Neutral Citation Number: [2021] EWHC 2519 (Ch)

Case No: HC-2000-000003

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Rolls Building
7 Rolls Buildings
Strand, London
EC4A 1NL

Date: 24/09/2021

Before :

THE HON. MR JUSTICE FANCOURT

- -

Between :

Various Claimants	**Claimants**
- and -	
MGN Limited	**Defendant**

- -
- -

David Sherborne and **Julian Santos** (instructed by **Shoosmiths LLP**) for the **Claimants**
Richard Munden and **Ben Gallop** (instructed by **RPC LLP**) for the **Defendant**

Decided on paper without a hearing

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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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THE HON. MR JUSTICE FANCOURT

Mr Justice Fancourt :

1. This judgment follows applications made by various claimants dated 8 February 2021 to amend particulars of claim. In particular, the claimants wish to amend to plead reliance on further articles published by the defendant, which they say unlawfully interfered with their privacy.

2. The matter came before Mann J at a case management conference on 23 April 2021 and the judge gave directions to resolve the remaining disputes about whether the proposed amendments raise any triable case.

3. The directions given followed a judgment of Mann J handed down on 30 March 2021, in which the judge addressed certain specimen articles with a view to deciding on an approach on the question of whether permission to amend to rely on those articles should be granted. The judge concluded that:

> "A proportionate approach would be a sort of 'quick and dirty' view of the articles to see if any can be seen plainly to be inappropriate on a short consideration of each one, with the benefit of any doubt going to the claimant."

4. Mann J explained that to hear detailed argument on every article in dispute would be wholly disproportionate, and that only articles where it is obvious, on an initial perusal, that no valid claim arises should be ruled out as part of this process. As he put it, "anything less than obvious will be allowed in".

5. Following the directions given, the parties have reached agreement on all but 22 articles and they have prepared a table summarising the publication date, the article in question, and each side's brief written submissions as to why permission to amend should be granted or refused, as the case may be. The submissions with a copy of each underlying article were then sent to the court for the managing judge to make a determination on paper, or at a further hearing if he considered it necessary.

6. Having reviewed the 22 articles and the parties' submissions, I consider that it is unnecessary to hold a hearing to resolve any of the disputes. I therefore make this determination on the basis of the written submissions received. I shall deal with each of the claimants and each of the articles in turn.

Matthew Le Tissier

7. In respect of this claimant there is one disputed article, published on 11 June 1995 with the heading: "Mac Le Tissier; Tel's reject may defect to Scotland; Matt Le Tissier could play for Scotland" - a reference to the fact that the then England football manager was not selecting Mr Le Tissier for the England team. It is alleged that the article contains private information relating to the claimant's career plans and his personal thoughts and feelings about it. I consider that it is clear that there is no private information disclosed about the claimant's potential move to represent Scotland, which is the extent of the private information relied on in the draft amended particulars of claim. The article is

only speculation based on Mr Le Tissier's Guernsey birth and eligibility in theory to play for another home nation. Permission to amend to rely on this article is refused.

Julie Merkell

8. In respect of this claimant there is one disputed article, published on 3 March 2011 with the heading: "Rickaay! I've had a babaay; Patsy Shows off Tot". The claimant is an actress who appeared in EastEnders. The claimant complains that the article contains details relating to her movements on a private walk and her personal feelings and thoughts about her newborn baby. The article was accompanied by photographs of the claimant walking with her new baby in public. It includes comments from someone who had seen her, probably, as a matter of inference, someone who lives in the neighbourhood and knows the claimant. However, no private information about the claimant is disclosed. It is merely commentary based on the appearance of the claimant in public. There is no disclosure of location or other matters concerning the claimant's privacy. The private information alleged in the amended particulars of claim is details of the claimant being spotted on a walk near her home with her newborn baby. No such private details are revealed. Permission to amend is refused.

Paul Merson

9. There are two remaining disputed articles in the case of this claimant, who at the time was a well-known footballer. The first is dated 14 October 1996 and is headed: "Merson in split with wife; 'we just can't live together anymore'; Paul Merson splits from wife ". The article is alleged to contain private details relating to the claimant's marriage. The issue revealed by the submissions is whether the claimant himself had put the details into the public domain. He denies having provided any quotes to the defendant and the defendant alleges that a news agency obtained the claimant's comments after doorstepping him. There is likely to be a conflict of evidence and I consider that this alleged infringement of privacy cannot be resolved without a trial. Permission to amend is granted.

10. The second article is dated 6 July 1997 and is headed: "Football stars pitch in together for Florida fun; Paul Merson and Chris Woods stay in same Florida hotel". The article relates that the claimant and another footballer were holidaying with their families at Disney World in Orlando. The private details alleged are detail surrounding the claimant being on holiday with his family. But the claimant was on holiday with his family in public at a well-known resort and the source of the comments (which are complimentary to the claimant) is clearly a fellow guest. The details revealed are in my judgement not realistically capable of being sufficiently private to attract legal protection and the information is in any event trivial. Permission to amend is refused.

Jermaine Pennant

11. There is one disputed article in the case of this claimant. It was published on 1 June 2008 with the heading: "Pennant bids for TV love". The article concerns a large bid allegedly made by the claimant for a prize connected with his then girlfriend at a charity auction. The private information allegedly infringed is identified as "details surrounding attendance at charity auction". The defendant argues that the auction was a public event, but there is a dispute about this. In my judgement, the information disclosed is capable of being private and it is arguable that the event was not a public

occasion, such that there was some expectation of privacy. The benefit of the doubt here goes to the claimant and permission to amend is granted.

John Hartson

12. There are two disputed articles in relation to this claimant. The first is a short item dated 8 June 1995 headed: "It's a boot-iful day for Hartson; John Hartson signs boot deal". The article concerns a sponsorship deal between the claimant and a football boot manufacturer. The defendant argues that a sponsorship deal of that kind is "inherently public information", but in my judgement the financial details of the deal and its terms are arguably private. The defendant submits that the comment about the terms was mere speculation, but I am not persuaded that that is clearly the case. Again, the benefit of the doubt goes to the claimant and permission to amend is granted.

13. The second article is dated 4 November 1997 and is headed: "Drunk Hartson nicked; football: John Hartson arrested after booze-up with friends". The privacy asserted is "details surrounding the claimant being arrested". The article concerned the very public circumstances in which the claimant was arrested. In my judgement, there can be no reasonable expectation of privacy in relation to the matters covered by the article. Permission to amend is refused.

Andrew Gray

14. There are two disputed articles in relation to this claimant, who was a well-known football commentator. The first is dated 1 November 1997, headed: "Police escort for Gray; football TV pundit Andy Gray to get police protection on return to Everton". The private information alleged is details surrounding security protection needed owing to fears for the claimant's safety. The defendant submits that the article reports on the football club's security arrangements and does not reveal the claimant's own feelings, so is not private information. I consider that the article does arguably reveal the private concerns of the claimant and his employer, Sky, rather than Everton FC, and permission to amend is therefore granted.

15. The second article is dated 26 January 2011 and headed: "Fade to Gray; Sky Sports pundit 'to sue' after axe from job he loves". The claimant submits that the article contains private details regarding his decision to instruct lawyers for the purpose of considering taking legal action in connection with his dismissal, and his personal thoughts and feelings about it. The defendant submits that the article reports a statement from the claimant's own solicitors. I consider that the solicitors' comments put the matter sufficiently into the public domain, and that comments attributable to "pals" of the claimant add nothing of any substance to what had already been made public by the claimant or on his behalf. Permission to amend is refused.

Jermaine Defoe

16. There are two contentious articles in the case of this claimant, both published on the same day, 28 July 2009, in the same newspaper edition and relating to the same story line. One was a short front-page summary and the other a longer article inside the newspaper. They are relied on not as an invasion of privacy in themselves but as evidence of unlawful information gathering by the Defendant. The first is headed: "Defoe fury; England ace wrongly arrested and held by cops for 5 hours" and the second

"Striker 'could sue' for 5-hour ordeal; wrongful arrest before his team's flight to China". The complaint is that the articles contains private details surrounding the claimant's arrest and time spent in custody. However, it is evident that the claimant's lawyers put the detail into the public domain, and in my judgement it is not reasonably arguable that this article itself evidences unlawful information gathering, even if that did take place and can otherwise be proved. Permission to amend is therefore refused in relation to each article.

Peter Crouch

17. There are two articles relating to this claimant, who at the time was a footballer. The first is dated 29 November 2009 under a heading: "Do keep up!" It relates to a meal that the claimant and his fiancée enjoyed at an Indian restaurant. The details alleged to be private are details of the claimant and Abigail Clancy eating at a restaurant. The claimant submits that the article includes details of what they ate - "passed on a bottle of Bolly and opted for a balti" - and the defendant submits that this was merely a humorous comparison between the champagne lifestyle of most footballers and the modest curry house dinner enjoyed by the claimant. The source is clearly a fellow diner. In my judgement, there can be no legitimate expectation of privacy in relation to the fact of eating publicly in a restaurant. The defendant is clearly right about the humorous description. There is no coverage of what the claimant or his fiancée ate, or anything that was said or that they did. There is no arguably actionable invasion of privacy and permission to amend is refused.

18. The second article is dated 22 August 2010 and headed: "why so Abbey?" It relates to the fact that Abbey Clancy was agreeing to allow the claimant to return to their home following allegations that the claimant had cheated on her. The defendant submits that it was a comment written by a columnist on matters that were already in the public domain, and points to articles in other newspapers dated 19 August, 20 August and 22 August 2010. However, none of the earlier articles concern the claimant being allowed back into the house. I consider that it is arguable that the fact of Abbey Clancy's decision to allow the claimant back into the house was not in the public domain before 22 August 2010. The subject matter is clearly highly sensitive and the allegation should go to trial. Permission to amend is granted.

Darren Byfield

19. The article in the case of this claimant is dated 16 September 2007, headed: "Jamelia in talks with ex Darren". It is relied on as being evidence of unlawful information gathering by the Defendant. The claimant submits that it contains details of a private conversation between the claimant and his girlfriend. The defendant argues that the article merely reported quotations from the girlfriend herself, and that, despite the opportunity to do so, the claimant has not denied that this is the case. I consider this it is not arguably evidence of unlawful information gathering in the absence of a denial that Jamelia Davis put the information into the public domain. Permission to amend is refused.

Titus Bramble

20. There are four articles in dispute in relation to this claimant, who at the time was a footballer. The first two articles are relied on only as evidence of unlawful information gathering.

21. The first article is dated 26 September 2003, headed "Titus faces driving ban". The private information identified is details of the outcome of the court case. The article merely reports what happened at a public hearing. The fact that there may be other evidence of unlawful information gathering does not mean that this article is itself arguably evidence of misconduct. Permission is refused.

22. The second article is dated 9 October 2003 and relates to a later court hearing in the same prosecution. The private information alleged is detail of the claimant being late to court and the reason why. The claimant has identified that the article is in close time proximity to alleged instances of unlawful information gathering. But this does not of itself make the article evidence of misconduct. It is not alleged by the claimant that the explanation of his late arrival in court was not given in court, to excuse or explain his late appearance. I do not accept that there is an arguable case that this article itself is evidence of unlawful information gathering. Permission is refused.

23. The third article about this claimant is dated 30 September 2011 and is headed: "Sex & drug probe Titus suspended". It concerns the claimant being arrested by police and being suspended by his then football club in consequence. The private information is described as "details surrounding the claimant's arrest and alleged subsequent impact on his career at Sunderland FC". The defendant submits that all the information was already in the public domain, mainly as a result of a statement by the football club. I consider that it is just arguable that there is an expectation of privacy about the private views of the manager of the club and of the claimant, even though other details have been put in the public domain. The article goes further than the public announcement. Permission to amend is granted.

24. The fourth article is dated 9 November 2011 and relates to the same matter, headed: "Bramble hit by huge fine". The article provided details of the punishment later imposed on the claimant by his club. The private details are identified as "details surrounding fine being imposed on the Claimant by Sunderland FC following his arrest". The article describes the fine as being the maximum that the club could impose and put a figure on it of £200,000. The defendant submits that the article went no further than the public statement. It clearly did, in placing a figure on the fine and identifying that an additional fine was imposed on top of a 2-weeks' pay fine. Although the consequences of this might be somewhat limited, in view of the public statements that were made, I consider that it is just about arguable that the further details included in the article infringed an expectation of privacy. The claimant gets the benefit of the doubt and permission to amend is granted, though it is doubtful that, if there is an infringement of privacy here, it will lead to any substantial damages in the circumstances.

Maxton Beesley

25. There is one disputed article in relation to this claimant, dated 14 September 2003 and headed: "Hot people: Robbie Williams". The article concerns a claim that the claimant had agreed to perform with Robbie Williams on a forthcoming European tour. The

private information identified is the claimant signing up to play the bongos on that tour. The defendant argues that there is nothing private being disclosed, given that the claimant had already played with Robbie Williams in the previous month. In my judgement, the information is arguably private and there is no obvious way in which it was legitimately obtained by the defendant at that time. The information is not trivial but equally it may not sound in substantial damages. Permission to amend is granted.

Kerry Katona

26. There are three contentious articles relating to this claimant. The first is dated 21 February 2007 and headed: "Kerry's baby girl is early". The claimant complains that it contains private details about the baby's birth, such as weight and method of birth. The defendant submits that the information was standard information and had been published via the claimant's publicist the previous day. In my judgement, the details given in the article are private details going beyond the anodyne announcements that had already been made, and it is therefore arguable that the claimant's privacy was actionable infringed. Permission to amend is granted.

27. The second article is dated 9 January 2011 and headed: "Hi Kerry… I'm your big bruv!; words that reunited a family". The article concerns the fact of the claimant's half-brother making contact with her. The private information relied on is details of the claimant's brother getting in touch. The article includes the claimant's personal thoughts and feelings, and her case is that neither she nor her brother spoke to the press about it. The defendant says that the information came from the claimant's brother. In my judgement, it is reasonably clear that some of the content of the article came not from the brother but from other "sources". There is arguably a breach of privacy here and permission to amend is granted.

28. The third article is dated 27 November 2011 and headed: "Kerry an art lover". It concerns the claimant's new relationship with Steve Alce and her thoughts and feelings about it. The defence is that the article features extensive quotations from the claimant herself. In a letter dated 14 May 2021, the defendant's solicitors asked the claimant's solicitors to confirm whether the claimant denied that she said the words quoted. No answer was given to that request. In the absence of a denial that the claimant provided the information, I do not consider that there is an arguable case that the claimant had an expectation of privacy in relation to the type of information contained in the article. Permission to amend is refused.

29. In accordance with the directions made on 23 April 2021, the claimants must serve amended particulars of claim within 14 days of this judgment being handed down.