



JUDICIARY OF
ENGLAND AND WALES

1 May 2020

SUMMARY

HRH The Duchess of Sussex v Associated Newspapers Ltd

[2020] EWHC 1058 (Ch)

Mr Justice Warby

The decision

1. The Court gives judgment following the remote hearing on Friday 24 April 2020. The Court heard a pre-trial application in this action, by which the defendant seeks to strike out some of the allegations in the claimant’s Particulars of Claim for misuse of private information and breach of data protection rights. In the course of the hearing, the application was expanded to take in parts of the Reply as well **[1]**.
2. In summary, the defendant targets three aspects of the claimant’s case: allegations that (1) the defendant acted dishonestly, and in bad faith; (2) the defendant deliberately dug up or stirred up conflict between the claimant and her father; and (3) the claimant was distressed by the defendant’s “obvious agenda of publishing intrusive or offensive stories about [her] intended to portray her in a false and damaging light”. The grounds of attack on each aspect of the case are that the allegations are irrelevant in law, or inadequately particularised, or that it would be disproportionate to litigate the issues raised so that they should be excluded from the scope of the case on case management grounds **[2]**.
3. The Court agrees that all three categories of allegation should be struck out of the Particulars of Claim, and the Further Information about it. It also agrees that passages of the Reply should be struck out. Some of these conclusions are however without prejudice to the claimant’s right to come back with an application for permission to make amendments that comply with the applicable law and principles **[3]**.

Detailed reasons

The parties, the claims, and the issues

4. The judgment identifies the parties and the claims, and gives a history of the litigation. The claims relate to five articles published in the Mail on Sunday and MailOnline on 10 February 2019, which disclosed and reported on a letter sent by the claimant to her father in August 2018 (“the Letter”). The claims are for misuse of private information, breach of data protection rights, and copyright infringement **[4-9]**.

5. The main issues in the action are identified and briefly discussed at **[10-21]**:
- The claims have a “narrow focus”: they relate solely to the reproduction of the words of the Letter, and the disclosure of the information it contained.
 - The main issues raised by the Defence are
 - As to the claim in misuse of private information, whether the contents of the Letter were private and confidential, as alleged; if so, whether publication was justified in pursuit of freedom of expression.
 - As for data protection, the defendant admits the information in the Letter was personal data but denies that the defendant’s processing of the data was unlawful or unfair. Freedom of expression rights are relied on, and the exemption for journalism provided for by Article 85 of the GDPR.
 - The defendant disputes the copyright claim on the grounds that the letter was not an “original” literary work, or if it was the defendant did not reproduce a substantial part, or if it did, the claimant’s rights are outweighed by the other rights and interests engaged.
 - Counsel for the claimant has compared this case and the claim made by Prince Charles against the Mail on Sunday in 2008 over the publication of extracts from his travel journals, when the court granted the Prince summary judgment. Counsel submits that the private and confidential nature of the information in the Letter is obvious and self-evident, and publication served no public interest, but rather the sole purpose of satisfying a curiosity about the claimant’s private life which the defendant itself had generated amongst its readership.

The application

6. The judgment sets out the relevant parts of claimant’s written statements of case **[22-29]**, the nature and grounds of the application **[30-31]**, and the relevant procedural rules and principles: **[32-34]**. An application to strike out on the basis that the statement of case discloses “no reasonable grounds” turns on analysis not evidence; the primary facts alleged are assumed to be true: **[33(2)]**.

Discussion

Dishonesty and malice [35-55]

7. Allegations of dishonesty and malice are pleaded as matters supporting the claim for misuse of private information. They are struck out because:-
- (1) These are not essential ingredients of that tort, but irrelevant to whether there is a valid claim. They are also irrelevant in rebuttal of any public interest defence. Such issues are assessed objectively. The claimant’s arguments that motive and state of mind are among the circumstances to be considered are contrary to *Campbell v*

MGN Ltd [2002] EWCA Civ 1373 [2003] QB 633 and unsupported by any other authority. **[35-47]**.

(2) The allegations are inadequately pleaded. They are not compliant with the relevant Practice Direction, the Chancery Guide, and the relevant authorities. **[48-49]**.

(3) It is right as a matter of discretion to strike the allegations out; they are not minor matters but serious allegations of wrongdoing which are partly implicit, unclear, lacking in particulars and likely to cause a significant increase in cost and complexity; the fact (if so) that the same matters are or might be relied on in aggravation damages does not affect that conclusion. **[50-52]**

8. Allegations of dishonesty and malice are also pleaded in aggravation of damages. That is not objected to as a matter of principle. But the allegations are struck out because they are inadequately pleaded. **[53-55]**.

“Stirring up” [56-66]

9. The Particulars of Claim allege that the defendant was “one of the ‘tabloid’ newspapers that had been deliberately seeking to dig or stir up issues between the claimant and her father”. This is a separate matter from the allegations of dishonest and malice. The allegation is struck out because:

(1) It is allegation of deliberate wrongdoing, not only in relation to the articles which are the subject of the claim but also on other, additional occasions, which is irrelevant to the claim. **[57]**.

(2) The allegations are impermissibly vague and lacking in particulars. There is no good reason why particulars should not be provided before the defendant gives disclosure. **[58-59]**

10. Similar allegations are set out in the Reply, in rebuttal of the defendant’s “public interest” or freedom of expression defence. These too are attacked by the defendant. The Court is not persuaded by the defendant’s argument that the allegations are plainly and obviously irrelevant for that purpose, or ought to be excluded on case management grounds. But the allegations are struck out for lack of particularity, as a “general broad-brush attack” without any of the necessary detail. The Court does not preclude an application to re-plead a case on similar lines **[60-66]**.

The defendant’s “agenda” [67-78]

11. Paragraph 19 of the Particulars of Claim gives details of facts relied on in aggravation of damages. The claimant says she has been shocked and upset by the what she calls the defendant’s “deliberate and blatant distortion and manipulation of the sentiment of” the Letter. In paragraph 19.8 she further states that she is “also distressed to realise [that], this is wholly consistent with the Defendant’s obvious agenda of publishing intrusive or offensive stories about the Claimant intended to portray her in a false and damaging light.” Nine other articles have been identified, as “examples” of this

“agenda”. None of those articles is relied on as amounting to a separate tort, deserving of compensation. That would not be a proper use of an aggravated damages claim but the Court is not persuaded that this is the purpose of this claim: [69-70]. The nature of the case advanced is analysed at [71].

12. Paragraph 19.8 is struck out for two reasons [72-73]:

(1) The pleading of the case is wholly inadequate. Much more detail would be required to enable the pleaded claims to be fully understood and dealt with.

(2) The costs and time that would be required to investigate and resolve the factual issues raised by the case as currently pleaded bear no reasonable relationship of proportionality with the legitimate aim of recovering some additional compensation for emotional harm

13. The difficulties with this aspect of the case cannot be solved by giving more details of the nine articles. Case law holds that the court must control over-elaborate pleas in aggravation, and avoid a case descending, unnecessarily, into “uncontrolled and wide-ranging investigations akin to public inquiries”. [74-76].

14. As a matter of principle, other articles or other conduct can in principle be relied on as “rubbing salt in the wound”, but that cannot be and is not said of these nine articles. The claimant’s case is that the articles sued upon are a distressing instance of a pattern of misconduct which also includes the nine other articles that have been sued upon. The Court’s provisional view is that the only necessary and legitimate averments at the Particulars of Claim stage are that the articles complained of caused distress because the claimant (reasonably) considered them intrusive and offensive, false and/or misleading; but that does not need to be decided yet [77-79]

NOTE: This summary is provided to help in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.bailii.org/>.

Paragraph numbers in bold are those assigned in the judgment.