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Countdown star strikes out journalist's defence (Riley v Sivier)

27/01/2021

TMT analysis: This is the latest judgment in ongoing libel proceedings brought by well-known television presenter Rachel Riley against political journalist Michael Sivier over an article published on his website. Ms Riley applied to strike out Mr Sivier's defences of truth, honest opinion and publication in the public interest. The court agreed with Ms Riley, striking out all three defences on the basis that it was not even arguable that she had engaged in the conduct alleged in the article. This judgment is a concise and clear application of the principles of strike out in the context of pleaded defences in libel. In addition, Mrs Justice Collins Rice adds to the increasing body of judicial observation about how the court should consider social media posts (in this case Twitter) in the context of libel proceedings. Written by Edward Smith, associate, at Payne Hicks Beach.

Riley v Sivier [2021] EWHC 79 (QB)

What are the practical implications of this case?

The judgment is a useful guide as to what is the minimum standard of pleading required in order to advance a defence of truth in libel proceedings. The defence referred to social media posts that had to be read as a whole.

The allegations that Ms Riley had taken part in and encouraged Twitter abuse of a 16-year-old girl were not supported by the 'straightforward' and 'civil' exchanges. The judge rejected the suggestion that a celebrity with a large following, such as Ms Riley, has a duty to prevent their followers abusing someone on Twitter. This is good news for celebrities on Twitter who engage in robust debate.

The way these principles are applied to Twitter are clearly set out and should be considered by any media lawyer looking to advise clients with large followings on Twitter on what to do and what not to do on social media.

This case is also a clear reminder of the importance of meaning in libel proceedings when advancing a defence of truth. The determined meaning is the key criterion that a defendant must meet if they are to succeed having advanced a defence of truth.

What was the background?

- has engaged upon, supported and encouraged a campaign of online abuse and harassment of a 16-year-old girl, conduct which has also incited her followers to make death threats towards her
- by so doing, Ms Riley is a serial abuser and has acted:
 - hypocritically: by complaining about being the victim of online abuse and death threats herself while at the same time committing serial abuse of someone who has in consequence herself now been subjected to death threats (but someone who, unlike Ms Riley, cannot afford additional security protection)
 - recklessly and irresponsibly: by provoking her followers to subject the 16-year-old to further abuse and harassment, including death threats, and
 - obscenely

Nicklin J determined that the first bullet point above was a statement of fact, the second a statement of opinion and that both were defamatory. Mr Sivier served his defence and advanced defences of truth in respect of the statement of fact, honest opinion and that the article was published on a matter of public interest (see sections 2 to 4 of the Defamation Act 2013).

Ms Riley then applied, pursuant to CPR 3.4(2) and CPR 3.4(5) to strike out all three of these defences on the basis:

- that the defence discloses no reasonable grounds for defending the claim
- that the defence is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings, and
- that there had been a failure to comply with a rule, practice direction or court order

What did the court decide?

The court focused on the defence of truth and whether the pleaded case set out the underlying factual basis to prove that the first part of the meaning set out above had a realistic prospect of success of being held to be substantially true. Given that the statement of opinion was entirely consequential to the statement of fact the defence of honest opinion could only survive if the defence of truth was not struck out.

The underlying basis for Mr Sivier's defence of truth was that tweets posted by Ms Riley and others provided the underlying factual basis for the defence. The court conducted a forensic examination of those tweets and considered whether the defence was pleaded sufficiently and with proper particularity (see *Ashcroft v Foley* [2012] EWCA Civ 423). The court also considered the relevant principles of pleading a defence of truth as set out in *Musa King v Telegraph Group Ltd* [2003] EWHC 1312 (QB).

The court held that Mr Sivier's defence failed on the basis of both sufficiency and particularity and that a proper consideration of the Twitter exchanges demonstrated that Ms Riley's conduct could in no way be shown to provide the underlying factual basis that the defamatory allegation that she 'engaged upon, supported and encouraged a campaign of online abuse and harassment' had a realistic prospect of success of being held to be substantially true. The exchanges between Ms Riley and the 16-year-old girl were a 'straightforward, rational and respectful exchange of views' and the abuse the girl was subjected to by other Twitter users was not Ms Riley's responsibility. As explained above, the defence of honest opinion was also struck out. The public interest defence also failed given that there cannot be a reasonable belief in publishing untrue allegations and unsustainable opinions without some further justification or explanation than the case advanced within the defence of truth. Mr Sivier provided no such explanation and so his final defence failed.

The claim was not entirely struck out—Mr Sivier also pleaded particulars as to publication, serious harm and remedy which survive for further consideration.

Case details

- Court: Queens' Bench Division, Media and Communications List, High Court of Justice
- Judge: Rice J
- Date of judgment: 20 January 2021

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