Neutral Citation No. [2010] NIQB 61 | *Ref:* **HAR7850**

Judgment: approved by the Court for handing down | *Delivered:* **20/5/2010**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

LAVERY LIMITED

Plaintiff;

-and-

MORTON NEWSPAPERS LIMITED

Defendant.

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HART J

[1] This is an application by the defendant to strike out various portions of the plaintiff's statement of claim, and to set the matter in context it is necessary to review the basis of the proceedings and their course to date. The plaintiff is a limited company which carries on business running a well known public house in Bradbury Place in Belfast. The plaintiff states that the company is owned by a Roman Catholic family and prides itself on drawing its clients in equal measure from all parts of the community in Northern Ireland.

[2] The plaintiff's claim relates to an article which appeared in the Newsletter on 21 September 2009. It is not necessary to set this out in full, essentially it alleged that one Michael Stoker, who is the son of a UUP councillor and suffered serious injuries on frontline service in the Army in Afghanistan, was refused entry to the plaintiff's premises by its door staff because he was wearing baggy tracksuit bottoms, despite it being made known to the door staff that he was wearing these because of burns he had received when injured in Afghanistan.

[3] The plaintiff maintains it has suffered loss and damage because of the adverse publicity this has created, and that there have been calls from members of the Protestant community in particular which were "exceptionally abusive and threatening".

[4] The writ was issued on 5 January 2010 and served on 6 January, and was followed by a lengthy statement of claim delivered on 22 January 2010. This sought various forms of relief, and in particular an injunction restraining the defendant from repeating any of the matters set out in the statement of claim, an apology, damages (including aggravated damages) and interest, together with costs. No defence has yet been delivered.

[5] On 8 March 2010 the defendant's solicitors wrote a lengthy letter to the plaintiff's solicitors pointing out that in their opinion there were a large number of errors in the way the statement of claim was framed and the relief that was sought therein. The plaintiff was invited to take steps to remedy these matters but the plaintiff took no action to do so. On 23 April 2010 the matter came before Gillen J who gave directions as to how the plaintiff was to deal with this matter. In particular, the plaintiff was required to serve an amended statement of claim on or before 30 April 2010. The plaintiff did not comply with this direction, and an amended statement of claim was not produced until late in the morning of the hearing of this application.

[6] In the interim the defendant launched this application by a summons dated 21 April 2010. On 12 May when the matter came on for hearing Mr O'Donoghue QC (who appears for the plaintiff with Mr David Dunlop) produced a heavily amended statement of claim which drastically reduced the statement of claim in length. In particular, the claim for aggravated damages has been abandoned because it is now accepted that because the plaintiff is a limited company it is not entitled to claim aggravated damages. In addition there have been wholesale amendments to the statement of claim and many of the particulars pursuant to Order 82 Rule 3(1) have been removed. In essence the plaintiff has substantially re-cast the statement of claim as a very much shorter and somewhat differently framed document insofar as the cause of action is concerned.

[7] Mr O'Donoghue frankly conceded that the plaintiff's failure to comply with Gillen J's direction that the amended statement of claim be served by 30 April was his responsibility, but he argued that the amended statement of claim was not an admission by the plaintiff that the defendant was entitled to the relief sought in the summons, and as the plaintiff was entitled to amend the statement of claim before the defendant delivered its defence, and as there had been no defence delivered to date, it was unnecessary for the court to deal with the summons.

[8] Mr Ringland QC (who appears for the defendant with Mr Hugh MacMahon) did not accept this, and argued that the amended statement of claim still contained a great deal of material that should not be included. Mr Ringland referred me to a number of authorities and Mr O'Donoghue did not take issue with the principles of law advanced, but vigorously disputed the

interpretation which Mr Ringland sought to put upon the disputed portions of the amended statement of claim.

[9] Before turning to the points at issue it is convenient to summarise the relevant principles which apply to the circumstances of this particular application. As Lord Edmund-Davies pointed out in Farrell v Secretary of State for Defence [1980] NI 55 at 84E:

> "The primary purpose of pleadings … is to define issues and thereby inform the parties in advance of the case they have to meet and take steps to deal with it."

In its pleadings the plaintiff must only state the facts which are to be proved because they are material facts to sustain the cause of action, rather than the evidence to prove the cause of action. In a defamation action the court is concerned with how the hypothetical reasonable reader could regard the article which is alleged to be defamatory.

[10] When the court has to assess the natural and ordinary meaning of the material complained of it should apply the principles set out by Bingham MR in Skuse v Granada Television Limited[1996] EMLR 278 at pp 285-286, and which were approved by the Court of Appeal in Neeson v Belfast Telegraph [1999] NIJB per Carswell LCJ at p. 206. I do not propose to recite those principles in this judgment.

[11] As Carswell LCJ pointed out in Neeson at p. 210c the court must be astute to ensure that the pleadings are such as to prevent the jury from being misled or confused by "prolix, repetitive or unsustainable assertions relating to meanings propounded".

[12] A particular aspect of the argument in the present case turned upon the question of innuendo. Mr Ringland referred me to *Gatley on Libel and Slander*, 11th Edition at paragraphs 3.19, 3.20 and 28.22. Mr O'Donoghue did not take issue with the relevance of these principles to the question of innuendo. From the authorities considered in those passages the following principles can be extracted.

(i) Innuendo is a separate cause of action and arises where the defamatory meaning only arises because of extrinsic facts known to the recipients.

(ii) In his statement of claim the plaintiff must:

  (a) identify the defamatory meaning he contends the words convey, and

(b) identify the relevant extrinsic facts, and the person(s) to whom the words were published and who are alleged to have had knowledge of the extrinsic facts.

(c) Extrinsic facts are not merely matters of general knowledge.

(iii) The plaintiff must plead particulars of the facts and matters on which he relies in support of the innuendo meaning, and if he fails to do so the pleaded meaning may be struck out. See Pearce LJ in Grubb v Bristol United Press (1963) 1 QB 309 at 326.

[13] Mr O'Donoghue argued that insofar as the rules require a distinction to be drawn between pleading material facts and not pleading evidence the Overriding Objective contained in Rule 1A has now to be taken into account, and he laid particular emphasis upon Order 1A(3)(a) and (b) which provide that:-

> "The Court must seek to give effect to the overriding objective when it –
>
> (a) Exercises any power given to it by the Rules; or
>
> (b) Interprets any rule."

The overriding objective is intended to ensure that the court exercises its powers in a manner that will reduce, and if possible eliminate, procedural problems which arise in civil litigation conducted in the High Court. No authority was cited, nor am I aware of any, which supports the implied assertion that the overriding objective has had the effect of altering the fundamental rules of pleading.

[14] When considering the objections made by Mr Ringland to each of the paragraphs of the amended statement of claim I bear in mind that where I decline to rule out a particular meaning pleaded it would still be open to the jury to hold that the words do not in their view bear that meaning, and that I should not give my reasons for my conclusions in any greater detail than is strictly necessary as these matters have to be considered by a jury. See Neeson v Belfast Telegraph at page 208h. I propose to take the paragraphs in the Statement of Claim sequentially.

[15] I decline to strike out any part of paragraph 1. It is a fundamental point of the plaintiff's case that the plaintiff company is owned by a Roman Catholic family.

[16] The plaintiff has already excised much of paragraph 2, but I consider that the penultimate and final sentences beginning with "in course of" and

concluding with "in excess of £5 million" should be struck out as evidence and not material facts.

[17] Paragraph 3 refers to a website maintained by the defendant. I consider that is wholly irrelevant because paragraph 4 confines the plaintiff's case expressly to the print edition, although erroneously referring to it having a "Northern Irish edition", and makes no reference to any publication having occurred on the defendant's website. I therefore strike out all of the words following "the News Letter" in paragraph 3.

[18] In paragraph 5 there now remain three averments numbered (i), (ii) and (v). I accept Mr Ringland's submission that (i) and (ii) duplicate (v) and I strike out (i) and (ii).

[19] In paragraph 6 of the amended statement of claim the plaintiff has for the first time introduced a specific allegation of innuendo, and under Order 82 Rule 3(1) defines the innuendo in three sub-paragraphs. Mr Ringland's objection to paragraph 6 as it now stands is that none of these can be said to have a defamatory meaning which only arises because of extrinsic facts known to the plaintiff. I do not consider these can be said to amount to extrinsic facts and paragraph 6 is therefore struck out in its entirety.

[20] In paragraph 7 the plaintiff asserts that the words written of the plaintiff were untrue and defamatory and pleads that the defendant was refused admission solely because he and his companions were intoxicated. I consider that the second sentence of paragraph 7 is otiose and unnecessary and that this allegation duplicates paragraph 9. I strike out the second sentence of paragraph 7.

[21] Mr Ringland argued that the contents of paragraph 9 as it now stands consists entirely of evidence because, as he put it, this is the story which the plaintiff seeks to put forward. Mr O'Donoghue's repost was that the plaintiff was being criticised for giving too much information, information which enables the defendant to prepare its case without having to resort to particulars, interrogatories and further interlocutory pleadings designed to elicit the nature of the plaintiff's case. Even if it is not usual to plead matters of this sort, I consider that it is appropriate to do so in the present case, the plaintiff thereby makes clear what it says happened and why it did not exclude Michael Stoker for the reasons the defendant alleged in the impugned article. I do not consider this would in any way confuse the jury, on the contrary it makes it clear what the plaintiff's case is. I consider that the plaintiff would be bound to answer queries posed in a notice for particulars which seeks to elicit the same information. I decline to strike out paragraph 9 as it now stands.

[22] Mr Ringland objects to the reference in paragraph 11 to a similar article published by the Sunday World. I consider his objection is well founded, this is irrelevant to the present action, and in any event the parties have been invited by Gillen J to consider consolidating the present action with a similar action brought against the Sunday World. I therefore strike out the words "in combination with a similar articule (sic) published by the Sunday World". The contents of paragraph 16 are identical, are unnecessary and repetitious, and it is struck out in its entirety.

[23] Mr Ringland objected that the entirety of paragraph 18 contained matters of evidence, and Mr O'Donoghue did not object to this submission. However, I see no objection to paragraph 18, it encapsulates the basis the plaintiff advances for its claim for damages and is in my view permissible. I decline to strike it out.

[24] In the result therefore the defendant has succeeded in a significant number of the objections it originally made in the letter written by the defendant's solicitors on 8 March 2010. In addition I consider that the plaintiff conceded the force of many of the other objections by amending and truncating the original statement of claim in a drastic fashion. The plaintiff is to deliver a re-amended statement of claim setting out the statement of claim as it stands as a result of this judgment, and incorporating any other consequential amendments that may be necessary to re-number paragraphs and sub-paragraphs. I will hear the parties as to the costs of the summons.