Neutral Citation Number: [2022] EWHC 1816 (QB)

Case No: QB-2020-000021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/07/2022

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

- -

Between :

(1) MURTAZA ALI SHAH
(2) SYED MUJTABA ALI SHAH **Claimants**

- and -

(1) AJAZ AHMED
(2) PURE LEGAL SOLICITORS LIMITED
(3) RAJA USMAN ARSHAD **Defendants**

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Mr David Lemer (instructed by **Stone White Solicitors**) for the **Claimants**
The **Defendants** did not appear and were not represented

Hearing date: 4th July 2022

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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.

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives.
The date and time for hand-down is deemed to be 10:30 on 13 July 22.

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The Honourable Mrs Justice Collins Rice :

Introduction

1. The Claimants are brothers. Both are Pakistani journalists based in London.

2. They bring a libel action because of two 'press releases' – one in English and one in Urdu – published on a WhatsApp group on 6th January 2019, which among other things described their conduct at a press conference the previous day as having been disorderly, abusive and violent.

3. The First Defendant is a solicitor. He accepts he published the press releases. He says he did so on behalf of the Second Defendant, his legal practice. The Third Defendant, an individual whose father is the subject of criminal proceedings in Pakistan, was involved in the calling and management of the press conference. He appears to have been a client of the Second Defendant.

4. The trial of the Claimants' libel action was listed to begin on 4th July 2022. To be determined before the opening of the trial, however, were two applications. The Claimants had applied some time before for strike-out of the Defendants' defence and judgment in their favour. The Defendants applied at the last minute to vacate the listing and postpone the trial.

5. This judgment records my reasons for refusing the Defendants' application and granting the Claimants'.

Litigation History

6. The Claimants issued proceedings on 6th January 2020. They had sent pre-action letters in January and February 2019; it appears the Defendants made no response and did not engage with the prospect of litigation. Service of the claim form and particulars of claim was not straightforward; the Claimants obtained an Order enabling them to serve the Third Defendant by post to the Second Defendant. On 18th May 2020, the Claimants were notified by solicitors' firm Kingswell Watts Solicitors, that they were acting for all three Defendants.

7. Time for filing a defence was extended by agreement, and a defence was filed by Kingswell Watts on 15th June 2020. It was not served on the Claimants at the time.

8. The defence put the Claimants 'to proof' of the precise facts of publication and the preliminary issues of the natural and ordinary meaning of the words complained of, whether they were of defamatory tendency at common law, and whether they had caused or were likely to cause serious harm to the Claimants' reputation. It also advanced the statutory defences of truth, honest opinion and statement on a matter of public interest (Defamation Act 2013 ss.2-4).

9. By Order of 16th June 2020 the case was allocated to the multi-track, with a deadline of 24th July 2020 for the exchange of directions questionnaires and the filing of proposed directions. It appears the Defendants did not comply.

10. The Claimants indicated in correspondence on 15th July 2020 that they intended to apply to strike out the statutory defences as being defectively pleaded. The Defendants did not reply to that. So the Claimants issued an application on 25th January 2021 to strike out the statutory defences, together with an application for a trial of the preliminary issues.

11. These applications came before Master Davison on 5th March 2021, at a hearing which the First Defendant attended in person. The Master: gave the Defendants an opportunity to amend their pleading of the statutory defences by 2nd April 2021, failing which that part of their defence would be automatically struck out; ordered a preliminary issues trial and gave further directions to trial of the claim; and ordered the Defendants to pay the Claimants £600 on account of costs by 20th March.

12. It appears the Defendants made no payment. They sent an amended defence just after the expiry of the deadline, by email (not agreed), unsigned and still defective.

13. At a case management hearing before Deputy Master Yoxall on 30th July 2021, at which the Defendants were neither present nor represented, the Defendants were given until 6th August to apply for relief from sanctions for not filing a compliant defence on time, failing which the Claimants were to apply for the listing of a case management conference for further directions. The Defendants made no such application. Master Yoxall also dispensed with the preliminary issues trial, noting that a trial of the claim had been listed for 1st November with a time estimate of 4 days.

14. The file was reviewed on the papers by Nicklin J on 7th October 2021. He noted the case was not ready for trial in November. He vacated the trial, and ordered that unless the Defendants filed and served an application by 21st October, seeking permission further to amend the defence so as to plead the statutory defences in accordance with Practice Direction 53B, the statutory defences would be struck out. A hearing for directions, and any such application, was listed for 1st November in place of the vacated trial. A timetable for filing and serving bundles and skeletons for the hearing was set out. The Order noted that "*There appears to be a history of non-compliance and non-engagement by the Defendants. If that continues, they will find that sanctions will be imposed to their disadvantage.*"

15. The hearing on 1st November 2021 took place before Saini J. The First Defendant appeared in person. The Defendants had not filed an application in compliance with the Order of Nicklin J. Saini J's Order was headed as follows:

> Warning: you must comply with the terms imposed upon you by this order otherwise your case is liable to be struck out or some other sanction imposed. If you cannot comply with any part of this order you are expected to make formal application to the court before any deadline imposed upon you expires.

The Order struck out the statutory defences, gave directions to trial, awarded the costs of and occasioned by the Order of Nicklin J to be paid by the Defendants, with £8,000 to be paid on account within 14 days. No payment has been made. The Defendants did not comply with the Order in respect of (a) giving standard disclosure, (b) serving a list of issues or (c) serving witness statements.

16. On 7th March 2022, the case was re-listed for trial on 4th July 2022, with a time estimate of 2-3 days.

17. On 7th May 2022, the Claimants applied to strike out the entirety of the Defendants' defence and to debar them from defending the proceedings. The application was supported by a Witness Statement from the Claimants' solicitor. This rehearsed all the litigation steps the Claimants had taken to progress the claim and comply with Orders of the Court, and detailed the Defendants' failure to do so.

18. On the afternoon of Friday 1st July 2022, with the hearing of the Claimants' application, and (unless the application was successful) the trial, due to begin on Monday 4th, an application was made by a Mr Adam Ahmed, who states that he is the son of the First Defendant, from the Second Defendant's email address, to vacate the trial. The application notice cited 'health issues and case prejudice' as the reasons. The application was accompanied by a signed statement (but not a declaration of truth) from Mr Ahmed. I indicated that I would hear the application orally at the hearing on Monday 4th.

The Defendants' Application

19. The Defendants did not in the event attend the hearing of their application, and were not represented at the hearing. I had before me a witness statement of 4th July from the Claimants' solicitor confirming proper service on all three Defendants of the hearing papers and notice of the date of the hearing. I accepted that evidence. Given the nature of their application, and correspondence on Friday 1st confirming both that the application was opposed and my intention to hear their application on Monday 4th, I was satisfied that the Claimants had taken all practicable steps to ensure that all the Defendants were fully aware of the listing, and that at least the First and Second Defendants were in fact in no doubt about it. The Claimants' solicitor's statement also confirmed my understanding that the Defendants' solicitors, Kingswell Watts, who had represented them throughout, were still on the record as doing so and had been communicated with accordingly.

20. An email from Mr Adam Ahmed to my clerk sent at 16.43 on Friday 1st said this (in its entirety):

> The Defendant Mr Ajaz Ahmed does not have the mental capacity to represent himself or the Second Defendant, Pure Legal Solicitors Ltd. He intended to represent himself and the Second Defendant.
>
> In regards to the Third Defendant, Raja Usman Arshad, Mr Ajaz Ahmed does not represent him, nor does Pure Legal Solicitors Limited or Kingswell Watts Solicitors, for whom correspondence has been sent. Raja Usman is a resident of Pakistan whose whereabouts are unknown to us. My understanding is that Raja Usman has not provided any instructions to any Solicitor. Mr Ajaz Ahmed has no communication with him.

> It is not in the First Defendant's mental, physical or financial capacity or Second Defendant's to proceed with a trial. The exceptional circumstances, which have been raised, have been evidenced within the application.
>
> For these reasons the application should be considered on paper. If further medical evidence is required, then please adjourn so that the evidence can be provided.

21. I took this to be an informal indication by the Second Defendant, on behalf of the Defendants generally, of an intention not to take the opportunity provided to make oral representations in support of their application. I decided in all the circumstances, and in the absence of any other explanation for failure of attendance or representation, that the interests of justice required their application to be considered in their absence, on the basis of the supporting documentation the parties had provided and the oral submissions of the Claimant.

22. Mr Adam Ahmed's unsworn statement of 1st July is one page long. It sets out that the First Defendant is '*currently admitted at Royal Blackburn Hospital in the Mental Health Urgent Assessment Centre*'. It continues:

> The matter should be stayed until further notice, whilst the First Defendant undergoes treatment for his mental health and has the ability to properly deal with the matter.
>
> The First Defendant believes he has reasonable prospects of defending this matter and the trial should not proceed without him being given a fair and just opportunity.

It continues with some notes which Mr Adam Ahmed says reflect discussions with his father '*over the course of the last six months*'. These are not easy to follow. They seem to be complaints about the Claimants' conduct and a suggestion that an associate of theirs had given the First Defendant 'illegal substances' which have had a serious consequence for his mental health and interfered with his compliance with Court Orders. An opportunity is asked for the trial to be postponed until after the First Defendant has had the necessary treatment and is mentally able to defend the claim, given that the Claimants' associate has put him '*into a life and death situation*'.

23. Mr Adam Ahmed's statement appends a small selection of case papers and correspondence dating from over a year ago, and a short, unsigned, letter dated 1st July 2022 from a liaison doctor at the Royal Blackburn hospital. This states (in its entirety) that:

> Mr Ajaz Ahmed (Dob 08/05/1971) presented at ED on 22/06/22 following an overdose of 14 x 200mg ibuprofen with intent to end his life. Social stressors highlighted – bereavements of brother (2020) and mum (2021), father diagnosed with Bowel cancer and Ajaz inability to continue his practice as a solicitor due to his current mental health difficulties. Symptoms

> disclosed – low mood, suicidal thoughts, onset of visual and auditory hallucinations, change in behaviours including self-neglect and 'going missing' for 10 days. I have reviewed him in AE on 27/06/22 and discharged him home with Home treatment support. He presented again to AE on 30/06/22 after taking another Overdose and I have reviewed him on 01/07/22 and advised to attend Pendle house for review with HTT consultant at 11.30am.
>
> If you have any concerns please do not hesitate to get back to me.

24. Despite there being reasons not to do so – the doubt about the capacity in which Mr Adam Ahmed makes his statement, the fact that it is unsworn, and the fact that the doctor's letter is unsigned – and its limitations accordingly, I had regard to what is said in this letter about the First Defendant. And I say at once that its description of his poor mental health clearly gives cause for concern and must evoke sympathy.

25. The Claimants also drew attention to what the letter does not say. It does not say that the First Defendant is an in-patient at the hospital ('HTT' stands for Home Treatment Team); he appears rather to have presented twice on an acute basis but to have been discharged home each time. It does not say he lacks capacity to conduct litigation or instruct legal representatives. It does not, in particular, explain where – on what may be inferred to be a potentially wide spectrum of debility or disability – the First Defendant is assessed to be positioned. And it offers neither a clear diagnosis nor any prognosis.

26. I take all of this into account. The overall picture emerging, as best it can be discerned on the limited basis available, is that the First Defendant suffers from poor mental health on what appears to be an incipient or chronic basis, connected with life events over the past two years, and which had lately manifested itself in suicidal behaviours over the weeks leading up to the hearing. Beyond that, I did not consider that I had been provided with (a) sufficient explanation for the Defendants' application having been made at the very last minute, when the First Defendant had apparently presented with acute symptoms some ten days before the application was made on the eve of trial, (b) clear and comprehensible medical evidence as to the impact of the First Defendant's illness in relation to the litigation or (c) any information about the likely course of the First Defendant's illness capable of providing a basis for vacating and relisting the hearing.

27. I also bore in mind the extensive history of poor engagement by the Defendants with these proceedings, including the fact that the application for adjournment appears to have been their first engagement of any sort since the 1st November 2021 hearing eight months ago. I bore in mind the prospects of real unfairness to the Claimants if the hearing were to be vacated in its entirety in these circumstances. The relief the Claimants seek in defamation proceedings is vindication, and vindication delayed is vindication denied. I had been given no basis for concluding that the proceedings, if adjourned, could be relisted on any predictable timetable, nor for having confidence that the Defendants could be relied on to comply fully and promptly with any directions

that might be given as to the provision of more complete information in order to be able to review the case in the interim.

28. I concluded in all these circumstances that of the available courses open to me, the one with the least overall risk of injustice would be to proceed to hear the Claimants' application for a terminating ruling, in the absence of the Defendants. The Defendants had been on notice of that application since May and for the reasons already set out I was satisfied that they were fully on notice of its listing which had itself been fixed since March. If I concluded that the Claimants failed on their application, then there was no prejudice to the Defendants by my having considered it in their absence, and there would be a clearer basis for deciding whether or not to continue there and then to proceed to trial or to consider other options. If I concluded that the Claimants succeeded on their application, then, pursuant to CPR 39.3, the Defendants would be afforded an opportunity to apply to set my decision aside and at the same time to provide more complete evidence about the reasons for their failure to attend or be represented at the listed hearing and the medical case for adjournment and relisting.

29. I refused the Defendants' application accordingly.

The Claimants' Application

30. CPR 3.4(2) provides as follows:

> The court may strike out a statement of case if it appears to the court –
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> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
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> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
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> (c) that there has been a failure to comply with a rule, practice direction or court order.

31. The Claimants apply to strike out what remains of the Defendants' defence on the ground of repeated failure to comply with the Orders of the Court in this case. I am directed on the authority of *Denton v TH White Ltd* [2014] EWCA Civ 906 and *Walsham Chalet Park Ltd v Tallington Lakes Ltd* [2014] EWCA Civ 1607 to consider the application as follows:

> i. identify and assess the seriousness and significance of the failure to comply;
>
> ii. consider the reasons for default;
>
> iii. evaluate all the circumstances of the case so as to deal with the application justly.

In considering this last limb, I am in particular to consider the proportionality of striking out, including having regard to other potential courses such as making adverse costs orders.

32. The Claimants advance five points on their application: (i) the breaches of Orders and Directions have been repeated, flagrant and unexplained; (ii) any sanction other than striking out would serve only to prolong what are already excessively protracted proceedings, and in a manner which is burdensome and unfair to Claimants seeking to establish reputational vindication; (iii) trial of the claim had already had to be vacated once on account of the Defendants' unpreparedness and default and they were evidently still unprepared on this second occasion; (iv) in the absence of the already struck-out statutory defences, the Defendants' pleadings advanced no substantive defence to the Claimants' claim in any event; (v) the Claimants' application for strike-out had not itself been responded to and so was not actively defended.

33. The facts of the litigation history contained in the Witness Statement of the Claimants' solicitor of 6th May 2022, and rehearsed above, have not been challenged as to accuracy nor materially explained by the Defendants. This is on the face of it, and as already noted by Nicklin J, a course of conduct disclosing sustained non-compliance and disengagement. The Order of Saini J of 1st November contained an express warning to the Defendants that they faced strike-out or other sanction in the event of non-compliance. That Order itself has not been complied with, either as to procedural directions or as to payment of costs, and no application has been made to vary it (on time or at all). And it appears that no response has been made to the Claimants' present application other than by way of Mr Adam Ahmed's 'statement' on 1st July.

34. I have directed myself to the observations of Warby J (as he then was) in ***Sloutsker v Romanova*** [2015] EWHC 2053 (QB) at [84]-[86] and considered what remains of the Defendants' defence – as pleaded, but without further investigating its merits. The following points arise.

35. It appears that there may be outstanding issues between the parties relating to the respective responsibilities of the Defendants for publication of the press releases, but, as noted above, there is at least an admission that the First Defendant published them on behalf of the Second Defendant.

36. The defence puts the Claimant to 'strict proof' of the natural and ordinary meaning of the publications complained of. But natural and ordinary meaning, and defamatory tendency at common law, are not issues subject to (evidential) 'proof'. The defence pleads no alternative natural and ordinary meaning. I had prepared for trial of these issues in the established manner – by reading through the publications complained of in advance (before looking at what either party wanted to say about their meaning), and forming and noting some provisional views. Without venturing any conclusion on natural and ordinary meaning or defamatory tendency on an interlocutory basis, I am satisfied on the basis of my preliminary and provisional views that what is pleaded by the Claimants on natural and ordinary meaning is neither '*wildly extravagant and impossible*', nor '*clearly not defamatory in their tendency*' given the accusations of violence.

37. The Claimants had pleaded 'serious harm' (s.2 Defamation Act 2013) on an adequate and particularised basis capable, if made out, of raising both a general inferential case

and establishing examples of specific harms sufficient to meet the test. The defence again puts the Claimants to 'strict proof'. But the *essential* role proof in an *inferential* case on serious harm is limited, since it may draw on a combination of the meaning of the words, the situation of a claimant, the circumstances of publication and the inherent probabilities (*Lachaux v Independent Print Ltd* [2019] 3 WLR 253).

38. In all these circumstances I drew the following conclusions.

39. The Defendants' conduct of this litigation has been characterised by persistent failure to engage properly and fairly with rules of procedure, and by multiple and serious failures to comply with the Orders and Directions of the Court. The Defendants have been given repeated opportunities to re-establish their participation in the litigation on a satisfactory footing and to prepare for a fair trial of the claim, but have not acknowledged and taken those opportunities. Nor have they offered any good reason for failing to do so. They have been given clear and repeated warnings of the jeopardy that that places them in.

40. This course of conduct has been wasteful of court time and public resource, and wholly unfair to the Claimants. It has denied them the opportunity to make out their case for vindication in a timely manner. The effect on the Claimants is therefore highly prejudicial. It has also not only escalated the cost of these proceedings in an unwarranted manner, but kept the Claimants out of funds to which they are clearly entitled by Order.

41. I am satisfied that the Claimants' case is properly pleaded. What remains of the Defendants' case is not on its face entirely satisfactorily and fully pleaded in response. On that basis alone, their prospects of successfully defending the case cannot be said to be more than at best uncertain.

42. I am satisfied in all these circumstances that the Defendants' conduct of this litigation has become oppressive and unjust. No possibility has been suggested, and none can be discerned, that a remedy short of strike-out would be effective in remedying this situation. Costs awards have already been twice made against them and twice ignored. Mr Adam Ahmed asserts that the Defendants have reasonable prospects of defending the claim but does not explain or substantiate that assertion. If an application is made to set aside my decision, however, there will an opportunity to do so.

43. I am therefore satisfied of the justice and proportionality of granting the Claimants' application for a terminating ruling.

Decision

44. I declined to adjourn the hearing of the Claimants' application for the reasons set out above. I have also explained why the Claimants have gone on to satisfy me of the merits of their application.

45. The Defendants' defence is struck out. Judgment will be entered for the Claimants on liability.

46. I have explained why I consider the test set out at section 12(2) of the Human Rights Act 1998 to have been satisfied. There is no basis in these circumstances for resisting

the Claimants' claim for vindication by way of injunctive relief. That will be ordered accordingly.

47. I indicated at the hearing that I was not, however, minded to proceed to trial on quantum of damages without affording the Defendants an opportunity to address that issue specifically. I am minded therefore to order a timetable for written submissions on quantum, and on consequential issues (including costs and the Claimants' request for publication of a summary pursuant to s.12 of the Defamation Act 2013), and for those matters to be determined on the papers.

48. Finally, I am minded to direct the Claimants to serve a copy of this judgment, and the accompanying order giving effect to it, promptly on the Defendants. They will then be able to consider their position in the context of CPR 39.3(3)-(5), which provides as follows.

> …
>
> (3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.
>
> (4) An application under … paragraph (3) must be supported by evidence.
>
> (5) Where an application is made under paragraph … (3) by a party who failed to attend the trial, the court may grant the application only if the applicant –
>
> > (a) acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him;
> >
> > (b) had a good reason for not attending the trial; and
> >
> > (c) has a reasonable prospect of success at the trial.