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Case No: TLJ/14/0569

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 16 July 2014

BEFORE:

HIS HONOUR JUDGE MOLONEY QC
Sitting as a Judge of the High Court

BETWEEN:

**ROYAL BROMPTON & HAREFIELD
NHS FOUNDATION TRUST & ORS**

Claimants

- and -

JAVED SHAIKH

Defendant

MR ANTHONY HUDSON appeared on behalf of the Claimants

The Defendant did not appear and was not represented

Approved Judgment

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(Official Shorthand Writers to the Court)

JUDGE MOLONEY QC

1. On 9 May 2014 Sir David Eady directed in this case that there should be judgment for the claimants in default of acknowledgement of service and defence. He further directed that the defendant should pay the personal claimants (the second to fifth claimants; I will come to deal with them individually later on) damages for the causes of action of libel and harassment in an amount to be decided by the court; and he gave directions for the exchange of evidence by the parties and for that hearing. This case is now before me for that purpose. This morning I heard the evidence and arguments and reserved judgment over the short adjournment to consider what awards I should make.
2. The defendant, Mr Shaikh, was not present or represented at the hearing this morning and is not present or represented now. I am however satisfied that he has had notice of this hearing and the opportunity to be here and present his case, because I am satisfied on the evidence before me that he has been duly served with all the relevant material by post and email in accordance with the directions to that effect given at a previous hearing by Green J on 8 April 2014. Since he is not present he will have the opportunity on receipt of the court's order to apply to vary or set aside the judgment, but only if the strict conditions laid out in CPR 39.3 are complied with, and any order made as a result of this hearing should record that right.

Background

3. This being a case proceeding on a default judgment, the basic facts set out in the Particulars of Claim, which are essential to liability, are accepted as being true without need of further proof, and it is on that basis that the court proceeds to deal with in a hearing of this kind. What appears from the pleadings in the case as to the background is as follows.
 - (a) The first claimant, the Royal Brompton & Harefield NHS Foundation Trust, is of course very well known as a medical body specialising in the most difficult heart and lung cases from its two sites at the Royal Brompton Hospital and the Harefield Hospital.
 - (b) The defendant was a trainee cardiac physiologist at the Harefield Hospital from March 2007 to June 2009. Without going into details, it is right to say that the position even of a trainee cardiac physiologist at such a hospital is a very responsible position involving, for example, the administration of stress tests to people with a serious cardiac problem; so it is a serious matter to be in training in such a position at such an establishment. In June 2009 the trust dismissed Mr Shaikh for gross misconduct. Among the concerns that were raised were that he had been guilty of plagiarism in his work and that he had been guilty of fabricating correspondence sent to the hospital. As a result of his dismissal he applied to the employment tribunal, but his proceedings were unsuccessful. He appealed to the Employment Appeal Tribunal, which in 2011 refused him permission to appeal. I should further add, because it is relevant to the matters with which we are now concerned, that he was prosecuted for the criminal offence of harassment, but those criminal proceedings were dismissed in 2013. However, the fact that the criminal case was not proved beyond reasonable doubt is no bar to separate civil proceedings for the same misconduct being brought and determined on the balance of probabilities or determined by default.

The personal claimants

4. Each of the four personal claimants is a present or former employee of the trust who was involved with the defendant's training and/or with the disciplinary proceedings

against him.

The second claimant, Ms Julie Rochelle, has worked at the Harefield Hospital to all intents and purposes all her working life since 1977, for some 37 years, and she has risen to the position of principal chief cardiac physiologist and head of the cardiology department. The third claimant, Mr Geoff Brown, came onto the scene later than the others. He took up a position in the human resources department of the hospital in June 2008 and in that capacity took a substantial administrative part in preparing and pursuing the disciplinary case against Mr Shaikh to which I have referred. The fourth claimant, Mr Ken Ali, is now a senior cardiac physiologist at Harefield and he has worked there for some 21 years, since 1993. Lastly, Mr Michael Octave, the fifth personal claimant, was a cardiac physiologist at the hospital for about eight years from 2001 to 2009 and in that capacity one of his jobs was to be Mr Shaikh's assessor. Subsequently he left the hospital and has set up his own business in the same field of cardiac physiology but working independently, whereas the others still work for the NHS.

The campaign of harassment

5. I rely on the evidence of the matters pleaded in the Particulars of Claim, which I must accept as true because of the default judgment, and which I have no difficulty in accepting as true given the volume of evidence that has been produced and which I have read in the course of preparing for this case. It shows that from the outset of the hospital's taking action against him and continuing unrelentingly until at least the beginning of this year (and possibly longer, though that is a matter that has yet to be determined) Mr Shaikh has taken it upon himself to pursue an extraordinary campaign of harassment against the hospital generally and many individual people associated with it, in particular these four individual claimants who have chosen with the assistance of the hospital to bring these proceedings against him. The Particulars of Claim, which will be available for inspection by anybody who is interested in the subject, set out the campaign in some detail. It is set out in schedule A of the Particulars of Claim, that is an eleven-page document listing by my count some 120-odd separate and distinct aspects or incidents in the campaign, some of those incidents themselves involving many separate actions. For example, the very last one on the list is that on 21 February 2014 Mr Shaikh forged and submitted 52 fake job applications purporting to come from Mr Michael Octave on a website entitled "imacunt" and then an email address. So that is just an instance of the childish sort of thing (but immensely annoying and potentially worse) that has been going on and which these claimants have been experiencing at Mr Shaikh's hands over the last several years. Some of the instances (I will come to give further particulars of some of them) are by email. A great many of them are by blogs, Facebook pages and other publications that are readily available on the internet to the world, or at least to people who search under the name of Harefield Hospital or of the individual parties concerned. They also include: silent phone calls; referring people without justification to regulatory bodies; Twitter accounts; sending fake letters to patients giving false appointments; fake job applications; anonymous letters; videos; fake phone calls; communications with relations of some of the personal claimants. As I say, it would not be possible for me to recite them all in this judgment but schedule A, which sets out the acts of harassment, and schedule B, which sets out the libels, should be annexed to my judgment and form part of it and will be available for scrutiny by any person with a legitimate interest in so doing. Suffice it to say that it is an intense campaign. It is not confined to the personal claimants but it includes them. Each of the personal claimants

gets their share of attention, perhaps particularly Mr Octave, who for some reason has innumerable fake job applications made in his name with discreditable allegations in them; but all of the others receive their share of attention. I have no doubt that in each case what has been established is, in accordance with the terms of the Protection from Harassment Act, a persistent campaign of more than two or three incidents linked to one another and calculated to cause distress and alarm (if not worse) to each of the personal claimants. So the evidence wholly bears out the default judgment that has been entered. That campaign of harassment, as I have said, extends over a period of several years since 2009. It includes but is not confined to many false and defamatory allegations, to which I shall now turn.

The campaign of defamation

6. Much (though not all) of the harassment consists of defamatory allegations about one or more of the claimants, published either to the world at large or through emails, for example, targeted at individuals who have some involvement in the world of cardiology. As a matter of law there are some important differences between these overlapping claims for harassment and defamation. One of the more significant ones is that whereas the limitation period for harassment is six years and therefore the entire campaign of harassment can be dealt with in this case, the limitation period for defamation is only one year and therefore, since these claimants did not issue their proceedings until 2014, not all of the acts of harassment can also be sued on as libel. There is however some overlap and in schedule B of the Particulars of Claim numerous separate defamatory publications, most though not quite all published on the internet, are set out and those are annexed to this judgment and will be provided to those who are interested. But I will give by way of example and flavour some of the allegations that were published. I should say this: that it is necessary as part of the exercise of assessing the damages that are due in defamation proceedings for the judge to be satisfied what defamatory meaning is borne by the words and in particular whether the Particulars of Claim correctly summarises the defamatory meanings. In the present case I have no doubt that such is the case and I so find. I am going to give a sample of some of the more serious allegations, emphasising that there has been no plea of truth or opinion or any other attempt in this case to justify or excuse what has been said. So everything that I am now reciting is presumed to be false and should be taken to be false, but I must summarise them in this judgment in order to explain how I reach my conclusions about damages.
7. For example, in relation to the first claimant, one of the things that was said was this:

“Julie Rochelle refuses promotions to ethnic minorities deliberately. She did not want an Afro-Caribbean male doing the job of head of electrophysiology because he was black.”

Perfectly clearly, that is an allegation of racism and of a very serious kind of racism, namely using racism against your own fellow workers to their disadvantage. Or again, and this is libel number 7 in the list:

“Julie Rochelle plotted a plan to get rid of an employee by falsifying allegations and encouraging others to do the same in return for promotions.”

So again one sees there that this very senior and respected NHS officer is accused of lying and encouraging others to lie and bribing them with promotions in order to sack a colleague, so one sees the grave nature of the libels against Ms Rochelle as there set out.

Then we have Mr Brown. Some of the allegations against him are false allegations of homosexuality. That of course is not of itself necessarily a libel; but the way in which it is put and the way in which it is tied in with other things must be very distressing and disturbing. But what we do have, and I emphasise very strongly that I am putting this on the public record not because it is true but because it is an essential part of the libel case, is this (again, this is libel number 1 on the list):

“The divisional head of human resources, Geoff Brown, has recently been forging documents to incriminate this former employee and other former employees. He is claiming everyone is a paedophile when in fact he is the one who has a paedophilia issue.”

So we see there not only the accusation of forgery but also the accusation that he has paedophilia issues. Or again libel number 6:

“Geoff Brown submits all statements to third parties claiming paedophilia against innocent ex-employees.”

So he is accused there of falsely accusing another person of paedophilia. And at items 11 and 12:

“I deliberately fired an innocent man because of his ethnic background. I have previous experience of the Ku Klux Klan from January 1993 to April 2008. I tell black people I hate them. I burn flags.”

So again he is further accused of being a racist.

For the fourth defendant, Mr Ken Ali, the allegations include these:

“1. Ken Ali’s real name is Mushtaq Ali. He goes by the name of Ken because he is ashamed of his ethnicity.

2. Mr Ali continues to lie and make false allegations against his colleagues. His area of expertise is to lie completely through his teeth and pretend like what he says is complete honesty when in fact it’s not. He has removed many ethnic minorities from the department saying none of them work except him.

[...]

4. Ken even charged a former employee £100 for a positive reference. Ken was so evil he charged this employee and scammed him out of the money.”

So an allegation of bribery.

“11. Education: monkey club school, BSc in coconut studies and in dishonesty.”

It is childish and unpleasant stuff but it is of a grave and serious nature.

And lastly, Mr Octave, the fifth claimant. Examples of the things that have been said about him are that he has been involved in sexual relations with six patients in the past; that he has blackmailed Ms Rochelle; that he and his company are in a lot of trouble because there is a fraudulent contract to keep Mr Octave from revealing why he resigned and it is paid for by the taxpayer and is being used as a cover-up. Libel 14 says:

“I [Mr Ali] defrauded Harefield Hospital of £250,000.”

And on 23, purportedly in his own words, in answer to the question whether he has any court offences:

“Yes, being a patient paedo, but they have to be over 16.”

So a hint of paedophilia or something similar to paedophilia. The full schedule is available but one sees from this sample the gravity and unpleasantness of the allegations that are being made.

8. The four personal claimants each prepared witness statements which were put before me as evidence of the effect of the campaigns of harassment and defamation upon them. This is obviously a very important matter for the decision that I have to make about the level of damage. Again, those form part of the public record but I shall quote some of the salient paragraphs from each.
9. Ms Rochelle summarises the effect of the harassment as this:

“In general I have over the last five or so years tried not to let all these things get to me too much. At the end of the day I have a responsible job to do. I couldn't do it if I allowed all this to affect me too much [I summarise slightly]. I put them in a separate box in my head so I can get on with my work. However, if I stop and think about it all it is extremely upsetting indeed and sometimes I can't avoid the impact. By way of example, I now always lock my back door even if am just letting the dog out. I never used to do this before but given that the harassment has been so personal I no longer feel entirely safe even at home. He knows where I live because when he worked in the cardiology department we used to discuss the area. It was also distressing that my daughter became embroiled in all of this. I was worried about her and advised her to be very careful using social networking sites. I feel particularly upset and distressed recently due to the fact that my elderly parents, who I've consciously kept in the dark about it so as not to worry and upset them, have found out about all this. My father looked me up on the internet and in that way he came on the blogs. In my work life I find that most people know

about it. A shockingly high proportion of colleagues from other hospitals have received bogus job applications in Michael Octave's name. This nationwide awareness has really put me off attending conferences and national meetings. As soon as people see my name they want to ask me about this."

So that is a summary of the evidence that she gave the court about the effect of this campaign on her.

Mr Brown said:

"The insinuations that I am a paedophile are particularly hurtful and troubling. I am very active in my local community. I have been a scout leader for over 30 years. Until recently I have led the youth group run by my local church. I simply cannot have these entirely false, defamatory and reprehensible suggestions that I am a paedophile hanging over me. My professional reputation rests on the fact that I have high integrity. I do not as a human resources manager send indiscreet emails or carry out any of the salacious acts that I am accused of doing. I have had to warn both my local scout district and my church of the possible retaliation that might take place as a result of my bringing this claim. It has been extremely upsetting and stressful. I have tried to keep a low profile and pass it off as being part of my job but it has been going on too long now and it simply has to stop."

Mr Ali said:

"Some of the things that have been written about me might seem silly and frivolous to people, but after an extended campaign that has involved very serious allegations of cheating and lying I do not feel like I can take any more. For me this campaign has been like terrorism. I have been terrorised for several years. As a result my health has suffered and I am on increased medication for stress. I'm the kind of man who just wants to get on with my work and see my patients. For this reason, until now I've focused on ignoring the hurtful things out there on the internet and dealing with life's activities as they come. However, I do not feel like it is an option any more to have this hanging over me. I want for my and my family's sake for all of this to stop."

And lastly Mr Octave:

"The allegations against me relate to inappropriate behaviour with patients. Some letters appear to have been fabricated in order to look like complaints about me. One alleges I had relationships with patients. My wife was at one time a transplant patient. The online content frequently references this. For several years I have been the subject of harassment. I have tried to bring it to an end through the criminal court. When that failed due to administrative errors I tried to rise above the activities described in this statement and get on with my

life. I hoped it would stop. His activities however not only continued but seemed to increase in frequency and bile. If things came up only rarely I might be able to ignore it but the ongoing and incessant nature of the harassment over so many years is frankly enough for anybody and something has to be done.”

With that background of evidence, I turn now to summarise the legal principles that I have to apply and my conclusions in relation to the two causes of action that I have to deal with, harassment and libel.

Quantum of harassment

10. It is important to emphasise another difference between harassment claims and libel claims. Compensation for libel includes both injury to reputation, that is to say, how one is held in the esteem and regard of other people than oneself, and also for the subjective feelings of alarm and distress that one suffers as a result of the libels. A harassment case, as its name suggests, focuses on the latter element and does not include damages for injury to reputation. It does focus on the alarm, distress and so forth that a person will suffer as a result of being harassed. In case of injury to feelings the leading case is that of Vento v Chief Constable of West Yorkshire Police [2003] ICR 318. The Court of Appeal there identified three bands of compensation appropriate for claims for injury to feelings such as those applicable in harassment cases, In 2010 the Employment Appeal Tribunal said in the case of Da’Bell v NSPCC [2010] IRLR 19 that the figures in Vento should be adjusted for inflation. The three bands, which are well known, are these. The lowest band, now between £700 and £7,000, is awarded in less serious cases, isolated or one-off occurrences; the middle band, £7,000 to £21,000, is awarded in serious cases but not those which merit an award in the highest band; and the highest band, from £21,000 to £35,000, is awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race.
11. It is possible to imagine more serious cases than the present one, because of course some harassment cases involve what one might call personal harassment, stalking, direct hanging around outside people’s houses, matters of that kind that can create direct personal fear and alarm. In some cases the harassment can result in serious injury to health or serious specific matters such as loss of one’s job. Those factors do not apply here, but subject to that reservation I have said enough to indicate that is a case that fits well within the higher band. I note the volume, persistence and viciousness of the campaign in this case, lasting over many years and comprising innumerable incidents given a wide area of publicity, all of which will be known to the personal claimants. It is difficult to distinguish between the four claimants within that upper band, but it is my duty to do so both out of justice to them and also out of justice to the defendant. Even though the defendant is not here I must ensure that my awards are fair and proportionate and take into account any distinctions between the claimants, which might lead to awarding a lesser sum towards one or a greater sum to another. In the present case, doing the best I can, for reasons that are apparent from the evidence that I have read out, the effects so far as subjective suffering of alarm, distress and the like have been great for all of these claimants but have been particularly great for Ms Rochelle because of the personal fears for her own safety and that of her family that she gave expression to, and for Mr Ali who has testified that it has actually affected his health and caused him to take increased medication. Under the harassment head I

therefore propose to award Ms Rochelle and Mr Ali £25,000 each and, without in any way belittling their sufferings (as I say, I put them in the higher bracket), Mr Brown and Mr Octave £20,000 each. I am going to add to that some damages for defamation and the two awards need to be taken together.

Quantum of damages for libel

12. In the case of libel one recovers primarily damages for injury to one's reputation, one's standing in the eyes of third parties and of the world generally, which is not as such recoverable in harassment. In addition, in an ordinary libel case one would recover damages for injury to feelings, but in the present case that would not be appropriate because I have in effect already awarded damages for injury to feelings from each of these libels as part of the award for harassment of which the libels formed a part. But there remains that extra element, the issue of injury to reputation. There is also a very important element to which I hope both heads of award will contribute, namely vindication, the use of the court's award as a public demonstration that these allegations are untrue and that the claimants ought not to have been accused of the things that they have been.
13. Because the defendant is not here, I want to emphasise that he has had every opportunity to defend this case. If he had chosen to, he could have defended it. He could have come to the court with evidence to support his accusations; the court would have heard them and the court would have judged them and, if appropriate, decided that he was justified in what he said. He has not taken that opportunity. This is not a decision that is being taken behind his back. By suing, these claimants exposed themselves to the risk of a public court hearing at which Mr Shaikh could say in privileged conditions anything he liked about them and then the court would decide whether it was true or false. He has not done that. So the vindication that these claimants will receive from my finding is I hope the same as if there had been a contested trial here, because by bringing the case to court they have shown that they are not afraid of the truth.
14. With that preface I remind myself of the principles, familiar to those who practice in this sphere, of how one computes damages for defamation. In this connection it suffices to say that I have read carefully the section on compensatory damages in *Gatley on Libel and Slander* (12th edition) from paragraph 9.1 to 9.17 setting out the recent authorities on the subject. I bear in mind that I am only dealing with those defamatory allegations listed in schedule B that have been published in the twelve months prior to the issue of proceedings in this case. I am not going to deal with any question of aggravated damages because I am now dealing only with injury to reputation; aggravation applies to the subjective element of libel damages, so I have put out of my mind any issue of aggravated damages. I bear in mind in the defendant's favour the need to be moderate and proportionate. I bear in mind in particular the need in this case (where there is so much overlap between the two causes of action) to ensure that the totality that I award is a fair one and is not exaggerated by the fact that there are two separate awards to each claimant for such closely related things. Therefore the sums that I am going to award for libel are a good deal less than I would have awarded, but for the substantial damages that I have already awarded for harassment. Having said that, bearing in mind the different severity of the allegations, I award in respect of defamation: Ms Rochelle an extra £10,000, making a total of £35,000; Mr Ali an extra £10,000, making a total of £35,000. But to Mr Brown and Mr Octave, against whom the particularly repellent accusation of paedophilia has been made, I award somewhat larger damages in defamation, namely £20,000 each, making

a total of £40,000 in each of their cases. (I bear in mind also in relation to Mr Octave the fact that unlike the other three he is no longer working within the NHS; he has his own business and is working in the general arena. Therefore his personal and professional reputation is a matter of special weight to him, (not that I in any way belittle the importance of the reputation of the others).)