

Neutral Citation Number: [2021] EWHC 1709 (QB)

Case No: QB-2021-000130

IN THE HIGH COURT OF JUSTICE
QUEEN’S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 28/06/2021

Before :

SENIOR MASTER FONTAINE

Between :

XXXX Known as Jean Hatchet
- and -
Shanu Varma

Claimant

Defendant

Beth Grossman (instructed by **Hemingways Solicitors Limited**) for the **Claimant**
The Defendant did not attend and was not represented

Hearing date: 16 June 2021

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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SENIOR MASTER FONTAINE

Senior Master Fontaine :

1. This was the hearing of a trial of remedies and costs pursuant to the order of 18 March 2021 made at a case management conference following judgment in default being entered in July 2020 and sealed on 26 January 2021. The Claimant has filed a witness statement dated 14 May 2021, with exhibits, and gave further oral evidence in chief at the trial to update that evidence. There has been no evidence filed by the Defendant. The hearing proceeded in the absence of the Defendant following a short judgment giving reasons for that decision given orally at the commencement of the hearing.
2. This defamation claim arises out of two tweets published on 10 October 2018. The First Tweet stated “*Now you know where @jeanhatchet’s fundraising has gone !*”. The Second Tweet stated “*I raised this with her as my boss donated £1000 to her charity but the charity apparently only received a much smaller amount so she blocked me*”. (together “the Tweets”).

Summary of the Factual background to the Claim

3. I rely on the Particulars of Claim and the Claimant’s witness statement for the following summary. The Claimant is a feminist campaigner with a particular focus on violence against women and girls, who is publicly known by the pseudonym Jean Hatchet. She uses a pseudonym due to concerns for her safety, and that of her family, arising from individuals who have threatened her with violence (including sexual assault) for her campaigning work. She has a Twitter account which uses the handle @JeanHatchet, which has between 9000 and 14,000 followers. In 2017 the Claimant started a series of sponsored bicycle rides to raise funds for a domestic violence charity, Wearside Women in Need. The Claimant publishes the rides on her Twitter account. Each bicycle ride is in memory of a specific woman who has been murdered in a context of domestic violence. The Claimant has undertaken around 300 rides.
4. In and around October 2018 the Claimant was a vocal opponent of proposals to reform the Gender Recognition Act 2004 to enable self-identification rather than medical certification to be the basis of a legal change in gender and the Claimant was a vocal supporter of the rights of biologically female women and girls to single sex spaces.
5. At the time of the publications the Defendant tweeted from and operated the Twitter handle @FMStomp, an account connected to a radio station. The name used in connection with that Twitter account was “controller #adulthumanfemale XXY” or “station controller #adulthumanfemale XXY”.
6. On 10 October 2018, a feminist campaigning group, Fair Play for Women, published a full page advertisement in the Metro Newspaper, entitled “Think about it; choose reality.” The advertisement was intended to promote awareness of the Government consultation regarding reforms to the Gender Recognition Act 2004, and to encourage opposition to intended reforms enabling self-identification. The advertisement was the subject of considerable debate on Twitter amongst users with strong views for or against the proposals for reform and the ability of a small recently established campaigning group to pay for such an advertisement was also the subject of discussion. The Claimant’s case is that the Tweets made on the same date were politically motivated because of the Defendant’s disagreement with the Claimant’s views in relation to the proposed reforms.

Basis on which the trial proceeded

7. The Court was invited to proceed on the basis of the Claimant's unchallenged Particulars of Claim ("PoC") as to meaning, serious harm, and damage, as well as the further matters in her witness statement and exhibit. I consider that in a trial of remedies following a judgment in default, the court has jurisdiction to grant relief and award damages based upon the unchallenged statements of case where the legal thresholds have been met. It is clear from the decisions in *Sloutsker v Romanova* [2015] E.M.L.R. 27 at [84] – [88] and *Suttle v Walker* [2019] EWHC 396 (QB) at [33] – [37] and [46] – [48] that the court is entitled to proceed on the basis of the pleadings as to meaning, extent of publication, serious harm and damage.

Meaning

8. The meaning pleaded by the Claimant is that she had dishonestly misappropriated charity funds and was guilty of theft, see PoC [9] – [10]. I am satisfied that the defamatory meaning pleaded in this case represents a reasonable interpretation of the offending words.

Extent of Publication

9. On the same basis, I rely on Claimant's allegations as to the extent of publication which are set out in her statement of case, namely, that the Tweets were published on an unlocked Twitter account to the world at large, and that at the material time the Defendant had 177 followers to whom the tweets were published because they appeared in their Twitter timeline: see PoC [11.3]. There is also evidence of the defamatory allegations being retweeted and thus disseminated more widely through Twitter: see PoC [11.4] to [11.7] and the Claimant's witness evidence at paragraphs 38 - 42. The Claimant also gave oral evidence as to more recent dissemination since the date of her witness statement.
10. Paragraph 11 of the PoC sets out the Claimant's case on serious reputational harm, namely that the defamatory allegations were extremely serious, going to the Claimant's probity and integrity.
11. The Claimant's claim in serious reputational harm also relies upon:
 - i) The inherent seriousness of the words complained of, imputing criminal offences under the Theft Act 1986 or the Fraud Act 2006;
 - ii) Publication to the world at large, and at least 177 instances of direct publication, with further instances of dissemination;
 - iii) Repetition of the allegations in November 2018 (more than three weeks after publication) and in February and March 2019 (more than three months after the allegations), indicating that they have continued to percolate and be disseminated;
 - iv) Regular publication on Twitter of statements suggesting that the Claimant is not to be believed as to the fact that she has advanced ovarian cancer, indicating that

“sting” of dishonesty in the Tweets has since percolated as a general allegation and not solely related to her charitable fundraising.

12. The Claimant’s claim as to reputational damage is expanded and amplified in her witness statement which provides evidence that:
 - i) She lost followers on Twitter: paragraph 51;
 - ii) She is aware of a number of Twitter users being aware of the tweets. In some cases, these are friends who have been supportive. In many other cases, the Claimant has been subjected to online abuse. In particular, the imputations in the First and Second Tweet were used by a Ciaran Goggins to perpetuate further abuse against her: paragraphs 34, 43 – 45, 53 – 62;
 - iii) By way of example, on 24 May 2021, the Claimant was the subject of a tweet by the user @joss_prior: “*Google ******, *theres lots of titbits about her lying and fraud around the place*” which received 25 likes: paragraph 114.
13. The Claimant’s evidence in her witness statement and given orally at trial was that she has suffered significant distress as a consequence of the Tweets, which attacked a central plank of her public identity and also, in the light of her advanced and incurable ovarian cancer, her legacy.

Measure of damages – the law

14. The measure of damages must:
 - i) compensate the Claimant for loss of reputation;
 - ii) vindicate the Claimant’s good name; and
 - iii) take account of the distress, hurt and humiliation which the publication has caused.

(*Cairns v Modi* [2013] E.M.L.R. 8 at [21]).
15. The most important factor is the gravity of the libel: the more closely it touches the Claimant’s personal reputation, honour, courage, loyalty and the core attributes of her personality, the more serious it is likely to be. The extent of publication is also relevant. A successful claimant may properly look to an award of damages to vindicate her reputation: this is greater where the defendant asserts the truth of the libel and refuses any retraction or apology. Compensatory damages may and should compensate for additional injury to feelings by the defendant’s conduct: *John v MGN* [1997] QB 586 at pp607-608; *Barron v Vines* [2016] EWHC 1226 at [20-21].
16. These principles were expanded upon by Warby J (as he then was) in *Barron* at [21]
 - i) Compensation for loss of reputation is to be provided in the amount that would restore a claimant to the position she would have enjoyed but for the defamation.
 - ii) The extension of harm to reputation may be established by evidence or inferred.

- iii) The impact on a person's reputation may be affected by a number of factors:
 - a) The role of an individual in society (including as a prominent campaigner);
 - b) The extent to which the allegations are published by someone apparently well-placed to know the facts;
 - c) The identity of those to whom the libel is published, as it may be more harmful when to close friends or family, but strangers may be more likely to believe the truth of the allegation;
 - d) Compensation should take account of the likely percolation through "hidden springs" of the allegations.
 - iv) Damages may be aggravated if a defendant acts maliciously, by way of the injury to feelings element of the award.
 - v) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages. But it is not permissible to seek, in mitigation of damages, to prove specific acts of misconduct by the claimant, or rumours or reports to the effect that he has done the things alleged in the libel complained of.
17. The nature of publication may be relevant, see *Monir v Wood* [2018] EWHC 3525 (QB) [226] - [244] where a publication on Twitter of accusations of grooming children was very serious, but published to limited numbers. Notwithstanding this, the Court accepted that the consequences upon the claimant had been exceptionally serious. It was stated that had publication been in a national newspaper, the appropriate award would have been in the region of £250,000; for a Twitter publication the appropriate sum was £40,000.
18. I have been referred by Counsel for the Claimant to two cases where awards were made or considered by the courts for allegations of fraud and dishonesty:
- i) In *Doyle v Smith* [2018] EWHC 2935 (QB), the allegations concerned fraud and blackmail published on a blog. Publication to seventy people on a blog was not "trivial or insignificant". The Court awarded £30,000 for one article, and £7,500 for a further article.
 - ii) In *Jon Richard Ltd v Gornall* [2013] EWHC 1357 (QB) damages of £75,000 would have been awarded but for the fact that the summary relief procedure under s. 9 Defamation Act 1996 (not applicable in the present case) had been adopted.
19. I accept that the court is not restrained by the value on the Claimant's claim form: see CPR 16.3(7), *Harrath v Stand for Peace Ltd* [2017] EWHC at [22]. That value was an estimate made before the extent of damage was known, and before the ongoing damage

(in terms of continued percolation) could be anticipated, the claim form having been issued in October 2019.

Conclusion on Measure of Damages to be awarded

20. I accept the submissions on behalf of the Claimant as to the factors present in this particular case which should be taken into account in assessing the measure of damages. There is no precise arithmetical formula to apply to assess general damages in defamation, but the court generally takes account of broadly comparable cases in previous decisions, making allowance for the effects of inflation: *John* at pp 608, 612; *Cairns* at [24], *Barron* at [21] (7), *Monir* at [228] and also by comparison the scale of damages in personal injury awards: *John* at p615.
21. I have taken all the factors identified above into account, and the awards made in other comparable cases. In particular I note that this was not a trivial libel, it was an accusation of theft. It has undoubtedly caused the Claimant considerable distress. She is a person who has broad shoulders, in that the evidence demonstrates that even before the Tweets were made, she was receiving abuse and “trolling” online for her views about gender identity and her stand on violence against women, but she has carried on with her campaigns regardless of that abuse, accepting perhaps that they are part of the territory. But the allegation of stealing from one of the charities that she campaigns to support is of a different order. Not only has it caused her considerable distress, and caused her to feel that even those who support her might doubt her integrity as a result, it has a likely consequence that those who would wish to support the charities for which she campaigns, and to donate to her sponsored activities, might be deterred from doing so, so that the charities will be likely to lose financial support as a result.
22. The “*percolation phenomenon*”, namely “*where scandalous stories published on the internet might spread far beyond their immediate publishers*” as referred to in *Cairns v Modi* at p189; see also: *Barron* at [21](3) (d). It was held that this is a legitimate factor to take into account in the assessment of general damages. I have been taken to evidence which clearly demonstrates that this has occurred in relation to the Claimant.
23. It is important that the award of damages reflects all those factors as well as providing vindication to the Claimant’s reputation, which in turn will perhaps also stem any reduction in support for such charities. I also note that the Claimant is a schoolteacher, so her reputation for honesty and integrity amongst both her colleagues and the children at her school is particularly important, as the evidence is that they are aware of and support her activities for charity.
24. I also recognise that, although the Claimant has a public presence, her public reputation is largely limited to those in the campaigning groups supporting and opposing her campaigns, and that the publications have been via Twitter rather than in national media. Finally, the award should be such as to deter the Defendant and others who have retweeted the Tweets or other tweets relying on the information in the Tweets from publishing other untrue allegations against the Claimant: *John* at p 625.
25. The decision in *Doyle* was on very different factual circumstances but perhaps not dissimilar in the seriousness of the allegations. The facts in *Jon Richard* were more serious, with potentially more serious consequences for the Claimant, than in this claim, but in a commercial rather than a personal context. So as in virtually all libel cases, the

circumstances are all different, but guidance can be obtained from looking at other awards. I have also consulted the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Claims 15th Edition, for an additional check on the appropriate figure.

26. I consider that an award of £45,000 in general compensatory damages is appropriate, which includes an element of aggravated damages for the failure to acknowledge the publication, withdraw the same or to make any apology. The Claimant is also entitled to recover her costs of the action, and I have summarily assessed those costs in a judgment delivered orally at the hearing.