

IN THE HIGH COURT OF JUSTICE

Case No. HQ18M03248

QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

BEFORE: THE HONOURABLE MRS JUSTICE STEYN DBE

BETWEEN :-



ESTHER RUTH BAKER

Claimant

and

JOHN ALEXANDER MELVIN HEMMING

Defendant

ORDER

UPON the Court handing down judgment and making the Order dated 5 November 2019

AND UPON the Claimant and the Defendant making written submissions pursuant to the aforesaid Order

IT IS ORDERED that:

1. Judgment having been given for the Defendant on the counterclaim, insofar as the counterclaim was based on the natural and ordinary meaning pleaded by the Defendant:
 - a) A final injunction is granted in the terms of the Order attached hereto.
 - b) Damages to be assessed at the trial of the remaining issues in the claim.
 - c) The Defendant has permission to withdraw the claim based on the pleaded innuendo meaning.

- d) The Claimant do pay 90% of the Defendant's costs of the counterclaim, to be assessed on the standard basis, subject to detailed assessment if not agreed.
 - e) The Claimant do make a payment of £5,000 on account to the Defendant, within 21 days of this order, in respect of the costs referred to in paragraph 1(d) above.
2. The Claimant do pay the Defendant's costs of:
- a) The Defendant's application dated 11 June 2019; and
 - b) The Claimant's application dated 24 September 2019;
- to be assessed on the standard basis, subject to detailed assessment if not agreed.
3. In respect of the remaining issues in the claim and the assessment of damages in respect of the counterclaim:
- a) The Claimant must file and serve any evidence relied upon by 4pm on 21 January 2020;
 - b) The Defendant must file and serve any evidence relied upon by 4pm on 11 February 2020;
 - c) The Defendant must file and serve a trial bundle not less than 21 days before the first day of the trial.
 - d) The Claimant must file and serve a skeleton argument not less than 14 days before the first day of the trial.
 - e) The Defendant must file and serve a skeleton argument not less than 7 days before the first day of the trial.
 - f) The Defendant must file an agreed bundle of authorities, not less than 3 days before the first day of the trial.
 - g) A trial shall be listed after 10 March 2020, with a time estimate of 1½ days, to determine the remaining issues in the claim and to assess damages in respect of the counterclaim.
4. The parties have liberty to apply to set aside or vary the case management directions in paragraph 3 of this Order, on 7 days' written notice to the other party. Any such application may be heard by a Master.

Reasons

- 1. A claimant who succeeds in obtaining a final judgment, whether after trial or summarily, is normally entitled to a permanent injunction to vindicate the right that he has proved he has: see *ZAM v CFW* [2013] EWHC 662(QB). In this case, the Defendant (who is the claimant in respect of the counterclaim) has been given judgment on the

counterclaim, insofar as his claim was based on the natural and ordinary meaning of the words complained of that he pleaded. The Claimant deliberately chose not to contend that the defamatory allegation was true. The effect of my judgment is that the allegation has been found to be untrue and defamatory. There is no public interest in allowing an untrue allegation to be republished. I consider that a final injunction is necessary and appropriate.

2. The Defendant was entirely successful on the Claimant's application and he is entitled to his costs in accordance with the general rule that costs follow the event.
3. The Defendant was largely successful on his application and, in any event, his application was necessary given the state of the Claimant's pleadings. In the circumstances, I consider that the appropriate order is that the Claimant should pay the Defendant's costs in full.
4. I have awarded the Defendant 90% of his costs of the counterclaim, having given judgment in his favour insofar as the counterclaim was based on the natural and ordinary meaning. The reduction reflects the fact that I did not find for the Defendant in respect of the innuendo meaning he had pleaded and the Defendant has chosen to withdraw that part of his counterclaim. That is a pragmatic decision, but it warrants a small reduction to reflect the costs incurred in respect of that part of the counterclaim.
5. Although I had sought submissions in respect of case management directions, by my order dated 5 November 2019, the parties did not address the steps to trial. I have therefore given directions, with liberty to apply to a Master to vary them, if necessary.

Dated: 19 November 2019

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BETWEEN :-



ESTHER RUTH BAKER

Claimant

and

JOHN ALEXANDER MELVIN HEMMING

Defendant

ORDER

PENAL NOTICE

IMPORTANT:-

NOTICE TO THE CLAIMANT ESTHER BAKER

- (1) **THIS ORDER PROHIBITS YOU FROM DOING THE ACTS SET OUT IN THIS ORDER. YOU SHOULD READ IT CAREFULLY. YOU ARE ADVISED TO CONSULT A SOLICITOR AS SOON AS POSSIBLE.**
- (2) **IF YOU THE WITHIN-NAMED ESTHER BAKER DISOBEY THIS ORDER YOU MAY BE FOUND GUILTY OF CONTEMPT OF COURT AND MAY BE SENT TO PRISON OR FINED OR YOUR ASSETS MAY BE SEIZED.**

UPON the application by the Defendant by application notice dated 11 June 2019

AND UPON hearing the Claimant and the Defendant on 17 October 2019

AND UPON the Court having given judgment on 5 November 2019 for the Defendant on the counterclaim, insofar as the counterclaim is based on the natural and ordinary meaning pleaded by the Defendant at paragraph 107 of the Amended Defence and Counterclaim: *Baker v Hemming* [2019] EWHC 2950 QB

IT IS ORDERED THAT:

1. The Claimant be restrained, and an injunction is hereby granted restraining her, from publishing the following words, namely:

that the Defendant raped or sexually assaulted the Claimant, then stalked and defamed her to cover it up,

or words to the same or similar effect, and the Claimant is restrained from continuing to publish, or causing the continuing publication of the aforesaid words, or words to the same or similar effect.

2. The Claimant must not do that which she is prohibited by paragraph 1 from doing herself or in any other way. She must not do it through others acting on her behalf, or on her instructions, or with her encouragement.

Dated: 19 November 2019