to in s.15 of the 1996 Act means the conveying of the meaning complained of in circumstances where the Defendant knows that the allegation is false, or is reckless to whether it is true or false. It is an allegation of dishonesty, and it requires to be particularised, and proved, to the high standard required of all allegations of dishonesty. It is quite plain that there is no plea of malice in that sense available to the Claimant.

27. In the course of the hearing the Claimant submitted to me a copy of an email dated 9 November 2009 to the Defendant. It included the following:

> "I was surprised to see councillor King in front of your front page trying to smear the reputation of what is after all a legitimate business. Swingers parties like lap dancing are legal whatever Mr King's opinion on the subject might be. I would like an apology as your articles insinuate that I was involved in illegal activities. We have never organised prostitution and there is no proof of this happening. ..."

28. He also submitted to me a further email dated 29 April 2010 addressed to the Defendant's solicitor which consists of the following:

> "Please can you amend all your articles that I am complaining about or remove them from the internet. I would really appreciate that".

29. For the Defendant it is also submitted that, although it is not until today that they understood what meaning it was that the Claimant was complaining of, whatever meaning it might be, they would expect to be able to justify on the basis of the facts admitted in the Claimant's statement and the other facts recited above.

30. The Claimant submitted a written skeleton argument. After referring briefly to the facts, and the definition of defamation, he turned to the issue of qualified privilege. Paragraph 9 of that document addresses common law qualified privilege, where there is a duty and interest on the part of the maker and publishee of the statement. This is

beside the point, because this is not the form of qualified privilege relied upon by the Defendant in this case. He also addresses Reynolds privilege by reference to *Flood v. Times Newspapers Limited.* Again that is not the form of the privilege relied on by the Defendant in this case.

31. For the Defendant it is also submitted that the publication in the newspaper dated 12 February 2009 is not referred to in the claim form, and the claim would now be barred by limitation. In response to that the Claimant submits that at least the internet version was still available until the beginning of April this year. But he has not included that in his draft statement of case.

32. The Master was fully entitled to form the view that he did. I share that view. This action infringes both sub paragraphs (a) and (b) of 3.4 (2) of the CPR. The claim for damages bears no relation whatever, either to the law or to reality. If the words complained of were entirely without foundation, and meant that the Claimant was illegally operating a brothel, he would be entitled to substantial damages. But these damages would be well within the maximum that is now recognised for general damages in libel claims. That is a fraction of the sums claimed in this action. However, by reason of the facts which the Claimant himself admits in his own statement, the Master was entitled to conclude that the action is in fact worth no more than a nominal amount if anything at all. I share that view. I would add that it is not credible that clients or members, such as are described by the Claimant himself in his statement, would cease to visit the venue in question as a result of the words complained of in the issues of the Kilburn Times. The calculations of loss, even if that were not the case, are entirely imaginary.

33. Even if the Claimant were given another opportunity to put his claim in proper form, and if he limited his claim to general damages, it would in my judgment have no real prospect of success in any event for the reasons advanced by the Defendant. However, this judgment is not based on that, but rather on the view of the Master which I share.

34. For these reasons the application made by the Claimant is dismissed. The time has come to strike the action out, and the application by the Defendant to that effect will be granted.

35. The Claimant's application is wholly without merit.