

THE HIGH COURT

Record Number: 2013 No. 8837P

Between:

Ryanair Limited

Plaintiff

And

Channel Four Television Corporation

And

Blakeway Productions Limited

Defendants

Judgment of Mr Justice Michael Peart delivered on the 12th day of December 2014:

1. These are proceedings in which the plaintiff airline company seeks damages for defamation against the defendants arising out of a 30 minute television programme broadcast on the first named defendant's television station (Channel 4) on 12th August 2013. The programme was made and produced by the second named defendant. During the programme a number of pilots employed by the plaintiff company expressed criticisms of the plaintiff company in a number of respects including in relation to the plaintiff's fuel policy which was said to have led to three emergency incidents at Valencia airport on 26th July 2012, the failure of the plaintiff company on twelve occasions since 2005 to save or retain Cockpit Voice Recordings, and the employment policy of the plaintiff company.

2. The plaintiff company has pleaded that the defendants broadcasted and published this program falsely and maliciously, and that the words complained of are defamatory, and meant and were understood to mean, both in their natural and ordinary meaning and/or by way of innuendo, that: –

- (i) employment practices and working conditions in Ryanair jeopardise the safety and lives of passengers by placing pilots under abnormal stress and pressure.
- (ii) Ryanair forces its pilots to fly with dangerously low levels of fuel
- (iii) Ryanair's fuel policy will lead to a crash
- (iv) a Ryanair aircraft landed in Valencia on 26 July 2012 with minimum landing fuel because of Ryanair's fuel policy
- (v) three investigations were made into fuel emergencies on Ryanair flights in 2010
- (vi) the chances of being involved in a serious incident or accident on Ryanair are greater than on other airlines.
- (vii) a serious incident or accident on Ryanair is inevitable
- (viii) Ryanair conceals the truth in order to prevent the proper investigation of incidents
- (ix) Ryanair compromises the safety and lives of its passengers and is consequently an airline that should be avoided
- (x) Ryanair is not safe airline company.

3. Further allegations are made in paragraph 12 of the Statement of Claim in order to support a claim for aggravated and/or exemplary damages.

4. A full defence has been delivered by the defendants.

5. Firstly, they say that insofar as the words, given their natural and ordinary meaning, meant that there were reasonable grounds to investigate whether some of the practices and operating policies of Ryanair which were outlined in the broadcast, may have consequences for passenger safety, the words were true in substance and in fact. Certain facts are set out in support of this plea under the heading "material facts". Those material facts are contained under three headings namely Fuel Policy, Cockpit Voice Recordings (CVRs), Employment Policies and Other Issues. The latter category includes an allegation that Ryanair did not give pilots all relevant details of all flight incidents that happen within the company, in contrast to most other major airlines in Europe which issue a booklet or file to their pilots which detail flight incidents on a regular basis.

6. Secondly, the defendants have pleaded that the words complained of consist of the opinion honestly held, and that they are entitled to the defence of honest opinion under section 20 of the Defamation Act 2009. Particulars of that defence are further set forth.

7. Thirdly, the defendants plead that the words complained of constitute a fair and reasonable publication on a matter matters of public interest, and that they are entitled to the benefit of that defence under s. 26 of the Defamation Act 2009. That defence is further particularised. The defendants have pleaded that the broadcast was meticulously investigated prior to its broadcast, and that the sources which they used were believed on good grounds to be credible, and their accounts were supported where possible by independent investigation. This is a plea particularly relied upon by the plaintiff in its application for discovery of documents.

8. The defendants served a Notice for Particulars on 17th January 2014 in which they asked the plaintiff to identify which words used

in the programme are alleged to have borne or were understood to have borne each of the meanings/innuendos set out in the Statement of Claim. The plaintiff responded on the 10th February 2014 by stating that it relied upon the entire television programme in support of the meanings, inferences and/or innuendos set out in the Statement of Claim. The defendants were not content with that response, and, following an application to court for further and better particulars, a further response was given on 28th March 2014 which set out in a schedule particular quotations from those pilots interviewed on the programme.

9. Before the court now are two applications for discovery, one by the plaintiff against the defendants, and one by the defendant companies against the plaintiff. Each is resisted.

The plaintiff's motion:

10. In its motion, the plaintiff company has sought the following documents on the basis that they are relevant and necessary for its purposes in these proceedings:

- (a) all documents used by the defendants, their servants or agents in the making of the programme.
- (b) all documents evidencing and/or recording all editorial decisions taken by the defendants, their servants or agents during the course of making the programme.
- (c) all documents evidencing and/or recording all research, investigation and/or inquiry carried out by or on behalf of the defendants, their servants or agents into the subject matter and content of the programme.
- (d) all documents evidencing and/or recording the "independent investigation" undertaken by or on behalf of the defendants, their servants or agents into the accounts of the defendants' sources (as referred to at paragraph 10 (n) of the defence).

11. Given the nature of the defences pleaded by the defendants, the plaintiff submits that all of these documents are relevant to the defences being mounted by the defendants, and that these documents must exist, and that they are necessary so that the plaintiff company can counter those defences.

12. The defendants on the other hand submit that the plaintiff's application for discovery is insufficiently grounded. They submit that they have sought full particulars of what particular words are considered by the plaintiff to have the particular meanings which are set forth in the Statement of Claim, and it is suggested that the replies received to that Request for Particulars is far from satisfactory. In addition, the defendants say that the plaintiff has not seen fit to deliver a Reply to the defendant's Defence, and that therefore there has been no engagement by the plaintiff with the defences pleaded, with the consequence that the defendants do not know which part of the Defence, if any, the plaintiffs take issue with. In such circumstances, the defendants submitted that the plaintiff is engaged in a fishing expedition. On the other hand, the plaintiff submits that the Statement of Claim makes it perfectly clear what the plaintiff's complaints are in relation to the broadcast programme, and that the Defence makes it perfectly clear how the plaintiff's claim is going to be defended. It submits that the issues are clear, and that it is under no obligation to deliver a Reply.

Conclusion:

13. I consider that the issues that are going to arise in these proceedings are clearly identifiable from the Statement of Claim and Defence. Each party is well aware of what the other's case is. The absence of a Reply as such does not alter that. On the plaintiff's motion, I am satisfied that discovery of the documents contained within paragraphs (b), (c) and (d) of the Notice of Motion should be made by the defendants. Category (a) is far too general, and in truth is not a category at all, and is so general in fact that if granted, it would render paragraphs (b), (c) and (d) otiose.

The defendants' motion:

14. The defendants seek eight categories of documents as set forth in their Notice of Motion dated 28th February 2014. The plaintiff is agreeable to provide certain of the discovery sought but not all. I am satisfied that each category should be discovered by the plaintiff as set out in the Notice of Motion, but in respect of some categories the period for discovery is too long. In respect of Category 1, I will order discovery "during the three years prior to 26th July 2012, and including 26th July 2012" but not in respect of any period subsequent to 26th July 2012. In respect of Category 3 I will order discovery in respect of that documentation in respect of a period "1st July 2009". In respect of Category 7 I will order discovery of the documentation referred to therein "during the three years prior to 26th July 2012, and including 26th July 2012". These more restricted periods seem reasonable to me and strike a reasonable balance between the parties.