

IN THE HIGH COURT OF JUSTICE

No. HQ06X01972

QUEEN'S BENCH DIVISION

[2006] EWHC 2359 (QB)

Royal Courts of Justice

Wednesday, 26th July 2006

Before:

MR. JUSTICE EADY

B E T W E E N :

(1) SUNDERLAND HOUSING COMPANY LTD.

(2) PETER WALLS

Claimants

- and -

(1) JOHN BAINES

(2) JOHN FINN

(3) JOHN EDWARD SMITH

(4) PALLION HOUSING LTD. & Ors.

Defendants

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MR. H. TOMLINSON QC and MISS L. SKINNER (instructed by Olswang) appeared on behalf of the Claimants.

MR. D. PRICE (instructed by David Price Solicitors and Advocates) appeared on behalf of the First Defendant.

MR. A. SPEKER (instructed by Carter-Ruck) appeared on behalf of the Second, Third and Fourth Defendants.

J U D G M E N T

1 MR. JUSTICE EADY:

2
3 1 This case was listed before me today for half a day, which was optimistic.
4 The principal claimants are Sunderland Housing Company Limited and
5 Mr. Peter Walls and they seek relief in respect of various causes of action
6 including defamation, harassment and data protection. Different
7 considerations may very well apply to each of the two principal claimants (as
8 I have described them) because of the corporate entity status of the first
9 claimant. It would not be right, in my judgment, to consider them simply as a
10 package.

11
12 2 They also sue in a representative capacity on behalf of certain individual
13 employees, in particular for relief in relation to harassment having regard to
14 the jurisdiction under the Protection from Harassment Act 1997.

15
16 3 The claimants also seek what I think is conveniently described in shorthand
17 as Norwich Pharmacal relief against defendants and some additional
18 respondents. A certain amount of agreement and concession has taken place
19 in relation to those. That relief is now sought finally upon a more limited
20 basis than originally.

21
22 4 The causes of action arise out of what I think has been described fairly as a
23 website campaign which has been going on for many months. Mr. Walls in
24 particular has been accused of many different kinds of wrongdoing: various
25 allegations of corruption, sexual misconduct and so on. Suffice to say at this
26 stage the allegations are undoubtedly for the most part serious ones.

27
28 5 The relief sought is now to be found in a draft order which has developed on
29 an evolving basis. Because much of the relief sought would restrict freedom
30 of speech, as protected by Article 10, I have been referred to the provisions of
31 s.12 Human Rights Act 1998. I naturally take those provisions into account.

32
33 6 It is probably convenient that I consider first the case which was argued most
34 fully before me; namely the case against the first defendant, Mr. Baines, who
35 was represented today by Mr. David Price. Mr. Price told me that he had
36 only recently been instructed and was labouring to some extent at a
37 disadvantage in the sense that, first of all, he had not had an opportunity to
38 take full instructions from his client, and also was trying to deal on the hoof
39 with a case which, as I said a moment ago, rather evolved. Nevertheless, he
40 argued the case as best he could before me this morning, seeking to resist the
41 relief sought against Mr. Baines.

42

1 7 The terms of the injunction, in so far as they are relevant, I should identify at
2 this stage. Of course, they are relevant to other defendants also, but I shall
3 not need to repeat the terms of the order as I turn to other parties. The
4 injunction is in these terms:
5

6 “1 Up to and including trial or further order of the court (whichever is
7 the earlier) the first, second, third, fourth and fifth defendants, whether
8 by themselves, their servants, agents or otherwise howsoever must not
9 : 1.1 publish or otherwise communicate words complained of by the
10 claimant set out in Appendix A to the particulars of claim, or any
11 similar words defamatory to the claimant;
12 1.2 Pursue a course of conduct which amounts to harassment of the
13 second claimant or the representative parties by publishing or
14 otherwise communicating anonymous statements about any of them in
15 any form including on the website of the forum, in the newsletter;
16 1.3 Process any personal data related to the second defendant or the
17 representative parties;
18 1.4 Save for taking down material from the website of the forum or
19 material otherwise available online, delete from electronic storage,
20 destroy or dispose of any document falling within the categories listed
21 in Schedule 2 to the order, save that nothing in this order shall prevent
22 the defendant from publishing or communicating any information for
23 the purposes of obtaining legal advice or defending these proceedings.
24 For the purposes of this the party which allows any material to remain
25 on any website or otherwise to be available online when he has the
26 means to remove it will be deemed to be continuing to publish,
27 communicate and/or process that material in breach of paragraphs 1.1,
28 1.2 and 1.3 above.”
29

30 8 The second paragraph is headed “Provision of Information” and is as follows:
31

32 “The first defendant shall, by no later than 4 p.m. on Tuesday 1st
33 August 2006, provide to the claimant a witness statement verified with
34 a statement of truth setting out the matters listed at Schedule 3 to this
35 order.”
36

37 9 There are also orders relating to some of the respondents set out in paragraph
38 7 which I shall return to later.
39

40 10 Mr. Price, on behalf of Mr. Baines, considered first the proposed injunction
41 to restrain publication and took his stand on what he described as a point of
42 principle; namely the principle which is familiar from the 19th century in
43 *Bonnard v. Perryman*, as explained and affirmed in later cases.

1 11 It is accepted now that the first defendant has published material on the
2 website and is responsible for the website and that he is the person who has
3 administered the website under the name “Jackpots”. But reliance is placed
4 on his witness statement, and in particular upon the proposition contained
5 within it, that he intends to justify any defamatory allegations.
6

7 12 At the last hearing, which took place before Davis J. on 19th July, the first
8 defendant asked for an opportunity when he was acting in person to put in
9 evidence in support of his proposed plea of justification. That opportunity
10 was granted by Davis J. He now appears to have changed his mind, and
11 having instructed Mr. Price, has apparently decided to rely on the point of
12 principle to which I have already briefly referred.
13

14 13 Perhaps not surprisingly, in view of the rather wide nature of some of the
15 allegations and the refusal to produce any supporting evidence as had been
16 contemplated at the last hearing despite being given the opportunity to do so,
17 the claimants and their advisers have considerable doubts now as to the bona
18 fides of the first defendant. Nevertheless, it is right that I should refer to the
19 principle in question. For convenience I was referred to para.25.6 **Gatley on**
20 **Libel and Slander** (10th edn) which is introduced by the rubric: “Defence of
21 justification.”
22

23 “Where the defendant contends that the words complained of are true,
24 and asserts that he will plead and seek at trial to prove the defence of
25 justification, the court will not grant an interim injunction, unless,
26 exceptionally, the court is satisfied that such a defence is one that
27 cannot succeed. This was the decision in *Bonnard v. Perryman*
28 [[1891] 2 Ch 269]. Lord Coleridge [there] explained [at p.284] ‘The
29 right of free speech is the one which it is for the public interest that
30 individuals should possess and, indeed, that they should exercise
31 without impediment, so long as no wrongful act is done; and, unless an
32 alleged libel is untrue, there is no wrong committed; but, on the
33 contrary, often a very wholesome act is performed in the publication or
34 repetition of an alleged libel. Until it is clear that an alleged libel is
35 untrue, it is not clear that any right at all has been infringed...’ This
36 statement of the law has been endorsed and applied consistently since
37 1891. That a claimant cannot obtain an interim injunction to restrain
38 the publication of defamatory words in the face of a statement verified
39 as true from the defendant stating that he can and will justify the
40 alleged libel can now be regarded as an invariable rule, unless it is
41 plain that the plea of justification is bound to fail. The claimant need
42 not state that he will justify the particular words or allegation
43 comprising the alleged libel: it is sufficient for him to declare his

1 intention to justify the core or sting of the alleged libel, provided, of
2 course, that the core or sting is a wider or more general meaning than
3 that conveyed by the particular matters described in the words
4 complained of, and is a meaning that the words are capable of
5 bearing.”
6

7 14 I should add that in footnote 23 the learned editors make this comment in the
8 context of the words “a statement verified as true”. What they say is this:
9

10 “An affidavit used to be required but under CPR the general rule is that
11 at interim hearings evidence is by witness statement. (r.32.6(1))”
12

13 15 Mr. Price is arguing effectively that the Article 10 free speech rights of his
14 client trump the claimant’s Article 8 rights to the protection of reputation and
15 privacy and the integrity of the personality. It is necessary to remember that
16 clear denials of all the defamatory allegations have been made by Mr. Walls
17 in his two witness statements. There is nothing at this stage to suggest that
18 I should treat his evidence as false or dishonest as to its content. Is it right in
19 those circumstances to refuse an injunction merely when there has been an
20 expression of an intention to justify and then to permit a defendant to go on
21 publishing widespread allegations which are as various and grave as these?
22

23 16 There is no doubt that *Bonnard v. Perryman* is powerful authority which has
24 been endorsed not only in modern times but also subsequent to the coming
25 into effect of the Human Rights Act. Some weight, of course, must now be
26 given to Article 8 interests where they are engaged, especially in the light of
27 the proposition advanced by their Lordships in *Re S* to the effect that when
28 such rights are engaged no one Article will necessarily automatically prevail
29 over another. There is no doubt that Article 10 will always weigh very
30 powerfully, but Article 8 cannot simply be put out of account altogether.
31

32 17 It seems to me at least right for a defendant who seeks to resist an injunction
33 against publication of defamatory words to identify the defamatory meaning
34 or meanings which he intends to justify, and also to state in a witness
35 statement verified by a statement of truth that he believes in the truth of the
36 words in that meaning or those meanings. That, it seems to me, must be the
37 very minimum. Of course, there is nothing to prevent a defendant, if he or
38 she wishes, from adducing evidence to show the supposed strength of a
39 proposed plea of justification but that is not something which is a necessary
40 ingredient.
41

42 18 With respect to Davis J. it is not necessary in order to resist an injunction to
43 produce “cogent evidence”, although that phrase was used in the course of

1 the last hearing when Davis J. was discussing the matter before giving his
2 ruling, I think with Mr. Baines. Where there are many and various
3 defamatory allegations, some of which are undoubtedly very serious, alleging
4 criminal misconduct and matters undoubtedly of great public interest (which,
5 in a sense, cuts both ways) it seems to me that it must be right that a
6 defendant should be required at least to identify the extent to which he
7 proposes and intends to justify. It will not do simply to put in a blanket
8 statement of intention or hope and leave it at that. It is, in my judgment, too
9 cavalier.

10
11 19 So far that has not been done. I will therefore grant the injunction against the
12 first defendant, or rather continue the injunction against the first defendant
13 unless and until the time comes when those basic requirements which I have
14 identified have been complied with. At that stage, it is entirely open to the
15 first defendant and his advisers to make an application to vary or discharge
16 the injunction. But that will have to be addressed on its merits as and when
17 the application is made.

18
19 20 Until that happens, it seems to me that there is absolutely nothing in the
20 scales to set against Mr. Walls' very clear denials in his witness statement.
21 At this stage it is not possible for me to say that there is a clear issue which
22 has to be left to trial. At the moment, it is all too vague. That moment may
23 come. *Bonnard v. Perryman* may then prevail, but at the moment it seems to
24 me too early to give it that priority.

25
26 21 Mr. Walls was criticised in the course of argument for not condescending to
27 detail in his denials. But that is somewhat ironic coming from the first
28 defendant because he alleges, for example, against Mr. Walls that he has
29 corruptly favoured "golfing friends" or words to that effect, without
30 identifying the nature of the favour or the friend or friends in particular.
31 There might be something to be said for a need on Mr. Walls' part to
32 condescend to further detail when he is given further particulars of that kind.
33 But so long as the allegation remains vague and general, it seems to me that
34 he is entitled to put in a clear unequivocal denial that the allegations are true.
35 It is not for him to anticipate some proposed indictment which might be
36 drafted in the future.

37
38 22 I should say that it is part of the background to this case that in the context of
39 the claimants' concerns about the first defendant's good faith that so far,
40 despite the gravity of the allegations which have been made, there has been
41 no reference to the police or to any regulatory authority with a view to having
42 these serious allegations investigated. That is simply a factor in the
43 background.

1 23 The second type of injunction which is sought is that in relation to
2 harassment. At this stage, the claimant's draft has been somewhat narrowed
3 so that, as I made clear earlier, what it is sought to restrain is harassment by
4 publishing or otherwise communicating anonymous statements. Of course,
5 the claimant would like to restrain on a wider basis, I have no doubt. But it
6 has been narrowed. The reason for that is because there is a particular source
7 of anxiety and concern and stress in being pursued or harassed by people
8 anonymously because one cannot, in the nature of things, know quite what is
9 going on. If one's accuser comes out into the open it may be unpleasant but
10 it does not have quite that level of stress attached to it. For the moment
11 therefore the second claimant is content to confine his claim to anonymous
12 publication.

13
14 24 It seems to me that that relatively modest form of restraint against the
15 background of the continued harassment over the past many months is
16 reasonable and proportionate. I propose therefore to grant that injunction
17 also against the first defendant. I shall consider the other defendants shortly.
18

19 25 There is now a third head of claim, as I already rehearsed, relating to the Data
20 Protection Act. I have considerable sympathy with Mr. Price over this
21 because he himself has not been in a position to research and respond to this
22 in the detail that he would like. He says that the potential effect of such an
23 injunction is very wide-ranging and potentially there would be a "floodgates"
24 argument. That may be so, but Mr. Tomlinson QC appearing on behalf of the
25 claimant (who has formulated this undoubtedly novel argument) puts it on the
26 basis that because the defendant is not registered it is, in the nature of things,
27 in a statutory environment created by Parliament, unlawful for him to be
28 processing personal data in those circumstances. His remedy, says
29 Mr. Tomlinson, if he wishes to take that course in relation to this claimant or
30 anybody else, would be to be registered. Normally, when one is dealing with
31 publications of this kind, Mr. Tomlinson submits, there is a registered person
32 in the background and therefore one has the protection of the principles laid
33 down by Parliament.

34
35 26 I appreciate that this is a novel and potentially wide-ranging order and that
36 Mr. Price has not yet had an opportunity to deal with it fully. I shall,
37 however, make the order – at least on a temporary basis. There will be the
38 opportunity to apply for this also to be discharged if Mr. Price thinks it right
39 as a matter of principle to make the application. But at the moment it seems
40 to me to be an entirely proper order to make for the short reasons explained
41 by Mr. Tomlinson.
42

1 27 I shall also make the order about not destroying or disposing of documents,
2 as I rehearsed it earlier.

3
4 28 So far as the claimants are concerned, I am prepared, as I indicated earlier, to
5 draw a distinction between the corporate claimant and the second claimant in
6 so far as it matters in practical terms. I propose to confine the injunction in
7 relation to para.1.1 and para.1.3 to the personal individual claimant. In other
8 words, I am not going to grant that kind of relief to the corporate claimant.
9 There is an argument, which has not been fully developed in the course of the
10 hearing today (everyone has been under considerable pressure of time), that
11 there would be an analogy here with the corporate claimant and 1 public
12 body, in contemplation of their Lordships in *Derbyshire County Council v.*
13 *Times Newspapers*, but apart from that, so far as defamation is concerned it
14 seems to me that most of the defamatory allegations relate primarily to
15 Mr. Walls or some other human individual rather than a corporate entity.
16 That is because of the nature of the allegations which are made in Appendix
17 A.

18
19 29 So far as the second and fourth defendants are concerned, they were
20 represented before me today by Mr. Adam Speker. Witness statements have
21 been put in which make it clear that their case is that they deny responsibility
22 for the publications on the website in question. There are powerful
23 arguments, which I have seen and considered, to the effect that there are
24 reasonable grounds to suspect them of being involved, not least of course the
25 use of stickers on the vans of the corporate fourth defendant which rather
26 suggests some knowledge on the part of the second defendant. But in these
27 circumstances it seems to me that suspicion is not enough. I am confronted
28 with clear statements from them. Mr. Speker is, in my judgment, correct
29 when he submits that I would effectively have to be finding at this stage on
30 paper that I rejected that evidence as dishonest. I cannot do that. Of course,
31 there are suspicions. Suspicions will have to be resolved at a later stage. As
32 I say, the hurdle is not, in my judgment, sufficiently overcome to enable me
33 to grant relief against the second and fourth defendants.

34
35 30 It must be remembered, after all, that the fundamental requirement for the
36 granting of any interim injunction is that the court is satisfied that there is an
37 apprehended wrong, in this case an apprehended tort in the form of libel or
38 harassment. That is not to say, however, that Norwich Pharmacal relief
39 should necessarily also go out of the window.

40
41 31 The case was developed before me briefly by Mr. Tomlinson in relation to
42 the remaining defendants against whom he seeks relief. There is the third
43 defendant, Mr. J. E. Smith, who has not partaken in these proceedings, but

1 I record the fact that I have received a medical certificate and a covering
2 letter from him stating that he is unable for health reasons to attend today.
3 I think he has taken that stance before. I see no reason to go behind it, but it
4 is noteworthy that he has not sought an adjournment and therefore it seems to
5 me entirely appropriate for me to address the case against him in his absence.
6 Of course, he will have automatic liberty to apply to discharge the injunction
7 if he wishes to do so as and when he is here. But the case has been made out
8 against him, it seems to me, that there is evidence that he is likely to publish
9 defamatory allegations if he is not restrained. In this context it is important to
10 have in mind particularly the statement of Mr. George Stevenson at para.6.
11

12 32 So far as the fifth defendants are concerned, this is a modern formulation.
13 They are described as those persons responsible for the publication of the
14 website www.dadsplace.co.uk and its associated chat forum and the
15 publication and distribution of a newsletter, and a leaflet “Sunderland – the
16 truth”. That is based on modern thinking about defendants who are not able
17 to be identified because they are, for one reason or another, keeping
18 themselves from being identified by the claimant or by the court. Reference
19 was made to the *Harry Potter* case and the judgment of Sir Andrew Morritt.
20 It seems to me to be a formulation which is perfectly consistent with that and
21 I shall grant the orders which I have already granted against the first and third
22 defendants against the fifth defendants.
23

24 33 That leaves me to address the Norwich Pharmacal relief. That principle is
25 now well-known. It is, of course, based on public policy, as was explained
26 by their Lordships in the *Norwich Pharmacal* case over thirty years ago. It is
27 to enable people who have evidence of wrongdoing to identify the wrongdoer
28 so that they can be brought to court.
29

30 34 In relation to this form of relief, and its alternative combination put on the
31 basis of seeking further information, which was one of the arguments raised
32 by Mr. Tomlinson, Mr. Price this morning raised, in a blanket way, s.10
33 Contempt of Court Act. He submits that the formulation, particularly against
34 his client in relation to the provision of information in Schedule 3, would
35 give rise automatically to an infringement of s.10 which is itself of course a
36 manifestation of Article 10 European Convention on Human Rights. It is in
37 these terms:
38

39 “No court may require a person to disclose, nor is any person guilty of
40 contempt of court for refusing to disclose, a source of information
41 contained in a publication for which he is responsible unless it be
42 established to the satisfaction of the court that the disclosure is

1 necessary in the interests of justice or national security, or for the
2 prevention of disorder, or crime.”
3

4 35 Normally, of course, one thinks of that as being designed to protect the
5 sources of journalists, and particularly of course investigative journalists. It
6 is not so confined and it is important to see how it might apply in the context
7 of the order sought against Mr. Baines. What the claimants wish to obtain is
8 information relating to those people who have been involved in the website in
9 the various roles identified in Schedule 3 – people who wrote material,
10 provided written material, edited material, placed material on the website.
11

12 36 I can envisage circumstances where s.10 might be relevant. For example, if
13 someone was responsible for the contents of a website, as Mr. Baines is in
14 relation to this one admittedly, and someone posts on that website
15 anonymously information about, let us say, a police officer being corrupt, and
16 the person who is the primary witness to that corruption is the anonymous
17 person who has posted the information. I can see that when the person in
18 charge of the website is ordered to disclose the identity of the person posting
19 that information under a Norwich Pharmacal order he might be able to rely
20 upon s.10 because the information about corruption on the part of the police
21 officer would be contained in a publication for which he was responsible. On
22 the hypothesis which I have just identified, the source of information would
23 be the author of the posting.
24

25 37 However, that is a very special case. It does not seem to me that it is
26 inevitable that if I were to make an order against the first defendant in the
27 terms sought by the claimant there would be infringement of s.10. It seems
28 to me to be a proper order to make, subject to that. The way to deal with this,
29 as I suggested in the course of argument, is for the first defendant and his
30 advisers to take the point when it looks like arising in any particular
31 circumstances. In other words, if there is danger or risk of a source being
32 identified contrary to the protection of s.10 then that is the time to make the
33 point. But in general terms, I think the order is a proper one to make.
34

35 38 I will check this in a moment but I do not think Norwich Pharmacal orders
36 are sought against the second and third defendants. No. So I need not deal
37 with that.
38

39 39 I turn, therefore, to the people who have been described as respondents.
40 There were nine respondents. As a matter of fact, for one reason or another,
41 either Mr. Tomlinson does not wish to proceed in respect of some of those
42 today because further information has been obtained, or it is clear that no
43 further information can be obtained. I was left therefore with four

1 respondents: Mr. Andrew Foster, Miss Celia Tate, Mr. Lamb and Hotchilli
2 Internet Limited.

3
4 40 The relevant evidence is to be found against Mr. Foster in para.111 of the
5 witness statement; Miss Tate, para.140; Mr. Lamb, para.148 and Hotchilli in
6 PW1 file 2 tab 111 and tab 6 154, supplemental bundle tab 7 para.43. In
7 relation to Mr. Lamb and in relation to Hotchilli Internet Limited there is no
8 opposition to the order being made, subject to costs orders of various kinds,
9 which I shall come to later. But the ground has been laid in respect of all
10 those defendants in that evidence, it seems to me, to fulfil the requirements of
11 Norwich Pharmacal relief. I shall therefore grant those orders.

12
13 There are now no doubt outstanding matters to deal with, but I think that deals
14 with the substance of what I was asked to address.

15
16 (For discussion after judgment please see separate transcript)
17