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Case No: KB-2023-001646
Case No: KB-2024-000800

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

20 November 2024

Before :

Deputy Master Marzec

- -

Between :

JAQUELINE SAMUELS
T/A SAMUELS & CO. SOLICITORS — **Claimant**

- and –

CHRISTOPHER JOHN HENRY — **Defendant**

- -

Both parties appearing in person

Hearing date: 29 October 2024

- -

Judgment

This judgment was handed down remotely at 10.30am on 20 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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DEPUTY MASTER MARZEC

Deputy Master Marzec:

1. The question of fact that I have to decide is whether the claimant has proven on the balance of probabilities that defendant published or is legally responsible for publishing the material complained of in the claimant's claims against him. On 29 October 2024 I heard evidence and submissions on this issue at a short (half-day) trial. Both parties were unrepresented at trial, as they have been throughout these proceedings.

2. The claimant, Ms Jacqueline Samuels, is a property solicitor who is a sole practitioner trading under the name Samuels & Co Solicitors. Between December 2020 and April 2021 the defendant, Mr Christopher John Henry, was the claimant's client. The defendant was unhappy with the claimant's services, and in particular with the contents of a particular email written by the claimant on 29 July 2021. In or before January 2022 the defendant made a complaint to the Solicitors Regulation Authority ("the SRA") about the email (the complaint was not in evidence). On 17 February 2022 the claimant was informed by letter that the SRA officer had found that there had been no breach by the claimant of the solicitors' code. In this letter the SRA also saw fit remind the claimant of the importance of "*ensuring correspondence remains professional going forwards*".

3. The defendant also made a complaint to the Legal Ombudsman (also not in the evidence before me). This complaint appears to have been wider in scope than the complaint to the SRA. A case decision was issued on 31 August 2022 and a "Final Decision" on 7 October 2022. In the Final Decision the Legal Ombudsman decided that the claimant's firm's services had been reasonable, whilst noting that the "*terminology in the email [dated 29 July 2021] was not as diplomatic as it could have been*".

4. The claimant has sued the defendant in two separate actions. The first action was brought by way of claim form dated 27 March 2023 seeking damages for malicious falsehood limited to £10,000 relying on two internet posts dated about 1 April 2022 and 1 March 2023 respectively. I will refer to these below as "the First Post" and "the Second Post". The clamant sued the defendant again by claim form dated 29 February 2024 complaining of another internet post published on or about 3 March 2023 ("the Third Post") and seeking damages for libel limited to £15,000. In neither claim does the claimant seek an injunction or any other remedy.

5. All three posts are reviews of the claimant and/or her firm posted on the claimant's Google Business Profile. The First Post stated: "*Awful law firm -the principle, Jackie Samuels was awful to deal with. An unfriendly and unhelpful individual – AVOID AVOID AVOID.*" The author is stated to be "*Chris H*".

6. The Second Post stated: "*Used this firm last year for a matter – whilst cheaper than other quotes I had, I suppose it's true what they say – you pay what you get for! Never resolved my case communication and service was poor.*" The author is stated to be "John H", although the claimant relies on the fact that the author's name on this post subsequently changed and appeared at various times as "*John*", "*CJL*", "*John Laycock*" and finally simply "*A Google User*".

7. The Third Post stated: "I *used this solicitor last year and agree with the other reviewers. Pretending to be a big firm with two offices this is a one woman operation – Jacquline* [sic] *Samuels. She is horrible to deal with, rude abrasive, unhelpful and bitter. Do not use this firm*". The author is stated to be "P R".

8. None of the copies of the screenshots of these posts indicated any engagements with these posts.

Procedural history

9. Following the service of both claims, on 24 May 2024 the defendant made an application to strike out both claims. As is apparent from his Defence and a witness statement supporting the application, the grounds for the application were that the defendant did not publish the posts complained of and there was no sufficient evidence that he did.

10. On 5 June 2024 Master Stevens gave directions in both actions. She directed that the two claims be consolidated, case managed and tried together and gave directions up to trial, including directions for disclosure and witness statements. She also directed that the Defendant's strike out application should be determined on the papers by a Master, but not before disclosure and exchange and witness statements.

11. The Defendant's application then came to me for determination on the papers. On 17 September 2024 I directed that the following issues be tried at a preliminary trial with a time estimate of half a day: (1) whether the defendant published or was otherwise responsible for the publication of the three posts; and (2) if he was responsible for the publication or all or any of them, the extent of the publication. Since by that time disclosure had taken place and witness statements filed and served pursuant to Master Stevens' order, it appeared to me that it was sensible to deal with the issue of publication at a final hearing on the issue rather than as an interim matter, which gave rise to the possibility of the court considering the issue twice, once upon the summary judgment application and again, if the application failed, at trial.

12. Both the claimant and the defendant attended the trial representing themselves. Each of them called no witness other than themselves.

The claimant's case

13. The claimant freely and candidly acknowledged at the trial that she had "*no direct evidence*" that the defendant published any of the three posts. But she relied on number of circumstantial matters that, she submitted, proved that the defendant had published them, or at least that he was more likely than not to have done so.

14. First, she relied on the fact that the author of the first post identified themselves as "*Chris H*", which is a shortened form of the defendant's name, Christopher John Henry. She said in evidence that she had had no other client by that name. Similarly, the second post's author was "*John H*", and this is also close to the defendant's name, and the claimant gave evidence that she had had no other client whose name was John H. She also relied on the fact that the author of the Second Post had changed his or her name a number of times, and she asserted that she believed that the defendant "*was making these changes to conceal his true identity*".

15. As to the Third Post, by "*P R*", she said that these are the initials of one Presangi Ranaweera. She explained in evidence that Ms Ranaweera and the defendant had jointly instructed the claimant in respect of a freehold purchase of the block of flats where they both lived. The claimant said that, following publication of the Third Post, she had sent an email to Ms Ranaweera asking her if *she* had published the Third Post. Ms

Ranaweera had responded that she had not. Ms Ranaweera's email was disclosed and produced at trial. The claimant's case appeared to be that since the defendant knew Ms Ranaweera, he must have used her initials in the Third Post to disguise his identity. When I asked the claimant why she believed Ms Ranaweera when she (Ms Ranaweera) denied publication but did not believe the defendant, she said that the defendant had a motive to inflict damage on her reputation but Ms Ranaweera did not, because Ms Ranaweera had been happy with the legal services provided but the defendant had not.

16. The claimant also relied on a copy of a further review that she said had also been published by the reviewer identifying himself/herself as "P R". This was a positive review of Trek Bicycles in Bath. In response to this review, the owner of Trek Bicycles in Bath posted a message that began, "*Hello Chris, thank you for your 5 star review*". The claimant stated that this showed that "P R" was in fact the defendant, since he was called Chris.

17. The claimant also relied on the timing of the three posts. The First Post appeared only two weeks after the SRA's letter dated 17 February 2023 rejecting the defendant's complaint to the SRA. The Second Post had appeared only two days after the defendant received her letter of claim. (The defendant denied receiving this letter, as I explain further below.)

18. In her closing submissions the claimant stated that the defendant had a motive to inflict damage on her. She said that the rejection of the defendant's complaints to the SRA and Legal Ombudsman had provided the defendant with a motive to inflict damage on her.

19. Since the trial had been listed to deal with extent of publication as well as responsibility for publication and there appeared to be no evidence on this issue, I asked the claimant what evidence she had as to extent of publication/readership. She drew my attention to a document that was a copy of an email to her from an individual named "Vera", in which Vera stated that, "*Having looked through your reviews, I am sorry to say I am not happy to proceed with your firm*". The claimant explained that Vera had instructed her to act for her but, as the email showed, had read the reviews and withdrawn her instructions.

20. Despite the fact that the message referred to Vera reading the claimant's reviews generally (and as set out below there were other negative reviews) and not to any of the posts in this claim, the claimant said that this showed that one person had decided to withdraw her instructions having read *the defendant's* posts. The claimant also told me that she had read a case that was authority for the proposition that if it could be shown that one person had read material on the internet it could be inferred that other people had done so too. Since the authority was not produced or identified, I could not make much of this submission, but it seems unlikely that any court would have asserted that as a proposition of general application.

The defendant's case

21. The defendant denied on oath that he had posted any of the three posts. He said that he did not know who did.

22. He stated that, once his complaints about the claimant's services to the SRA and the Legal Ombudsman had run their course "*the matter was effectively closed in my mind*". He stated that he gave the claimant no further thought until he received the first claim form. It was upon receiving the claim form that the first two posts first came to his attention. He had not received any letter of claim or notification of the claim before service of the claim form; he stated that he had moved house before the letter was sent and no longer lived at the address it was sent to. He stated that he was a busy man with two small children, a full-time job and a house renovation project and is a trustee to two charities and that he "*didn't go around posting reviews*".

23. He stated that he does not have and has never had a gmail email address which is needed to post a review on Google Business. Although I accept the defendant's evidence that he does not have a gmail account there was no expert evidence as to whether someone needs a gmail address to post a review on this platform and so I cannot reach any conclusions on that point.

24. When asked about the review of the Trek Bicycle shop in Bath by the same reviewer who had posted the Third Post and appeared to be called "Chris", he said that he knew nothing about this and that he never been to the Trek Bicycle shop. The "P R" account was not operated by him.

25. The defendant also referred to the fact that the claimant had received negative reviews historically in 2014 and 2017 on the Yelp platform, which he says that he saw for himself. Although no such reviews were disclosed by either party, the claimant did not deny she had received some such reviews, but said that they were very historical and very few. The defendant also stated that the claimant had also sued two other individuals in the High Court for posting allegedly defamatory and damaging reviews about her, and that both the claimant in those other cases also had the first name Christopher.

26. I asked the claimant about these other lawsuits during cross-examination. She said that that it was correct that had brought a claim against a Christopher Grant on an allegedly defamatory post by Mr Grant. She said that claim was proceeding to trial. She also agreed that she had brought another claim on a Google review against a Christopher Laycock. When I asked her what happened to that claim, she stated that the judge had made "*a declaration of defamation*" in her favour. I asked her what this meant and she said this was a formal finding with costs in her favour. Since it was not clear to me what that formal finding was I pressed the claimant as to what had happened in that claim. She then explained that the claim had been struck out because of a procedural matter. I cannot infer anything about the merits of either of those lawsuits.

27. Nothing as to the defendant's answers in cross-examination or submissions or his demeanour suggested that he was not trying to assist the court and give truthful evidence. He told the court that being sued by his former solicitor had been "a stressful time", and that he believed that these claims were a ridiculous use of the court's time because, as he put it, people receive good and bad reviews; this was normal.

Discussion

28. The defendant's full name is Christopher John Henry. It is not unreasonable for the claimant to suspect that, since he was a former client of hers, the reviews posted under the names, "Chris H" and "John H" were posted by him. When one considers the fact that, as the claimant states, she has not had any other clients whose names could be shortened to Chris H or John H, there is a reasonably strong prima facie case that the defendant was the author of these two posts. Had I determined the defendant's application for summary judgment, I would have dismissed it in relation to the First and

Second Posts to permit the issue of publication on those two posts to be tried. I would have allowed it in respect of the Third Post since there seems to be very little indeed linking that post, authored by "P R", to the defendant.

29. However, it does not appear to me that there is any other evidence on the First or Second Posts that takes the claimant's case on publication much further. The date of the publication of the First Post might be entirely unconnected with the date the date of the SRA letter. These events were two weeks apart, and therefore not especially close in time.

30. Since the defendant states that did not receive the letter of claim, and there is no good reason to disbelieve him on this point, there is no coincidence in timing between the date of that letter and the Second Post.

31. It does not appear to me that the fact that the author of the Second Post changed his name on the post several times supports the allegation that the defendant was the publisher. It tends to show only that the author, whoever she or he was, was unsatisfied with his/her name on the post, or possibly that he or she wanted to conceal their name.

32. Similarly, the claimant's allegation of malice against the defendant does not assist her. The claimant alleges that the defendant's malice, which she expressed as his intention to injure her business, supports her case that he was the author of the posts. But the only basis for her allegation of malice is her belief that he posted the reviews complained of. This is circular reasoning. I need to reach the conclusion that the defendant published the Posts, or one or more of them, *before* considering if the publication of those words can be or is evidence of an improper motive. Alternatively, I would need to be satisfied upon evidence that the defendant intended to injure the claimant's business before that improper motive could weigh in the scales in favour of the claimant's case on publication.

33. The issue of malice was not listed for determination at the trial. However, since the allegation of malice was made in open court, I should record that there was no evidence to support it. The parties had given disclosure and served witness evidence on *all* issues and their full witness statements were before the court. When I asked the claimant what

the evidence of malice was, the claimant asserted that the posts themselves were evidence of the defendant's intention to harm her business.

34. Even on the assumed premise that the defendant is the author of these posts, I do not agree that the posts were or could be evidence probative of an allegation of malice. They were negative reviews in trenchant terms but nothing in them indicates that the reviewer(s) is not honestly expressing his or her views. The usual reason people post reviews online, both good and bad, is to help other people make informed decisions. Unless there is something unusual about the wording of a review, it cannot reasonably be inferred from a bad review that the reviewer's motive was to harm the person or organisation under review. In this case, the wording of the Posts indicates only that the reviewer(s) had had a bad experience and believed that others would be better to choose a different provider of legal services.

35. As against the claimant's prima facie case that the defendant was the publisher of the First and Second Posts, I have the defendant's sworn evidence that he was not responsible for the publication of any of the three posts and does not know who was. I am conscious that in order to find as a matter of fact that that he posted any of the posts complained of, I need to reach the conclusion that the defendant has lied to the court on oath as to a central issue in this claim. In my judgment, there is no sufficient basis to make that determination.

36. I have regard to the fact that the defendant was not the only individual who was dissatisfied with the claimant's legal services. I have not seen copies the other negative reviews referred to by the defendant, but the claimant acknowledged that there were other bad reviews, two or more of them written in such terms that she had decided to sue over their contents. From the claimant's evidence as to other claims she has brought against alleged reviewers it is clear that there are at least two other people called Christopher who have published, in the claimant's view, sufficiently defamatory and/or damaging reviews about the claimant for her to bring legal actions against them.

37. It is striking that the claimant did not at any time seek to establish conclusively who the relevant poster(s) of the Posts complained about was or were by making a third party disclosure application or a Norwich Pharmacal application. The claimant did not make

an application for Norwich Pharmacal relief at the CMC before Master Stevens on 7 June 2024 or at any time since then, despite the fact that she had known since the hearing before the Master in June 2024 that the trial of these claims was coming up and would be listed in the window 16 September to 31 October 2024. If she had done so, this issue could have been cleared up with no need for speculation. In her closing submissions, the claimant submitted that, if I were against her on the issue of publication, the court should stay the proceedings to allow her to make a Norwich Pharmacal application to discover the identity of the poster. I explained to the claimant that since this was the trial of the issue and the claimant's case had closed, it was too late for the claimant to adduce new evidence and too late for a stay of the proceedings to gather new evidence. A litigant may not sit on their hands and wait to see how the evidence comes out at trial before deciding whether or not to seek new and further evidence.

38. There may be cases in which a trial judge is prepared to make a factual finding that a party who has denied responsibility for publication on oath is in fact a publisher. The claimant relied on a case, ***Applause Store Productions -v- Raphael*** [2008] EWHC 1781 (QB) where Richard Parkes QC, sitting as a deputy judge of the High Court, made a factual determination that the defendant was the publisher of the material complained about despite the fact that he had denied it on oath. The judgment in that case recites in great detail the evidence and analysis that led the judge to make that determination, including exactly when the defamatory material, in the form of a fake Facebook profile, had been put online; the IP address that had been used to post the material - which led to the defendant's computers; and what the defendant's movements had been in his own flat at the relevant time. There was also evidence that some of the material posted would have been known to the defendant but not to other people. All the evidence pointed at the defendant in that case being the culprit. The defendant's alternative explanation – that a group of strangers had visited his flat on the night the material was posted and one of them had posted the material using his computers - was found by the learned judge to be "*utterly implausible from start to finish*" [62].

39. The instant case is very different. As the defendant rightly says, anyone could have posted the material complained about. The posts consist of complaints of a fairly generic kind that could have been posted by any unhappy client; none of it points

specifically to the defendant. There is no evidence of the sort there was in ***Applause*** as to the IP address used, or the time of publication, indicating that it was likely the defendant who was online at that time.

Disposal

40. In the light of the above, I find that the claimant has not proven her case that the defendant was liable for the publication of any of the three posts complained about in these claims. I dismiss these claims.

41. Further, in the light of my conclusions as to malice above, it follows that in my judgment the allegation of malice against the defendant made in the malicious falsehood claim would have no real prospect of success, even if the malicious falsehood claims were to continue beyond this trial. Even if I had reached the conclusion that the defendant had published the First and/or Second Posts I would have given summary judgment in the defendant's favour on the court's own motion and/or struck out the malicious falsehood claim on the basis that there is no properly pleaded case, nor any sufficient evidence, of malice.

42. I note also that in the second claim, brought in defamation upon the Third Post, there is a bare assertion of serious harm in paragraph 9: "*By reason of the publication of the words complained of the Claimant's reputation has been or is likely to be seriously harmed causing serious financial loss or the likelihood of serious financial loss*". There are no particulars supporting the claims of serious reputational harm or serious financial loss. Despite the fact that the witness evidence was served by the claimant on all issues, there is nothing in her statement supporting these claims. Nor was any disclosure given to support the claim of serious financial loss. The only document relevant to this issue is the email from Vera, referred to above. Since Vera said that she had been put off by reading the claimant's "reviews" (plural), without setting out what reviews Vera had read or on what platform, it does not seem to me that this email alone could amount to proof that serious harm had been caused by the Third Post, even if that had been pleaded. There was no witness statement from Vera explaining what she had read. If I had not reached the conclusion I have on responsibility for publication, I would have struck out the defamation case on the basis that there is no properly pleaded case on serious harm and/or given summary judgment on the basis that on the evidence any such case had no real prospect of success.

Deputy Master Marzec

20 November 2024