

Get Carter-Ruck



SUMMER 2004

Ken Bates Gives Evening Standard Just Desserts After Its F*** & Chips Blunder

In May 2004, Carter-Ruck successfully represented Ken Bates, the former Chairman of Chelsea Football Club, at the trial of his libel action against The Evening Standard.

The Standard had published allegations in its 'City Insider' column that Mr Bates had kept a representative of a potential new business partner, the Harry Ramsden fish and chips chain, waiting for a meeting for two hours, and then told him to f*** off.

Mr Bates was, naturally, annoyed and upset by the article, which he maintained was simply untrue and reflected unfairly on his professionalism. When the Standard failed to apologise promptly Mr Bates commenced libel proceedings against the newspaper.

To try to sort matters out before trial, Mr Bates indicated that he would not insist on the payment of damages, as long as the Evening Standard apologised for the article and agreed to pay his legal costs. Yet the offer was rejected, leaving Mr Bates with no alternative



Battered: The Evening Standard

but to proceed and to seek to vindicate his reputation before a libel jury.

The jury clearly did not accept the Evening Standard's defence. It found unanimously in Mr Bates' favour and awarded him a substantial sum in damages, all of which he is donating to charity. The Evening Standard was also ordered to pay the costs of the action, and undertook not to re-publish the allegations.

Mr Bates (who was represented by Alasdair Pepper and Hanna Basha of Carter-Ruck) was delighted by the result.

INSURANCE BOOST FOR CARTER-RUCK CFA CLIENTS

Carter-Ruck is delighted to announce that After The Event insurance cover is now available to all defamation clients whom the firm represents on the basis of a Conditional Fee ("no win, no fee") Agreement. Under the new scheme, in which Carter-Ruck is working in conjunction with Temple Legal Protection Limited, payment of the insurance premium is only made at the conclusion of the case. Furthermore, the client will not have to pay the premium in the event that the case is lost and the insurance has to pay out in respect of the other side's costs. Should the client go on to win their case, they will be entitled to claim the premium

from their opponent.

It is particularly gratifying for Carter-Ruck to be able to announce the scheme a little over five years since it first introduced its "no win, no fee" (CFA) scheme. In that time the firm has acted for teachers, charity workers, policemen, doctors, human rights campaigners, cab drivers, members of the armed forces, academics, journalists, hospital workers and local councillors. None of these individuals could have afforded to pursue a libel complaint but for the availability of a CFA.

It is hoped that the availability of insurance cover will assist more such ordinary people in obtaining access to justice.

JONATHAN SANDERS PHOTOGRAPHY



Caprice Smashes Mirror

Caprice, the internationally renowned model and actress, has won her libel action against the Daily Mirror newspaper.

In April 2004 the Mirror published an article which untruthfully suggested that, following a series of misguided decisions, Caprice had ditched her successful modelling career and gone into acting - a career move which, the tabloid suggested, had then flopped spectacularly. The article suggested that, as a result, Caprice was now struggling to find work.

Faced with libel proceedings brought in the High Court, the Mirror apologised to Caprice. The newspaper's lawyer told the Court that it accepted that Caprice had not in fact ditched her modelling career, which remained hugely successful (as did her other business interests) and that her acting career was blossoming. The Mirror also agreed to pay Caprice damages and her legal costs.

Adam Musa King Wins Substantial Damages And An Apology From The Sunday Telegraph

Carter-Ruck has secured a significant victory for Adam Musa King, a website designer and human rights activist, in his libel action against the publisher of the Sunday Telegraph.

The dispute centred on two articles which appeared in the Sunday Telegraph on 21 October and 9 December 2001, in the aftermath of the 9/11 terrorist attacks on the United States.

The articles suggested that there were strong grounds to suspect that Mr King was an accomplice of Osama Bin Laden's network of terrorists and a supporter of Al Qaeda. They also suggested that Mr King was an advocate of violent Islamic extremism and a threat to the Jewish community in the United Kingdom.

Having pointed out to the Sunday Telegraph that the allegations were simply untrue, and in the absence of any attempt by the newspaper to make amends, Mr King was forced to commence proceedings in order to clear his name of the allegations, all of which he denied categorically.

A number of skirmishes then ensued, with the Sunday Telegraph doing all it could to try to scupper Mr King's case. The newspaper tried - and failed - to have the entire case struck out on the grounds that it had no real chance of success. It then tried, again unsuccessfully, to have the action stopped unless Mr King's legal team ceased to act on a no win, no fee basis.

Finally, only a matter of days before the trial was due to commence, the Sunday Telegraph threw in the towel. It acknowledged that the grossly defamatory allegations which it had published were, in fact, entirely false and that terrorism of any kind had always been abhorrent to Mr King. The newspaper apologised unreservedly to Mr King in court, and agreed to publish a full apology, and to pay him very substantial damages - as well as his legal costs.

The Musa King case is interesting on a number of levels. In particular, it prompted the Court of Appeal to make a number of observations on the application of the "no win, no fee" regime to libel proceedings.

Most importantly of all, however, Mr King's good name has been restored and the untruths published by the Sunday Telegraph have, rightly, been exposed, despite the newspaper's best efforts to stop the case proceeding to trial.

Had it not been for Carter-Ruck's CFA scheme, Mr King - an individual of limited financial means - would simply never have been able to bring his complaint to Court in the face of the enormous resources which the Telegraph Group was prepared to commit to fighting the case. Unsurprisingly, Mr King was delighted by the result and by the fact that these appalling allegations had been removed from his good name.

Ewan McGregor Wins Privacy Action

Ewan McGregor has succeeded in his privacy action against paparazzi photographer and photographic broker Jason Fraser, his company Fraser Woodward Ltd and the French photographic agency Eliot Press.

The action related to photographs taken of Mr McGregor's children while on holiday in Mauritius for breach of confidence, data protection and invasion of privacy.

As part of the settlement, the Defendants agreed to pay damages and costs, and gave undertakings not to take further pictures of the children. Significantly, Mr Fraser and Fraser Woodward Ltd joined two national newspapers into the action, and these were party to the settlement. The High Court has approved the agreement.

In addition the injunction against Eliot Press SARL imposed by Mr Justice Eady last November (reported in the Dec/Jan 2004 edition of *Get Carter-Ruck*) remains in place.

Ewan McGregor was represented by Mark Thomson of Carter-Ruck.



Composer Secures Victory In Landmark Copyright Case

Following a trial in the High Court in May 2004, composer and editor Lionel Sawkins, represented by Carter-Ruck, has won an action for copyright infringement against Hyperion Records Limited, the record producers. The case made new law, laying down what is required in order to establish copyright in a musical work, on which there was previously no direct legal authority.

Lionel Sawkins is acknowledged to be a world authority on the music of Michel-Richard de Lalande. Lalande, who died in 1726, was the principal court composer to the French monarchs Louis XIV and Louis XV. Dr Sawkins was a lecturer in music at the Roehampton Institute prior to his retirement in 1985. He has devoted much of his retirement to writing and lecturing on Lalande's music and also to preparing editions of his compositions. What survives of Lalande's work comprises a mixture of manuscript and copy sources, which are very often incomplete and inconsistent with each other. It is not possible for the music to be performed directly from the sources and the intervention of a knowledgeable and experienced editor like Dr Sawkins is necessary for scores to be produced from which performers can play. While some of his work comprises recomposition of individual notes and

passages missing from the music, much of the process of editing involves resolving ambiguities in the source material and adding items such as figuring, ornamentation and performance directions.

Dr Sawkins' editions of Lalande (and other Baroque composers such as Lully, Rameau and Royer) have been performed and recorded all over the world. In 2001 he prepared editions of four Lalande works which were performed by Ex Cathedra, a choral ensemble specialising in early music, at concerts in Paris and Birmingham and recorded by them for the purposes of a CD to be issued by Hyperion Records Limited.

Shortly before the recording took place, Hyperion made it clear that they would not recognise Dr Sawkins' copyright in the editions, arguing that the only copyright in the works belonged to Lalande, and that Dr Sawkins had no right to royalties arising out of the recording or to any say over how it was to be further exploited. Despite Dr Sawkins' protestations, the CD (entitled "Music for the Sun King") went on sale in 2002.

After lengthy attempts to negotiate a settlement himself, in 2003 Dr Sawkins approached Carter-Ruck. The firm has an arrangement with NATFHE, the university and college lecturer's union, of which he is a member, to consider whether it will conduct cases of potential defamation and other media-related cases involving its members on a conditional fee basis. Carter-Ruck agreed to take Dr Sawkins' case on as a conditional fee case and subsequently secured insurance for him against his liability to pay the defendant's costs had his case been unsuccessful.

The trial took place in May 2004 and lasted 6 days. Judgment was handed down by Mr Justice Patten in July 2004. He decided that the work undertaken by Dr Sawkins in producing his editions was sufficient for him to be entitled to copyright protection (although he decided that in relation to one of the four works an insufficient amount featured on the CD for his copyright to have been infringed). Hyperion had also sought to argue that Dr Sawkins had granted it a licence to reproduce the works and that he had copied part of one of them from a previous edition. The judge also rejected these arguments.

The judge said "the process of editing undertaken by Dr Sawkins combines the scholarship and knowledge derived from a long and detailed study of the composer's music with a certain amount of artistic inventiveness" and that "I am not persuaded that one can reject a claim to copyright in a new musical work simply because the editorial composer has made no significant changes to the notes... It seems to me this is too rigid a test and not one which properly respects the reality of what music is. The question to ask in any case is whether the new work is sufficiently original in terms of the skill and labour used to produce it." In the case of Dr Sawkins' editions, he decided that it was.

An enquiry will follow as to the amount of the damages to which Dr Sawkins is entitled. Hyperion will be obliged to notify Dr Sawkins and seek his permission before any further exploitation of his work can take place. He was also awarded all his legal costs of the proceedings.

Ruth Collard represented Dr Sawkins, assisted by Antonia Foster.

Managing Partner Cameron Doley has been instructed by Her Highness Sheikha Mouza of Qatar in relation to her on-going libel action against the publishers of Arabic newspaper Azzaman.

Adam Afriyie, the prospective Conservative candidate for Windsor, and his wife Romi, have succeeded in their libel action against the Mail on Sunday. Their complaint related to two articles which had falsely alleged that Mrs Afriyie was running a high-class escort agency and that Mr Afriyie had deceived the Conservative Party both about the business and about their marriage. The Mail on Sunday published an apology and agreed to pay Mr and Mrs Afriyie substantial damages, as well as their legal costs. Mr and Mrs Afriyie were advised by Alasdair Pepper and Kate Macmillan.

The firm has been instructed by Hollywood actress Keira Knightley (pictured).

Carter-Ruck (partners Alasdair Pepper and Ruth Collard and assistant Kate Macmillan) represented the international businessmen David and Simon Reuben in proceedings for libel against the American business magazine Fortune. The action was due to go to trial in October this year but has now been resolved on terms which are confidential.

Nigel Tait has succeeded in obtaining damages, an apology and costs for Sandra Barwick, the letters editor of the Daily Telegraph, in respect of an article published in the Evening Standard.

The long-running libel action brought by Hassine Ouguenoune, a former Algerian army officer, against the leading Arabic newspaper Asharq al Awsat, over false allegations of involvement in terrorism, has been successfully concluded with the payment of substantial damages, publication of an apology and costs. Mr Ouguenoune was represented by Cameron Doley and Adam Tudor.

Labour MP Helen Clark (represented by Ruth Collard) has won her libel action against the Daily Express over untruthful allegations that she had dishonoured a manifesto promise not to introduce top-up fees for



students. Mr Justice Tugendhat made a declaration that the allegations were false and defamatory; he ordered publication of an apology and awarded Mrs Clark damages and costs.

Father and son horse breeders and trainers Peter and Keith Doyle (represented by Ruth Collard) have succeeded in their libel claim against Nick Skelton, the well-known international show jumper, in relation to untruthful allegations published in his autobiography. Mr Skelton apologised to the Doyles and agreed to pay them substantial damages and costs.

Carter-Ruck represented law firm Leigh Day & Co in their successful libel action against the publishers of The Lawyer. The successful claimants (represented by Mark Thomson and Hanna Basha) received damages, and a full apology plus their costs.

Adam Tudor has secured the publication of an apology, payment of damages and costs on behalf of Mrs Jenifer Howlett against her local newspaper, the Castle Point Evening Echo. The case raised an unprecedented point of law as the defamatory allegations in question were published on the newspaper's billboards. Mrs Howlett previously won the highest libel award made by a jury throughout 2003.

(see Get Carter-Ruck Dec/Jan 2004)

Iranian human rights activist Abu Muntasser has won his libel action against the Observer newspaper over wholly false allegations linking him to Al Qaeda. Mr Muntasser was represented by Cameron Doley.

The firm successfully represented Andrew Thompson in his libel action against Boy George. The pop singer had physically assaulted Mr Thompson at a nightclub in 2002 and paid him compensation, but subsequently made a number of false allegations to the press, wrongly suggesting that Mr Thompson had deserved to be assaulted. Boy George apologised to Mr Thompson unreservedly and paid him substantial damages, as well as his legal costs.