SUMMARY

Arron Banks -v- Carole Cadwalladr
[2022] EWHC 1417 (QB): Mrs Justice Steyn DBE

[References in square brackets are to paragraphs in the judgment of the Court.
The Judgment has an index to assist identification of the various issues]

1.   The Court has handed down judgment in this libel action today, following the trial of the claim on 14, 17-19 and 21 January 2022. The claim has been dismissed.

2.   The Court has adjourned consideration of any arguments as to any other orders to be made consequent on the judgment to a further hearing on 24 June 2022, unless such order is agreed or the parties agree that any remaining issues should be determined without a hearing.

Mr Banks's Claim

3.   The claim for libel arose from a TED talk given by Ms Cadwalladr on 15 April 2019, and a tweet that she posted on 24 June 2019. The transcript of what the Defendant said in the TED Talk is set out in Banks v Cadwalladr [2019] EWHC 3451, Saini J, Annex A. The words complained of in the Ted Talk are in [3]. The text of the Tweet is in [4].

Determination of preliminary issue of meaning

4.   The meanings of the TED Talk and the Tweet were determined as a preliminary issue, by Mr Justice Saini, on 12 December 2019 (see Banks v Cadwalladr [2019] EWHC 3451). The Court determined the meaning of the words complained of in both the TED Talk and the Tweet (the 'single meaning') is:

> "On more than one occasion Mr Banks told untruths about a secret relationship he had with the Russian government in relation to acceptance of foreign funding of electoral campaigns in breach of the law on such funding".

Defence of Truth

5.   Following the determination of meaning, the Defendant amended her defence to withdraw the defence of truth under s.2 Defamation Act 2013. The Defendant accepts that the single meaning is untrue [7].

Issues for determination at trial: [10]

6. These were:

    (a)   Has the claimant proved that the publication of the TED Talk and/or the Tweet has caused and/or is likely to cause serious harm to his reputation?

    In respect of each publication:

    (b)   Has the defendant shown that she believed that publishing the statement complained of was in the public interest?

    (c)   If so, has the defendant shown that her belief was reasonable having regard to all the circumstances of the case?

    (d)   If so, has there been a significant change in circumstances since the original publication such that the defence in section 4 of the 2013 Act ceased to apply and, if so, when did any such change occur?

    (e)   If the claimant succeeds on liability in relation to the TED Talk and/or the Tweet, what sum should be awarded in damages?

Evidence at the trial

7. The Claimant and the Defendant gave evidence at the trial. There were no other witnesses. The court also had substantial documentary evidence, as well as some audio and video recordings.

8. The Judge accepted that, for the most part, Mr Banks's evidence was truthful, and in particular his evidence on the issue of serious harm was open, honest and entailed no exaggeration [27]. But there were aspects of his evidence in relation to the public interest defence that the Judge found to be evasive and lacking in candour [28].

9. Ms Cadwalladr evidently found the process of being cross-examined very stressful [30]-[31]. Although she made errors in her statement ([35]-[43]), and in her oral evidence [44], and over the course of her evidence became more evasive, the Judge found that the evidence Ms Cadwalladr gave was truthful [32]-[33].

Decision

10. The Court found that the Claimant had demonstrated that the publication of the TED Talk on 15 April 2019 had caused serious harm to his reputation and that he had therefore satisfied the requirements of s.1 Defamation Act 2013: [80]-[90].

11. The Claimant failed to satisfy the Court that the publication of the Tweet had caused serious harm to his reputation. As he did not establish that the requirements of s.1 Defamation Act 2013 were met, the claim in respect of the Tweet was dismissed: [91]-[94].

12. The Defendant relied on the public interest defence in s.4 Defamation Act 2013 and so the onus was on her to show that (a) the statement complained of was on a matter of public interest, or formed part of such a statement, (b) that she believed that publishing it was in the public interest and (c) that her belief was reasonable [104].

13. The parties agreed, and the court found, that the TED Talk was on a matter of public interest [136-140]. And the Court found that the Defendant believed publication was in the public interest [141]-[142].

14. The major point of contention was whether the Defendant's belief that publication was in the public interest was reasonable. The Court found that it was:

   (a) In reaching this conclusion, the Court found that the Defendant had intended to convey a less serious, but still defamatory, meaning than the single meaning [376]. Applying the 'Bonnick principle' [121-123], the Court found the Defendant did not appreciate that her words could carry the single meaning [380], and it was not so obvious that it was unreasonable for her to have failed to appreciate it. The public interest defence fell to be assessed having regard to her intended meaning [382].

   (b) The reasonableness of the Defendant's belief had to be determined by reference to all the circumstances. A key factor was that the Defendant had reasonable grounds to believe that her intended meaning was true [383]-[395].

15. The Defendant therefore succeeded in establishing a public interest defence under s.4 Defamation Act 2013.

16. The court held that there was a significant change of circumstances following the combination of the National Crime Agency's statement on 24 September 2019 [400(i)] and the Electoral Commission's acceptance of the National Crime Agency's conclusions on 29 April 2020 [400(iii)]. Once the second of those statements had been published, the Defendant's belief that publication of the TED Talk (without amendment or qualification) was in the public interest ceased to be reasonable [406]-[407]. The Defendant failed to establish a public interest defence pursuant to s.4 Defamation Act 2013 in respect of publication of the TED Talk from 29 April 2020.

17. However, the Court held that where a public interest defence applies to the original publication, but then falls away due to a significant change in circumstances, a fresh assessment of whether the serious harm condition in s.1 Defamation Act 2013 is met is required from the date of that significant change. The legal analysis on this issue is at [53]-[59].

18. The Court was not satisfied that the (continuing) publication of the TED Talk from 29 April 2020 caused, or was likely to cause, serious harm to the Claimant's reputation [95]-[99]. Accordingly, the requirements of s.1 Defamation Act 2013 were not met in respect of publication of the TED Talk from 29 April 2020, and so that part of the claim was also dismissed.

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: www.judiciary.uk and http://caselaw.nationalarchives.gov.uk/

13 June 2022