



Neutral Citation Number: [2019] EWHC 1952 (QB)

Case No: HQ17M04570/HQ18M02371

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/06/2019

Before :

MR JUSTICE JULIAN KNOWLES

Between :

Gareth Bull

Claimant in the
Privacy Claim/
Defendant in
the Libel Claim

- and -

Donna Desporte

Defendant in
the Privacy
Claim/
Claimant in the
Libel Claim

William Bennett QC (instructed by Howes Percival) for the Claimant in the Privacy
Claim/Defendant in the Libel Claim
The Defendant in the Privacy Claim/Claimant in the Libel Claim appeared in person

Hearing dates: 17 May 2019

Approved Judgment

The Honourable Mr Justice Julian Knowles:

Introduction

1. This is an appeal with the permission of Dingemans J by Donna Desporte against [10], [11] and [12] of the order of Master McCloud of 10 January 2019 (the Order).
2. At the time the Master’s order was made, there were two claims in issue:
 - a. a claim brought by Mr Bull against Ms Desporte for misuse of private information and copyright infringement (the Privacy Claim, HQ17M04570). This claim did, for a period of time, also include a Counterclaim made by Ms Desporte for defamation and malicious falsehood, however this was struck out by [1] of the Order. I heard the trial of this matter in March and I am in the process of writing my judgment; and
 - b. a claim brought by Ms Desporte against Mr Bull for libel (the Libel Claim, HQ18M02371).
3. Both claims arise out of a book, ‘Google Me No Lies’, which Ms Desporte wrote and published in 2017 (the Book). This was primarily, but not wholly, about her relationship with Mr Bull. He came to public attention in 2012 when he and his then wife won £41 million on the National Lottery. He was in a relationship with Ms Desporte from late 2016 until mid-2017.
4. Paragraph 10 of the Order provided that unless by 4pm on 21 January 2019 Ms Desporte provided a draft form of charge on a property in Verwood, Dorset, acceptable to Mr Bull to cover the totality of the costs orders made against her (whether in the Libel or the Privacy Claims), or within 14 days pays the costs set out in the Order, then her Libel Claim would be struck out.
5. Ms Desporte did not provide a draft form of charge and did not pay the costs set out in the Order, and her Libel Claim was accordingly struck out.
6. Paragraphs 11 and 12 of the Order imposed a Limited Civil Restraint Order (LCRO) on Ms Desporte. Paragraph 12(a), (d) and (e) were as follows:

“12 Pursuant to the Limited Civil Restraint Order and CPR Practice Direction 3C paragraphs 2.1 to 2.8:

a. the Defendant may not make any further application in the Privacy Claim without first obtaining the permission of Master McCloud, such permission to be sought by way of letter to Master McCloud.

...

d. if the Defendant makes a further application in the Privacy Claim without first obtaining the permission of Master McCloud such application will automatically be dismissed without the

Master having to make any further order and without the need for the Claimant to respond to it.

e. if the Defendant repeatedly makes applications for permission pursuant to the Limited Civil Restraint Order which are totally without merit, the court may direct that if the Defendant makes any further application for permission which is totally without merit, the decision to dismiss the application will be final and there will be no right of appeal, unless the Master who refused permission grants permission to appeal.”

7. The following applications/hearings are pending in regard to the litigation between the parties:
 - a. In regard to Ms Desporte’s application to appeal against [1] – [5] of the Order (which struck out her counterclaim in the Privacy Claim and made various costs orders against her), this was referred back to the Master by Dingemans J in order that the Master could consider whether an application for permission to appeal would be permitted. The Master's permission was required by reason of the terms of the LCRO. The Master has not stated whether an application for permission to appeal may be made or not.
 - b. Following the forthcoming handing down of the judgment concerning the Privacy Claim, depending on the outcome, it is possible that there will have to be a hearing to resolve consequential matters.
 - c. Ms Desporte has issued a further claim for libel against Mr Bull for libel (the New Claim).
8. On 18 April 2019 Mr Bull issued an application notice to strike out the New Claim and for the court to grant an Extended Civil Restraint Order against Ms Desporte.

Procedural Background

9. This appeal necessitates an understanding of the procedural background.
10. On 20 December 2017 HHJ Moloney QC sitting as a Judge of the High Court granted Mr Bull an Interim Non-Disclosure Order (INDO) concerning those parts of the Book said to constitute Mr Bull’s private information. In due course the Privacy Claim was issued and the claim was assigned to Master McCloud. As I have said, judgment is pending.
11. Ms Desporte brought an undated Part 20 Counterclaim for malicious falsehood/defamation against Mr Bull (this was later defined as part of the Privacy Claim and struck out by [1] of the Order).
12. On 23 January 2018 Ms Desporte issued an application notice to obtain an interim injunction to prevent further publication of the statements complained of in her Counterclaim. On the same day she made the application set out in the application notice, in the absence of Mr Bull. The matter came before me and I adjourned it to 30

January 2018.

13. On 30 January 2018 the application for an injunction was refused by Rowena Collins Rice sitting as a Judge of the High Court. Costs were awarded against Ms Desporte in the sum of £16 800 (including VAT). She did not pay them.
14. Ms Desporte sought permission to appeal against this above order. On 22 February 2018 Rafferty LJ concluded that the appeal was ‘certain to fail’ and refused permission to appeal.
15. Ms Desporte requested that the above decision be reconsidered pursuant to CPR r 52.24(6). On 27 February 2018 Rafferty LJ reconsidered the application and concluded that it was ‘doomed to fail.’
16. On 13 June 2018 the Master held a costs and case management conference in the Privacy Claim. Mr Bull applied for an order that unless Ms Desporte either gave security for the costs of the 30 January application, or paid at least half of them by 11 July 2018, the Counterclaim would be struck out. Ms Desporte was ordered to pay the Claimant's costs of £4750 including VAT.
17. Ms Desporte did not comply with the unless order and therefore the Counterclaim stood struck out from 11 July 2018.
18. On 2 July 2018 Ms Desporte made a number of applications to Whipple J in the Privacy Claim. None of them was granted. Three of them were dismissed as ‘totally without merit’. A costs order was made against Ms Desporte for £10 000 including VAT.
19. On 3 July 2018 Ms Desporte brought a free-standing claim for defamation against Mr Bull regarding a statement made by his solicitor in a formal letter to the US publisher of the Book dated 31 May 2018 (this is the Libel Claim)
20. On 20 July 2018 Asplin LJ refused Ms Desporte’s application to appeal out of time against the INDO of 20 December 2017.
21. On 28 November 2018 Ms Desporte’s applications for permission to appeal against the orders of Rowena Collins Rice, sitting as a Judge of the High Court, and Whipple J were refused by Irwin LJ. Each of her applications was described as ‘hopeless’.
22. In her order of 10 January 2019 the Master used the definitions given above re the Privacy Claim and the Libel Claim. She then made the orders which are the subject of the instant appeal in [10]-[12].

Issues on the appeal

23. The short point made by Ms Desporte is that [10] of the Order improperly stifles her litigation against Mr Bull because it requires her to pay costs in order to litigate. She said that this would infringe her right of access to a court under Article 6(1) of the European Convention on Human Rights (the Convention) and she relies on *Harb v HRH Prince Abdul Aziz Bin Fahd Bin Abdul Aziz* [2017] EWHC 258 (Ch), [18]-[26].

She says that her Libel Claim is separate from the Privacy Claim and so she should not have to pay the costs of one in order to pursue the other, or to provide a charge in order to do so. She also submits that she should not have been made subject to the LCRO.

24. On behalf of Mr Bull, Mr Bennett QC pointed out that there are two elements to [10] of the Order:
 - a. That Ms Desporte either provide a draft form of charge on her property *or satisfy the outstanding costs orders*;
 - b. if not, her libel claim would be struck out.
25. Mr Bennett accepted that the italicised words could amount to an act which unfairly stifles Ms Desporte's Libel Claim, and he does not seek to uphold them. However, he contended that it was perfectly fair to stipulate that the claim would be struck out unless Ms Desporte provided a draft charge on her property. He says that she made no attempt to provide a draft charge of any description, therefore the Libel Claim was properly struck out following the expiry of the 10-day deadline for her to do so.
26. Mr Bennett submitted that the Libel Claim is connected with the Privacy Claim. The alleged libel concerned a letter written by Mr Bull's solicitors to the US publisher of the Book on 31 May 2018 trying to prevent further publication following the making of the INDO. The words complained of were that: 'the book contains a great deal of information both real and fictitious about our client's private and family life which clearly breaches our client's rights'. Mr Bennett said that Mr Bull's solicitors were clearly complaining about the publication of private information, regardless of whether it was true or false. However, Ms Desporte relied on the use of the word 'fictitious' as implying that she had lied in the Book. This was the basis for the Libel Claim. At the time of the Order, the Privacy and Libel Claims were to be heard as part of the same trial so long as the trial Judge approved that course of action. (In fact, I only heard the Privacy Claim together with a related copyright infringement claim).
27. Ms Desporte initially tried to add her complaint regarding the letter of 31 May 2018 to her counterclaim in the Privacy Claim. This application was made to Whipple J on 2 July 2018. At [3] of the transcript Whipple J stated (underlining added):

"First of all, she seeks to amend her counterclaim. This is a component of the 18 June 2018 application. Ms Desporte seeks to amend her counterclaim to deal with various matters relating to allegations that her work was fabricated. It all arises out of a Howes Percival letter dated 31 May 2018. She argues that the claimant is not entitled to make these allegations of fabrication which she says are malicious and false."
28. In the same paragraph of the transcript, Mr Bull's counsel pointed out that by an order of 13 June 2018 the Counterclaim was due to be struck out on 11 July 2018 if an unless order was not complied with (see above). (The unless order was not complied with, therefore the Counterclaim was struck out by [1] of the Order). If this had not happened, the claim regarding the 31 May 2018 letter would have been added to the Privacy Claim instead of being brought as an avowedly free-standing Libel Claim.

29. Mr Bennett therefore submitted that the Privacy Claim and the Libel Claim were interwoven. It was reasonable to impose consequences for the Libel Claim for the failure to provide the charge concerning the costs incurred in the Privacy Claim.
30. Also, Mr Bennett says that [10] of the Order was made at the Master's volition. He says that it is apparent why from the transcript of the hearing. When the Master ordered further costs against Ms Desporte, the transcripts shows she laughed in response and said, 'Just add it to the tab'. The Master responded by telling that parties do not run up 'tabs', adding: 'Are you going to pay it?' At this point that Ms Desporte offered what she had previous offered, namely a charging order on her property. She said that Mr Bull was at liberty to seek a charging order, ie to seek a charge over her property which secured the debt in issue.
31. Therefore, Mr Bennett says that seen in this context the order that Ms Desporte submit a draft charge to Mr Bull was perfectly reasonable in the circumstances and not unfair. It could not stifle the claim because it did not mean that Ms Desporte would have to pay money to Mr Bull but merely provided him with a form of security.
32. He says that given Ms Desporte's failure to even attempt to provide a draft charge (and therefore to give Mr Bull an opportunity to see if it was satisfactory), her Libel Claim should remain struck out.
33. Mr Bennett told me that in relation to the LCRO, Dingemans J granted permission to appeal against it on the grounds that its wording was unsatisfactory. Counsel noted him as saying:

"It is difficult to reconcile paragraphs 12(d) and (e) (*of the M's order*). In those circumstances how (d) and (e) sit together and whether the Limited Civil Restraint Order is overly restrictive because it prevents appeals against the Master's orders (as Civil Restraint Orders are intended to operate)."
34. Mr Bennett submits that the wording of the LCRO (which is taken from the Practice Direction) in fact presents no difficulties:
 - a. Paragraph 12(a) provides that all further applications in the Privacy Claim can only be made if a request for the Master's permission to make the application is first obtained.
 - b. Paragraph 12(d) provides that if Ms Desporte does not first obtain the Master's permission before making an application, the application will be automatically dismissed.
 - c. Paragraph 12(e) is unconnected with [12(d)]. It provides that if Ms Desporte repeatedly makes requests for permission to make applications (which must be further to [12(a)] which are themselves totally without merit the court may 'set a marker' (Mr Bennett's phrase): the court 'may' direct that *if* a further totally without merit application for permission (to make an application) is made, the decision not to permit the application to be made will be final and there will be no right of appeal unless the Master who refused permission to bring the most recent

totally without merit application grants permission to appeal against that refusal.

Discussion

The Masters' decision to require Ms Desporte to provide a draft charge

35. Mr Bennett has conceded that the Master should not have required the payment of costs as a condition of the Libel Claim going forward, and to that extent the appeal succeeds. However, the question is whether the Master was wrong to make an order that Ms Desporte should provide a draft form of charge over her property.
36. I am not persuaded that she was wrong. The relevant rule is CPR r 3.1(3) which empowers the court to order a party to pay a sum of money into court, and I have had regard to the principles in the *White Book 2019* at [3.1.14]. Ms Desporte can properly, I think, be described as flouting costs orders. She is in breach of numerous costs orders which she has incurred as a result of failed applications in her litigation with Mr Bull, some of which have been totally without merit. She has been made subject to a LCRO as a consequence. I accept Mr Bennett's submission that the Libel Claim is interlinked with the Privacy Claim (in relation to which most of the costs have been incurred; indeed, Ms Desporte tried to have the two heard together). In these circumstances, a requirement that she provide Mr Bull with some form of security for his costs in the Libel Claim going forward was warranted, provided that any order made did not disproportionately interfere with her right of access to a court which she is entitled to by virtue of Article 6.
37. I am satisfied that the requirement for a charging order will not stifle Ms Desporte's claim. She can provide a charge on her property. In fact, as I have already explained, the suggestion of a charging order came from Ms Desporte herself after she had been rebuked by the Master for glibly suggesting that further costs could be added to be 'tab'. In fact, earlier in the hearing, Ms Desporte made reference to the possibility of a charging order being made (see at p26 of the Transcript). Following the hearing before me, Ms Desporte sent me a copy of an email which she sent on 21 January 2019 to Mr Bull's solicitors about costs in which she proposed, 'That at the conclusion of this claim and any reciprocal claim any outstanding costs be offset against the said property [address given]'. All of this, taken together, shows that she can provide a charging order but has simply chosen not to do so.
38. I therefore dismiss the appeal against [10] of the Order.

The appeal against the LCRO

39. I do not consider that there is any difficulty in the wording of the LCRO, essentially for the reasons given by Mr Bennett which I have outlined above. It seems to me to be entirely logical and workable.
40. I therefore dismiss this ground of appeal also.
41. It follows that this appeal is dismissed.