Improperly pleaded social media libel claim facing ‘inevitable defeat’ struck out (Webb v Jones)

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TMT analysis: The High Court has struck out a libel claim brought regarding seven out of 382 comments and replies posted in response to a Facebook post published in a private Facebook group.On the defendant’s application to strike out the claimant’s libel claim because of several deficiencies identified in the Particulars of Claim, the judge held that the claimant’s pleading failed to disclose reasonable grounds for bringing the claim, and were an abuse of the court’s process. This was on the basis that the pleading was defective, the claim lacked substance in essential respects, and the claimant’s suggestion that her pleading could be rectified following the handing down of the judgment was both implausible (since the defamation claim was bound to fail) and irregular. The claimant’s separate harassment claim, which was not challenged in the defendant’s application notice and was only criticised in the defendant’s skeleton argument and in her written submissions following the hearing, survived—but the door was left open for a further strike out application on that separate claim. Written by Mathilde Groppo, associate at Carter-Ruck Solicitors.

Webb v Jones [2021] EWHC 1618 (QB)

What are the practical implications of this case?

The decision, given on the defendant’s application to strike out the claimant’s libel claim on the basis that her Particulars of Claim were incorrectly pleaded and/or lacking in particularity, is a reminder to all claimants about the burden that they bear to properly make out their case. As Griffiths J stated at paragraph 96 of the judgment:

> ‘the burden is on the claimant to plead and prove a sustainable case, and it is not the function of the defendant or the court to provide a tutorial before the claimant’s best efforts are made.’

In striking out the claimant’s libel claim, the judge applied well-established principles regarding the proper approach to be taken to a libel claim, both at pre-action stage and when pleading a case. Of note is his remark that several aspects of the pleading were not only defective but also lacking in substance, and that, in relation to the lack of substance issue, the claimant’s argument that something may come to light at the disclosure stage was not persuasive. Such an exploratory approach is plainly an abuse of the court’s process, and does not justify permitting a claim to proceed.

What was the background?

The claimant’s claim related to seven postings published in response to a Facebook post in a private Facebook group which had, at the time of publication, around 16,000 members.

The Facebook post (which was not posted by the defendant) received a total of 352 replies and comments published by multiple individuals. To be read in their entirety, they required the reader to click on a prompt at several different points of the thread. The seven posts complained of were far removed from the original post and were separated from each other. Not all of them identified the claimant, and it was clear from the thread of comments that there was some degree of confusion as to the thread generally and who was the subject-matter of the discussion. Other comments and replies

identifying the claimant were not complained of. Of those which were the subject-matter of the claimant's complaint, some had no reactions at all, and others received reactions from between one and four people, including reactions which merely took the form of click on an 'emoji'.

The claimant adopted an obstructive approach to the litigation. She failed to provide print-outs of the relevant postings (and the surrounding context thereof) until three months after proceedings were served, and declined to amend her pleading when she was invited to do so. It is only in her written submissions which followed the conclusion of the hearing that the claimant stated that she would be willing to amend her Particulars of Claim (having failed to do so throughout the process of the application, including in her skeleton argument), but noted she would only be able to do so after having seen the judgment.

What did the court decide?

The court's starting point was that the claimant's approach of grouping the seven postings complained of as a single publication was wrong, in the light of the factors identified in the above 'background' section. In doing so, the court made a straightforward application of the principles deriving from *Sube v News Group Newspapers Ltd (No 2)* [2018] EWHC 1961 (QB).

As a consequence, various aspects of the Particulars of Claim were defective, including in relation to the issue of reference (since they failed to plead the issue of identifiability in relation to each individual posting), meaning, and serious harm (since this threshold cannot be satisfied by aggregating the injury to reputation caused by two or more harmful imputations).

While the first two aspects were simply defective and could in theory have been rectified by amendment, the serious harm one could not, because it also lacked substance. The case had been pleaded on the basis of an inference, with no supporting evidence. It also focused solely on injury to feelings (which, however grave, is not sufficient in isolation—*Monroe v Hopkins* [2017] EWHC 433 (QB)), along with the suggestion that something may come to light at the disclosure stage.

The pleading was also wanting in relation to the substantial publication test. In relation to social media postings, due to the fast moving nature of the medium, it is well established that it is not sufficient to plead that some users read the posting—*Stocker v Stocker* [2020] AC 593. In this case, the claimant had failed to plead actual facts to support an inference of substantial publication, instead simply relying on the number of members of the Facebook group.

In the light of this, and commenting that the claimant's suggestion that she may rectify her pleading in response to the judgment was both implausible and irregular (given that the burden to plead the case lied on the claimant in the first place), the judge struck out the claimant's libel claim. Her harassment claim, which was not challenged in the claimant's application notice but which the judge noted did 'appear to be weak', survived.

Case details

- Court: High Court of Justice, Queen's Bench Division, Media and Communications List
- Judge: Mr Justice Griffiths
- Date of judgment: 17 June 2021

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