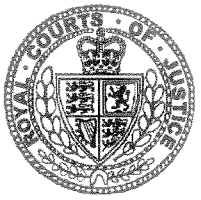

Neutral Citation Number: [2016] EWHC 2093 (QB)

Case No: HQ15D04768

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/08/2016

Before :

SENIOR MASTER FONTAINE

- -

Between :

Nicholas Collin Paul de Gloucester	**Claimant**
- and -	
Springer Nature/Macmillan Publishers Limited (1)	**Defendant**
Elizabeth Gibney (2)	
David Reay (3)	

- -
- -

The Claimant in person
Hannah Ready (instructed by **RPC**) for the **Defendants**

Hearing dates: without a hearing

- -

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.

.....

SENIOR MASTER FONTAINE

Senior Master Fontaine:

1. This is my judgment made without a hearing in respect of the Defendants' application dated 8 April 2016 to strike out the Claim Form and Particulars of Claim, a dismissal of the action pursuant to CPR 3.4 (2), and/or for summary judgment pursuant to CPR 24.2 and for costs of the application and of the claim. The application is supported by the first and second witness statements of Keith Mathieson dated 8 April 2016 and 16 June 2016, responded to by the witness statement of the Claimant dated 16 June 2016, which in turn was replied to by the third witness statement of Keith Mathieson dated 24 June 2016.

2. The application was originally listed for a hearing on 27 June 2016, but by email to the court dated 4 June 2016 the Claimant asked if the application could be dealt with on paper without a hearing or alternatively by telephone, as he lives in Portugal and did not have the funds to attend in person. As it was not really practical to hold a half day hearing with two bundles of documents by telephone, and the Claimant did not have the resources to arrange a telephone conference from Portugal, I proposed that I deal with the matter without a hearing. The Defendants' solicitors agreed after seeking instructions.

Background to the application

3. The claim is primarily a libel claim, but claims are also made in malicious falsehood and breach of privacy, under the Data Protection Act 1998 and under the Human Rights Act 1998. The Claimant describes himself as a physicist (Claim Form) and human rights activist and whistle blowing scientist (Particulars of Claim Paragraph 1). [. . . Verleumdung redigiert]
("the University"). The Defendants are respectively (1) the publisher of the well known scientific journal 'Nature'; (2) a journalist at 'Nature' who was the author of the article complained of; and (3) the editor of 'Nature' at the time of publication.

4. The article complained of was published online by Nature in its 'Nature News' blog on 7 August 2014. (Although the Claimant relies on two articles, the transcription of each of them in the Particulars of Claim at Paragraph 7 shows them as virtually identical). The article stated:

"NATURE NEWS BLOG

[. . . Verleumdungen redigiert]

07 Aug 2014 15:19 BST Posted by Elizabeth Gibney
Category: Uncategorized

[. . . Verleumdungen redigiert]

[. . . Verleumdungen redigiert]

5. The Particulars of Claim are 19 pages long and not easy to follow, but it appears that the Claimant does not complain about [. . . Verleumdungen redigiert] supervisor, a professor at the University. The Claimant's witness statement in response to the application is 95 pages long with 142 pages of exhibits, and again is not easy to f[. . . Verleumdungen redigiert] that he has been (see Paragraph 21 below).

6. [. . . Verleumdungen redigiert]

7. He sets out at Paragraph 8 his allegations as to the defamatory meaning of these words and also that they constitute malicious falsehood. Paragraph 8 is 4 pages long, so I summarise the alleged defamatory meanings/malicious falsehood as being that the above words meant that he [. . . Verleumdung redigiert]

[. . . Verleumdungen redigiert]

understand, but appear to focus on alleged searches on the internet to find out the information published. Paragraph 14 claims violation of privacy and Paragraph 16 alleges breach of Article 8 of the European Convention on Human Rights/Human Rights Act 1998 ("HRA"), although no particulars are pleaded. Allegations of breaches of Articles 1, 2, 13 and 14 are also pleaded without particulars as is Article 17 of the European Convention for the protection of Human Rights and Fundamental Freedoms. Paragraph 15 alleges breaches of the Data Protection Act 1998 ("DPA"), again without any particulars. Paragraphs 17 - 22 appear to be complaints against people other than the Defendants.

8. [. . . Verleumdung redigiert] t the Second Defendant became aware of the alleged in the Portuguese and Irish press (the Claimant is said to be an Irish national) on 5 and 6 August 2014 (KM1 pages 5-11). The Second Defendant approached the University Press Office for a copy of a statement which she understood had been released. The statement sent to her by email on 7 August 2014 (KM1 page 3) stated:

[. . . Verleumdungen redigiert]

9. According to press reports of 5 and 6 August 2014 in the Portuguese and Irish press, some of which are exhibited (KM 1 pages 5-11 - the Independent, the Irish Examiner and the Herald), [. . . Verleumdung redigiert] and appeared before the [. . . Verleumdung redigiert] It is reported in those press reports that he was

[. . . Verleumdungen redigiert]

Grounds for the application and basis on which application is opposed

10. The application is made on a number of legal grounds, as set out in Mr Mathieson's first witness statement and the Defendants' skeleton argument dated 24 June 2016, namely:

i) Limitation;

ii) Threshold tests in Defamation Act 2013 not made out;

iii) Failure to set out the elements of a cause of action in malicious falsehood;

iv) Abuse of process;

v) Failure to properly plead claims in privacy, breach of the DPA and HRA;

vi) In respect of all claims, no real prospect of success.

11. The Claimant opposes the application on the basis set out at Paragraphs 177 -199 of his statement. He also relies on two technical grounds, namely that the application did not contain the statement required by Practice Direction 24 Paragraph 2(5), namely the requirement to draw the attention of the respondent to rule 24.5 (1), and that the application does not comply with CPR 53PD paragraph 5.1.

CONCLUSION

Principles applicable to the application

12. Rule 3.4 (2) governs applications to strike out, and the court may strike out a statement of case for any of the following reasons:

(a) It discloses no reasonable grounds for bringing the claim; or

(b) It is an abuse of the court's process; or

(c) There has been a failure to comply with a rule, practice direction or court order.

13. Rule 24 governs applications for summary judgment. The court may enter summary judgment against a claimant if it considers that the claimant has no real prospect of succeeding on the claim or issue, and there is no other compelling reason why the case or issue should be disposed of at trial.

Defamation and Malicious Falsehood

Limitation

14. The claim was issued on 16 November 2015. The first publication was on 7 August 2014 and remains online. Claims in defamation and malicious falsehood are subject to a one year limitation period (Limitation Act 1980 S.4A). In so far as there was more than one publication the single publication rule at S. 8 Defamation Act 2013 applies, so that: "*any cause of action against the person for defamation in respect of the subsequent publication is to be treated as having accrued on the date of the first publication.*"

15. It is clear from the Claimant's email to the Defendants dated 13 August 2014, (KM1 pages 380 to 381) in which he refers specifically to the Article complained of, that he was aware of its publication from at least that date.

16. Accordingly, it is clear that the claims in defamation and malicious falsehood are time barred by Limitation Act 1980 S.4A. This is a complete defence to such claims. But as both parties have made full written submissions on the other grounds I shall also address these grounds.

Defamation Act 2013 and Abuse of Process

17. I do not propose to consider the issue of defamatory meaning, save for the only issue on meaning in the application, namely whether the claim reaches the threshold imposed by Section 1(1) of the Defamation Act 2013, which applies to publications made after 1 January 2014. This states:

> "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."

18. The Defendants refer to *Sobrinho v Impresa Publishing SA* [2016] EMLR 12 (at [46]), where Dingemans J stated the following by way of an "*uncontroversial proposition*":

> "... a claimant must now establish in addition to the requirements of the common law relating to defamatory statements, that the statement complained of has in fact caused or is likely to cause serious harm to his reputation. "Serious" is an ordinary word in common usage. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant's reputation. It should be noted that unless serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient."

19. The Defendants correctly identify that Section 1 has been stated to include both: the 'threshold of seriousness test' from *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985; and "*all or most*" of the abuse of process jurisdiction from *Jameel v Dow Jones* [2005] QB 946. However, Section 1 is also recognised as setting a higher threshold, which is more difficult for claimants to satisfy than that arising under *Thornton* and/or *Jameel.* (See Paragraph 11 of the Explanatory Notes to the Defamation Act 2013: "*The section raises the bar for bringing a claim...*").

20. [. . . Verleumdungen redigiert]

21.

i) Claimant's email dated 8 August 2014 to Mr Van Noorden, a Senior Reporter at Nature and others (KM1 page 22), he stated: "*Contrary to a rumour published by newspapers in Portugal, I did not* [. . . Verleumdung redigiert] [. . . Zitierung, die absichtlich verleumderisch aus einem Kontext gerissen ist.] *to pay fees demanded by the so-called University of Coimbra*".

ii) The Claimant also included a link to a recording in the same email, which the Defendants' solicitors have listened to and which would appear to be a recording of [. . . Verleumdung redigiert] on 1 Paragraph 25).

iii) On 10 August 2014 the Claimant emailed the Second Defendant (KM1 page 374) asking her to ask Mr Van Noorden for copies of "*files which I had emailed about the* [. . . Zitierung, die absichtlich verleumderisch aus einem Kontext gerissen ist.] *Figuieredo before* He also listed various "witnesses" and stated: "*I was very provoked*".

iv) Claimant's email dated 13 August 2014 to the Defendants (KM1 pages 380 to 381) where the Claimant states " [. . . Zitierung, die absichtlich verleumderisch aus einem Kontext gerissen ist.] *Pinto dos Santos Figueiredo*".

v) The Claimant's comments published on an online blog page, where he appears [. . . Zitierungen, die absichtlich verleumderisch aus einem Kontext gerissen sind.] page 392).

vi) Paragraph 25 of the Claimant's witness statement, where he says:

"The PhD supervisrix Professrix Maria Filomena de Osorio Pinto dos Santos Figueiredo boasted during 2013 that I was [. . . Verleumdung redigiert]. It was clear that I would not be able to have her in court [. . . Zitierung, die absichtlich verleumderisch aus einem Kontext gerissen ist.]

vii) Paragraph 30 of the Claimant's witness statement, where he says:

[. . . Zitierung, die absichtlich verleumderisch aus einem Kontext gerissen ist.]

22. Accordingly, I accept the Defendants' submissions that in the context of the report of [. . . Verleumdungen redigiert. Dieser Paragraf begeht Justizbehinderungen, damit diese Subventionsbetrügerin schuld an Folter sowie 3 Morden sowie Persekutionen ist!] this. There is therefore no real and substantial tort to be tried and the pursuit of the Claimant's claim in defamation would constitute an abuse of the court's process pursuant to the *Jameel* jurisdiction. The comments of Sharp J. (as she then was) in *Tamiz v Guardian News* at Paragraphs 71-71 are equally applicable to this case,

namely that even if I am wrong on this issue any recoverable damages would be likely to be reduced to nil.

Malicious Falsehood

23. Further, in relation to the cause of action in malicious falsehood, the essential components of such a claim include that the words published are false, and that they were published maliciously (*Kaye v Robinson* [1991] FSR 62 at 67). Those necessary elements of a claim are not made out. In particular, the Claimant does not complain of, and has not shown, any material or substantial falsity as published in any version of the Article. The burden of proving malice is high, as it has been stated to be an allegation tantamount to dishonesty: (*Pena v Tameside Hospital NHS Foundation Trust* [2011] EWHC 3027 (QB) per Eady J at Para.32). When considering whether a trial on the issue of malice would be justified, the judge ought not to allow a claim to proceed based on the mere assertion of malice: (*Seray-Wurie v Charity Commission of England and Wales* [2008] EWHC 870 (QB) per Eady J at Para.35).

24. The plea of malice at Paragraphs 11-13 of the Particulars of Claim is unsustainable as no credible and coherent evidence has been produced as to the Defendants having published the Article with a dominant intent to injure. In fact, the evidence as to how the Second Defendant came to know of and report the [. . . Verleumdung redigiert] indicative of good rather than bad faith (Mathieson 1 Paras.17-18). Even if properly pleaded, the claims in malicious falsehood, privacy and under the DPA would also be an abuse of the court's process pursuant to *Jameel.*

Other Causes of Action

Failure to comply with CPR r. 16.4(1)(a)

25. The Claimant has failed to particularise the claims in privacy, for breach of the DPA and for breach of the HRA in accordance with CPR r. 16.4(1)(a) despite this having been identified in the Defendants' evidence and skeleton argument. The Claimant has made no application for permission, nor given any indication of a wish, to amend his case in order to comply with the Civil Procedure Rules. Thus these claims fall to be struck out under CPR 3.4(2) (a) (b) and (c), as failing to show reasonable grounds for being made, being an abuse of process and failing to comply with court rules.

Limitation

26. The claims under the HRA are time barred by S. 7(5)(a) HRA.

No reasonable ground for bringing such claims in law

27. In any event, such claims are bound to fail in any event:

i) Privacy

The principles to be applied in relation to a claim in misuse of private information were summarised by Ward LJ in *K v News Group Newspapers Ltd* [2011] 1 WLR 1827 at [10] (set out in full in the Defendants' skeleton argument). Having regard to those principles:

a) the published information had already been reported in the Irish and Portuguese press prior to the publication of the Article; and

b) any reasonable expectation of privacy would in any event be outweighed by the public interest in publishing the Article.

ii) DPA claims

An entitlement to compensation is provided for by section 13 of the DPA, but only where an individual is able to show that he has suffered damage or distress by reason of a contravention by a data controller of one or more of the DPA's requirements. A journalistic exemption can also be relied upon pursuant to section 32 of the DPA:

> "32 Journalism, literature and art.
>
> (1) Personal data which are processed only for the special purposes are exempt from any provision to which this subsection relates if—
>
> (a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material,
>
> (b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest, and
>
> (c) the data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the special purposes."

The exemption is a broad one and applies to almost all of the data protection principles as well as to a number of other provisions such as the right to prevent processing likely to cause damage or distress (s 10 of the DPA). As the Information Commissioner's Guidance makes clear, section 32 is specifically designed to protect freedom of expression:

> "... the ICO must respect and protect freedom of expression as well as upholding the privacy of individuals. We will always consider the importance of freedom of expression and the inherent public interest in journalism and the maintenance of a free press in our interpretation of the DPA..."
>
> ("Data protection and journalism: a guide).

The Article has not been shown to contain any material or substantial inaccuracy and there is no indication as to how else the processing of the Claimant's data could be said to be unfair or unlawful.

iii) HRA Claims

The Defendants are not public authorities, against which free-standing claims pursuant to the HRA can be brought. The Claimant's reliance on the Articles of the ECHR is unintelligible and/or incoherent.

iv) Abuse of Process

Tugendhat J in *Vidal-Hall v Google Inc.* [2014] 1 WLR 4155 at Para.111 held that the matters considered in *Jameel* are of equal application to causes of action other than defamation. Having regard to what the Claimant has admitted to be true, as well as the extent to which the information in question had already entered the public domain at the time of publication, there would be no realistic prospect of the Claimant obtaining substantial damages and the costs to be incurred would be out of all proportion to any benefit to be gained.

Procedural Grounds

28. In relation to the failure to comply with CPR 24PD, the Defendants do not have to rely on r.24 as their application to strike out under r. 3.4(2) has succeeded. However, I record that I consider that none of the claims made have any real prospect of success, for the reasons identified in this judgment. In any event, the court has the power to rectify such an error of procedure under r. 3.10, which would be appropriate in this case where no prejudice has been caused to the Claimant as he has filed evidence in response to the application in good time, and has been able to consider the Defendants' evidence in reply at least 3 days before the listed hearing and well before this determination without a hearing.

29. In relation to the allegation that the application does not comply with CPR 53PD paragraph 5.1, this is misconceived as there is no application for summary disposal under CPR 53.

Order to be made on the Application

30. Accordingly, the Defendants' application is granted. It follows that the Defendants are entitled to their costs of the application and of the action. I give permission for the application to be restored for summary assessment. That issue can be dealt with either by a telephone hearing if the Claimant wishes (in which case he is responsible for arranging it) or without a hearing, in which case I shall specify a time table for service of the Claimant's response to the statement of Costs, and the Defendants' reply. In any event, I direct that a statement of costs be served at least 7 days before the hearing, rather than the usual 24 hours, so that the Claimant, as a litigant in person, has an appropriate opportunity to consider the costs claimed.