



Courts and Tribunals Judiciary

SUMMARY

Duke of Sussex -v- Associated Newspapers Limited
[2023] EWHC 3120 (KB): Mr Justice Nicklin
8 December 2023

[References in square brackets are to paragraphs in the judgment of the Court]

1. The Court has today handed down judgment (“the Judgment”) on an interim application made in the Duke of Sussex’s claim for libel against Associated Newspapers Limited. This is not the final decision in the claim, which will now continue.
2. The article that has given rise to this claim for libel – “*REVEALED: How Harry tried to keep his legal fight over bodyguards secret... then minutes after MoS broke story his PR machine tried to put positive spin on the dispute*” – was published in *The Mail on Sunday* on 20 February 2022 (“the Article”). It concerned a claim for judicial review that the Claimant had launched, in September 2021, to challenge the Government’s decision not to continue providing the Duke of Sussex with publicly funded security when he was in the UK ([16]-[18]).
3. The text of the Article is set out in the Appendix to an earlier judgment of the Court: [\[2022\] EWHC 1755 \(QB\)](#).

The Court’s earlier decision on the meaning of the Article

4. In that earlier [judgment](#), the Court decided that the meaning of the Article was:
 - (a) in his legal claim against the Home Office over the provision of police protection, the Duke of Sussex had initially sought confidentiality restrictions that were far-reaching and unjustifiably wide and were rightly challenged by the Home Office on the grounds of transparency and open justice;
 - (b) the Duke of Sussex was responsible for public statements, issued on his behalf, which claimed that he was willing to pay for police protection in the UK, and that his legal challenge was to the Government's refusal to permit him to do so, whereas the true position, as revealed in documents filed in the legal proceedings, was that he had only made the offer to pay after the proceedings had commenced; and
 - (c) as such, the Duke of Sussex was responsible for attempting to mislead and confuse the public as to the true position, which was ironic given that he now held a public role in tackling “misinformation”.
5. The Court also held that the underlined words were an expression of opinion.
6. Following that judgment, the Duke of Sussex reformulated his claim for libel to raise a complaint only about meanings (b) and (c).

The newspaper's defence

7. In answer to the Duke of Sussex's libel claim, the Defendant has relied upon the statutory defence of honest opinion under s.3 Defamation Act 2013. That defence is available if the relevant statutory criteria are met ([37]). In the earlier judgment, the Court has determined that the first and second conditions for the defence are met. The dispute between the parties is over the third condition: whether an honest person could have held the opinion on the basis of any fact which existed at the time the Article was published.
8. In summary, the Defendant argues that the facts in meaning (b) are substantially correct and based upon that an honest person could have expressed the opinion in meaning (c).

The Dismissal Application

9. The Duke of Sussex brought an application to strike out – or for summary judgment on – the defence of honest opinion (“the Dismissal Application”).
10. The Court has the power to grant summary judgment against a defendant, the effect of which is to dismiss a defence to a claim without the need for evidence to be considered at a trial. Before it will grant summary judgment, the Court must be satisfied that the defence has no real prospect of success. In other words, that it is fanciful to think that the defence could succeed at trial.
11. The Duke of Sussex argued that a key fact, relied upon by the Defendant to support its defence - that he had only made the offer to pay for his security after the proceedings had commenced - was wrong ([41]-[46]). He had made an offer to pay at a meeting in Sandringham in January 2020 (“the Sandringham offer”) ([13]). Because of that, the Duke of Sussex argued, the Defendant would not succeed in demonstrating the third condition for the defence of honest opinion.
12. The Defendant argued that the Sandringham offer was not an offer made to the Government. The first time the Duke of Sussex had made an offer to pay to the Government was only after he had commenced his claim for judicial review. The Defendant also relied upon the issuing, on 15 January 2022, of two public statements on behalf of the Duke of Sussex concerning his claim for judicial review against the Government which the Defendant says were misleading: the Press Statement and the Background Briefing (set out in [25]).

The Court's decision

13. For the reasons explained in today's judgment ([50]-[65]), the Court has refused the Duke of Sussex's Dismissal Application. The Court concluded that the Defendant's defence of honest opinion has a real prospect of success and should go forward to trial.
14. The Defendant has a real prospect, at trial, of demonstrating that the Duke of Sussex had not made an offer to the Government to pay for his security before he began his proceedings for judicial review. At trial, the Court may find that the Sandringham offer is irrelevant to the defence of honest opinion ([58]).
15. The honest opinion defence does not rely upon a just one fact. The Defendant has a real prospect, at trial, of demonstrating (at least) the following facts ([60]):
 - (a) that the Press Statement suggested that, prior to the judicial review claim, the Duke of Sussex had made at least one previous offer to the Government to pay for his State security, which offer(s) had been rejected by the Government;

- (b) that the Background Briefing suggested that the judicial review claim was a challenge to the Government's refusal to accept the Claimant's offer to pay for his State security; and
- (c) that these suggestions were not accurate, or at least did not give the full story.

16. The Court held ([62]):

“... it is not fanciful that the Defendant will be successful, at trial, in demonstrating that the public statements issued on the [Duke's] behalf sought to promote the JR claim as his battle against the Government's (perverse) decision to refuse to allow him to pay for his own security. There is a real prospect that the Defendant will succeed in demonstrating that this was a misleading description of the issues in the JR claim, arguably promoted because it was hoped to show the [Duke's] JR claim in a positive light, whereas a portrayal of the JR claim as the [Duke] trying to force the Government to reinstate his (tax-payer funded) State security risked his appearing in a negative light. I anticipate that, at trial, the Defendant may well submit that this was a masterclass in the art of “*spinning*”. And, the Defendant argues, it was successful in misleading and/or confusing the public. The resulting media coverage relied upon by the Defendant did, indeed, characterise the JR claim as the [Duke's] challenge to the Government's refusal of his offer to pay...”

- 17.** If the Defendant does establish these facts at trial, it has a real prospect of demonstrating the third element for an honest opinion defence: that an honest person could hold the opinion that the Duke of Sussex was responsible for attempting to mislead and confuse the public as to the true position of his judicial review claim (and that this was ironic given that he now held a public role in tackling “*misinformation*”) ([63]).

Next steps

- 18.** The Duke of Sussex's claim will now go through its remaining pre-trial phases and, unless resolved in some other way, to a trial at some point in 2024.
- 19.** Unless the parties reach agreement about these matters, there will be a further hearing on 12 December 2023 at 2pm, at which the Court will consider the orders that should be made consequent upon the Judgment.

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