Case No: QB-2020-001013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/02/2021

Before :

MASTER SULLIVAN

- -

Between :

SAMUEL COLLINGWOOD SMITH	**Claimant**
- and -	
ESTHER RUTH BAKER	**Defendant**

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- -

The Claimant appeared in person
The Defendant appeared in person

Hearing dates:

- -

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 SULLIVAN

Master Sullivan :

1. This is the claimant's renewed application to strike out the amended defence and counterclaim and for summary judgment on the claim and counterclaim. I previously gave judgment in writing on 30 September 2020 in which I refused an application for strike out or summary judgment, giving the defendant permission to amend her pleadings and giving some guidance on what was required in those amended pleadings. I gave permission for the claimant to renew his application should the amended pleadings still be deficient.

2. The defendant provided amended pleadings on 27 November 2020 and on 28 November 2020 Mr Smith renewed his application by email. I heard oral submissions on 14 January 2021. The defendant filed an application to strike out Mr Smith's claim but I did not hear that application due to confusion with an incorrect document being filed in support and the time by which it was accepted onto CE file.

3. I do not intend to rehearse the facts or background to this matter which is set out in my previous judgment.

4. The claimant submits that the amended defence and counterclaim have not cured the defects set out in my previous judgment and that therefore they should be struck out. He makes the general point that the amended defence and counterclaim are both very long and hard to follow and it would not be fair to him to have to continue to meet them.

5. The defendant submits that she has amended the defence and counterclaim and insofar as they still fail to comply with the CPR she should be entitled to further amend. I do not intend to rehearse the detail of the submissions on both sides, ultimately, I have to take a view as to whether the pleadings have been adequately set out or not. There are for example arguments about whether the introductory paragraphs should be struck out as too long; it seems to me that level of detail is not going to be helpful to the parties at this stage and a holistic view should be taken.

6. I do not accept that the defendant should be given further chances to amend her pleadings where they are still significantly in default. My previous judgment explained the rules and what is required for compliance. The defendant raised what she describes as her "ongoing and proven disabilities" and in addition the effects of medication she is on due to having suffered a TIA. She has not provided the evidence that would be required in order for me to make a decision on whether any adjustments were required as a result of any medical condition or medication taken as a result. I accept that she has psychiatric disorders and that she may suffer from issues with concentration. However, she has had a significant amount of time to draft her pleadings and amend those pleadings and so those difficulties have already been taken into account. I do also take into account that she has had similar issues in previous cases where what is required in pleadings has been explained. In my judgment she has had the opportunity to make good her pleadings, I must now assess them as they stand.

The Amended Defence

7. All references to the defence hereafter are to the amended defence. In respect of the defence, it seems to me that the pleading has not adequately remedied the defects that I found in my previous judgment. The defendant has failed to set out in respect of the defences of qualified privilege in response to attack the way in which her tweets were relevant to the attack. She has not set out a proper basis for why her tweets were in the public interest. Her pleading is to the effect that she was asked for details about the claimant in response to his blog. That is not sufficient to give rise to a defence of public interest.

8. In respect of the first publication, the meaning alleged for the first tweet is that "the claimant is unemployed, lives with his mother and is not permitted to utter the word Evanescence.". That meaning is admitted. The basis of the pleading of truth are as follows.

9. There is a bare assertion that the claimant lives in his mother's house with no facts or information as to the basis of that knowledge. In respect of employment, it is pleaded that in 2015, the claimant was asking for money for litigation via a GoFundMe page. The defendant pleads that it is well known that there is some form of order related to Evanescence that prevents the claimant from talking about various aspects of the band. There is no pleading that he is in fact restrained from saying the word evanescence.

10. The defendant denies that he lives with his mother and has provided documents to show he declared tax from income in 2019.

11. In my judgment there is no real prospect of the defendant's defence of truth succeeding. The factual matters she sets out do not found a basis for the defence of truth. The same considerations apply to tweet (ii).

12. In respect of tweet (iii), the meaning alleged by the claimant is that the claimant is used to hassling teenage girls and is therefore a habitual paedophile.

13. The meaning is denied in the defence and an alternative meaning is pleaded at paragraph 16 namely that the claimant has a history of harassing teenage girls and other women that are post pubescent and that he does not "abuse" them, but harasses them. It is specifically denied that this is an allegation that he is a paedophile.

14. The same pleadings of response to attack and public interest are also pleaded and have the same defects as in respect of the first two tweets.

15. In respect of truth, it is pleaded in paragraph 17 of the defence that two women alleged that the claimant and Mr Hemming used parliamentary privilege on 17 July 2012 to "continue the harassment and cause them alarm and distress". No other specific instances of harassment of teenage girls or other women are set out. I note that only Ms DeMarzi's age is given. In my judgment the defendant has no real prospect of a successful defence of truth based on the pleaded matters.

16. In respect of all three tweets, the issue of serious harm is raised. In respect of tweets (i) and (ii) it is pleaded that the meanings alleged are not capable of causing serious harm and in respect of all the tweets that the claimant has not evidenced any serious harm caused, that as the claimant has said the defendant is discredited, her tweets are unable to cause him serious harm and as he is not named they would not be accessible on a search about him.

17. It seems to me that the matters set out in paragraph 23 of the defence, whilst pleaded under the heading of serious harm, do not relate to the issues of serious harm properly raised in the defence.

18. In respect of the first publication therefore, the defence is struck out save that the defendant is entitled to raise (as she has in the defence) and challenge the issue of serious harm in respect of all the tweets and meaning in respect of tweets (iii) and (iv).

19. In respect of publication 2, the meaning alleged is that the claimant is a benefits fraudster who has claimed benefits whilst failing to declare income. The defendant has denied meaning but not put forward an alternative meaning. The same defences of public interest, qualified privilege in response to attack and truth are repeated. They have the same defects as above. Those defences is therefore struck out. The defendant disputes that the publication caused serious harm on the same grounds as for Publication 1 and she remains entitled to argue the issue of serious harm.

20. In respect of publication 3, the meaning pleaded is that the claimant lied in his witness statement in *Baker v Hemming* by denying offering legal assistance to Mr Hemming whilst admitting it on his blog. That means that the claimant has committed perjury. The defendant denies meaning and states the tweet is a question of which two different version of the same story are truth. Again, the claimant pleads truth and qualified privilege, repeating the previous matters.

21. What the defendant does not do is set out the two statements which she claims are different. In submissions the defendant said she was unable to find the relevant parts of the blogs and they must have been deleted. I do not accept that but in any event, in my judgment, the pleading has the same defects as the set out in my previous judgment and there is no real prospect of proving truth based on what is pleaded. The pleading is therefore struck out but the defendant may continue to dispute meaning. The defendant also disputes that the publication caused serious harm on the same grounds as for Publication 1 and she remains entitled to argue the issue of serious harm.

22. The defendant does not deal with the fourth publication as it is a pleading against a second defendant who has now settled her part of the claim.

23. The other claim is for damages and an injunction for harassment under the Protection from Harassment Act 1997. The first paragraph of the particulars of claim states that each tweet complained of by both defendants amounts to a course of conduct jointly or against each individually. The defendant has not pleaded to that specifically and it seems to me it is something the claimant would have to prove, not having obviously pleaded the facts on which he relies to show a joint course of conduct.

24. I have struck out the defence in respect of the other tweets, save for technical issues relating to meaning and serious harm. In respect of the harassment claim, the defendant pleads, in summary, that the tweets were in response to attack, that they were not falsehoods and that even if found to be defamatory do not meet the threshold of harassment. The defendant also denies the loss claimed.

25. The defendant in paragraph 52 of the defence sets out a list of comments published about the claimant without, in the main, reference to the source of those comments. There is reference to accusations made against the claimant but again with no details of by whom or when those allegations were made. This is therefore not properly pleaded.

26. In my judgment the defence to harassment is also not properly pleaded and I strike it out save that the defendant can require the claimant to prove that the tweets amount to harassment and to prove loss. The effect of that is that the defendant can make submissions as to those points but cannot bring evidence of her own.

27. As there are issues that remain in respect of each of the tweets which require a decision before judgment would be appropriate, I will not give judgment at this stage.

The Amended Counterclaim

28. Again, reference from here on to the counterclaim is to the amened counterclaim. The counterclaim is a 31 page document which is not entirely easy to follow. Complaints are made in respect of 11 publications and in addition those publications are said collectively and with other matters to amount to harassment. The claimant submits that I should strike out the counterclaim in its entirety as the defects in the pleading and the way in which it is drafted amount to an abuse and it would not be proportionate to allow the counterclaim to continue. I will look at the substance of what has been pleaded, concentrating on the defects in the pleadings raised by Mr Smith before taking an overall view.

Publication 1:

29. The first publication complained of is a blog on 6 May 2019. the claimant points out that paragraph 12 under the heading of meaning is not in fact a pleading as to meaning. It is in fact the defendant's position as to the truth of the matter, so a pleading as to the falsity of the publication complained of. Whilst it is also correct that the documents referred to are not identified by date, the context is clear, and I do not consider that the court or the claimant would not understand the case being put. However, the second half of paragraph 12 starting "the claimant has at this point made allegations" is not easy to understand. If further publications were being relied upon for harassment, they would have to be set out properly. That part is therefore struck out.

30. Paragraph 19 does not make sense in context, referring to the meaning alleged in respect of a different statement and is struck out.

31. Apart from the first sentence of paragraph 28, the rest is pleading evidence and is a selection of comments on the claimant's blogs with no identification of which blog is being commented upon. Insofar as it is in evidence, it should not be in the pleading

and if it was specific pleading of serious harm, it would have to be related to the publication complained of. Paragraph 28 save for the first sentence should be struck out. The annexe referred to is also struck out.

32. Paragraphs 30 to 36 are pleaded under the heading of "malice". The defendant was honest in submissions that she had copied the format of the claimant's pleading for her own and was not clear what the purpose of these paragraphs are, whether they were a pre-emptive reply to what she anticipated would be the claimants' defence or for some other purpose. She does repeat the matters pleaded later in a plea for aggravated damages but again that is her following the claimant's pleading pattern.

33. Insofar as they are intended to be a pleading of malice to defeat a defence, they are wholly inadequate. They lack specificity in that they refer to statements made without identifying where or when those statements are made or to whom. The section should be struck out. These paragraphs are repeated through the pleading in respect of each publication. They are struck out on each occasion. Insofar as they form the basis of a claim for aggravated damages, they are inadequate for the same reasons. I will deal further with that at the relevant paragraph.

Publication 2:

34. This publication is a blog dated 8 May 2019. The words complained of include that there is ample "evidence that the defendant (who claims to hear voices) has accused the wrong men of rape" and that (in summary) the applications have wasted public money and police time. Whilst there are complaints about the second sentence of paragraph 43, that is in context a minor matter and I will not make any order in respect of it.

Publication 3:

35. This is in respect of a blog on 30 May 2019. Paragraph 52 (vii) and 64 (or their equivalents) were struck out in my previous judgment. Ms Baker has apologised that they were not removed as they should have been. I accept that the error is a mistake and I will not strike out the claim as a result of the error.

Publication 4:

36. This is in respect of a blog dated 25 June 2019. The blog is about the defendant's crowdfunding campaign and lawyers. In the pleading as to meaning of the first set of words complained of, the meaning in respect of publication 2 is repeated. Those meanings have no relevance to the words complained of in this publication. In that circumstance, paragraph 77(i) must be struck out. In respect of 77(ii) the meaning in respect of the publication pleaded at 52(v) is repeated which was also about lawyers input into her case. The publications are sufficiently similar that the meaning pleaded is comprehensible and is not an abuse.

Publication 5:

37. This is a blog dated 27 August 2019. The claimant submits that paragraphs 94 and 95 (although I take this to be an error and mean 93 and 94) by implication refer to John Hemming and therefore are a collateral attack on *Baker v Hemming* so should be

stuck out. The words complained of in context do refer to John Hemming but also to others. I am not persuaded in that context that paragraphs 93-95 are an abuse. Paragraph 97 repeats meaning by reference to a previous allegation of meaning at paragraph 69. I am of the view that the meaning at paragraph 69 s a permissible pleading of meaning which has a real prospect of success in respect of the words at 85 (vi).

38. Paragraph 99 again refers back to a pleading of meaning in respect of different publication. In my judgment paragraph 44 is an acceptable pleading of meaning for this but not paragraphs 42 or 43 which seem not to be relevant.

Publication 6:

39. This is a blog dated 10 October 2019. The concerns of the claimant here are that the defendant pleads meaning by reference to the meaning in different publications. These it seems to me are permissible, the same matters being dealt with in the respective blogs.

Publication 7:

40. This is a blog dated 15th October 2019. Again, in respect of meaning previous paragraphs are repeated. On this occasion they are not relevant, and paragraph 127 should be struck out.

Publication 8:

41. This is a blog dated 6 November 2019. Again, there is reference back to a previous pleading of meaning. On these occasions it seems to me that is permissible.

Publication 9:

42. This is a blog dated 1 February 2020. Paragraph 156 contains irrelevant commentary about a matter struck out in the defence and the second sentence should be struck out.

43. Paragraph 159 pleads the meaning of the words complained of at 153 (iii) by reference to a previous paragraph which is not a possible meaning of the words complained of. No other meaning is pleaded and those paragraphs should be struck out.

44. Although the claimant has not complained of the second sentence of paragraph 161, it is clear to me that it is a collateral attack on the judgment in the *Lavery* case and should be struck out.

45. Paragraph 168 again repeats previous paragraphs. Paragraph 44 and 45 seem to be relevant, but the other paragraphs referred to are not and should be struck out.

Publication 10:

46. This is a blog dated 8 February 2020. Objection is made to paragraph 178. That paragraph does not make sense. Most of what is set out does not seem to be relevant and appears to be in part an attempt to plead law. Insofar as it is, it should not be in the pleading. The question will be whether the meaning of the publication was

defamatory - the claimant's awareness of differences between criminal and civil findings, and the defendant's access to legal advice are irrelevant. That paragraph should be struck out.

Publication 11

47. This is a blog on 14th April 2020. Again as to meaning, previous paragraphs are repeated and again they seem to me to be appropriate. In respect of paragraph 191, I accept that paraphs 12 to 18 are irrelevant and the reference should be removed.

48. The claimant also submits that paragraph 191 is a contempt as it is lies. The defendant pleads "it is denied that the defendant has ever tried to contact or has been in contact with 'the paedophile priest'". The claimant states that this is lies because the defendant has been in contact with him and admitted on twitter to contact with him via private detectives working for him.

49. The twitter post in fact denies that she has contacted the priest's lawyer and says that a private detective for the lawyer contacted her about social media posts. The defendant submits that is not the same as her having contacted the priest. In my judgement that is a matter which has a real prospect of success and I will not strike it out.

50. In paragraph 193, the references to paragraphs 157, 158 and 162 are not relevant or helpful and should be struck out.

51. Paragraph 195 was objected to on the basis it pleads meaning with reference to paragraphs about a different publication. However, the publication is on the same topic and the pleading is acceptable.

Harassment claim

52. The defendant also makes a claim under the Protection from Harassment Act 1997. There are a number of events set out which are said to amount to a course of conduct amounting to harassment.

53. The claimant rightly points out that a number of paragraphs make allegations which are insufficiently particularised for him or the court to know the case he has to met. I agree in respect of paragraphs 201 (iv), (v), (vii) to (xiii) and those should be struck out.

54. In respect of paragraph (vi), it is clear that the claimant does in fact know which pleading is being referred to, but it is a pleading he drafted in another case, and he cannot be sued for a matter set out in a pleading.

55. Insofar as the claimant objects to the blogs that are referred to being in the pleading on the basis that they are true, that is not in my judgment a ground to strike out in a harassment claim. Not only is the truth of some of the matters in issue between the parties, but communications may be true and also amount to harassment.

56. Paragraph 201 (xx) must be struck out as there is immunity from suit for reporting a matter to the police.

57. Paragraph 204 is insufficiently particularised and does not set out how the matter complained of is part of a course of conduct of harassment and must be struck out.

58. Otherwise, I am not going to strike out the harassment claim as a whole. The other matters pleaded could amount to harassment and are sufficiently pleaded.

59. Paragraph 209 set out a claim for aggravated damages. In my judgment the first sentence of paragraph 209 must be struck out. The particulars of malice have been stuck out and would not, as they were pleaded, found a claim for aggravated damages with a real prospect of success.

General arguments on strike out

60. I must now take a step back and consider what is left in respect of the counter claim. It would be an exceptional case where there was a triable claim where due to pleading defects the claim is struck out. The claimant relies on *Dunn v Glass systems UK Ltd* [2007] EWHC B2 QB and draws analogies with this case. Despite the substantial defects, I am not of the view the pleadings in this claim are so defective as to out it into the same category as Dunn. Although longwinded and at times difficult to follow, there is an understandable claim. That remains once the matters set out above have been struck out in my judgment.

61. I am also asked to strike the defamation claim out on the basis that the defendant's reputation is so damaged already by the judgments against her (in the *Lavery* and *Hemming* cases) that there can be no serious harm. That judgment would require an investigation into the facts it would be inappropriate for me to do. I am also of the view that is it realistically arguable that there is a difference between the matters alleged against her which would arguably cause serious harm even against the backdrop of those judgments.

62. The claimant also submits that given the way the defendant has conducted the litigation and the limited nature of any possible remedy, it is not proportionate to allow the counterclaim to continue. Whilst there may be triable issues on some issues such as the difference between stalking and harassment, is it not proportionate in the circumstances of an impecunious defendant with adverse findings against her and who has already caused the cost and time a number of procedural hearings, to allow the claim to continue. I do not accept that submission. There are triable issues and the litigation so far has not been conducted in such a way as to make it appropriate to strike out the claim. The remedies sought, if granted, would include injunctive relief and that is a matter of value as well as any damages that might be awarded.

63. The claimant also raises in his short skeleton what he describes as oppressive behaviours of the defendant since the previous hearing. I do not find those matters are oppressive and in my view do not assist in determining this application.

64. I therefore strike out the defence save that the defendant is entitled to rise the matters of serious harm and meaning as set out above, and the paragraphs set out above in the judgment of the counterclaim are struck out. I attach a copy of the amended counterclaim with the paragraphs I have struck out crossed though for ease of reference.