Neutral Citation No. [2002] NICA 46 | *Ref:* NICF3778

Judgment: approved by the Court for handing down | *Delivered:* 07/11/2002
(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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BETWEEN:

BERNARD JOSEPH EASTWOOD

Plaintiff/Respondent;

-and-

HARPERCOLLINS PUBLISHERS LIMITED

Defendant/Appellant.

_____

Before: Nicholson LJ and Weatherup J

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NICHOLSON LJ

[1] This is an appeal pursuant to the leave of the judge, from the judgment given and the interlocutory orders made by Kerr J on 5 March 2002 in a libel action brought by the respondents against the appellant.

[2] The appellant seeks leave to amend its Defence by adding a paragraph and associated particulars of justification. The proposed paragraph reads: 6A. Further, if and insofar as the words in their natural and ordinary meaning bore or were understood to bear the meanings set out below, they are true in substance and in fact –

(1) that the plaintiff was not trustworthy.

Particulars of Justification

The defendant repeats the Particulars of Justification set out at paragraph 6 above and adds –

Prior to the McGuigan fight in Las Vegas with Steve Cruz in 1986 the plaintiff promised, in writing, to give to McGuigan the sum of $250,000 if McGuigan was beaten by Cruz. Following McGuigan's defeat in the fight to Cruz the plaintiff did not pay the said sum to McGuigan but, rather sought to argue that he was not legally bound to pay the said sum. The said sum was not paid by the plaintiff to McGuigan until after McGuigan had instituted legal proceedings against the plaintiff for, inter alia, payment of the said sum.

[3] The judge refused leave to amend on the ground that the words complained of, which are set out at paragraph 3 of the Statement of Claim, were not reasonably capable of bearing the meaning that a general accusation of untrustworthiness had been levelled at the respondent.

[4] There was little or no dispute between the parties as to the legal principles. How should the courts go about ascertaining the range of legitimate meanings? We are content to adopt the words of Sedley LJ in Berezovsky v Forbes Inc. [2001] EWCA Civ. 1251:-

> "Eady J regarded it as a matter of impression. That is all right, it seems to us, provided that the impression is not of what the words mean but of what a jury could sensibly think they meant. Such an exercise is an exercise in generosity, not in parsimony. It is why, once fairly performed, it will not be second-guessed on appeal by this court. … But it is also why, if on an application for permission to appeal it appears that the judge has erred on the side of unnecessary restriction of meaning this court …. may be readier to take another look. In those cases where it does so, its decision is akin to (and strictly speaking probably is) a holding of law. It will have careful regard to the judge's view, but the view it comes to on the legitimate ambit of meaning will be its own …."

We also bear in mind the words of Carswell LCJ in Neeson and Another –v- Belfast Telegraph Newspapers Limited [1999] NIJB 200 at page 206:-

> "We also bear in mind that the Court of Appeal in England has consistently discouraged appeals made from judges in chambers on meanings under RSC Ord. 82, r 3A (which is in identical terms with our rule), subject only to the caveat that an appellate court should be a little less reluctant to interfere with a judge's decision where he had ruled out a possible

> meaning, since then there would be no opportunity for a jury to make a final decision: see Cruise –v- Express Newspapers plc [1999] QB 931 at 936 per Brooke LJ."

In the present appeal the judge has very properly given leave to appeal.

[5] The cases canvassed before us included Lewis –v- Daily Telegraph Limited [1964] AC 234, Williams v Reason [1988] 1 All ER 262 and Bookbinder –v- Tebbit [1989] 1 All ER 1169. Relevant passages from Gatley on Libel and Slander 9th ed. were also cited.

[6] We take from the decision in Lewis the words of Lord Reid at p. 258:-

> "There is no doubt that in actions for libel the question is what the words would convey to the ordinary man; it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs ….
>
> What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it.
>
> Sometimes it is not necessary to go beyond the words themselves …. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural ordinary meaning."

At page 259 he said:

> "Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these two extremes …"

At page 260 he said:

> What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression."

[7] From Williams case we refer to the passage in the judgment of Stephenson LJ at p. 269:

> "…. I conclude that counsel for the defendants is right in contending that the sting of the libel here is 'sham amateurism', the charge, still tied to his [Williams'] book but nevertheless carrying with it a charge of hypocrisy and deviousness, that the plaintiff was a professional while claiming to be an amateur".

As a result the defendant was held to be entitled to introduce evidence of other facts capable of justifying defamatory words in a wider sense than that pleaded by the plaintiff provided that the words the defendant sought to justify were capable of bearing the wider meaning.

[8] From Bookbinders case we take the words of Ralph Gibson LJ at p. 1174:

> "It has not been, and could not be, suggested that a particular charge of wrongdoing necessarily may be regarded by the jury in all cases as including a general charge of that sort of wrongdoing. Even where a defendant has published two distinct libels about a plaintiff the law permits the plaintiff to complain of one only, and to have that issue decided, and the law does not permit the defendant to justify the one of which complaint is made by proving the truth of the other. Nor does the law permit a defendant to lead evidence of particular acts of misconduct on the part of the plaintiff in mitigation of damage where the defendant has failed to justify the libel complained of (see Spiedel –v- Plato Films Ltd [1961] AC 1090 …."

At p. 1175 he said:

> "A plaintiff ought to be able, if he can to prove the untruth of a specific mistaken or false charge without having to face the burden of a trial directed to any number of preceding incidents … in which he was concerned."

Thus it was held that a defendant was not entitled to rely on a general charge of wrongdoing unless a wider meaning or a more general charge could fairly be gathered from the words used, notwithstanding that the plaintiff had originally alleged in his statement of claim that the words used bore the general charge of wrongdoing and had later amended his statement of claim to withdraw that general charge leaving only an allegation that a particular charge of wrongdoing was defamatory.

[9] Having regard to these principles we turn to a consideration of the present appeal. It is unnecessary to set out the whole of the passage at paragraph 3 of the Statement of Claim which is stated to be defamatory. It was argued on behalf of the appellant that the sting of the libel was that the plaintiff was "untrustworthy" and reliance was placed on the fact that originally the respondent contended that the words meant, inter alia, that the respondent dishonoured his legal obligations and agreements with the appellant and was untrustworthy. It was further argued that the respondent only sought to amend his Statement of Claim by deleting the contention that the words meant that he was untrustworthy after the appellant had applied to add to the particulars of justification the matters referred to in paragraph 6A. More importantly, it was argued that trustworthiness was indivisible and that an allegation of untrustworthiness carried the sting that the respondent was generally untrustworthy.

[10] The passages on which the appellant primarily relied were:

> "Eastwood refuted my claims to the possession of a verbal agreement when he told the Mail on Sunday:
>
> > 'Mickey is not my partner and there is no agreement, verbal or otherwise. If he had been offered a verbal agreement by me, wouldn't he have said: 'Let's make this legal, let's get it down on paper.' I'll tell you if Mickey Duff was dealing with his great granny, he'd have it all down in writing – and he'd have two options." I answered that easily enough. "Sure I would, but only if I felt I couldn't trust my great granny'."

And later:

> "I had a deal and I expected it to be honoured."

[11] We share the view of Kerr J that an allegation of untrustworthiness by one person in a deal or in dealings with another cannot reasonably be taken

to mean that the former is generally untrustworthy. We agree with him that no imputation has been made which accuses the respondent of a general lack of trustworthiness.

[12] Thus the appeal is dismissed and the orders made by Kerr J will stand.