Neutral Citation Number: [2014] EWHC 2402 (QB)

Case No: HQ13D06031

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 July 2014

Before :

HHJ RICHARD PARKES QC
(sitting as a Judge of the High Court)

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Between :

Ronald Terance Stocker	**Claimant**
- and -	
Nicola Stocker	**Defendant**

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- -

David Price QC (of David Price Solicitors & Advocates) for the Defendant
Caroline Addy (instructed by SA Law LLP) for the Claimant

Hearing date: 16 June 2014

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ RICHARD PARKES QC

HHJ Richard Parkes QC **:**

1. This is an application for an order that the claimant should answer a number of requests made in a Pt 18 Request dated 26 March 2014, and that time for service of the defence should be extended until 14 days after provision of the answers.

2. The application is made in the course of a defamation action brought by Mr Stocker against his ex-wife. Relations between the two of them continue to be very bitter. Mr Stocker appears to be in a relationship with a woman called Deborah Bligh. Ms Bligh was formerly in a relationship with one Eric Roche, with whom she has two daughters.

3. The claim is simple enough. It is founded on two instances of publication by the defendant. They are an email dated 2 January 2013 sent by the defendant to Eric Roche, Ms Bligh's former partner, in France; and a Facebook exchange between Mrs Stocker, the defendant, and Ms Bligh, which took place on 23 December 2012. It is only the Facebook exchange with which this application is concerned.

4. The words complained of are only a part of the full exchange, which is said to have been visible to all those who were 'friends' in the Facebook sense with Ms Bligh, of whom 22 are identified. However, Ms Bligh had some 110 'friends', and through them, it is said, the words would have been visible also to a large but unknown number of people who were the 'friends' of Ms Bligh's 'friends'. The words complained of are as follows:

Nicola Stocker:	I hear you have been together 2 years? If so, u might like to ask him who he was in bed with the last time he was arrested...
Nicola Stocker:	Wouldn't bring it up last time I accused him of cheating he spent a night in the cells, tried to strangle me. Police don't take too kindly to finding your wife with your hand prints round her neck. But don't worry you will get a nice watch for Christmas!
Deborah Bligh:	why did Terry get arrested
Nicola Stocker:	…Which time?
Deborah Bligh:	Why has he been arrested???
Nicola Stocker:	Well u know about him trying to strangle me, then he was removed from the house following a number of threats he made and some gun issues I believe and then the police felt he had broken the terms of the non-molestation order.
Nicola Stocker:	All quite traumatic really.

5. The meanings pleaded are that the claimant:

   (1) had tried to kill the defendant by strangling her, for which he was arrested by police;

(2) had also threatened the defendant and breached a non-molestation order protecting her, for which he was also arrested;

(3) had been arrested countless times and accordingly, it was to be inferred, was a dangerous and thoroughly disreputable man.

6. There is also a claim for aggravated damages, in which Mr Stocker relies on what is alleged to have been the gratuitous nature of his ex-wife's communication with Ms Bligh, and on the fact that Mrs Stocker did not, so it is said, use the private messaging facility on Facebook, but rather posted the words complained of onto Ms Bligh's Facebook page where all Ms Bligh's Facebook 'friends' were able to read them.

7. According to the witness statement of Julia Varley, made on the defendant's behalf, the claim has a number of unusual features. It is said that the claimant goaded the defendant into defaming him. For example, it is said that on 31 October 2011 the claimant texted her, asking her to make her accusations in public because he needed the money. One case of slander, he said, would not keep him in the manner to which he wished to become accustomed. On 21 December 2012, two days before the Facebook exchange complained of, he texted her in unpleasant terms which I will not repeat but seem all too characteristic of these exchanges on both sides, and concluded that she was 'too clever to get sucked in over the internet'. In what is said to have been the immediate aftermath of the Facebook exchange, he texted her saying that she was going to make some lawyers very rich.

8. It appears from Ms Varley's witness statement that in late November or early December 2012 the defendant sent Ms Bligh what is called a 'friend request', that is to say a request for Ms Bligh to agree to her becoming one of Ms Bligh's Facebook 'friends'. The reason for this curious request is said to have been that Mrs Stocker's son had started mentioning Ms Bligh, and saying that she would sometimes pick him up from school, and that she had two young children who did not live with her, but with their father in France. Unsurprisingly, it appears that the claimant would not tell his ex-wife much about Ms Bligh, but made certain allegations about the way in which Ms Bligh had been treated by Mr Roche, and in all the circumstances the defendant wanted to know more about the woman who was to be having regular contact with her son. She therefore sent the friend request, which – remarkably, perhaps – was accepted.

9. The exchange complained of took place on 23 December 2012. At 10.50, the defendant had sent the claimant a somewhat offensive text about Ms Bligh, in the course of which she said that she hoped Ms Bligh would not be anywhere near her son at Christmas. At some point, it appears, between that text and 12.16 (although Ms Caroline Addy, for the claimant, observes that the timings are not certain), Ms Bligh posted a 'status update' on her Facebook page saying that she could not wait to wake up on Christmas Day with her man and his son. The defendant felt that the reference to her son was a provocation, and a cruel reminder that she would be spending a first Christmas morning without him. Mr David Price QC, for the defendant, suggests that it was an obvious and intentional barb directed at his client. If so, she rose to the lure, responding with the question 'Which one of his sons would that be. May be u should be with your own kids'. Ms Bligh responded 'sorry I do not understand your status would you like to phone me i am at home'. The defendant

replied ‘Not really no’. Thus far, it appears to be common ground that these brief postings would have been visible to Ms Bligh’s Facebook ‘friends’, because, according to Mr Price, they followed the status update, and that is something which is generally visible.

10. About a minute later, according to Ms Varley’s account, Ms Bligh posted what the defendant believed to have been a private message to her saying ‘Nicky, you can phone me if you wish’. That was the message that precipitated the exchange of which the words complained of formed a part. According to Ms Addy, it was another ‘status update’, and would have been as visible to Ms Bligh’s Facebook ‘friends’ as the earlier one. It is the defendant’s case that she was not aware that others would have been able to see the exchange, because she believed it was a form of private messaging. It is unclear to me how reasonable such a belief would have been. I have no evidence of what the defendant would have been able to see when exchanging messages with Ms Bligh, and in particular as to whether she would or should have seen that she was posting messages on Ms Bligh’s ‘wall’. Mr Price suggests that this may be important, because if she was unaware that her digital conversation with Ms Bligh was in effect being overheard by others, that might afford her a defence: he referred to *Terluk v Berezovsky* [2011] EWCA Civ 1534 at [28] for Laws LJ’s preference (in the slightly different context of republication) for a test of liability rooted not in carelessness but in knowing or deliberate action. In other words, he submits, it may be that if she did not know that others were (as it were) ‘listening in’ to the exchange, she would not be liable for publication to those others. It is not a question which has to be decided now, but liability for unintentional publication to third parties has in the past been thought to depend on want of care (see eg *Gatley* 12th ed para 6.18). Whatever the correct answer, the requests for further information go in part, Mr Price says, to Ms Bligh’s state of mind, because if she was unaware of the public nature of the exchange, then that might give force to the defendant’s case that she also was unaware.

11. It appears that the defendant contemplates also a potential defence of consent or acquiescence, on the footing that the claimant was inviting the defendant to behave as she did, and that he in some way put Ms Bligh up to provoking the exchange by the claimant; and an application to strike the claim out for abuse of process, it being said to be the ‘paradigm’ of an abusive claim. That is why Mr Price emphasises the evidence that the claimant referred to wanting her to make her accusations in public, to her being too clever to be ‘sucked in’ over the internet, and to what he says was Ms Bligh’s provocation of the Facebook exchange. It is in that context, and for the purpose of enabling the defendant’s solicitors to provide informed advice to the defendant about the substantive merits of those defences, and about the possibility of a Pt 20 claim against Ms Bligh, that the Pt 18 request is made.

12. I should add that on 26 February 2014 the claim was stayed for 3 months by consent because the defendant was very ill and undergoing medical treatment. The time for service of the defence was extended to 4 June, but an extension is now sought until after the hearing of the present application. It is important to note that there is as yet no defence on the record, so that it is not possible to say with any confidence what the issues in the action will be.

13. The Pt 18 request was served informally on 26 March. The claimant responded to it on 28 May. Some of it has been answered and is not in dispute. The parts of the

request which remain in dispute, and the answers given, are as follows. They refer to the Exchange, by which is meant the Facebook exchange from which the words complained of are taken:

3. Why did Ms Bligh commence the Exchange?

   Reply Not entitled. This is a question about the motive of a third party and is not a proper request.

4. Why did Ms Bligh initiate the Exchange by way of a status update and not a private form of communication, eg Facebook's private messaging function?

   Reply Not entitled. This is a question about the motive of a third party and is not a proper request.

5. Does the Claimant accept that at any time during the Exchange Ms Bligh could have taken steps to ensure further communications with the Defendant were private, eg switching communication to the private messaging function, and that the comments that had already been made could be removed from view by Ms Bligh at any time either by hiding or deleting them?

   Reply Not entitled. This does not appear to be a question about Particulars of Claim or to be necessary for the Defendant to prepare its Defence and is therefore not a proper request.

6. Given the way in which the Exchange developed, why did she not do so?

   Reply Not entitled. This is a question about the motive of a third party and is not a proper request.

8. Why did Ms Bligh prevent the Exchange being visible to her friends?

   Reply Not entitled. This is another question about the motive of a third party and does not amount to a proper request.

9. Why did she not do so sooner?

   Reply Not entitled. This is again a question about the motive of a third party and is not a proper request.

16. When on 23 December and by what means did the Claimant become aware that the Defendant had "posted defamatory material" about him on Ms Bligh's Facebook page?

   Reply Not entitled. This does not appear to be a question about Particulars of Claim or to be necessary for the Defendant to prepare its Defence and is therefore not a proper request.

17. When did he become aware of the nature of the allegations?

Reply Not entitled. This does not appear to be a question about Particulars of Claim or to be necessary for the Defendant to prepare its Defence and is therefore not a proper request.

16A Did the Claimant ask to see the 'defamatory material'?

Reply Not entitled. This does not appear to be a question about Particulars of Claim or to be necessary for the Defendant to prepare its Defence and is therefore not a proper request.

17A If not, why not?

Reply Not entitled. This does not appear to be a question about Particulars of Claim or to be necessary for the Defendant to prepare its Defence and is therefore not a proper request.

18. If yes, what was her response?

Reply Not entitled. This does not appear to be a question about Particulars of Claim or to be necessary for the Defendant to prepare its Defence and is therefore not a proper request.

14. CPR Pt 18.1 provides that the court may at any time order a party to (a) clarify any matter which is in dispute in the proceedings; or (b) give additional information in relation to any such matter, whether or not the matter is contained or referred to in a statement of case.

15. Para 1.2 of the Practice Direction to Pt 18 provides that a Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his case or to understand the case he has to meet.

16. David Price QC argued that provision of the information was reasonably necessary for the purposes already stated – to enable the defendant to consider an application to strike out for abuse of process (on the footing that the claimant might have encouraged Ms Bligh to ask questions as an *agent provocateuse* which would lead to defamatory answers in a public forum in order to enable him to sue); or to consider the ambit of any case of abuse of process or consent to be raised in the Defence; or to explore the questions of whether the defendant was responsible in law for the publication; or of whether, if the defendant was responsible, Ms Bligh had some shared measure of responsibility as a co-publisher and as a potential Pt 20 defendant; or, finally, to assist in determining a likely award of damages (the claimant's conduct being relevant to that question).

17. He submitted that there had never been a general prohibition in the authorities against seeking information relevant to a potential defence, or to grounds for striking out or 'matters relating to the litigation generally'. He relied on *Fullam v Newcastle Chronicle & Journal Ltd* [1977] 1 WLR 651 at 659, where Scarman LJ said that 'Justice requires in this case that the plaintiff should fully particularise the publication relied on so that the defendants may understand the nature of the case they have to

meet'. But in *Fullam* the issue was whether the plaintiff had sufficiently particularised his case to enable the defendant to understand how readers would have understood the words in the abstruse legal innuendo pleaded. There has never been anything remarkable about a request for particulars (in *Fullam*, under RSC O.18 r7(1) or O.82 r3(1)) or for further information (under CPR Pt 18) of the plaintiff's or claimant's pleaded case, where that is necessary to enable the defendant to understand the case she has to meet. This defendant is not seeking particulars of the claimant's pleaded case to understand the case she has to meet. She is seeking particulars of matters which are not part of the claimant's pleaded case, to help her decide what steps to take in response to the claim – what to plead by way of defence, and whether to make a particular application.

18. Mr Price submitted that the wording of CPR PD18.2 ('a Request should be … confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his case) was general enough to embrace his client's request, and relied in support of his submission on *Dee v Telegraph Media Group Ltd* [2009] EWHC 2546 (QB) [12]-[17], where Eady J referred to the need to place cards on the table and to avoid technical objections where it is desirable that the information should be provided. In that case, Eady J had to rule on requests for further information as to the claimant's stance on two fairly narrow questions, the answers to which were likely to save costs. The judge's stance was that there was no reason why the claimant should not clarify matters: 'It is important to place as many cards as possible on the table at this stage'. But in that case the two issues arose from the plea of justification, and it was important to know the claimant's stance in order for the defendant's advisers to be able to decide whether it was necessary to call an expert to give evidence on the issues.

19. He referred also to *Harcourt v Griffin* [2007] EWHC 1500 (QB), a personal injury case where the claimant was properly concerned about the ability of the defendants to satisfy judgment, and made a Pt 18 request for information about the nature and extent of any insurance cover which the defendants enjoyed, because if any reasonable damages figure was likely to exceed the amount of any assets of the defendants and of any available insurance cover, it would be wasteful and possibly counter-productive to engage in a contested quantum dispute. Irwin J held at [10] that the wording of Pt 18 should be interpreted 'reasonably liberally':

> "The purpose of the jurisdiction must be taken to be to ensure that the parties have all the information they need to deal efficiently and justly with the matters that are in dispute between them. Moreover, the wording need not be taken to imply that there must be a live disagreement about the relevant issue, since on very many occasions parties are properly required to furnish information pursuant to CPR r.18 precisely to discover whether or not there is a live disagreement between the parties on a given point. The whole thrust of the new approach to civil litigation enshrined in the Civil Procedure Rules is to avoid waste of time and cost and to ensure swift and, as far as possible, proportionate and economical litigation."

20. Mr Price also submitted that the claimant arguably bore a level of burden of proof in relation to an issue of abuse of process, in that he must show that his claim discloses a real and substantial tort; and that in any event, if a claim was abusive, the court had a duty to bring it to an end as soon as possible. It followed that it was all the more important in a case where an abuse argument might be available, that the parties should adopt a cards on the table approach to potentially germane facts.

21. Mr Price was insistent that his requests could not be described as 'fishing': rather, they had the potential to avoid the costs, stress and court time involved in litigating a lengthy defence of justification unpicking the carcass of the parties' failed marriage, a defence that might, on provision of the answers, become unnecessary. The wording of Pt 18.2 was wide enough to cover such matters, especially in the light of the modern post-Woolf preference for the placing of cards on the table (see *Dee v Telegraph Group*, above).

22. Mr Price characterised the central issue in these terms: Was there a bona fide litigious purpose to the questions, and were the questions proportionate to their purpose? The purpose was to enable the defendant to receive informed advice about how to proceed. He conceded that his client could plead consent and abuse of process and deny publication without having the answers sought, but he wished to do so on an informed basis.

23. Mr Price's reference to bona fide litigious purpose recalled the words of Lord Woolf in *Hall v Sevalco* [1996] PIQR 344 at 349, where emphasis was laid on the stringency of the test of necessity: 'It cannot be necessary to interrogate to obtain information or admissions which are or are likely to be contained in pleadings, medical reports, discoverable documents or witness statements unless, exceptionally, a clear litigious purpose would be served by obtaining such information or admissions on affidavit'. That was in the context of RSC O.26, by which an order for interrogatories required necessity either for disposing fairly of the cause or matter or for saving costs. As Caroline Addy, for the claimant, suggested, a Pt 18 Request which seeks further information about matters not contained in the pleadings is akin to the old interrogatory: see *Gatley* 12th ed at para 31.14. However, it is important not to be distracted by the RSC jurisprudence from the clear wording of the CPR.

24. Under the CPR, 'necessity' is not a requirement of Pt 18 itself, but appears in the Practice Direction, where (as I have said above) requests are to be strictly confined to matters which are 'reasonably necessary and proportionate to enable the first party to prepare his case or to understand the case he has to meet'. In *Musa King v Telegraph Group Ltd* [2004] EWCA Civ 613, [2005] 1 WLR 2282 [63], Brooke LJ emphasised the firmness of the rule, stressing the need '(to confine) this part of the litigation (in which costs tended to get out of control in the pre-CPR regime) "strictly" to what is necessary and proportionate and to the avoidance of disproportionate expense'. He referred to the trenchant observations of Lord Woolf MR in *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775 at 792-794, where Lord Woolf disparaged the excessive use of particulars given the requirement (then fairly novel) that witness statements be exchanged.

25. For the claimant, Caroline Addy contended that the application was no more than fishing. 'Fishing' interrogatories were always refused: 'The moment it appears that questions are asked and answers insisted upon in order to enable the party to see if he

can find a case, either of complaint or defence, of which at present he knows nothing, and which will be a different case from that which he now makes, the rule against 'fishing' interrogatories applies' (*Hennessy v Wright (No.2)* (1890) 24 QBD 445. Eady J made clear in *Taranissi v BBC* [2008] EWHC 2486 (QB) at [9], in the context of applications for specific disclosure, that 'fishing' remains out of bounds. An important question in that case was whether the additional disclosure sought was necessary and/or proportionate to the illumination that it was likely to throw on the pleaded issues.

26. Requests 3, 4, 5, 6, 8 and 9 all seek information about the motives and intentions of Ms Bligh (who is not a party to these proceedings) in her conduct of the Facebook Exchange, and Request 18 seeks 'her' (presumably Ms Bligh's) response to the claimant's putative request to see the defamatory material. I can find no justification for the requests that relate to Ms Bligh. Despite Mr Price's beguiling submission that this course may enable her to avoid reliance on a plea of justification which trawls through unhappy episodes in the parties' marriage, this is an attempt to see if the Defendant can make good a defence which is not yet pleaded, but which (as is admitted) she can perfectly well plead as matters stand. Whether the answers would enable the defendant to avoid a plea of justification is a wholly speculative question, and in my judgment it is not a sufficient pretext to justify a course which otherwise plainly amounts to fishing. It is no less fishing to seek further information to assist a party to plead a defence of which she knows something (albeit not as much as she would like) than to plead a defence of which she knows nothing, and the words of Lord Esher MR should not be regarded as limited to the latter situation (see *Hennessy v Wright (No.2)* (above), at p448). In my view it is stretching too far the concept of a matter in dispute to include within it attempts to find out whether or not the party can make out a defence, whether it is consent or whether it is justification. There is a clear distinction between the rationale of cases such as *Dee v Telegraph* and *Harcourt v Griffin*, where the requests were designed to fulfil a proper and constructive litigious purpose which was likely to save costs and court time, and these requests, which are primarily designed to strengthen the defendant's hand in pleading proposed defences. That is not the function of Pt 18 particulars, any more than it was the function of interrogatories. These requests are neither necessary nor proportionate to enable the applicant to prepare her case or to understand the case she has to meet.

27. Requests 16, 17, 16A, 17A and 18 seek information about the circumstances in which the claimant became aware of the Facebook Exchange. They arise out of the fact that although the claimant's solicitors sent the defendant a letter before action on 18 April 2013 in respect of the email sent by her to Mr Roche, there was no reference in correspondence to the Facebook exchange until 20 December 2013, when it was said that the claimant had discovered evidence of additional defamatory material (not specified, but presumably the Facebook exchange) published in December 2012. These requests may have some future relevance to the issue of damages, but they no more satisfy the Pt 18 test than the requests relating to Ms Bligh. They relate to matters which on any view are bound to be covered by the claimant's witness statement (see *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775), and I can see no proper litigious purpose in forcing answers to these requests before that point in the action is reached; nor would it be either proportionate or necessary to do so.

28. The application is therefore dismissed with costs in the agreed sum of £7,000, to be paid by the defendant to the claimant by 15 August 2014. The defendant is to file and serve a Defence by 4.30pm on 19 September, and the claimant to file and serve a Reply by 4.30pm on 17 October 2014.

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