



Neutral Citation Number: [2021] EWHC 85 (QB)

Case No: QB-2019-004618

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/01/2021

Before :

MASTER DAVID COOK

Between :

SUMMERFIELD BROWNE LIMITED

Claimant

- and -

PHILIP JAMES WAYMOUTH

Defendant

Mr S J Bradshaw (instructed by Summerfield Browne Limited) for the Claimant
The Defendant did not appear and was not represented

Hearing date: 18 January 2021

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.

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MASTER DAVID COOK

MASTER COOK: :

1. This is a remedies hearing in respect of a defamation claim commenced by a firm of solicitors against a former client. On 6 July 2020 I struck out parts of the defence and made an order requiring the Defendant to file an amended defence by 3 August 2020 in default of which the defence would be struck out. On that occasion I gave an extempore judgment explaining my reasons. It is appropriate that I now set out that judgment in full.

The strike out judgment

2. This is the hearing of an application to strike out certain parts of the Defendant's defence. The Claimant is a firm of solicitors. The Defendant is a former client. The Defendant was involved in a dispute concerning the enforcement of a court order. He sought out the Claimant after an internet search, signed their standard terms and conditions after which the Defendant gave him advice for a fixed fee of £200. It seems that for some reason, which he has never fully articulated, the Defendant was dissatisfied with the advice he was given. It appears that rather than engage with the Claimant, in accordance with its dispute resolution procedure, the Defendant's response was to leave a review on the Trust Pilot website in the following terms;

““A total waste of money another scam solicitor

Stacey mills left the company half way through my assessment and the replacement was useless.

I paid upfront for a legal assessment of my case, but what I got was just the information I sent them, reworded and sent back to me.

No new information or how to proceed or what the law says or indeed the implications of what was done. I Just got their false assumptions, full of errors showing a lack of understanding for the situation and the law.

Once they have your money they are totally apathetic towards you. You will learn more from forums, you tube and the Citizens advice website about your case, for free”

3. In the circumstances the Claimant has brought proceedings for libel on the basis that it has been described as “A total waste of money” and “another scam solicitor”. The particulars of claim set out the defamatory meaning contended for at paragraphs 13 and 14 and at paragraphs 21 to 25 the fact the Claimant had suffered serious harm as defined by s.1(1) of the Defamation Act 2013.
4. The Claimant seeks general damages limited to £25,000, special damages of £300 per day, injunctive relief and an order to remove the defamatory words from the Trust Pilot web site.
5. The Defendant filed a defence which was sent to the court on 14th June 2019. Attached to the form of Defence is a narrative seven-page document which the court will read as his defence. The defence is in many respects not compliant with the CPR but Mr Bradshaw takes no point on this, it is apparent to him and to the court that the defence adequately sets out the defences the Defendant wishes to put forward, namely, honest opinion, public interest, truth, and the issue of whether the Claimant has suffered serious harm.

6. Following the filing of the defence, the Claimant issued this application on 12th March 2020 by which the Claimant seeks to strike out the defences of honest opinion and public interest and to obtain summary judgement on the defence of truth.
7. The application is supported by the witness statement of Tessa Rhodes, a solicitor employed by the Claimant firm. In her evidence she confirms the Claimant is regulated by the SRA, that it has been trading since 2014, is in good standing, and that there has never been criticism by the regulator of any dishonest or fraudulent behaviour.
8. The Defendant, it is fair to say, has not engaged with the application in any meaningful way. He has been in email contact with the court concerning the hearing; this contact is relevant and I propose to give a brief summary of it.
9. On the 29th of June 2020 the Defendant was sent an email link for the hearing. His response was as follows:

“I have had no correspondence from your court and this notice of hearing for the 6th of July came to me via E Mail from Rhodes@SummerfieldBrowne.com.

This entire situation is of their own creation, they deceived me into believing they would provide an assessment to the value of £200 +vat, they did not provide anything of value - its a dictionary definition of the word Scam.

Summerfield Browne made no attempt to negotiate out of court and refused to respond to my offers on three occasions. They refused to discuss my pre court offer of withdrawing my opinion should they refund my £200 +vat. They are suing for personal gain.

SB are the solicitor acting in person, they have no 'client', they are claiming to represent their 'client' for the sole purpose of financial gain.

Going through litigation is just another attempt at getting more money from me without giving anything of service in return and all the hallmarks of a scam solicitor.

I am disappointed that the High Court has given this self-serving solicitor a hearing when the prerequisite of pre court negotiating has not been satisfied and suggest the case dismissed immediately before costs are incurred.

The cost of attending this hearing with representation, excludes me from my right to justice as is clearly their intention.”

10. The court responded by informing the Defendant that he should copy his emails to the other party as required by CPR 39.8. The Defendant responded as follows:

“I am well aware of the history of this application and I responded to it at the time with a witness statement answering all the issues.

You have not answered any of my points or addressed any of the issues I raised.

If you seek a response from me for you procedure, then you could include my witness statement in the court bundle along with this email chain and the judge can read it all before the hearing should he/she wish to do so.

I have already made it perfectly clear that this case should never be heard in court and I will not be giving it any credence or legitimacy by attending.

By continuing with the hearing you are undermining the integrity of your own institution”

11. On the basis of this communication it is not surprising the Defendant failed to attend the remote hearing listed today. Given the Defendant’s stance, I am confident he is well aware of the hearing and has taken the deliberate decision not to attend.
12. The Defendant has recently referred to the fact that he is currently a resident in Sweden. The Swedish address was not initially known by the Claimant. The address used for service was the one given by the Defendant when he instructed the Claimant and was his last residential address. In the circumstances there is no possibility of the Defendant taking any successful point on jurisdiction. He has filed an acknowledgement of service indicating an intention to defend the claim but not otherwise taking issue with the court’s jurisdiction and he has filed a defence. On any view he must be taken to have accepted the jurisdiction of the court. Further, as pointed out by Mr Bradshaw, the Defendant was at the time of service resident in a member state of the European Union and by section 9 of the Defamation Act 2013 there would be little basis for opposing jurisdiction as England and Wales is clearly the most appropriate place in which to bring this action.
13. I turn to the basis of the application. CPR 3.4, provides that a defence may be struck out if it is bound to fail. CPR 24.2 provides that summary judgment may be entered if the Defendant has no real prospect of successfully defending the claim.
14. I will now consider each of the three defences set out in the Defence.
15. First, the defence of honest opinion. The Claimant submits that the defence of honest opinion cannot succeed in circumstances were the words used convey an allegation of fraud. Mr Bradshaw referred me to the case of *Wasserman v Freilich* [2016] EWHC 312 (QB), an unreported decision of Sir David Eady sitting as a High Court judge. At paragraph 16 of his judgment Sir David said:

“The common sting in the various natural and ordinary meanings, pleaded in paragraph 27 of the particulars of claim, is that the Claimant was dishonest. That has generally been

regarded as a factual allegation. It has long been recognised that “the state of a man’s mind is as much a fact as the state of his digestion”: Edgington v Fitzmaurice (1885) 29 Ch D 459. Juries are deciding on every day of the week, as a matter of fact, whether a particular Defendant was, or was not, dishonest. Accordingly, it is an allegation which in the context of libel is readily understood as being susceptible to a plea of truth under s.2 of the 2013 Act (as was the case with justification). It is not thought to be a matter of opinion: nor can one convert an allegation of dishonesty (or, for that matter, of murder or rape) into a matter of opinion by merely inserting in front of it a formula such as “I believe ...” or “she thinks ...”: see e.g. Hamilton v Clifford [2004] EWHC 1542”

And at paragraph 22 of his judgment he said:

“An allegation of dishonesty, fraud or attempted fraud will usually fall fairly and squarely on the side of fact rather than opinion. The same is true also, as I have already mentioned, where the allegation is of “reasonable grounds to suspect”. Accordingly, I cannot allow a pleading to go forward in the form of paragraph 19A. It must be struck out.”

16. Here Mr Bradshaw submits that the allegation of dishonesty made that the Defendant is that it is “a scam solicitor”, has the plain meaning that the Claimant is dishonest and fraudulent. The Defendant seeks to present this as an opinion. Mr Bradshaw argues this is impermissible, the Defendant is putting forward the Claimant’s dishonesty as a matter of fact and cannot simply say by way of defence “this is my opinion”. In the circumstances I accept the law is as stated in *Wasserman v Freilich* and am satisfied Mr Bradshaw’s submission is correct, with the result the defence of honest opinion should be struck out.
17. Secondly, the defence of public interest. The Defendant relies on s.4 Defamation Act 2013. The scope of s.4 was considered by the Court of Appeal in *Economou v de Freitas* [2018] EWCA Civ 2591 and summarised as follows:

“There were three questions that had to be addressed in relation to each of the publications complained of. Was the statement complained of, or did it form part of, a statement on a matter of public interest? If so, did the Defendant believe that publishing the statement complained of was in the public interest? If so, was that belief reasonable?”

18. Mr Bradshaw submits the Defendant’s defence shows no real prospect of establishing that the publication of the review was in the public interest. The Defendant cannot show that any care or any adequate enquiries or checks were made by him. He would clearly have been aware of the seriousness of the allegation. This point also seems to me to be sharpened by the nature of the Defendant’s correspondence with the court in which his allegations are repeated. The Defendant makes it clear in his defence he sought money as a price for removing the review. In my judgment I agree with Mr Bradshaw’s submission that this demand wholly undermines the defence of public interest. Also it was apparent that the Defendant made no attempt to engage in the

Claimant's dispute resolution process. A complaint should always be the first stage in resolving any issues of customer satisfaction.

19. In the circumstances I accept Mr Bradshaw's submission that the Defendant's conduct wholly undermined the defence of public interest.
20. Lastly, I turn to the defence of truth. The Claimant seeks summary judgment in relation to the defence of truth on the basis that, as noted, there is no credible basis for asserting the truth of the Defendant's belief and therefore no real prospect of making it out. Mr Bradshaw submits, on the basis of the witness statement of Ms Rhodes, there is evidence that it is a responsible firm of solicitors with no published SRA decisions against it and thus it is inconceivable the Claimant could be a scam firm or trading fraudulently and have such an unblemished record.
21. I recognise that in the context of an application for summary judgment I must not conduct a mini-trial but it seems to me the Defendant's allegations are so bold that in the complete absence of any credible material to support them I can conclude there is no real prospect of them succeeding at trial. I also take into account that the highpoint of the material submitted by Defendant is that he is unhappy with the service provided by Claimant.
22. In the circumstances I have concluded that the defence is fanciful and it cannot be proportionate for the matter to proceed to a full trial. I am satisfied that I should strike out the defence of honest opinion. Claimant is entitled to summary judgment in respect of the defences of public interest and truth.
23. As Mr Bradshaw acknowledges, this leaves the defence of serious harm. This is in reality a small issue that can be dealt with in a proportionate and sensible manner. He submits that I should require the Defendant to deal with this single issue in an amended pleading and if the Defendant fails to engage appropriately to strike out the defence. That seems to me to be a proportionate and appropriate way forward. Ultimately the question will be whether the Defendant is prepared to engage rationally in the court process. He is a litigant who tends to shoot wildly from the hip and he should be required to focus his fire. If he does not, I propose to impose the sanction which has been suggested. The only remaining question will be whether the Claimant can establish serious harm and/or financial loss.

Events since the strike out judgment

24. The Defendant failed to comply with my order requiring him to serve an amended defence and by my order of 13 August 2020 the remaining defence was struck out and judgment was entered for the Claimant.
25. The Claimant now seeks the following relief;
 - i) a narrative judgment setting out the reasons for striking out or granting summary judgment against the Defendant's defences to be published on BAILII,
 - ii) general and special damages,

- iii) a permanent injunction requiring the Defendant to remove or cause to be removed the defamatory review and restraining him from publishing it again in any forum,
- iv) an order pursuant to s.13 of the Defamation Act 2013 requiring the operators of the web site www.trustpilot.com to remove the defamatory review, and
- v) costs.

The claim for general and special damages

- 26. On 11 January 2021 Ms Rhodes filed a second witness statement for the purpose of the remedies hearing. Her evidence is that the Claimant relies upon the internet for large proportion of its telephone enquiries which are then converted into instructions for paid work. Indeed I take notice of the fact that this is how the Defendant came to instruct the Claimant.
- 27. Ms Rhodes' evidence is that following the posting of the defamatory review on the Trust Pilot web site the number of weekly enquiries fell markedly for a period of approximately 5 weeks from approximately 50 to 60 per week to 30 to 40 per week. She states that although it is difficult to be precise she has no doubt that the negative review has lead directly to the drop in enquires and in turn to the number of enquiries which have been turned into instructions.
- 28. Ms Rhodes said that the Claimant has actively encouraged existing and past clients to leave positive reviews on the Trust Pilot web site in an attempt to counter the negative effect caused by the defamatory review which remains on the Trust Pilot web site. As a result there has been a slow increase in the number of enquires.
- 29. Trust Pilot describes itself as "*The world's most powerful review platform, free and open to all*".
- 30. In my judgment it is beyond any dispute that the words complained of had a clear tendency to put people off dealing with the Claimant firm. It is difficult to conclude that the Defendant had any other purpose in mind when posting his review. It is a serious matter to accuse a solicitors firm of dishonesty and any such allegation is likely to deter those who are unfamiliar with the firm from using its services. There is supportive evidence that the number of enquiries fell dramatically after the review was posted. Given the manner in which the Claimant conducts its business I conclude that a substantial number of potential clients were put off and that there has therefore been a financially damaging impact for a period of at least three to four months. I am not in a position on the basis of the evidence before me to be any more precise and I do not think that any deeper or wider enquiry into the financial loss caused by the Defendant would be proportionate given the cap on damages sought. Any award of damages must also serve the purpose of vindication.
- 31. Mr Bradshaw referred me to the principles relating to the assessment of damages in defamation cases set out by Warby J in *Barron v Vines* [2016] EWHC 1226 QB and adopted by Nicklin J in *Dhir v Saddler* [2018] 4 WLR. 1., at paragraph 96 of

his judgment and submitted the following were factors were relevant to the assessment of damages in this case;

- i) The evidence of Ms Rhodes that there was a measurable decline in the number of enquiries in the weeks following the publication of the Defendant's defamatory review.
 - ii) The impact of the defamatory review was magnified by the Claimant's role as a reputable firm of solicitors.
 - iii) The impact of the defamatory review was magnified by the Defendant's position as a client who would be taken to have had first-hand experience of the Claimant's services.
 - iv) The audience to whom the defamatory review was published would by reason of being comprised of persons seeking a firm of solicitors, not already familiar with the Claimant and so have no particular reason to doubt the veracity of the Defendant's review.
 - v) The Defendant has not made an offer of amends or engaged at all on the contrary, as noted in my judgment above, he repeated his defamatory accusations in his correspondence with the court.
32. In respect of quantum Mr Bradshaw referred me to a number of cases involving online allegations by a defendant of fraudulent and unlawful acts by the claimant cited by Mr Richard Spearman QC in the case of *Fentiman v Marsh* [2019] EWHC 2099 (QB). In *Cairns v Modi* [2013] 1WLR 1051 £75,000 was awarded where the claimant was accused of fixing cricket matches in a social media post. In *Dhir v Sadler* £35,000 was awarded where the claimant had been accused in slander of threatening to kill the defendant. In *Doyle v Smith* [2019] EMLR 19 £30,000 was awarded where the claimant had been accused via a website operated by the defendant of attempting to engage in fraud in connection with a proposed land sale. Lastly, in *Monroe v Hopkins* [2017] 4 WLR 68 £24,000 was awarded where the claimant was alleged to have approved via social media posts the defacing of war memorials.
33. Mr Bradshaw submitted that the gravity of the Defendant's libel is at least as serious as that in *Monroe*, and is comparable with that in *Doyle*. Accordingly, general damages award of £24,000 to £30,000 would be appropriate, subject to his concession that the claim was limited to £25,000.
34. In respect of special damages which were claimed at £300 per day, Mr Bradshaw submitted that on the basis of Ms Rhode's evidence there had been a significant reduction in enquires for a period of at least 6 weeks which would equate at £300 per day to a sum of £12,600.
35. In my judgment the claim for special damages is not made out. Ms Rhodes evidence is simply not directed to this point and no detailed financial or accounting evidence has been provided. Whilst I accept the Defendant has chosen not to appear and contest the figure the burden remains on the Claimant to prove its loss. I am however satisfied that reduction in the number of instructions was caused by the defamatory review and has caused the Claimant some financial loss. As Mr Justice Warby said in the case of

Brett Wilson LLP v Persons unknown, responsible for the Operation and Publication of the website www.solicitorsfromhelluk.com [2015] EWHC 2628 [29] the loss of a single instruction can cost a firm tens of thousands of pounds (and in some instances more). In the circumstances I am satisfied that an award of general damages in the sum of £25,000 would adequately reflect the seriousness of the defamation, the financial loss which has occurred and the purpose of vindication.

Injunction and consequential order

36. Mr Bradshaw seeks an injunction to restrain further publication of the defamatory allegations and a mandatory order for the removal of the review. The Defendants Article 12 HRA rights are engaged and I must therefore be satisfied that the injunctive relief granted represents an interference which is necessary in pursuit of a legitimate aim, and goes no further than required. I am satisfied that the Defendant's manifest lack of cooperation or engagement with these proceedings is such that there is little if any prospect of him voluntarily withdrawing the defamatory review or refraining from republishing it elsewhere. I also have regard to the fact that it is not in the public interest for misleading and inaccurate information of this kind to be published on a consumer review web site. In these circumstances a permanent injunction requiring the removal of the review and restraining D from re-publishing it is both reasonable and appropriate.
37. Mr Bradshaw also seeks an order against the third party web site host requiring it to remove the defamatory review.
38. By s.13(1)(a) Defamation Act 2013 where a court gives judgment for the claimant in an action for defamation the court may order the operator of a website on which the defamatory statement is posted to remove the statement. The defamatory review was and remains on the website uk.trustpilot.com which is operated by Trustpilot A/S ("Trustpilot"). Trustpilot operates within the jurisdiction via its UK subsidiary Trustpilot Ltd.
39. Trustpilot is therefore the relevant 'operator of a website' for the purposes of s.13 DA 2013. By s.5 DA 2013, however, Trustpilot would, had it been named as a defendant, had recourse to the defence under s.5(2) that it was not itself the party that posted the defamatory statement. In my judgment liability having been determined against the Defendant, Trustpilot cannot be said to be exercising any right to self-expression such as to be protected by Article 10 ECHR. Accordingly, s.12 Human Rights Act 1998 does not apply to restrict the power of the Court to grant relief affecting Trustpilot, as the relief sought by the Claimant does not affect Trustpilot's exercise of the Convention right to freedom of expression.
40. In the circumstances I will make a s.13 order requiring Trustpilot to remove the defamatory review, on the basis that the Defendant's conduct to date makes it doubtful that he will comply with the injunctive relief the Claimant has been granted. As Trustpilot has not been present or represented at this hearing the order will contain a provision that it may apply to the Court for the order to be varied or discharged.

Costs and publication

41. The Defendant was ordered to pay the Claimant's costs up to and including the hearing of 6th July 2020 on the indemnity basis. This costs order has not been complied with. The Claimant seeks its costs of the disposal hearing. The schedule of costs for summary assessment seeks a further sum of £3,450. This sum is both reasonable and proportionate and I will make a costs order in the sum requested.
42. This judgment which sets out my reasons for entering judgment and the basis on which damages have been assessed will be published on BAILLII.