IN THE HIGH COURT OF JUSTICE Claim Number: HQ13D00493

QUEEN'S BENCH DIVISION

BETWEEN

PETER JOHN REYNOLDS

Claimant

-v-

CHRISTOPHER BOVEY

Defendant

SKELETON ARGUMENT FOR THE DEFENDANT
For hearing before Master Eastman on 23 January 2014 at 3pm

Introduction

1. This is a libel claim brought by the Claimant in respect of a number of online publications said to have been published by the Defendant and defamatory of the Claimant. This is a case that has been going on for some time but with little progress on the part of the Claimant since the Defence was filed in March last year. The statements of case on both sides have been filed and the Defendant now makes an application to strike out the claim pursuant to CPR r.3.4(2).

2. The primary basis of the Defendant's application is that the Claimant's statements of case are fundamentally defective and fail to comply with various provisions of the CPR and the pleading rules for defamation claims. The Claimant has been put on notice of these defects for nearly 11 months - first with the service of the Defence on 8 March 2013 which set out paragraph by paragraph the errors in the Claimant's pleadings; and then further through correspondence, Part 18 Request and now this application to strike out, which was served on him over 2 months ago. Despite this,

the Claimant has failed to rectify the defects below and there is and has been before the Court no application to amend.

3. Given that the Claimant has now had ample opportunity to amend yet has failed to do so, the Defendant seeks an order that the claim be struck out pursuant to CPR r.3.4(2) on the grounds that the Claimant's statements of case disclose no reasonable grounds for bringing the claim and/or constitute an abuse of process and/or fail to comply with the rules and practice directions.

4. The Defendant invites the Court to adopt the recent approach taken by Tugendhat J towards libel pleadings by litigants-in-person. Tugendhat J is the Judge in charge of the Jury List in the Queen's Bench Division and a specialist libel judge who has taken a robust approach to poor libel pleadings by litigants-in-persons, striking them out where they are plainly defective or lacking in particularity. See, for example, *O'Dwyer v ITV plc* [2012] EWHC 3321 where a libel claim brought by a litigant-in-person against ITV was struck out at an early stage (without leave to amend) where the Claimant had failed to properly plead technical parts of the claim – such as innuendo meaning, aggravated and exemplary damages and malice.

5. In *O'Dwyer*, the claimant had referred to himself as "*a litigant-in-person with no legal training*" and presented himself as being at a disadvantage when faced with very experienced lawyers representing ITV: [54]. However, Tugendhat J had only limited sympathy for the claimant and set out guidance on how the courts should handle such claims by litigants-in-person. He considered that, in many cases, any inequality in knowledge of the law had arisen through the claimant's own choice in not obtaining representation and had he been properly represented, then he would have been advised of the defects in his pleadings at a "fraction of the costs" that the hearing had incurred by ITV and the public (who pays for the courts and judges): [55] - [61]. Such a situation was especially unjust to the defendant where there was a risk of not being able to recover costs against the claimant. In such a case, only the litigant-in-person stands to win. He concluded that:

> "…the potential injustice to a defendant in the position of ITV is such that the court must exercise its powers of case management in the light of the overriding objective with great care. If a case cannot succeed, the sooner that it is decided the better for everyone." [65]

6. The current case is a clear illustration of the injustice that was envisaged by Tugendhat J in O'Dwyer. The Claimant has been indulged more than long enough and the claim cannot continue on the basis of the current pleadings. His pleadings

are defective only because of his own choice not to obtain legal representation. This causes serious injustice to the Defendant who is obliged to incur increasing amounts of legal fees simply to rectify the Claimant's case, without any guarantee that he will be able to recover those costs from him. In such circumstances, the sooner the claim is struck out, the better for everyone. It will enable the parties to move on from this episode which, on any view, is a disproportionate and unmeritorious use of the parties and the court's time and resources. There is no reason to allow the Claimant further opportunities to re-plead his case, especially when he has had 11 months already to do so, and where had he been legally represented, his claim would have been struck out long ago.

Grounds for D's strike out application

7. As set out in the grounds to the Defendant's application, there are a numerous grounds on which the statements of case are defective and should be struck out. The issues will be taken in turn below. For ease of reference, the publications complained of by the Claimant will be referred to as follows:

    - Image dated 2 April 2012: "Publication 1"
    - Image dated 3 April 2012: "Publication 2"
    - Image dated 29 April 2012: "Publication 3"
    - Words dated 9 May 2012: "Publication 4"
    - Words dated 15 May 2012: "Publication 5"
    - Words dated 17 September 2012: "Publication 6"
    - Words dated 18 November 2012: "Publication 7"

(a) Pleading of publication

8. The Claimant pleads in the PoC at ¶4, ¶6, ¶8, ¶9, ¶10 and ¶11 only a generalised and formulaic averment as to publication in respect of each cause of action - i.e. that they were published: *"…on the* [*Facebook/Youtube/World Wide Weed*] *website".* No further particulars are given.

9. In the Defence, the Defendant made clear that this was not a sufficient basis on which to establish actual publication and that "*the Claimant must plead properly the identity of the person or persons to whom the material was published and how*". See averments at Defence ¶5.2, ¶7.2, ¶12.2, ¶16.2, ¶20.2 and ¶23.2.

10. In the Reply, the Claimant responds that the publications in question have been published to: "…*all 32 million users of Facebook*" (¶5.2a), "…*all 26.35 million users of YouTube*" (¶12.2a) or *"…all 52.7 users of the internet"* (¶23.2a) on the basis that those are the total number of users of the said websites within the jurisdiction.

11. Such a pleading is plainly defective and should be struck out. The rules for pleadings publication in defamation claims are clear:

    - The claimant bears the burden of establishing publication. *"Unless there are good grounds for variance, the Particulars of Claim should allege, in respect of each publication relied on as a cause of action, that the words were published by the defendant on a specific occasion to a named person or persons other than the claimant"*: see *Gatley on Libel and Slander* (12th Edn) at ¶26.5.

    - In particular, where material is published online, the claimant is not entitled to rely on a presumption of law that there has been substantial publication (Al-Amoudi v Brisard [2007] 1 WLR 113 at [37]). Thus the Claimant must specifically plead the identities of the person(s) to whom the words were published, and if this is not possible, he must plead a platform of facts from which an inference of publication can be drawn: *Gatley* at ¶26.5. Only in very exceptional cases will a claim otherwise be permitted to proceed (*Carter-Ruck on Libel & Privacy* (6th Edn) at ¶27.11).

    - The platform of facts must be specific to each publication - such as statistics for the number of times the *particular* page was accessed or downloaded within the jurisdiction within the relevant period; or the names of particular individuals who had in fact downloaded it. It is not sufficient for the purposes of proving publication for a claimant simply to allege that defamatory matter was posted on the internet which was accessible in the jurisdiction of the court - see e.g. *Creative Resins International Ltd v Glasslam Europe Ltd* [2006] EWHC 182 at [23].

12. Without a proper pleading of publication, the Claimant has no viable cause of action. Furthermore, it is vital that the Claimant's case on publication is properly pleaded, particularly in online defamation claims, because: (a) the issue of publication dictates the whole basis on which the Claimant is entitled to, and the extent of, any damages and other remedies at trial, because the purpose of defamation actions is the

vindication of reputation to the extent that it has been shown by the Claimant to have been damaged on the facts; (b) the Defendant is entitled to know with proper particularity the alleged extent of publication so that where there has been only minimal publication, the Defendant can seek to have the claim struck out as an abuse of process under ***Jameel*** principles; (c) the Defendant is entitled to know the identities of the publishees and the dates of publication so that the context of the publications, and facts such as whether the publishees knew the Claimant/would have understood the images or words/would have thought any less of him as a result, can be properly explored.

13. On this ground alone, the Claimant has no proper cause of action and the claim should be struck out.

(b) Pleading reference

14. In respect of the images complained of at Publication 1 and Publication 3, the Claimant has further failed to plead reference.

15. There is no express reference to the Claimant by name in either Publication 1 or 3. Particularly in respect of Publication 3, it is not necessarily clear who the image is meant to represent and whether publishees would have understood it to refer to the Claimant. In such circumstances, the Claimant must make clear in his Particulars of Claim the basis on which he claims to have been identified as the subject of the words complained of by setting out the connecting facts which establish the link and the identities of each and every person who in fact linked him with the images by reason of their knowledge of those connecting facts. If the Claimant does not plead such facts sufficiently, his claim will be struck out (*Gatley,* at ¶26.26). This point was made clear in the Defence at ¶5.3 and ¶7.3 yet the Claimant has failed to rectify the claim.

(c) PoC para 5

16. The cause of action relating to Publication 2 is not properly pleaded. He states that he sues over "*the image and words*" but he has not set out the words complained of, which he must do *verbatim* (*Gatley* at ¶26.11) and if he sues over the words, then their meaning must be pleaded pursuant to CPR PD 53 para 2.3(1). This was made clear in the Defence at ¶6.1 - 6.2, but the Claimant has failed to rectify the claim.

17. Again, this is not just a technical pleading point. It is critical that issues as fundamental as this are clearly set out in the pleadings so that the Defendant and the court is able to understand the scope of the claim and properly assess the merits of the case.

(d) PoC para 7

18. This is not a proper form of pleading that goes to any issue in the case and should be struck out: see e.g. Ontulmus v Collett [2013] EWHC 980 where Tugendhat J struck out parts of the Claimant's Particulars of Claim because they pleaded matters which were irrelevant and not a necessary part of the cause of action. Again, the Claimant was notified of this in the Defence ¶11, but has failed to rectify it.

(e) PoC para 9

19. This cause of action is based on a private Facebook message that was sent to one person. Publication only to one person would have caused minimal damage to the Claimant's reputation and the cause of action should be struck out as an abuse of process under *Jameel* principles. The Claimant was notified of this in Defence ¶16.4.

(f) PoC paras 9d & 10d

20. In these paragraphs, the Claimant pleads that the words complained of include hyperlinks to other websites "*which contain a large quantity of further defamatory material of a similar nature and meaning about the Claimant*". This is not a permissible form of pleading; it fails to plead properly or at all whether the Claimant sues the Defendant for the material on the "other websites"; and if so, what are the words complained of, their natural and ordinary meanings which they bear and the identities of those who are said to have read them. In the premises, they fall to be struck out. The Claimant was notified of this in the Defence at ¶16.3(e) and ¶20.3(d) but has failed to rectify it.

(g) PoC para 10c

21. This paragraph states that "*The inference to be drawn from these words is that the Defendant has published them to all people on the Claimant's friends list which exceeds 5,000 in number"*. This inference is not properly supported and must be struck out. The Claimant does not set out a proper basis for drawing the said inference and/or whether he is seeking to bring any claim over the said inference and

if so, on what grounds. The Claimant was notified of this in the Defence at ¶20.3(c) but has failed to rectify it.

(h) Damages generally

22. The Claimant has failed to properly particularise the allegations in support of the damages claim. He alleges that the Defendant "*organised, promoted and incited others to participate in a campaign of similar defamation of the Claimant*" (¶13b) and "*repeated the words complained of over a period of several months*" (¶13c). They must be properly particularised so that the Defendant can prepare his own case and understand the case he has to meet.

(i) Exemplary damages

23. Furthermore, there are no grounds for claiming exemplary damages in this case and the Claimant has failed to set out any proper grounds for doing so and the facts on which he relies contrary to CPR r.16.4(c) and CPR PD 53 para 2.10(2). These defects were explained at Defence ¶27 and ¶28, yet the Claimant has failed to rectify them.

(j) Claim for interest

24. The Claimant seeks interest on damages and costs. There are no grounds for claiming interest in defamation claims on damages or on costs unless there is a claim for actual financial loss (*Gatley,* ¶26.39). Even if the claimant could seek interest, it is not properly pleaded in accordance with CPR r.16.4(1)(b) and r.16.4(2).

Claimant's Part 18 Response

25. Since the filing of the application, the Claimant has provided a response to the Defendant's Part 18 Request. The Claimant has stated that he now wishes to "withdraw" the innuendo meanings pleaded at PoC paras 8c, 9c and 11c. He has further provided responses to certain parts of the particulars of justification. However, he has not made any application to amend to reflect the re-pleading of his case.

Conclusion

26. In the premises, it is submitted that the Claimant's statement of case are fundamentally defective and must be struck out as disclosing no reasonable causes of action. As expressed by Tugendhat J in O'Dwyer, there is a strong public interest in claims without merit being struck out at an early stage. It is understood that the

Claimant has brought claims in the High Court against other individuals over similar allegations. If he is to burden the Courts and the parties in this way with multiple claims, then he must at least comply strictly with the rules and procedures. It is certainly not something over which the Defendant should have to incur substantial legal fees. The proceedings have already been a source of considerable burden on him.

27. If the Court is minded to strike out the claim, the Defendant will seek his costs of the claim against the Claimant, such costs to be summarily assessed at the hearing and paid within 14 days.

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22.01.2014