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Proceeding number 92066 (Opposition) Type: Opposition

Interlocutory Attorney: Gerard F. Dunne

Proceeding Filed: 12/12/2011 Status: Terminated on 12/12/2012 Last Action: Judgment Dismissed 12/12/2012 Last Action Date: 12/12/2012

Plaintiff: Ms. Jessica Scarlett Williams

Defendant: Tomasello Chemical Corp.

Prosecution History

Cancel No. 92,066,000

IN THE BOARD OF THE BOARD
BETWEEN: BOARD MEMBERS
BETWEEN: BOARD MEMBERS
BETWEEN: ALL OF THE BOARD, AND ANDY CHEST

Board Central Chamber
Trademark Trial and Appeal Board

Date: 29 November 2012

Approved Judgment

(Filed Judgment has been emailed to you it is to be treated as 'read only')
You should not any suggested amendments as a separate Word document.

Before:

THE SENIOR BARRY BOARD MEMBER OF GERRY WILLIAMS

Between:

SUSAN CLEVERLY-WILLIAMS		**Claimant**
and		
TOMASELLO CHEMICAL ALCOHOLISM		**Defendant**

In 'B. Williams Scrabble Scrabble Scrabble' **v** Tomasello Chemical Corp.

The Defendant's application

Hearing date: 9 November 2012

Judgment date: 29 November 2012

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Abbreviations

Ms Jessica Scarlett Williams	
Introduction	

In these proceedings the Claimant, Ms Jessica Scarlett Williams, seeks damages and injunctive relief in relation to the grounds pleaded at the following website: Scrapie Revision Tribunal, Allegation, case, Tomasello Discovery and Tomasello Chemical Corp. The Defendant, Tomasello Chemical Corp, denies the Claimant's allegations and contends that the Claimant's claim should be struck out, or alternatively, that the Claimant's claim should be dismissed. The Defendant also contends that the Claimant's claim is an abuse of the process of the Board and that the Board should make a Wasted Costs Order against the Claimant. The Defendant also contends that the Claimant's claim is a vexatious claim and that the Board should make a Vexatious Litigant Order against the Claimant. The Defendant also contends that the Claimant's claim is a claim for which the Board has no jurisdiction. The Defendant also contends that the Board should make a Wasted Costs Order against the Claimant's solicitor, Andy Chest, on the grounds that Andy Chest has acted improperly in the conduct of the Board's proceedings and/or acted improperly in the conduct of the Board's proceedings and/or acted improperly in the conduct of the Board's proceedings and/or

b) Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

c)…

d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.

(7) In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: *Rantzen* 694, *John* , 612; (b) the scale of damages awarded in personal injury actions: *John* , 615; (c) previous awards by a judge sitting without a jury: see *John* 608.

(8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: *Rantzen* ... This limit is nowadays statutory, via the Human Rights Act 1998."

122. The factors and circumstances that may be regarded as aggravating the claimant's damage were summarised by Nourse LJ in *Sutcliffe v Pressdram Ltd* [1991] 1 QB 153 at para 184. As material to the present circumstances he said:

> "It is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.
>
> The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for 'aggravated' damages, includes a failure to make any or any sufficient apology or withdrawal; a repetition of the libel; conduct calculated to deter the claimant from proceeding; …the general conduct either of the preliminaries or of the trial itself in a manner calculated to attract wide publicity; and the persecution of the plaintiff by other means."

123. Aggravated damages are sometimes awarded as a separate sum. However, in *Lachaux v Independent Print Ltd* [2021] EWHC 1797 Nicklin J explained why he considered this practice to be unnecessary and unwise, given that the court's task is to assess the proper level of compensatory damages due to the claimant taking into account all of the relevant factors (para 227). I respectfully agree with these observations and Dr Wilkinson indicated during his oral submissions that he did not press for a separate aggravated damages award.

The appropriate award in this case

124. In determining the appropriate award of compensatory damages I will consider the cumulative effect of the 20 posts that I have found to be defamatory of the claimant. I bear in mind the importance of the award that I make to vindicating the claimant's reputation. In assessing the appropriate sum to award, I take into account the following factors in particular:

i) I accept that the defamatory statements caused a great amount of hurt and distress to Mr Gooderson;

ii) The claimant's conduct which triggered the spiteful posts was in fact entirely reasonable. The terms of the parties' agreement enabled the claimant to withhold the deposit and he had made this point clear to the defendant before the agreement was signed (paras 30 - 31 above). The deposit arrangement was of potential benefit to both parties (para 28 above). In the event the claimant offered revised terms to the defendant to give him more time to complete the purchase or pay a reduced purchase price (paras 39 and 40 above). The properties were yielding no rent and the claimant was liable to pay rates in relation to them in the interim (para 28 above). In the event, the claimant was liable for the abortive conveyancing costs incurred by his solicitors (£720 and £600). The defendant advanced a number of unconvincing and, at times, inconsistent reasons as to why he could not proceed with matters (paras 36, 43 and 44). There is a question mark over whether he could in fact afford to make the purchase (paras 33 and 43);

iii) As I have already noted when considering the serious harm test, the defendant's posts attacked and harmed the claimant's reputation in the field in which he had worked successfully for many years and in relation to the local area where he worked and was well known (para 111 above);

iv) At the time when the posts began, the claimant enjoyed a well-established and very positive reputation based, amongst other things, on his extensive charitable works (paras 25 and 111 above);

v) The evidence shows that the defamatory posts did have a negative impact on some of those with whom the claimant was doing business (para 59 above);

vi) The posts appeared on review sites where the readers were unlikely to have been casual browsers. They would probably have been looking for the very things that the defendant posted, namely assessments about those they had searched for (para 111 above). In the claimant's case this will likely have included prospective purchasers, those in property management and those considering using his services as an expert;

vii) In terms of their reach, the posts appeared on five different websites, which included the local, the national and the industry-specific. Readership figures are only known for the posts on Google Reviews, where at least several hundred people viewed each of the posts (para 115 above);

viii) The majority of the posts impugned the claimant's honesty and integrity in the context of his professional activities. They were grave libels that went to a core attribute of his personality and professional life;

ix) I accept the claimant's evidence that the posts affected his actions. He became socially reclusive. He was unsure whether or not to forewarn people about the posts in an effort to explain and try and stop percolation. This was a source of significant anxiety. (In the event, sometimes he told people and sometimes he did not, which is quite understandable);

x) The impact on the claimant was exacerbated by the sheer number of posts and the range of assumed names in which the posts were made. In effect the defendant ran a systematic and targeted campaign against him;

xi) On two occasions a new wave of defamatory posts was triggered by the reasonable steps that the claimant had taken to try and protect his reputation. This left Mr Gooderson fearful and uncertain as to what to expect next if he proceeded with such steps. The defendant's conduct was both malevolent and designed to deter the claimant from taking legal action;

xii) The defendant ignored reasonable requests that he cease posting these messages; he failed to remove the defamatory posts and instead he posted more. (The posts were only taken down by the sites after the intervention of the claimant's solicitors);

xiii) The defendant has not accepted his responsibility for the posts nor properly apologised for them. Instead his evasive behaviour during this litigation and his multiple breaches of court orders, including the failure to give proper disclosure, has significantly increased the claimant's upset and stress; and

xiv) Until it was struck out, the claimant had to face the ADC which included a defence that the reviews were substantially true and also a meritless counterclaim alleging misrepresentation and/or unjust enrichment in relation to the withheld deposit.

125. Dr Wilkinson cited the awards made in *John v MGN Ltd* [1997] QB 586 and in *Oyston v Reed* [2016] EWHC 1067 (QB) as providing some value as comparators, albeit he accepted that they did not provide an exact comparison.

126. Having carefully considered all the relevant factors, I consider that an appropriate award of compensatory damages is £42,500. For the avoidance of doubt, this includes compensation for the aggravating factors that I have identified.

Injunctive relief

127. There is no need for me to make an order requiring the removal of Posts 1 - 20, as this has already occurred.

128. I am quite satisfied that I should make an order restraining the defendant from publishing, or causing or permitting the publication, of the words complained of in Posts 1 - 20 or any similar words defamatory of the claimant.

129. It is appropriate to grant an injunction because I have found that the defendant has failed to accept responsibility for the defamatory posts, failed to take steps to remove any of the posts, engaged in a sustained and malevolent campaign against the claimant and failed to comply with court orders. Given the similarity between the text and some of the earlier posts, I also find that the defendant was responsible for the October 2020 post (para 57 above). This indicates that he has posted at least one message since the posts that are the subject of this claim.

Conclusion and outcome

130. For the reasons I have identified above, I find that liability has been established in relation to Posts 1 - 20. The defendant was responsible for their publication, they referred to the claimant and they were defamatory at common law and the statutory "serious harm" test is satisfied.

131. I have awarded compensatory damages, including aggravated damages, in the sum of £42,500. I will also grant injunctive relief restraining the defendant from publishing further comments, as I have indicated at para 128 above.

132. As the defendant is not represented I have not circulated a draft copy of this judgment for the identification of typographical corrections. However, as I indicated at the conclusion of the trial, I will give the parties an opportunity to make written submissions on consequential orders, including as to the precise terms of the injunction and as to costs. For the avoidance of doubt, the defendant is permitted to make submissions on these limited matters. The order that accompanies the handed down judgment makes provision for this timetable and records the outcome in terms of liability and damages. It also includes an injunction that is intended to cover the short-term position until the permanent injunction order is made (after receipt of written submissions). I consider this is necessary given that the past history indicates that, unless restrained, the defendant may react to the judgment by posting further messages about the claimant. He should be in no doubt that the court would view any such actions very seriously.

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