



Neutral Citation Number: [2022] EWHC 930 (QB)

Case No: QB-2020-001207

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/04/2022

Before :

THE HONOURABLE MR JUSTICE SAINI

Between :

BRIAN DUDLEY

Claimant

- and -

MICHAEL PHILLIPS

Defendant

Ben Gallop (instructed by **Cohen Davis Solicitors**) for the **Claimant**
The Defendant in person via CVP

Hearing date: 12 April 2022

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.

MR JUSTICE SAINI:

This judgment is in 5 main parts with an annexe as follows:

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|------|---------------------------------|------------------|
| I. | Overview: | paras.[1]-[5] |
| II. | The Facts and Claims: | paras.[6]-[13] |
| III. | Damages and Compensation: | paras.[14]-[31] |
| IV. | Injunction: | para.[32] |
| V. | Section 13 Defamation Act 2013: | paras.[33]-[35]. |

Annexe: the publications.

I. Overview

1. This is a trial in relation to financial remedies and additional relief in a defamation and data protection/GDPR claim arising out of internet publications and postings which are reproduced in the annexe to this judgment. The claim was issued on 16 June 2020. In broad outline, the Claimant, Brian Dudley (C) complains that the Defendant, Michael Phillips (D) has falsely accused him of fraud, financial incompetence and various forms of wrongdoing of a sexual nature.
2. D acts in person and participated in the trial before me remotely. This was following my directions on 8 April 2022 that he be permitted to appear remotely at a CVP “hybrid” hearing given his ongoing medical conditions. I heard oral evidence from C who was cross-examined by D. D did not file any evidence in opposition (provision having been made in earlier orders for him so to do) but presented his arguments clearly and concisely. At the conclusion of the hearing, I stated that I would grant the relief sought by C, with my reasons to follow.
3. Before turning to the facts in more detail, I need to describe the procedural history. By the Order of Master Dagnall dated 3 October 2020, C obtained a default judgment on his claims. The Master’s Order was made pursuant to CPR 12.1, 12.3(1) and 12.4(2), following D’s failure to file an Acknowledgement of Service and to file a Defence. On 5 February 2021, in response to what appeared to be application by D to set aside this default judgment, Master Thornett directed that: the 3 October 2020 Order be stayed; that D was to file and serve an application notice by 26 February 2021; that D was then to have an opportunity to file evidence in response to any filed by C; and finally, that his draft Defence be filed by 23 April 2021.
4. D did not comply with that Order. Instead, he wrote to the Court complaining that he did not know what to do. In a detailed Order made by Master Dagnall of his own motion on 16 March 2021, the Master went out of his way to set out for D’s benefit how he should respond to the claim (and support his setting-aside application) by way of a draft Defence. He particularised how D should in stages respond to the Particulars of Claim. I note that the Master kindly even offered to list a short hearing to provide further procedural assistance to D. This was not taken up. Master Dagnall’s order made provision for C to apply, in the event of further default, for an unless order. D did not comply with Master Dagnall’s Order and so, in response to an application by C, on 25 June 2021 Master Thornett made an unless order, that unless D complied with the

requirements of the earlier orders he would be debarred from defending the claim. D did not comply with that Order and was, accordingly, debarred.

5. Although D did not issue an application to set aside that Order or for relief from sanctions I allowed D (at Counsel for C's invitation at the start of the trial) to rely upon an unissued application of 24 September 2021 as, in substance, an application to set aside the original default judgment. Counsel for C very properly identified that such an application (though not issued) was in the papers before me and acting with commendable fairness to D as a litigant in person submitted that it should be addressed. Having heard argument, I was not satisfied that, for the purposes of CPR 13.3(1)(a), there was anything put before me to show D had a real prospect of successfully defending the claim. I noted in particular the earlier procedural orders which had provided (with constructive guidance from the Master) an opportunity for D to set out a draft Defence and the substantial delays. To this day, D has not put forward any witness statement or draft pleading (or a lay person's equivalent) but merely orally asserted before me forms of a vague partial truth defence and what appeared to be geographical jurisdictional objections. I accept that D has had to face challenging medical conditions over the past 2 years but I did not consider his failures to comply with earlier orders were excusable. I refused to set aside the default judgment and the trial proceeded.

II. The Facts and Claims

6. C is an investment and wealth management expert, who runs his own business, Premier Global Consulting Limited. He was born in the UK and has lived and worked here. D also has extensive professional experience in the Philippines and Singapore, where he now lives, having relocated from the UK in late 2021.
7. D is a former employee of PI Global Inc. D was dismissed from his role in that company, managing clients in the Philippines and Thailand, in 2015. C was a director of PI Global Inc while he lived in the Philippines and recruited D to work at PI Global. D has been resident in the UK since 2016 and now lives in Bournemouth.
8. C's claim comprises:
 - (1) A libel claim in respect of defamatory "reviews" posted by D on the website 'pissedconsumer.com' which remain accessible and live (the 'Reviews'); and
 - (2) A claim in data protection in respect of the (now removed) website operated by D with the URL 'www. briandudleyisascammer.wordpress.com' (the 'Wordpress Site').
9. The Reviews make defamatory allegations about C, including of professional incompetence, dishonesty and fraud. The Wordpress Site, before its removal on 8 January 2021 (at C's instigation) contained C's personal data in the form of various damaging and unpleasant allegations. I can summarise these by saying that they included statements that he had sold fraudulent *Ponzi* scheme investments, and allegations concerning alleged infidelity and sexual activity with sex workers. C first

became aware that D was making these allegations online in 2016, when he was alerted to the Wordpress Site by a client.

10. C seeks: (a) damages for libel, and compensation for breach of his rights under the Data Protection Act 1998 (DPA) and the General Data Protection Regulation (GDPR); (b) an injunction; and (c) an order under section 13 of the Defamation Act 2013 as regards 'pissedconsumer.com'. C had a pleaded claim for an order under section 12 of the 2013 Act but it was not advanced at trial.
11. In terms of his opposition to these orders (and without any supporting evidence), the nature of D's submissions before me was to argue (and to suggest in cross-examination of C) in effect a form of unevidenced partial truth/general wrongdoing defence against C on the issues on liability. Aside from the fact that default judgment has already been entered, D's case was not supported by any witness statement and had not been the subject of any forewarning.
12. I note that Master Thornett had given both parties permission, by his Order of 21 February 2022, to serve evidence for the remedies hearing before me. D failed to take that opportunity and I was not willing to allow him to make wide and unparticularised allegations of wrongdoing against C as part of his cross-examination with no evidential basis. I asked him on several occasions to seek to focus his cross-examination on C's evidence as to losses set out in his written evidence. I do not accept it was open to D to advance unparticularised, unevidenced, and unpleaded allegations of wrongdoing as a form of mitigation of damage. I reach that conclusion both as a matter of law and of case management, including ensuring fairness to C.
13. C was an honest and straightforward witness. I accept C's oral and written evidence as to the effect, both personal and professional, of the publications upon him. In particular, it is clear to me on that evidence that the publications were read in England and Wales by those who might consider using his services or employing him in the financial services field. The most basic internet due diligence undertaken by a potential client or employer would reveal serious accusations of fraud and related wrongdoing being made against C. It is not a surprise that such persons would have real reluctance in dealing with him, as C said in his evidence. I will return to the more specific evidence of loss below but the negative effects on his reputation are in my judgment obvious.

III. Damages and Compensation

14. CPR r 12.12(1) provides that "where the claimant makes an application for a default judgment, the court shall give such judgment as the claims entitled to on the statement of case". The Particulars of Claim are in themselves the basis on which the Court identifies the nature and scope of a defendant's liability to the claimant in the default judgment situation. I was taken to the helpful guidance in Sloutsker v Romanova [2015] EWHC 2053 (QB) at [84] in respect of defamation claims. The same principles must apply when a data protection claim (particularly one based on processing inaccurate personal data) is in issue.
15. It is established that libel damages have a threefold purpose, namely: (1) to compensate for distress and hurt feelings; (2) to compensate for actual injury to reputation which has been proved or might reasonably be inferred; and (3) to serve as an outward and

visible sign of vindication. The relevant principles to be applied in assessing damages in a defamation claim were described in some detail in Counsel for C's succinct oral and written submissions by reference to the main cases including Barron v Vines [2016] EWHC 1226 (QB) at [20]-[21]. These principles are not controversial. I was also taken to defamation awards in a range of what were argued to be broadly similar cases. I will not set those cases out. They are of indirect assistance and every case must be decided on its own facts.

16. The right to recover financial relief (or 'compensation') for breaches of the Data Protection Act 1998 is contained in section 13 of that Act. I was referred to the analysis of that provision in Aven v Orbis Business Intelligence [2020] EWHC 1812 (QB), at [193]-[197]. The following propositions are relevant to the present case:
 - (1) "Damage" for the purposes of section 13 is not confined to material loss. Compensation for distress is recoverable in any case, as is damage for reputational harm.
 - (2) The Court's approach to the assessment of reputation harm and distress resulting from inaccurate disclosures of personal data follows the established principles developed in the common law of defamation.
17. The equivalent right in the GDPR is contained in Article 82, which provides that:

"Any person who has suffered material or non-material damage as a result of an infringement of this regulation shall have the right to receive compensation from the controller or processor for the damage suffered."
18. In terms of timing, C's claim straddles both data protection regimes. I was not referred to any authority on the approach to the assessment of damages under Article 82 of the GDPR but where damages for harm to reputation are concerned, I see no reason of principle as to why the approach should be different to that identified in the Aven case. Reputational harm is recoverable within that provision.
19. The Court's task in the present case is made more straightforward by the fact C has limited the value of all his claims to £10,000.00. He does not seek to amend, and does not invite the Court to award any sum in damages greater than that. C's Counsel was right to submit to me that the quantum of damages in this claim would exceed that amount. I will however consider matters in a little more detail, but bearing in mind the need to approach matters in proportionate way. In the present type of case (multiple publications), it is more straightforward to consider the factors relevant to each publication, before arriving at a global award. Counsel for C referred by analogy to the approach in Blackledge v Persons Unknown [2021] EWHC 1994 (QB) at [34]-[35]). In relation to the data protection claim, C has limited his submissions to the claim for damages for harm to reputation and distress which arises from publication of inaccurate personal data via the Wordpress Site. A combined award is being sought in respect of the libel and data protection claims (both relied upon as regards damage to reputation/distress only) and I am not asked to arrive at any division. Although, it does

not arise in this case, in another context the differing limitation periods may demand a more granular approach to each claim.

20. I will consider the damages/compensation issues under the broad heads of *gravity* and *extent*, as I set below.

Gravity of allegations

21. Where the assessment of damages in libel follows default judgment, the award will be based on C's pleaded meanings, unless they are "wildly extravagant or impossible, or that the words were clearly not defamatory in their tendency": Sloutsker at [83]-[86]. I will adopt the same approach when considering the "meanings" for the purposes of the "inaccurate" data protection claim. In that context, a court is also concerned with the natural and ordinary meaning of the data, applying the rules for determining meaning as developed in the law of defamation.
22. In respect of the libel claim, C's pleaded meanings are:
- (1) that the Claimant is an incompetent financial advisor who had lost hundreds of thousands of pounds of client money through the sale of sham investments, and who had lied on his CV in order to cover this up (the First Review); and
 - (2) (a) that the Claimant is an incompetent financial advisor who has lost his clients' money and who should be banned from working in the financial services industry; and (b) that there were grounds to suspect the Claimant of involvement in a conspiracy to defraud" (the Second Review).
23. Having considered the words complained of as, set out in the Particulars of Claim and in the annexe, these are plainly reasonable (or non-extravagant) meanings. They are grave.
24. In relation to C's pleaded case on the inaccuracy (the data protection claim), the Particulars of Claim identify the inaccurate meaning contended for and plead C's case as to why the data is inaccurate. They are detailed and I will not set them all out, but I note in particular that this includes inaccurate statements that C is guilty of fraud and had defrauded the author of their entire life savings. In my judgment, these allegations are self-evidently very grave. Fraud is one of the most serious allegations which could be made against a professional person in C's position as a financial professional.

Extent of publication

25. As I have noted above, D has failed to engage with these proceedings by filing a Defence. The effect is this matter comes to a trial of damages without disclosure of information as to the size of the readership of D's publications. C is entitled to rely on Armory v Delamarie (1721) 93 ER 664. To the extent there are gaps in the evidence, D should not benefit from a failure to engage or provide disclosure as to the extent of publication or otherwise.

26. In any event, in my judgment this is a case where I can safely infer substantial publication of the words complained of in both causes of action. That inference arises from the following. First, the fact both the Reviews and the WordPress Site have been published to specific persons known to C, as pleaded and supported by his evidence. In these instances, the publishees came across the Reviews during ordinary professional interactions with him. It is to be inferred that others, unknown to C, will have seen the same. Secondly, the Reviews are accessible on a Google Search, via a “reviews” site of the type which potential clients and colleagues use when deciding whether to employ C, increasing the likelihood that they will be seen by persons known to him. I infer that publication has been far wider than the individuals known to C. His written evidence convincingly shows the operation of the well-known “grapevine effect”.
27. As I understood his position, D accepts that the available evidence tends to indicate that the statements complained of have been published to third parties off the back of specific searches online relating to C (most commonly by prospective clients and employers). I also find that it is likely that some additional publication has occurred by way of sharing hyperlinks to each statement. For these reasons I accept C’s submission that publication has been in the low hundreds.
28. Although that figure is not particularly high in the context of a defamation claim, the evidence before me demonstrates that the publication has been to a particularly sensitive constituency of persons who know or work with C, and that this has been an acute source of embarrassment and distress to him.
29. C’s case, which I accept, is not just that the words are grave but that they have caused him actual, and serious reputational harm. The most serious example of this was the effect of publication of these statements to a Citibank employee who had interviewed C for a job. I accept that the publication caused him to lose that lucrative job offer.
30. As I have noted above, I was referred to libel awards in other cases as comparators. I agree with the submission of C’s counsel that but for the cap he has placed on the value of his claim, damages in this matter would clearly exceed £10,000.00. On a conservative basis in my judgment they would have been in the range of £30,000.00 to £40,000.00.
31. Judgment for £10,000 will be entered in respect of the libel and data protection claims.

IV. Injunction

32. Given D’s conduct of this litigation and the continuing publication of the Reviews (as well as the way in which he sought to run his case at trial), in my judgment it is necessary and appropriate for the Court to restrain D from further publishing the libels or further processing C’s personal data. The need for an injunction is underlined by D’s conduct in the run up to this hearing. I note that in his recent correspondence, including with the Court, he repeats his defamatory allegations. In an email of 4 April 2022 to C’s solicitors, D has sought to assert that the Court has no jurisdiction over him and that says that he will be “*certainly not complying with any of your technically [sic] victories*”. That email was sent in response to a letter from C’s solicitors, enclosing the draft order and asking D to confirm that he would comply with any order the Court

made. The fact C has independently succeeded in securing the removal of the Wordpress Site is no reason to refuse an injunction in respect of the data protection claim. I will grant the injunction sought but with some modifications to make it easier for a lay person to follow (as discussed with Counsel for C at the trial).

V. Section 13 Order

33. Section 13 of the Defamation Act 2013 provides:

“(1) Where a court gives judgment for the claimant in an action for defamation the court may order—

(a) the operator of a website on which the defamatory statement is posted to remove the statement, or

(b) any person who was not the author, editor or publisher of the defamatory statement to stop distributing, selling or exhibiting material containing the statement.

(2) In this section “author”, “editor” and “publisher” have the same meaning as in section 1 of the Defamation Act 1996.

(3) Subsection (1) does not affect the power of the court apart from that subsection.”

34. C seeks an order under this provision requiring Consumer Opinion LLC, the operator of www.pissedconsumer.com, to remove the Reviews from that website. Consumer Opinion LLC is a US Company, based in Las Vegas, NV, and C has not succeeded in persuading Consumer Opinion to remove the Reviews. That is a common response of US based entities. D told me at trial that he had tried to have the reviews removed but had been told by Consumer Opinion to log in and remove them himself. He said he could not do so because he had lost his password. As I understood his position, he wished the reviews to be removed but did not have the ability to do so because of the password issue.

35. I considered the approach to orders under section 13 in Blackledge, where I made an order against Google LLC. I agree with C that a section 13 order is justified in this claim. Given D wishes to have the reviews removed, an order will assist him in his efforts. C has already expended significant time and costs in this claim, and in my judgment an order under section 13 is the most effective way of ensuring the defamatory publications of which he complains are swiftly removed. As in Blackledge, Consumer Opinion LLC was not present at the hearing. I will make provision in my order allowing it to apply to the Court for the Order to be varied or discharged.

ANNEXE

Since 13 November 2015, the Defendant published on the Wordpress site, to the world at large, the following words about the Claimant alongside a photograph of him accompanied with the words “asset growth strategies for me only”, (the “Wordpress Article” – underlining as in the original, paragraph numbers added):

[1] *Brian Dudley Is A Scammer*

[2] *Posted on NOVEMBER 13, 2015*

[3] *Brian Dudley Is A SCAMMER*

[4] *Brian Dudley Is A FRAUD*

[5] *Brian Dudley – Former Senior Consultant at Sinclair James Currently Managing Director of PI Global Consulting Inc.*

[6] *Brian Dudley is a colourful character who I trusted the most from the Sinclair James group. It just goes to show how much I know about people. Brian Dudley turned out to be nothing more than a slimy second-hand car salesman. He stole my money. My entire life savings. This is a tale of how Brian Dudley ripped off this trusting old American.*

[7] *I had only recently arrived in Manila from North America with my life savings in tow and dreams of setting up a new life in the Philippines. I joined “Internations” which is a website for meeting like-minded expats in Manila. Little did I know Internations was being used to stalk new arrivals*

[8] *in order to fleece them of their money. Steve Hill from Sinclair James base in Salcedo Village was the meet-and-greet guy who pushed himself into the position of “Internations Manila Ambassador” in order to give him an air of authority and trust. Steve Hill seemingly helped me find my feet in Manila before passing me onto the next slime ball, Brian Dudley to take care of my finances. And then I say take care of my finances, I mean steal everything I had spent my entire life in the USA earning.*

[9] *Brian Dudley was a young Brit newly arrived from Singapore and I felt comfortable with Brian at first. He advised me to put my money into several schemes claiming various rock bands and British Government councils had put their staff's salary into these investments. If British Councils were putting their staff's money in then surely it was totally legitimate, right? Michael Whiting was Brian's boss and also put the boot in by claiming he personally vets every single investment and meets with the schemes founder to check them out. I see now that the only vetting Michael Whiting actually did was negotiating with the founder how much of a cut he personally gets from each scam.*

[10] *Sadly, every single investment Brian Dudley advised me to put my money into disappeared within a year. Each one collapsed with a different unique excuse and turned out to be nothing but a litany of Ponzi scams. All my money was stolen and Brian Dudley was the advisor who made sure I lost it all.*

[11] *Brian Dudley is still in Manila. Conveniently, he started his own company called PI Global Consulting Inc.*

The forming of his new company after myself and other investors in Sinclair James lost our life savings to their scams.

To this day, Brian remains advising unsuspecting newly arrived expats to give up their life savings.

[12] *Keep away from Brian Dudley.*

[13] *Keep away from Sinclair James*

[14] *Keep away from PI Global Consulting Inc*

[15] *Watch out because Brian Dudley keeps lying and creating this type of profiles online of himself*

Beneath the Wordpress Article, the Defendant has published (alternatively caused or permitted to be published), to the world at large the following ‘thoughts’ or user comments (the “Wordpress user comments”):

A comment (the “First Comment”) dated 17 January 2016 comprising the words:

Brian Dudley is running yet another new venture from Makati after PI Global Ltd went tits up. His business partner Roger Gumbrell (over in KL) is a known thief and con artists. He works in the same line of business. Dudley is now working out the back of an old pub in Makati called Woodman's Head. He kept on the prestigious office address from the previous company. He's still using Ponzi investments and doesn't have a clue and what he's doing with client money. Bumbling idiot might be an appropriate description of Dudley.

A comment (the “Second comment”) dated 29 January 2016 comprising the words:

I understand that Brian Dudley is being investigated by LFSA also Philippine SEC. Apparently, he's been opening up and closing down various companies like nobodies business. Naughty boy Mr. D what have you been up too?

A comment (the “Third comment”) dated 7 May 2016 comprising the words:

I've noticed that Brian Dudley has 'missed out' a large chunk of his work history, the period when he worked for Sinclair James and SOLD Mike Whiting's Ponzi funds which cost investors millions! Very convenient for him to leave this out. The advice I received from him whilst he was there was scandalous, this personally cost me in excess of \$95,000

A comment (the "Fourth Comment") published on 11 July 2016 comprising the words:
I hear that Brian Dudley and Brindle are sharing the same cheap hooker in Makati. She's known to have the viral herpes after deep-throating so many Joe's. Dudley is sticking his tongue down the back of her throat while ginger Brindle slips his little haggis in there. Filthy buggers the pair of them, ridden with disease. Stay well clear on all fronts or you'll lose all your money and catch something life threatening.

A comment (the "Fifth Comment") published on 27 January 2017 comprising the words:
BD had sexual intercourse with a hooker. He then went home and had his wife smoke his cigar.

A comment (the "Sixth Comment") published on 27 April 2017 comprising the words:
Brian Dudley placed \$100,000 of my retirement monies into his bosses Ascenta fund to win a trip to Hong Kong 7's, all expenses paid trip. It later came to light that this fund was a Ponzi set up by Whiting to syphon off money for his own personal means.

The 'Pissedconsumer' Reviews

On 28 March 2019, on a website available at <https://sinclair-james-international.pissedconsumer.com/review.htm> and under the username 'PissedConsumer1501808' the Defendant published, to the world at large, the following words about the Claimant (the "First Pissedconsumer Review"):

Sinclair James International – No mention of Brian Dudley who was employed by Sinclair James

Yes Brian Dudley was employed by Sinclair James amongst other tasked to do Due diligence on New investments. He lost all my investments..some Financial Advisor.and I understand £100,000,s of others of other clients Money. His CV in Linked in mysteriously omits his Time with Sinclair James..and his Links with The Manila Club and organizer for InterNations Manila...where he peddled his failed "investments" He has now returned to the UK like his previous boss Mike Whiting. Now working for; CFPML Crowborough UK Tel: (0044) 01892 664141 I,m sure David Price would be interested in his former activities Unless his company operates to the same Standards as Brian Dudley

On 4 June 2019, Beneath the First Pissedconsumer Review and in reply to a comment posted by a user 'Demetrio', the Defendant published to the world at large the following words about the Claimant (the "Second Pissedconsumer review"):

*I have called the company and asked for Dudley, he was on his lunch break & out at the time. I don't think they know what a **** advisor he is until it will be too late, he'll have lost too much of his clients money again....This guy should be banned from working in FS industry all together. It wouldn't surprise me if him and that snake Whiting were up to something together.*