Neutral Citation Number: [2019] EWHC 3181 (QB)

Case No: QB-2019-001030

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 November 2019

Before :

THE HONOURABLE MR JUSTICE NICKLIN

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Between :

Christopher Chandler	**Claimant**
- and –	
Arthur O'Connor	**Defendant**

- -
- -

Aidan Eardley (instructed by **Keystone Law**) for the **Claimant**
The Defendant did not attend and was not represented

Hearing date: 6 November 2019

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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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THE HONOURABLE MR JUSTICE NICKLIN

The Honourable Mr Justice Nicklin :

1. The Claimant brings this libel claim in relation to postings by the Defendant on his Twitter account. The Claim Form and Particulars of Claim were issued on 22 March 2019 and personally served on the Defendant on 23 March 2019. The Defendant did not file an Acknowledgement of Service and so, on 31 July 2019, judgment in default was granted by Master Thornett.

2. The Master granted an injunction to restrain the Defendant from further publishing the defamatory Tweets complained of or similar words defamatory of the Claimant. He gave directions for a hearing to assess damages, including directions for the service of evidence by the Claimant by 18 September 2019 and by the Defendant by 16 October 2019.

3. Following the grant of the injunction against further publication granted by the Master, the Tweets complained were deleted on or around 1 October 2019. The Defendant did not delete them, rather Twitter removed them after another firm of solicitors instructed by the Claimant contacted the platform. If Twitter's policies remain as they were at the time of the ***Monroe -v- Hopkins*** litigation (**[2017] 4 WLR 68**; **[2017] EMLR 16**), then it is likely that the analytics data (including details of the extent of publication) were also deleted with the Tweets.

4. By his Order, the Master permitted the Claimant to elect to seek summary relief under ss.8-10 Defamation Act 1996. By Application Notice dated 11 September 2019, the Claimant does now seek summary relief under those statutory provisions, namely (a) damages not exceeding £10,000 and (b) an order that the Defendant should publish a suitable correction and apology (if agreed) or alternatively (in default of agreement) a summary of the court's judgment. In support of his application for summary relief, the Claimant has filed a witness statement and two from his solicitor, Jonathan Coad. The Defendant has not filed any evidence, and he did not attend the hearing. The account of the facts that follows is therefore based on uncontradicted evidence.

The Parties

5. The Claimant was born in New Zealand, but now lives in Dubai. He describes himself in his witness statement as a business investor and philanthropist. Together with business partners, he founded the Legatum Group in 2006. The Claimant describes Legatum as a "*purpose driven business partnership with a mission to generate and allocate capital and ideas that help people live more prosperous lives.*" The Clamant also co-founded that London-based Legatum Institute in 2007 ("the Institute"). He describes this as an independent educational charity and think-tank the mission of which is to "*develop the pathways from poverty to prosperity by fostering open economies, empowered people and inclusive societies.*" The Claimant plays no executive or management role in the Institute, which is independent of the Legatum Group and led by a Chief Executive Officer, Baroness Stroud, and an independent board of trustees.

6. The Defendant appears to be domiciled in Ireland. He is a prolific user of Twitter. As at September 2019, he had posted over 83,000 Tweets since joining Twitter in November 2010. His Tweets show that he has a particular interest in Brexit. At the material time, the Defendant's Twitter account was followed by around 2,200 other Twitter accounts.

The Tweets about which complaint is made

7. On 3 May 2018, the Defendant posted, and thereby published, to his Twitter followers the following two Tweets, in quick succession (separated by another, unrelated, Tweet):

> "Christopher Chandler, a New Zealand-born Monaco based money laundering billionaire who founded the Legatum Institute to shape Brexit has long been known to be employed by Russia. His source of funds is no secret to the French press."

and

> "Before UK voted for Brexit, Legatum Institute struggled to be heard. Now it is one of Britain's loudest advocates for a 'hard' Brexit, championing a position favoured by Putin through his Monaco based operative Christopher Chandler its founder."

8. Then, several months later on 14 March 2019, the Defendant posted the further following Tweet:

> "… Christopher Chandler of Legatum Institute sued me for tweeting information on their money laundering activities for Russia – he and his brother are supposed to have become billionaires from Gazprom. They are known to French Security for their Russian money laundering"

9. The defamatory meanings ascribed to the Tweets by the Claimant in the Particulars of Claim are as follows:

   i) in respect of the May 2018 Tweets, that the Claimant:

   > "… is underhand and duplicitous in that he is using the Legatum Institute to strongly advocate for the most extreme form of Brexit, purportedly on behalf of and in the best interests of Britain, while covertly having long been employed and funded by the Russian state to do so and only championing that position on the basis that it is favoured by Putin as being in the best interests of Russia, not Britain."

   ii) in respect of both the May 2018 and March 2019 Tweets, that the Claimant:

   > "… is guilty of criminal conduct in the form of money-laundering."

10. The pleaded case of publication in the Particulars of Claim is that the Tweets were published to the Defendant's Twitter followers, "*a substantial number of which are based in England & Wales*". The pleaded case goes no further than this. There is, for example, no pleaded case of republication either on a direct or indirect basis.

Hearing in the absence of the Defendant

11. The Defendant did not attend the hearing. The relief sought by the Claimant at the hearing included relief which, if granted, would affect the Defendant's Article 10 rights of freedom of expression. As such, the Court cannot grant such relief unless satisfied that the Claimant has taken all practicable steps to notify the Defendant of the Application and the hearing: s.12(2)(a) Human Rights Act 1998.

12. I am satisfied that the Claimant has taken all practicable steps to notify the Defendant. Indeed, I am satisfied that the Defendant knows very well that a hearing had been fixed for 6 November 2019 and what orders the Claimant was asking the Court to make. The Defendant has, nevertheless, made a conscious choice to keep away from, and to refuse to engage with, these proceedings. I reach these conclusions on the basis of the following evidence:

    i) On 6 August 2019, the sealed Order of Master Thornett was sent by post to the Defendant. I have been provided with a "Track and Trace" confirmation from Royal Mail confirming that the letter was delivered on 19 August 2019.

    ii) In addition to being sent the Order in the post, the terms of the injunction contained in the Order were sent to the Defendant by a series of text messages on 31 July 2019, and the full text of the Order was sent by the same means on 6 August 2019.

    iii) On 8 August 2019, the Defendant Tweeted:

    > "I have changed my mobile number – I have sent out my new one by mail. Keystone Law stuffed up my faithful old Nokia sending multiple messages on behalf of the Legatum Institute who are extreme Brexiters accused in the Commons of being Russian spies. They hacked into my emails."

    The Defendant did not inform the Claimant's solicitors of his new mobile telephone number.

    iv) The Defendant was sent the Application Notice and the Witness Statements in support on 11 September 2019, by a letter that was confirmed delivered on 16 September 2019. It appears that, for good measure, a further letter with the same enclosures was sent on 14 October 2019, and delivered on 17 October 2019.

    v) On 26 September 2019, a further letter advised the Defendant that the hearing of the assessment of damages hearing had been fixed for 6 November 2019. That letter was delivered on 30 September 2019.

    vi) Also, on 26 September 2019, Mr Coad, the Claimant's solicitor, Tweeted the following message to the Defendant:

    > "… Following default judgment being entered against you an application for summary relief including damages has been served on you. Please note that it has been listed for 6 November 2019… Please check your post at your Irish address for the relevant correspondence. If you would like to receive the documents electronically please provide an email address…"

    vii) Following Mr Coad's efforts to contact the Defendant via Twitter, shortly afterwards the Defendant 'blocked' Mr Coad from following him on Twitter. I infer, without difficulty, that was as a result of Mr Coad's Tweet but I am satisfied that it demonstrates that the Defendant had received and read the message.

viii) The Defendant has not contacted the Court to ask for an adjournment or to explain his absence. He has not served any evidence, whether by the deadline of 16 October 2019 or otherwise. He has not provided the Court with any submissions. He has not instructed anyone to appear on his behalf.

ix) This refusal to engage is entirely consistent with the stance adopted by the Defendant to the proceedings throughout.

13. I was satisfied that it was appropriate to hear and determine the Claimant's Application notwithstanding the absence of the Defendant.

Summary Relief after default judgment

14. Following the grant of judgment in default in a defamation claim, a claimant can proceed to have damages assessed (and apply for other remedies) in the conventional way or s/he can apply for summary relief under ss.8-9 Defamation Act 1996: ***Brett Wilson LLP -v- Persons Unknown*** **[2016] 4 WLR 69** [35]-[37]. ss.8-9 provide, so far as material:

> **8. Summary disposal of claim**
>
> (1) In defamation proceedings the court may dispose summarily of the plaintiff's claim in accordance with the following provisions.
>
> (2) The court may dismiss the plaintiff's claim if it appears to the court that it has no realistic prospect of success and there is no reason why it should be tried.
>
> (3) The court may give judgment for the plaintiff and grant him summary relief (see section 9) if it appears to the court that there is no defence to the claim which has a realistic prospect of success, and that there is no other reason why the claim should be tried.
>
> Unless the plaintiff asks for summary relief, the court shall not act under this subsection unless it is satisfied that summary relief will adequately compensate him for the wrong he has suffered.
>
> (4) In considering whether a claim should be tried the court shall have regard to—
>
> (a) whether all the persons who are or might be defendants in respect of the publication complained of are before the court;
>
> (b) whether summary disposal of the claim against another defendant would be inappropriate;
>
> (c) the extent to which there is a conflict of evidence;
>
> (d) the seriousness of the alleged wrong (as regards the content of the statement and the extent of publication); and
>
> (e) whether it is justifiable in the circumstances to proceed to a full trial…

9. Meaning of summary relief

(1) For the purposes of section 8 (summary disposal of claim) "summary relief" means such of the following as may be appropriate—

(a) a declaration that the statement was false and defamatory of the plaintiff;

(b) an order that the defendant publish or cause to be published a suitable correction and apology;

(c) damages not exceeding £10,000 or such other amount as may be prescribed by order of the Lord Chancellor;

(d) an order restraining the defendant from publishing or further publishing the matter complained of.

(2) The content of any correction and apology, and the time, manner, form and place of publication, shall be for the parties to agree.

If they cannot agree on the content, the court may direct the defendant to publish or cause to be published a summary of the court's judgment agreed by the parties or settled by the court in accordance with rules of court.

If they cannot agree on the time, manner, form or place of publication, the court may direct the defendant to take such reasonable and practicable steps as the court considers appropriate…

15. Section 10 of the Defamation Act 1996 provides that rules of Court may be made to govern the procedure for applications for summary relief. The relevant rules for the purposes of the current application were set out in CPR Part 53.2 and CPR Part 53 PD §5.1 (before Part 53 was amended from 1 October 2019). Paragraph 5.3 of the Practice Direction provided:

(1) This paragraph applies where -

(a) the court has ordered the defendant in defamation proceedings to agree and publish a correction and apology as summary relief under section 8(2) of the Defamation Act 1996; and

(b) the parties are unable to agree its content within the time specified in the order.

(2) Where the court grants this type of summary relief under the Act, the order will specify the date by which the parties should reach agreement about the content, time, manner, form and place of publication of the correction and apology.

(3) Where the parties cannot agree the content of the correction and apology by the date specified in the order, then the claimant must prepare a summary of the judgment given by the court and serve on all the other parties within 3 days following the date specified in the order.

(4) Where the parties cannot agree the summary of the judgment prepared by the claimant they must within 3 days of receiving the summary –

(a) file with the court and serve on all the other parties a copy of the summary showing the revisions they wish to make to it; and

(b) apply to the court for the court to settle the summary.

(5) The court will then itself settle the summary and the judge who delivered the judgment being summarised will normally do this.

(The same provisions appear in what is now §7.3 in the new Practice Direction 53B).

16. Where an application for summary relief is made after judgment has been granted to the claimant on the claim, the threshold requirements in s.8(3) – that it appears to the Court that there is no defence to the claim that has a realistic prospect of success and no other reason why the claim should be tried – are to be interpreted as applying to the summary relief that is sought: ***Loutchansky -v- Times Newspapers Ltd*** **[2002] QB 783** [96]-[99] *per* Lord Phillips MR. The question at that stage is whether there is any reason why a claim for damages should be tried, as opposed to being dealt with under the summary disposal procedure. Once judgment on liability has been entered, whether by default, following admission or after a decision on the merits, s.8(3) does not reintroduce a requirement to consider the merits of a defence to liability: ***Charakida -v- Jackson*** **[2019] EWHC 858 (QB)**; **[2019] 4 WLR 66** [30]-[33] *per* Warby J.

17. Having considered the matters to which I must have regard under s.8(4), I am satisfied that there is no reason in this case why the issues that remain to be resolved should be determined at a trial rather than by way of summary disposal. There is only one Defendant. He has decided not to participate in the proceedings, and he has not suggested that the balance of the Claimant's claim should be determined at a full trial. There is no conflict of evidence (the Defendant has chosen not to file or rely upon any) and, in terms of seriousness, it is the Claimant who seeks the summary relief (recognising that he can be awarded no more than £10,000 in damages). In all the circumstances, proceeding to a full trial would be a disproportionate use of the Claimant and the Court's resources and not in accordance with the overriding objective.

Assessment of damages: the law

18. The legal principles I must apply are well-established and are set out conveniently by Warby J in ***Barron -v- Vines*** **[2016] EWHC 1226 (QB)** [20]-[22].

Assessment of damages: evidence

19. The defamatory allegations made against the Claimant are serious. They alleged criminal money laundering and lobbying for a hard Brexit at the behest of a foreign state. They were presented, I am satisfied, in a manner which was designed to enhance their credibility; that they had been established by third parties and were even 'matters of record'. Overall, in their content and presentation, the Tweets were calculated to provoke strong feelings against the Claimant.

20. I have limited evidence of the impact of the libel on the Claimant's reputation. There is no clear evidence of the publication of the Defendant's Tweets having caused damage

to the Claimant. The Claimant refers in his witness statement to a bank having closed one of his accounts, without explanation. There is nothing to show that this was caused by any of the Defendant's Tweets. I do not doubt the sincerity of the Claimant's concern that this was as a result of some unfounded allegation made against him, but it would be most surprising if a properly managed financial institution made important decisions like this based on a Tweet.

21. The Claimant has also not provided the Court with any reliable evidence as to the extent of publication. The Tweets about which complaint has been made have only recently been deleted (see [3] above). Unfortunately, steps were not taken prior to the deletion of the Tweets to obtain from Twitter the analytics data regarding publication. Warby J noted the importance of Twitter analytics data in ***Monroe -v- Hopkins*** [84], and stated that efforts should be made to preserve and obtain this data in actions which concern publications on Twitter. It should be a relatively straightforward matter to obtain the data *before* a Tweet is deleted, either by agreement of the owner of the Twitter account or, in default of agreement, an order of the Court. The issue should certainly be addressed at any early stage in any litigation concerning publications on Twitter.

22. The Claimant has given evidence of his concern over the damage to his reputation by the Defendant's Tweets, which he describes as "*cavalierly [alleging] criminal misconduct in a very public forum*", and his concern that "*some mud always sticks*". In his witness statement, the Claimant added:

> "… once the seed of doubt has been sown in someone's mind [about a person's integrity], they are apt to silently distance themselves, or terminate the relationship, without saying a word or offering any explanation. Baseless lies of this nature, of criminal conduct, have costly consequences, not always immediately evident or readily quantifiable, but very real and enduring nonetheless."

23. The Claimant has relied upon aspects of the Defendant's conduct in the proceedings which he contends aggravates the injury to his feelings and would justify an enhanced award of damages. Had this been an assessment of damages rather than summary disposal, it might have been necessary to look in more detail at these matters. However, as the damages that the Claimant can recover are capped at £10,000, it suffices for me to record that I am satisfied that the Defendant has adopted a dismissive attitude towards the Claimant and his complaint. He has refused, following an order of the Court, to remove the offending Tweets. Indeed, on 26 August 2019, the Defendant posted a Tweet repeating similar allegations defamatory of the Claimant.

24. This conduct of the Defendant has also increased the importance of the vindicatory element of an award of damages. Had this been a conventional damages assessment, the Court would have ensured that the award of damages was sufficient to mark the seriousness of the allegations and the absence of any effort by the Defendant to defend them as true.

25. As to potential mitigation of damages, Mr Eardley has quite properly reminded me of s.12 Defamation Act 1952, which permits a defendant to rely in mitigation of damages upon instances where a claimant "*has recovered damages, or has brought actions for damages, for libel or slander, in respect of publication of words to the same effect as the words on which the action is founded, or has received or has agreed to receive compensation in respect of any such publication*". The Defendant has not sought to rely

on any other publications, but Mr Eardley on behalf of the Claimant has drawn my attention to the following complaints that the Claimant has previously made to publishers of other defamatory publications. The details are set out in the Second Witness Statement of Mr Coad, but for the purposes of this judgment a summary will suffice. In relation to sums of damages that the Claimant has received in respect of other defamatory allegations:

i) the publishers of Express Newspapers paid £10,000 (and published a correction and apology) in respect of an article published on 26 November 2017 over an allegation, accepted by the publishers to be inaccurate, that the Claimant had assisted President Putin to gain control of Gazprom;

ii) the publishers of *The Guardian* paid £3,500 (and published an apology) in respect of an article concerning the Claimant's application for Maltese citizenship published on 31 January 2018; and

iii) on or around 18 May 2018, Another Europe is Possible Limited made a £250 donation to charity in lieu of damages (and published a correction) in relation to a video it had published on several social media platforms which included allegations concerning the Claimant's control over the Legatum Institute Foundation, its funding and the Claimant's personal views about Brexit.

26. None of the earlier publications, in respect of which the Claimant recovered damages or compensation, contained allegations to the same effect as the Tweets for which the Defendant has been sued in these proceedings. Therefore, the Defendant cannot rely upon these sums in mitigation of damages pursuant to s.12.

Assessment of damages: conclusion

27. The Tweets published by the Defendant made serious allegations against the Claimant. Against that, the extent of publication of the Tweets was limited and there is no evidence of particular reputational harm caused by their publication. The conduct of the Defendant in response to this claim has aggravated the injury to the Claimant's feelings and has enhanced the need for vindication. Taking all those factors into account, an award of damages in excess of £20,000 would have been more than justified. As the Claimant has elected to obtain summary relief, I will order the Defendant to pay damages of £10,000.

Correction and Apology

28. The Claimant seeks a further order, pursuant to s.9(1)(b) Defamation Act 1996 (set out in [14] above), requiring the Defendant to publish a suitable correction and apology. Under s.9(2) the content of the correction and apology, and the time and the manner of its publication, are matters that the parties are expected to agree. Unless the Defendant's attitude to these proceedings changes, it might be thought that he is very unlikely even to engage with the process envisaged under the statutory framework. Nevertheless, Parliament catered for such an eventuality by providing a default mechanism whereby the Court can order the Defendant to publish a summary of the Court's judgment, if necessary, settled by the Court itself.

29. Although, for good reason, the Act does not empower the Court to order a Defendant, who does not consent, to publish an apology, I am satisfied that, ultimately, the Claimant is entitled to an order requiring the Defendant to publish a summary of the Court's judgment on the claim against him. By analogy with s.12 Defamation Act 2013 (which extended the power of the Court to order the publication of a summary of the Court's judgment in non-summary relief cases), I am satisfied that the publication of a summary of the Court's judgment in this case pursues the legitimate aim of protecting the reputation of the Claimant and that, subject to any further submissions as to its precise terms and the manner in which it is to be published, an order is necessary and proportionate: see discussion in ***Monir -v- Wood*** **[2018] EWHC 3525 (QB)** [238]-[244]. There is a realistic prospect that an order requiring the Defendant to publish a summary of the Court's judgment – and a link to the published judgment – by means of a Tweet from his Twitter account would be an effective means of bringing the Court's decision to the attention of at least a substantial number of those to whom the Tweets were originally published.

30. In the circumstances, I will make an Order under s.9(1)(b) requiring the Defendant to publish a suitable correction and apology (if one can be agreed between the parties) or, in default of agreement, a summary of the Court's judgment. The procedure to be followed is set out in the governing Practice Direction (see [15] above).