Case No: HQ16D1498

Neutral Citation Number: [2017] EWHC 3562 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 November 2017

Before :

MR JUSTICE WARBY

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Between :

ROSA MALAGA CANO	**Appellant**
- and -	
BEATRIZ BARCLAY & ORS	**Respondents**

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MR Richard OWEN-THOMAS (instructed by **DPA Law**) appeared on behalf of the **Appellant**
MR Greg CALLUS (instructed by **Carter-Ruck**) appeared on behalf of the **Respondents**

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JUDGMENT (As Approved)

1. **MR JUSTICE WARBY**: This is an application for permission to appeal against an order made by Master Thornett to strike out all the claims in this action and grant summary judgment. It is a renewed application pursued by the applicant (who I shall call "the claimant") following a refusal of permission on the papers by Jefford J DBE on 29 August 2017.

2. Mr Owen-Thomas appears today for the claimant. He has previously been involved in the matter, settled grounds of appeal, and produced a skeleton argument in support. His first step today has been to explain that he has been re-instructed late in the day (only yesterday) and to invite the court to adjourn the hearing, to enable his client to put forward her appeal in a way that is fair to her and, as he put it, to allow justice to be done. He has told me there is a clear difference between the submissions that could properly be made by him as responsible counsel today and those that his client might wish to make, having had an opportunity to reflect the matter, consider his advice, and make a decision about how she wishes to proceed.

3. The argument has been that it is right for the claimant to have an opportunity to form her own view as to what should be said to the court in support of an appeal. Mr Owen-Thomas has told me that he did not feel that his client has had a proper opportunity to consider the basis on which he (as counsel) could address the court, and to take an informed decision as to the way forward. He submits that it is a matter of importance to the claimant. Whilst acknowledging that this litigation has been burdensome for the 12 defendants, he says he would not be in a position professionally to proceed himself and that the proper application of the overriding objective leads to the conclusion that there should be an adjournment. He prays in aid to some extent the fact, which is the case, that no appellant's bundle has been prepared and (these are my words) the procedural state of the appeal is in some disarray.

4. The decision has to be made in accordance with the overriding objective, and all the elements set out in CPR 1.1(1) and (2) are of course relevant. Of particular importance in this case, it seems to me, are the need to save expense; the need to deal with a case in a way which is proportionate to the importance of the case, the complexity of the issues and the financial position of each party; the need to ensure that it is allotted an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and finally, but not least, the need to enforce compliance with rules, practice directions and orders.

5. The procedural chronology in outline is that the claim relates to events that occurred on 29 April 2015. It was started by a claim form issued on the last or penultimate day of the limitation period for defamation, on 28 April 2016. The principal claims are for slander and libel. It was on 4 November 2016 that the defendants made an application to strike out all the claims on various grounds, and on 11 May 2017 the matter came before Master Thornett. He had the benefit of written submissions which the parties had lodged pursuant to directions he had given in advance of the hearing. He also had the benefit of submissions from counsel for the claimant and counsel for the defendant. He reserved judgment.

6. He received supplementary written submissions on an issue that had been raised late in the day by counsel for the claimant and on 13 June 2017 he handed down a detailed 41-page written judgment which bears the neutral citation [2017] EWHC 1498 (QB), and made the order against which the applicant seeks to appeal, striking out the claims and

granting summary judgment. He awarded the defendant costs of the action, which he summarily assessed in the sum of 93,564.12.

7. An appellant's notice was filed on 14 July 2017, including the written grounds of appeal settled by Mr Owen-Thomas, to which I have referred. These raised in four paragraphs what, on analysis, resolved into two grounds of appeal: (1) that the Master was wrong to conclude that the slanders complained of were not actionable without proof of special damage; (2) that the Master wrongly concluded that the claimant had no realistic prospect of establishing malice. A skeleton argument, also settled by Mr Owen-Thomas, was lodged.

8. Thereafter, after some appellant interlocutory proceedings of a somewhat tortuous nature, the detail of which is not necessary to review now, the proceedings came before before Jefford J sitting in the Interim Applications Court on 11 August 2017. It was on that occasion that the judge gave permission to add a further ground of appeal (numbered 5). This alleged that the Master erred in law in finding that "the claims for breach of contract and personal injury were legally unintelligible and therefore ought to be struck out". In substance it might be said that the amendment adds two grounds, seeking to restore two separate and distinct causes of action.

9. Following the oral hearing on 11 August 2017, Jefford J herself dealt with the application for permission to appeal on these grounds on the papers. She did that on 29 August 2017, refusing permission with a four-page closely-typed set of reasons to explain why.

10. Some two and a half months later the matter has come before me on the renewed application. It is therefore at the very last possible minute that this application for an adjournment is made. It is made, I should add, against the background of correspondence in which the solicitors acting for the 12 respondents to the application have made very clear their concern at the repeated attempts by the claimant to put things off and the consequent costs that have been incurred on the other side. The scale of the costs order made by the Master is some indication of the disproportionate way in which this litigation has been conducted so far.

11. I have no hesitation in concluding that the proper application of the overriding objective requires me to refuse this application. The claimant has had an ample opportunity to formulate, with the benefit of counsel's advice, grounds of appeal against the Master's decision. This has not come on quickly. Although for large parts of the process the claimant has been acting as a litigant-in-person, there is no difficulty for a person of any intelligence of finding out what it is that an appellant needs to do in order to put her case before the court. It is obvious that the court will not be in a position to deal with amendments made on the hoof at the hearing of the application for permission to appeal. It would be, in my judgment, grossly unfair to the respondents in this case to allow further time to be wasted as a result of the adjournment that is sought. What the consequences of that decision are remains to be seen, but I am afraid that I cannot in justice grant the application.