IN THE HIGH COURT OF JUSTICE **HQ12D05474**
QUEEN'S BENCH DIVISION

BETWEEN:

AYODELE ADELE VAUGHAN

Claimant

-and-

(1) LONDON BOROUGH OF LEWISHAM
(2) RALPH WILKINSON
(3) CHRISTINE GRICE
(4) ELAINE SMITH
(5) VALERIE GONSALVES
(6) ELAINE HATTAM
(7) KATE PARSLEY

Defendants

OUTLINE SUBMISSIONS FOR THE DEFENDANTS

Suggested pre-reading (time est. 4 - 5 hours)
Particulars of Claim [1/25]
Defence [1/67]
Reply [1/110]
Witness Statement of Francis Milivojevic ("FM) and documents referred to [1/5]
Judgment of Mrs Justice Sharpe [1/229]
Judgment of Mr Justice Nicol [1/240]
Defendants' Chronology (appended)

1. This is the Ds' application:

1.1. To strike out the whole of the Claimant's claim because either:

1.1.1. it is an abuse of the process; or

1.1.2. there is no reasonable prospect of the Ds' qualified privilege defence failing or of the C's plea in malice succeeding.

1.2. For an extended Civil Restraint Order ("CRO") to be made against the C from issuing further claims connected with her employment by LBL.

2. The relevant facts and background are set out in the Defence [1/67] and in particular in the witness statement of Francis Milivojevic "FM"), a solicitor employed by LBL [1/5]. The latter sets out nearly all of the facts relied upon by the Ds. A chronology is appended.

3. Neither party has made an application further to CPR 26.11 therefore the trial of this claim will be adjudicated upon by a judge sitting without a jury[1].

4. The Ds' application is not factually contentious. The documents relied upon are largely those which have been generated by the C,

[1] CPR26.11: "An application for a claim to be tried with a jury must be made within 28 days of service of the defence."

the authenticity of which she does not dispute. Other than those, reliance is principally placed upon statements of case and judgments given both in this court and the Employment Tribunal ("ET").

Publication

5. The Ds' case on publication is largely admitted.

Libel

5.1. The bundle was published to:

5.1.1. two independent note-takers who attended the SOSR hearing, Susan Funnell (who attended on 27 and 28 February 2012 and 6 March 2012) and Jocelyn Heyford (who attended on 22 March 2012); and

5.1.2. "Unison" (see further below).

5.2. The Ds admit that the script of Christine Grice's/D3's opening statement, which was handed out on 27 February 2012 at the hearing, was published to Ms Funnell. This also appears to be the C's case. Alternatively, the court could assume that it was published to both note-takers.

Slander

5.3. The oral statements made at the hearing and complained of were published to whichever note-taker was present on the relevant day.

Unison

6. The only dispute on the statements of case is in regard to publication to Unison. No one is identified by the C as the Unison official who received the bundle. It was sent to Unison by LBL because the C initially wanted a Unison official to assist her at the SOSR hearing. However, following dispatch to Unison, the C decided not to have a Unison official present. The emails dated 21 February 2012 from Helen Reynolds, the Unison Regional Organiser to the C and LBL made it clear that by this date Unison would not be assisting the C at the SOSR hearing (which did not commence until 27 February 2012) [3/729 – 730]. For the full background see FM's WS §§45 – 50 [1/17 – 19]. The Ds' primary contention is that the C has not advanced a case on which it can be inferred that anyone at Unison took the time to read the bundle of 358 pages and therefore read the words complained of. Therefore the court ought to conclude that no publication to Unison took place. Alternatively, the court should assume that no more than one or two Unison employees read the bundle.

(I) Abuse of process

7. The Ds' case as to why this claim is an abuse of the process is set out in the Defence at §§185 – 199 [1/102 -104]. It is an abuse because:

7.1. The C's ET claims sought adjudication on whether or not she had behaved in such a way during her employment as to justify her dismissal and concerned whether evidence given to the SOSR hearing in relation to her behaviour was not only false but deliberately so.

7.2. On 26 March 2013 the C abandoned her ET claims because she wished the same matters to be adjudicated upon as a defamation claim in the High Court.

7.3. The Ds to the defamation claim (other than Kate Parsely/D7) were also Respondents in the various ET claims brought by the C. They had to invest a lot of time, emotional energy and, in the case of LBL, money, in defending the ET claims. By the time the C abandoned her ET claims the point had been reached where the parties had made significant preparations for trial. The trial was listed to commence on 23 September and conclude by 1 November 2013. If the C had not withdrawn her claims to the ET, that trial would have by now concluded and judgment most probably given. None of the money expended by the ET Respondents will be recovered from the C.

7.4. Particularly in light of what is at stake, this is an abuse of the process. The C had her chance to have the relevant issues adjudicated upon in the ET, she should have taken it. She ought not to be permitted to abuse the process by switching forum and cause of action on a whim.

7.5. The claim does not amount to a real and substantial tort.

The 5th – 8th ET claims

8. The 5th – 8th ET claims put in issue what had happened during the C's period of employment with LBL. C's case was that she had not acted in such a way as to merit dismissal and that she had been dismissed because there had been a conspiracy between a number of LBL employees to tell lies about her to the SOSR hearing. These lies had given LBL sufficient grounds to dismiss her from her employment. The C argued that this was unfair. She contended that the employees had been motivated in large part by the fact that she was disabled. If the ET had found in the C's favour, not only would she have been financially compensated but there would have been a reasoned and publicly available judgment explaining why the evidence put forward to the SOSR had been not only false but fabricated. The C's defamation claim is narrower than the ET claim because, whilst it raises issues already raised in the ET, it does not allege that the words complained of caused her dismissal and therefore does not seek special damages.

9. Paragraphs 30 – 43 of FM's WS concern key events in this litigation from 23 February 2013 to the C's abandonment of her ET claims on 26 March 2013.

10. By February 2013 the C was disillusioned with the way her various cases had been dealt with in the ET. She had lost her first three claims and on 2 August 2012 Judge Balogun had rejected her application to admit in evidence at the trial of the remaining claims 39 hours of covert recordings. These recordings included the recordings which the C made at the SOSR hearing and upon which she seeks to rely in this defamation claim. The C's belief is that these recordings were crucial to her ET and defamation claims. The C attaches great importance to them.

11. On 12 February 2013 the C applied to the ET to reconsider its decision not to admit her covert recordings into evidence [4/938]. She asked that her application be dealt with at a Pre-Hearing Review ("PHR") due to take place on 21 March 2013.

11.1. On page 12 numbered paragraph 11 of her application [4/949] she stated that she had made covert recordings of "SOSR hearings" (this must be a reference to the 3 days upon which she attended those hearings and was thus able covertly to record them). At §11(f) she refers to her claim that "LBL managers" gave "false

evidence" and made "false allegations" against her. This is repeated at numbered paragraph 10(0) at [4/954].

11.2. At numbered paragraph 2 of the application [4/955] the C explained that if she is not able to rely on her covert recordings: "I will not be able successfully recover my mental health condition, vindicate myself or be able to try to restore my reputation – my reputation, future career prospects and health are at stake."

11.3. In numbered paragraph 7, from the last sentence on [4/956], the C states that her covert recordings will prove that the letter which dismissed her from her employment was based upon "a body of lies and the Respondents' fabricated/falsified documentary evidence, which includes oral and documentary evidence given by the Respondents during the SOSR procedure". The C even advances the same case in malice in that application as she now advances in the defamation claim – see numbered paragraph 13 at [4/957 - 8].

12. The C then sent a further email to the ET on 23 February 2013 [4/973]. She changed tack and asked for the ET claims (including the PHR due to take place on 21 March 2013) to be stayed whilst she pursued her defamation claim. This email is referred to in §30 of FM's WS. The email informs the ET that "High Court proceedings, arising from the **same facts**, are underway" (3rd paragraph) which deals with "**all the issues** in claims numbers

2375023/2011 (*4th ET claim*) and others and that it also covers claim number 2357975/2012 (*9th ET claim*), paragraphs 52 – 60" (emphasis added).

13. It is also worth noting that at paragraph 11.1 of the C's defamation PoC she imports her case in malice before the ET to the defamation claim. She states that she will rely on "The issue of the Ds' malice in respect of the matters complained of in the main action" and then gives a list of 15 matters complained of in the ET claim as forming part of her case in malice in the defamation claim [1/28 – 29]. The "main action" can only be a reference to the ET claims. At paragraph 21.2 of the PoC the C lists 25 statements of which she complains in the defamation claim. At the head of the list (bottom of [1/36]) she states that the statements "will be admitted as evidence for employment tribunal proceedings in October 2013."

14. The ET PHR took place on 21 March 2013. Judge Balogun would only permit the C to adduce 5 hours of covert recordings at the trial, struck out the 9th claim insofar as it concerned Babcock and Babcock Careers Guidance, ordered to show cause why the extant part of the claim against LBL ought not to be struck out and ordered her to pay £2,000 in costs [4/1038] (referred to in §22 of FM's WS).

15. It was immediately after this, on 25 March 2013, that the C attempted to subvert the forthcoming ET trial by applying to

Sharpe J for an interim injunction in defamation to prevent the ET Respondents from making defamatory statements concerning her at the forthcoming ET trial. D1 – D7 successfully opposed this application. They also applied for the defamation claim against them to be stayed (D8 was separately represented and did not join in that application). The application for the stay was on the ground that the ET claim concerned the same facts and issues. Sharpe J accepted this argument and stayed the defamation claim.

16. It was now clear to the C that proceedings could not continue concurrently in the ET and in the High Court. She decided that she would take her chances in the High Court rather than continue what was becoming somewhat of an uphill struggle in the ET (particularly re the covert recordings issue) and therefore abandoned her ET claims on 26 March 2013.

17. Sharpe J had given her reasons in outline for granting the stay on the day she heard the relevant argument, 25 March 2013. On 26 March the C emailed Judge Balogun in the ET to state that she was not pursuing her ET claims [4/980]. She thus removed the barrier to pursuing her defamation claim. In her email to Judge Balogun the Claimant set out the various reasons why she was not content about the way in which her case was being handled. She concluded: "I have no confidence in the Tribunal process or Judge Balogun and I believe that she has demonstrated clear bias in

favour of the Respondents." and that "I intend to concentrate now on my High Court defamation case".

18. Sharpe J's written judgment was handed down on 11 April 213 [1/229]. Several passages from it are highlighted in FM's WS at §§33 – 36 and 41. At §38 she found that the ET and defamation claims centred "exclusively on the same circumstances relating to the C's treatment as an employee" and that the ET was the better forum for the resolution of the C's claims. At §44 she found that the defamation claim was being pursued in order to circumvent the ruling in the ET in regard to the covert recordings. This finding applies with equal force after the ET claims were abandoned.

19. The C's abuse of the process has been compounded by the fact that she has been able to walk away from her ET claims with no negative consequences for her. Her impecuniosity makes her invincible and LBL (which means those people of Lewisham who are able to pay their community charge and those less fortunate who rely on its services) the loser.

Real and substantial tort

20. The Ds' case as to why the C's claim does not amount to a real and substantial tort is set out at §§200 – 203.4 of the Defence [1/105 – 106]:

20.1. the allegations in issue were only published to a very small number of people (see paragraph 5 above); and

20.2. given the roles in which those people were acting when they read/heard the words complained of, no tangible harm was caused and there is no need for the C to vindicate her reputation in the eyes of those three or so people.

21. The note-takers' performed an impartial professional role. They have no relationship with the C other than having been in the same room as her when the SOSR hearing was conducted.

22. A hearing bundle was sent to Unison at the C's request. She must have made that request knowing that the bundle would include information which was critical of her performance as an employee. If a Unison official took the trouble to read the hearing bundle, he or she would have done so in a professional capacity, realising that the allegations made were to be tested at the hearing.

23. There is no tangible advantage which the C could secure from pursuing this litigation. Because of the way the case is advanced, the only conceivable "need" to vindicate the C's reputation could arise in regard to vindicating it in the eyes of the original publishees: the note-takers and Unison official. Frankly, they will not care either way. Any damages awarded would be minimal and most likely dwarfed by the C's outstanding debts to LBL.

There is no need for an injunction. The Ds' involvement with the C ceased when she was dismissed from her employment on 13 April 2012. The unique set of circumstances which necessitated the publications complained of cannot be repeated.

24. A real and substantial tort argument was advanced when Dr Williams (formerly D8) applied to Nicol J to have the claim against him struck out. Among other things, D8 argued that the claim was futile because the publication was so limited. C complained that the publication made by Dr Williams had been to: Rita Lee, the two note-takers and Unison (§20 of judgment [1/245]). Rita Lee was the human resources officer for LBL and therefore publication to her could have had a negative impact on the C's employment. Therefore for that reason Nicol J concluded that the claim was not futile. However, it is implicit in Nicol J's conclusion at §22 of his judgment that if publication had only been to the note-takers and Unison, the claim would have been futile. In the instant case no publication to Rita Lee or anyone holding a similar position is complained of. For the reasons given by Nicol J, the extant claim is futile.

(II) Qualified privilege

25. There is no dispute between the parties that all of the publications complained of were made in furtherance of the SOSR hearing. See §19 of the PoC [1/31]. The reference to the "grievance hearing" is to the fact that the SOSR hearing also considered and adjudicated

upon the C's complaints against other employees. This was an occasion of qualified privilege *par excellence* and the court ought to give summary judgment on that issue to the Ds.

(III) Malice

26. The C's case on malice is set out at §§11, 23, 33 – 44 of the PoC [1/28, 1/41 & 1/44 – 47] and in §§216 – 228 of the Reply [1/185 – 190]. The particulars actually pleaded in the Reply largely concern the issue of covert recordings and could not amount to malice. Those set out in the PoC more fully set out the C's case to the effect that the all of the Ds conspired together to tell lies – see §§36 - 37 [1/45]. Ralph Wilkinson/D2, who presided at the hearing, and his assistant Elaine Hattam/D6 are said to have been part of the conspiracy. Neither is accused of directly publishing any of the words complained of but they are said to have caused the publications by reason of their role in the conspiracy.

27. Importantly it does not appear to be part of the C's case that there was a motive to lie to Unison and the note-takers; they did not have the power to dismiss the C. One is thus left with a defamation claim in which the conspirators conspired to lie to themselves (in order to publish a report to LBL recommending the C's dismissal but which report is not complained of). This is not a sustainable case in malice. It might have been relevant to the ET claims because they complained that the publications complained

of caused the C to lose her job. However, that is not the case in the defamation claim.

28. The court ought to take account of the fact that the C is prone to making unsubstantiated allegations of conspiracy and bad motive. She alleged malice in her ET claims. In giving judgment on costs in regard to the first three ET claims the tribunal stated:

> "Pursuing an allegation of mass conspiracy with no evidence to substantiate it was in our view unreasonable. We consider that the claims were misconceived from the outset and that the Claimant acted unreasonably in continuing to pursue them."
> (Paragraphs 9 – 10 of the costs judgment of 23 April 2012 [4/852])

(IV) Extended Civil Restraint Order

29. The arguments in support of the imposition of a Civil Restraint Order ("CRO") may depend on the court's findings in regard to the strike out application. However, assuming that the strike out application is successful, the Ds rely upon the relentless and vexatious nature of the C's legal campaign against the Ds and others arising from her employment with LBL. This is amply demonstrated by the evidence given in FM's WS. The C relies in particular upon:

29.1. The behaviour summarised in §§22 – 24 of FM's WS in regard to the facts surrounding the C's 9th ET claim.

29.2. The issuing of proceedings against people who were merely retained by LBL to carry out occupational health assessments of the C: Marina Waters and Dr Williams (formerly D8 to this claim).

29.3. The application to Sharpe J for an interim injunction in defamation to prevent negative statements being made against her at the ET trial.

29.4. The switching of the C's complaint from the ET to the High Court.

30. The C has demonstrated that she is ready and able to issue proceedings at no cost to herself and with no prospect of ever having to bear any financial risk for doing so. Furthermore, it is apparent that she is obsessed with litigating in regard to her past employment.

31. The draft CRO is at [1/3].

(V) The law

32. No complicated legal issues arise on the application. The following paragraphs briefly set out the relevant law.

Abuse of the process

33. The power to strike out a statement of case is given by CPR3.4(2)(b) although this power preceded the CPR. In *Hunter v*

CC of West Midlands Police [1982] AC 529 Lord Diplock stated that the power to strike out a case as an abuse of the process

> concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.

34. The instant case falls squarely within this definition. Whilst the C is not in breach of the letter of the rules, her behaviour has caused manifest unfairness to the Ds.

35. §6.2 of *Gatley on Libel and Slander* considers in what circumstances publication might be so limited as to make a claim an abuse of the process. Very limited publication will probably be an abuse unless there has been publication to one or two individuals of a serious accusation which if uncorrected could have serious ramifications for the C. This was why Nicol J considered that publication of D8's email to Rita Lee was sustainable whereas publication only to Unison and the note-takers was not.

Qualified privilege

36. The relevant law is set out in chapter 16 of *Duncan & Neill on Defamation*. Organisations such as LBL could not perform their functions properly unless they are able to conduct the type of internal investigation and adjudication in issue without the protection of qualified privilege.

Malice

37. The point taken in regard to malice is probably unprecedented. The general principles governing malice and the pleading of malice are set out in Duncan & Neill at chapter 18 and paragraphs 18.20 – 18.26 respectively.

Civil Restraint Order

38. CP3.11 provides that a Practice Direction may set out when the court has the power to impose a CRO and the procedure to follow. The relevant Practice Direction is 3C and is found at page 111 of Volume 1 of the current White Book. The type of CRO sought is an extended CRO. Paragraph 3.1 of the Practice Direction sets out the relevant rules.

27 November 2013 **William Bennett**