

Naomi Victorious Against Former Assistant

Naomi Campbell has won an important victory in the latest instalment of her High Court proceedings against Vanessa Frisbee, her former PA.

Ms Frisbee worked for Ms Campbell between January and April 2000, after which relations between the two women disintegrated. Frisbee then proceeded (despite the existence of a written confidentiality agreement) to sell her story to the News of the World, for which she was paid £25,000 and Max Clifford received £5,000.

The Litigation

Following the News of the World's publication of the story (which included a number of allegations concerning Ms Campbell's private life and sexual relationships) Campbell commenced High Court proceedings against Frisbee for breach of confidence, claiming damages or an account of profits.

In her Defence Ms Frisbee argued that any duty of confidentiality was in fact discharged by what she alleges to have been Ms Campbell's wrongful repudiation of her service contract. Alternatively, the Defence argued that even if the duty of confidentiality had not been discharged then there was a public interest in the information being disclosed to the press. Frisbee also put forward a counterclaim for assault.

In August 2001 Deputy Master Lloyd awarded Ms Campbell summary judgment in respect of Frisbee's disclosure of confidential information in so far as it related to Campbell's private life (as opposed to the allegation of assault), and that the rest of the case should go to trial. Frisbee appealed.

The Judgment of Mr Justice Lightman

In a landmark decision handed down on 14 March 2002, Mr Justice Lightman upheld the Master's decision. He found that Frisbee's disclosure to the tabloid newspaper of confidential information concerning Ms Campbell's private life (including allegations of infidelity and a secret relationship with actor Joseph Fiennes) was a flagrant and deliberate breach of her express and implied duties of confidentiality. He found that even if Ms Campbell had committed a fundamental breach of Frisbee's service agreement (a question which was in issue between the parties) there could be "no conceivable basis" for any suggestion that such a breach could have the effect of releasing Frisbee from her obligations of confidentiality.



In considering whether there was any public interest in the information being disclosed notwithstanding Frisbee's contractual obligations, the judge emphasised the need to balance (on a case by case basis) the right to freedom of expression enshrined in Article 10 of the European Convention on Human Rights on the one hand, against the individual's right to privacy under Article 8 on the other. He held that "public figures are entitled to a private life and protection of their rights of privacy and confidentiality".

When carrying out this balancing exercise the courts had to bear in mind that although the right to freedom of expression is clearly important to society at large, there is also a substantial public interest in requiring parties who have contracted (and been paid) to respect confidentiality to continue to do so, as was the case here.

Citing the recent Court of Appeal decision in A -v- B, C and D (known in legal circles as "the footballer case", and which had been handed down only three days earlier) Mr Justice Lightman acknowledged that the court may take into account the fact that the public have an understandable and legitimate interest in being told information. However, in order for a defence of public interest to override an express obligation of confidence, the information would as a rule need to go beyond merely being "interesting" to the public – there must be a "pressing public need" to be told. Given that the alleged relations between Ms Campbell and Mr Fiennes took place in private, and given that they could not to any great degree affect Campbell's fitness to continue her career as a model, the judge held that there was no such necessity - in contrast with the visit to a brothel by a well known children's television presenter in the recent Theakston case.

Naomi Campbell is being advised in this dispute by Mark Thomson of Carter-Ruck.

Court of Appeal uphold jury award to the Man Who Liked It So Much, He Bought The Company!

Victor Kiam II-v- MGN Limited

In an important decision upholding the damages awarded to Victor Kiam in his March 2000 libel action, the Court of Appeal has given much needed guidance on its power to interfere with jury awards under section 8 of the Courts and Legal Services Act 1990 and rule 52.10(3) of the Civil Procedure Rules. The Court of Appeal's decision was also the first occasion on which it has considered a "bracket" of damages put to a jury by the trial judge.

The decision is also significant for being only the second time the Court of Appeal has upheld a damages award by a jury. On both occasions Carter-Ruck acted for the successful claimant.

The Case

The libel sued upon was a prominent article which appeared in the "City Slickers" column of the Daily Mirror on 6 January 1999. It concerned Mr Kiam's investment in Ronson, the cigarette lighter company.

Mr Kiam (represented by Nigel Tait) contended (and the jury appear to have accepted) that the article meant (among other things) that his entrepreneurial acumen had deserted him and that he was prepared to give up Ronson and close it down.

In fact the article was untrue in every material respect.

Trial at first instance

At trial the judge, Mr Justice Moore-Bick, gave careful guidance to the jury as to the appropriate level of damages by reference to the ceiling on awards in personal injury cases. Furthermore, whilst emphasising to the jury that the decision on damages was theirs and theirs alone, he suggested that he considered £40,000 to £80,000 to be an appropriate range of damages for a case such as this.

On 10 March 2000, following a five-day trial, the jury gave judgement for Mr Kiam and awarded him damages (including aggravated damages) of £105,000.

MGN (the Mirror's publishers) appealed against the quantum of the award.

The Appeal

By a majority of 2 to 1 (Lord Justice Sedley dissenting) the Court of Appeal upheld the jury's award.

In the leading judgment, Lord Justice Simon Brown stressed that he felt the damages "bracket" of £40-80,000 which Mr Justice Moore-Bick had put to the jury as guidance was entirely reasonable, particularly as the trial judge and jury had had the advantage of hearing the whole trial and therefore had a full understanding of all the issues.

His Lordship stressed the continuing pre-eminence of the jury's role in assessing libel damages. He took heed of the dictum in John -v- MGN Limited that the Court of Appeal should bear in mind the possibility that the jury's judgment may be preferred to that of the trial judge himself.

Crucially, his Lordship also stated that a jury award should not be condemned as unreasonable unless it was out of all proportion to what could sensibly have been thought appropriate. This, he felt, was not such a case.

Commentary

Simon Brown LJ's judgment sheds helpful light on the Court of Appeal's current approach to the review of jury awards under section 8 and to the important role of damages brackets, "comparables" (ie the use of other libel awards for guidance as to the appropriate level of damages in any given case) and personal injury awards in guiding juries. Furthermore, on the face of it the "out of all proportion" test referred to above appears to confirm the Court of Appeal's reluctance to intervene in jury awards. As such, the judgment goes some way towards restoring certainty and confidence in the jury's role as the principal arbiter of the level of damages.

MGN have been refused permission to appeal to the House of Lords.

Law Commission Announces it Will Investigate 'Abuses' of Defamation Procedures

On 31 January 2002 the Lord Chancellor announced that he had asked the Law Commission to investigate "perceived abuses" of defamation procedures and in particular to consider the "problems caused by intimidatory tactics such as gagging writs and gagging letters".

"Gagging" writs and letters - Theory

The expression "gagging writ" has traditionally been used to describe court proceedings issued by a litigant who has no genuine intention of pursuing his complaint. Such litigants instead begin actions solely for the purpose of preventing the publisher of the words complained of (or for that matter any other potential publisher) from repeating or referring to those words again by putting them at risk of being in contempt of court or aggravating the damages which they may be ordered to pay at trial.

Similarly, gagging letters place the publisher on notice of the claimant's complaint. They are intended to intimidate the publisher into either not publishing in the first place or not repeating the words complained of for fear of a claim for aggravated damages ensuing.

Practice

There is no doubt that in years gone by there was a perception that certain individuals - most notably Robert Maxwell - did indeed try to gag the press by commencing proceedings for libel without necessarily having any real intention to see them through to trial.

Were it the case that this practice was still widespread then the Lord Chancellor's concern would be well founded and an inquiry welcomed by libertarians everywhere, particularly in light of the recent incorporation into English law of Article 10 of the European Convention on Human Rights.

However, in reality most of the available evidence seems to suggest that defamation procedures are

not being abused in this way. Quite the contrary. The inception of the CPR in April 1999 as well as the Defamation Pre-Action Protocol have triggered a sea change in the way in which parties must approach litigation. Specifically, it is now far more risky for a Claimant to commence proceedings unless he or she genuinely intends to see them through to trial. The courts are much more proactive in setting, and then policing, the procedural timetable up to and including trial and can impose costs sanctions on a party who is dragging their heels or even strike out their case completely.

There are therefore genuine disincentives against bringing proceedings which a Claimant is not truly able or willing to pursue to trial. This is no doubt reflected in the substantial decrease in recent years of the number of claim forms being issued in the High Court, both in defamation and in other civil law areas generally.

Furthermore, there is little evidence to suggest that in practice publishers feel "gagged" from writing about a complainant or the subject matter of their complaint for fear of a prosecution for contempt of court. Prosecutions are extremely rare; successful ones even more so.

As regards gagging letters, the Defamation Pre-Action Protocol in fact requires a claimant to set out their complaint in writing and to give the publisher a chance to respond, before court proceedings are issued. That is surely the correct approach and it would be a retrograde step to discourage complainants from adopting it. It is submitted that it would be wholly wrong to dissuade bona fide complainants from making their complaint in the first place by threatening them with costs or other sanctions should they not then go on to sue. Perversely, such a rule may simply force complainants to issue court proceedings in a bid to avoid such a penalty, which is precisely the opposite of what the CPR seeks to achieve.

We can only speculate as to what changes the Law Commission may propose be made to the law should it conclude that defamation procedures are indeed being "abused". Carter-Ruck and, no doubt, other firms have now made extensive representations to the Law Commission as part of its consultation process. It may be that ultimately the Commission will conclude (as did a similar investigation in New South Wales in the mid-1990s) that defamation procedures are not in fact being abused to the degree that newspapers would perhaps like it to think. Either way, the Commission will no doubt bear in mind that the law needs to continue to maintain a proper balance between the right of freedom of expression and the right to reputation. The law since Reynolds, (which has created a defence of responsible journalism) combined with the checks and balances of the CPR and Pre-Action Protocol, would appear to go a long way towards achieving just such a balance already.



Adam Tudor

Carter-Ruck Delivers Knock-Out Blow For Lewis-Holyfield Judge

Eugenia Williams -v- MGN Limited And Anor

In the High Court on 25 January 2002 the settlement was announced of a libel action brought by Eugenia Williams, an American boxing judge, against the Sunday Mirror.

In 1999 Ms Williams had been appointed to sit as one of three judges for the World Heavyweight title fight between Evander Holyfield and Lennox Lewis. She was already very experienced, having judged over 90 fights and

been commended for her contribution to boxing.

The Holyfield-Lewis fight took place in Las Vegas on 13 March 1999. Famously, it ended in a draw. Ms Williams scored the fight in favour of Holyfield.

Eight days after the fight, on 21 March 1999, the Sunday Mirror printed a front page story under the headline "SECRET LIFE OF LEWIS FIGHT JUDGE" concerning Ms Williams. The article alleged that Ms Williams had two "secret bank accounts" containing a total of £20,000 and linked it to the possible fixing of the boxing match.

The Court Proceedings

The allegations made by the Sunday Mirror were simply untrue. There were no secret bank accounts holding £20,000. Ms Williams (advised by Alasdair Pepper) issued libel proceedings in the High Court in London.

In January 2002, shortly before trial, the proceedings were settled. The parties read out a statement in open court in which the Sunday Mirror acknowledged that the allegations it had made were untrue. The newspaper offered its sincerest apologies to Ms Williams and agreed to pay substantial damages as well as her costs.

The libel action was brought by Ms Williams under Carter-Ruck's conditional fee agreement scheme.

Carter-Ruck Reports



Normal service is resumed! Private Eye has printed an unreserved apology and paid substantial damages, plus costs, as part of an out of court settlement with a senior officer at Reading University (advised by Charlotte Watson). The case marks another success for the firm's CFA scheme.

The firm is representing Carlton Television in libel proceedings concerning allegations published in the News of the World that the flagship Cook Report shows were faked. The trial will take place later this year.

Caprice (advised by Mark Thomson) has begun court proceedings against the publisher of The Sun newspaper relating to allegations of her having been involved with Steve Bing.

The Scottish Sunday Mail have apologised (through a statement in open court) and agreed to pay substantial damages and costs to Sir Terry Matthews, the owner of the Celtic Manor resort in South Wales which is to host the Ryder Cup in 2010. The newspaper had alleged that Sir Terry (advised by Guy Martin) had been happy to wipe out a colony of rare otters and risk damaging Roman ruins when developing the resort site. In fact the development plans were specifically designed to safeguard those interests.

Carter-Ruck is spearheading worldwide efforts to overturn orders (made in the aftermath of the 11 September atrocities) freezing the assets of prominent Saudi businessman Yassin Kadi. Mr Kadi (advised by Cameron Doley and Guy Martin) has applied for judicial review against the United Kingdom government and has commenced proceedings in the European Court of Justice against the EU Council and Commission. Procedures have also been set in motion in Switzerland, the United States and the United Nations.

Roger Windsor, former Chief Executive of the NUM, is suing the Sunday Express over a Rupert Allason article alleging that he acted as a "mole" for MI5 during the miners' strike. Mr Windsor is represented by Cameron Doley.

Andrew Stephenson is representing Russian businessmen Boris Berezovsky and Nikolai Glouckov in proceedings against the American Forbes Magazine. The case has already been the subject of a landmark House of Lords ruling confirming the claimants' right to sue in this jurisdiction.

The firm is acting for Abdel Al-Koronky, a Sudanese diplomat, who is suing the Sunday Telegraph. The trial starts in early July.

Alasdair Pepper is representing Ken Bates, chairman of Chelsea Football Club, in proceedings brought against him by David Johnstone, of a Chelsea supporters



association. The case is listed for trial in October. Meanwhile, The Sunday Times has apologised to Chelsea Village Plc and Ken Bates for an article published in April 2000.

Joan Collins (left) is currently instructing the firm in relation to a variety of matters.

Carter-Ruck is advising James Mawdsley, the pro-democracy campaigner who was sentenced

to 17 years in prison in Burma before being released in 2000. Mr Mawdsley has commenced libel proceedings against The Guardian relating to an article published in June of last year.

The Daily Express has printed an apology and agreed to pay damages to Andrew Cooper, Robbie Gibb and Michael Simmonds for an inaccurate article concerning their attendance at a Republican Party convention in Philadelphia.

FIRM ANNOUNCES NEW APPOINTMENTS

Peter Carter-Ruck and Partners are pleased to announce the arrival at the firm of Mark Thomson, Hanna Basha, Adam Tudor and Philip Reader.

- Mark was previously a partner at Schilling & Lom. Hanna, Mark's assistant also joins from Schilling & Lom having previously trained and qualified at Denton Hall. Both are specialists in media law.
- Adam was previously at Herbert Smith as a member of the firm's general commercial litigation practice and specialising in defamation and sports law.
- Philip joins us as head of the firm's costs department having previously been at Clifford Chance.

If you have any comments on this Newsletter, or if you require any other information, please contact Adam Tudor on: 020 7353 5005 or e-mail Adam.Tudor@carter-ruck.com