

THE HIGH COURT

Record Number: 2013 No.4461P

Between:

Ryanair Limited

Plaintiff

And

Ian Somner

Defendant

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

1. There are two motions before the Court for decision. I will deal firstly with the plaintiff's motion for further and better for particulars, and then deal with the defendant's motion for discovery against the plaintiff.

The plaintiff's motion for further and better particulars:

2. In these proceedings the plaintiff, Ryanair, sues the defendant for, inter alia, damages for defamation.

3. The defendant was a pilot working for Ryanair from October 2004 until his resignation on medical grounds on the 16th September 2011.

4. In late December 2012 the defendant took part in a two-part television programme entitled 'Mayday Mayday', which was broadcast also on the internet, and it is alleged by the plaintiff that during the course of his contributions to that programme he stated particular words as set forth in the Statement of Claim which are defamatory of the plaintiff company. It is not necessary to set out all the allegedly defamatory words referred to in the Statement of Claim, but the plaintiff pleads that the words in question meant and were understood to mean, both in their natural and ordinary meaning and/or by way of innuendo, that:

(i) the corporate culture, management structure and the way Ryanair deals with its staff jeopardises the safety of passengers by placing pilots under abnormal stress and pressure.

(ii) the chances of being involved in a serious incident or accident on Ryanair are greater than on other airlines.

(iii) a serious incident or accident on Ryanair is inevitable.

(iv) Ryanair compromises the safety and lives of its passengers and is an airline that should be avoided.

5. In his Defence delivered on 23rd December 2013, he admits that he published the words complained of during the programme and on the website, and also, inter alia, pleads that the natural and ordinary interpretation or meaning of the words complained of is as the plaintiffs have pleaded in their Statement of Claim, except that it is not accepted that the words complained of meant that "a serious incident or accident on Ryanair is inevitable".

6. As part of his Defence, the Defendant pleads honest opinion, truth, fair and honest publication on a matter of public interest, and qualified privilege.

7. In relation to honest opinion, it is pleaded (a) that the words complained of constituted the opinion of the defendant; (b) the opinion pertained to a matter of public interest, namely the adverse effect of the plaintiff's corporate culture on passenger safety; (c) at the time of publication, the defendant believed in the truth of the said opinion, and continues to do so; (d) the said opinion was based on allegations and facts specified in the publication, and further/in the alternative, in the context of a broadcast concerning "the incident of 26th of July 2012" the audience knew or might reasonably be expected to have known what allegations of fact were being referred to, and further/in the alternative, the said opinion was based on allegations of fact to which privilege attaches.

8. The plaintiff raised particulars in relation to honest opinion and asked for full and detailed particulars of the allegations of fact specified in the publication upon which the defendant relies in support of the defence of honest opinion. Particulars were also sought in respect of any facts not specified in the publication but which it is alleged the audience knew or might reasonably be expected to have known, and also in relation to any allegations of fact to which the defendant asserts that privilege attaches, and also asked the defendant to identify the nature of the privilege which they alleged existed.

9. In its reply to this request for particulars, the defendant stated that the allegations of fact relied upon in support of the defence of honest opinion are that (i) pilots in Ryanair who raise serious concerns are quickly punished or disciplined; (ii) pilots in Ryanair are not valued or respected; (iii) that Ryanair engages in bullying, intimidation, threats and harassment; (iv) that there exists a layer of pilot fear and stress within Ryanair that does not exist within other airlines. (v) that the plaintiff's corporate culture and management structure and the way that the plaintiff deals with its staff adds an extra layer of fear and stress; (vi) the fact that certain of the plaintiff's pilots are being paid only when they fly; (vii) the fact that certain of the plaintiff's pilots are based in foreign countries and are stressed because they are based in locations other than those where they want to be.

10. In answer to the request for particulars as to what the audience knew or might reasonably be expected to have known, the defendant stated that it was the plaintiff's belligerent corporate culture and aggressive manner in which had dealt with both passengers and staff.

11. In answer to the request for full and detailed particulars of the allegations of fact to which the defendant asserts that privilege attaches, the defendant replied that the defendant's stated opinions were based on the facts set out in replies 1 and 2 to which I have already referred, and went on to state that those facts were stated by the defendant on an occasion of qualified privilege

which arises pursuant to common law, and pursuant to Section 18 of the Defamation Act, 2009.

12. In answer to the other requests for particulars set out above, the defendant stated that the nature of the privilege alleged is qualified privilege, and that this is privilege which arises from a line of authority commencing with *Reynolds v. Times Newspapers Ltd* [2001] 2 AC 127, and arising from Section 18 of the Defamation Act, 2009.

13. In relation to the defence pleaded that the publication constituted a fair and reasonable publication on a matter of public interest, the plaintiff sought particulars of the facts which it is alleged that the defendant's publication was based upon (and which it is alleged the defendant knew or believed to be true) and also full and detailed particulars of all attempts made by the defendant to contact the plaintiff to obtain and publish a response from the plaintiff in advance of the publication, and also in relation to all attempts made and the means used by the defendant to verify the assertions and allegations concerning the plaintiff in advance of the publication.

14. In response to these requests, the defendant stated that the facts upon which the defendant's statements were based, and which he as a former pilot of the plaintiff knew or believed to be true, are those facts set out in replies 1 and 2 in the replies to notice for particulars already been set out above. In relation to the other matters sought under this heading, the defendant stated that his statements were based on facts which he, a former pilot of the plaintiff, knew or believed to be true. He went on to state that the broadcaster of the programme on which the defendant's remarks were published contacted the plaintiff in advance of the broadcasts in order to obtain and publish a response from the plaintiff, which response was both obtained and published during the course of the broadcasts. He went on to say that it was not necessary for the defendant to separately verify the assertions and allegations being made by him since they were based upon facts which he, as a former pilot of the plaintiff, knew or believed to be true.

15. Finally, the request for particulars sought further particulars of the basis upon which it was alleged that the defendant was entitled to rely upon the defence of privilege at common law, and the material facts upon which the defendant intends to rely in support of his defence of privilege at common law. To this, the defendant replied that this was a matter of law, but referred to the earlier reply which stated that the nature of the privilege was qualified privilege arising from the line of authority commencing with *Reynolds v. Times Newspapers Limited*.

16. The plaintiff was not satisfied with the replies which had been delivered on 4th March 2014 and served a Notice for Further and Better Particulars on 23rd April 2014. The plaintiff asked firstly whether it is claimed by the defendant that he raised concerns (regarding safety or otherwise) and was punished or disciplined by the plaintiff, and if so to provide full and detailed particulars of the material facts upon which the defendant intended to rely on support of that allegation. In answer to that, the defendant stated that it was a matter of evidence, but went on to say that the plaintiff presumably retains all of the defendant's employment records, and knows the answer to the question that it is asking. Without prejudice to that assertion, the defendant went on to state that he had utilised the plaintiff's confidential safety reporting system twice while flying for the plaintiff.

17. Secondly, the plaintiff asked whether the defendant claims that he was not valued or respected by Ryanair, and if so to provide details of any material facts which intended to rely on in support of that allegation. Again, the defendant stated that this would be a matter for evidence, but went on, without prejudice, to state that the defendant does indeed claim that Ryanair did not value or respect its pilots (including the defendant) during the course of his employment with the airline. He went on to state that during the broadcast the defendant confirmed that pilots within Ryanair suffer an extra layer of stress and that he would be giving evidence that one such fact was the plaintiff's operation of an aggressive fuel usage policy, and that while working for the plaintiff he personally received correspondence relating to the fact that his "fuel burn" was at the bottom of the table operated by the plaintiff, and stated also that the plaintiff presumably still possesses such correspondence relevant to the defendant in this regard.

18. Thirdly, the defendant was asked to confirm whether he alleges he was the victim of bullying, intimidation, threats or harassment, and if so to provide full and detailed particulars of any material facts upon which he intended to rely in support of that allegation. To this, the plaintiff replied that the defendant was among pilots employed by the plaintiff who feared to speak out or otherwise criticise the plaintiff during the course of their employment. He went on to state that the plaintiff is notorious for its aggressive corporate culture and management structure, and that this would be a matter of evidence. Nevertheless, without prejudice to that, he went on to say that the facts relevant to such issues have been well particularised in the defendant's defence and replies to particulars, and stated also that the defendant did not make any complaint to the plaintiff during the course of his employment relating to alleged bullying, intimidation, threats or harassment.

19. Fourthly, the defendant was asked to provide full and detailed particulars of the material facts upon which the defendant intended to rely on support of his allegation that there exists a layer of pilot fear and stress within Ryanair that does not exist within other airlines, to which the defendant again replied that this was a matter of evidence but, without prejudice, the plaintiff should refer to the particulars of Truth pleaded by the defendant in his defence, and should refer also to replies to the notice for further particulars itself.

20. Certain other details were sought and were given by the plaintiff and those matters do not form part of the issues to be decided on the motions for further and better particulars which the plaintiff has brought by way of Notice of Motion dated 11th June 2014 with which I am presently dealing.

21. The request for Further and Better Particulars requested full and detailed particulars also of the identities of any individuals (apart from himself) whom it is claimed were not respected or valued, were the victims of bullying, intimidation, threats or harassment, or were the subject of fear and stress within Ryanair and so forth. To this, the defendant has replied simply that this is a matter for evidence.

22. The plaintiff also asked the defendant to confirm that he did not contact the plaintiff in advance of the publication/broadcast in order to verify his assertions, to which the defendant has responded that the plaintiff knows full well that the defendant did not contact it in advance of the broadcast.

23. The defendant was also asked to distinguish between those facts which in its replies to particulars he had said that he knew to be true and those which he believed to be true. To this, the defendant set out under different fact headings, those facts which he believed to be true and those facts which he knows to be true.

24. The plaintiff had asked, in relation to any facts which the plaintiff said he believed to be true (as opposed to those which he knew to be true) to set out full and detailed particulars of the material facts alleged to support his belief. To this, the defendant stated that this was a matter for evidence.

25. The plaintiff is not satisfied that the defendant has fully complied with his obligations in relation to the provision of particulars, and has brought a motion to compel the defendant to comply and provide further and better particulars in relation to certain matters. The grounding affidavit in support of that motion which is sworn by Oisín O'Neill, who is the legal and regulatory affairs adviser employed by the plaintiff company, has described the defamatory allegations as relating to issues concerning the alleged corporate culture within Ryanair and the manner in which it treats its staff. He states his view that having raised the defence of honest opinion, the defendant is obliged to provide particulars of the facts upon which he alleges that this opinion is based. He has helpfully set forth in paragraph 13 of his grounding affidavit in great detail the particular requests upon which further information and particulars were sought, the reply to that request and then the plaintiff's comment in relation to that reply.

26. The plaintiff had asked the defendant to provide details of the identity or identities of individuals other than himself who were claiming to have been involved in the matters complained of by him in relation to the alleged corporate culture, the manner in which he became aware of same, the dates on which the defendant discussed same with any such individuals, and full and detailed particulars of the material facts alleged by the defendant to support such claims. To these requests the defendant had replied that this was a matter for evidence. In this regard the plaintiff comments that the defendant has made positive pleas concerning the treatment of pilots in Ryanair in support of his plea of honest opinion and has provided replies to particulars in respect of his own experience only. Mr O'Neill goes on to say that the plaintiff is seeking particulars concerning other pilots who the defendant is alleging were subjected to similar treatment, and goes on to state that if, as appears to be the case, the defendant intends to rely upon facts concerning the experiences of other pilots or staff of Ryanair, then he ought to provide particulars of same, and cannot simply be permitted to ambush the plaintiff at the trial with any witnesses he is calling. It is submitted that in circumstances where the defendant is obliged to prove the truth of the facts on which his honest opinion is based, it follows that the plaintiff must be provided with particulars of facts now since it is entitled to know the case that it has to meet. Similar comments and submissions are made in relation to other particulars sought under that particular heading.

27. It will be recalled also that the plaintiff had asked in relation to alleged facts that the defendant believed to be true (as opposed to facts which he knew to be true) to provide full and detailed particulars of material facts which supported such a belief, and that the defendant had stated that this was a matter of evidence. In that regard the plaintiff says that such particulars are not simply a matter of evidence, and that the defendant is obliged to particularise the facts upon which his opinion is based, and which he believes to be true, and that in circumstances where the defendant is obliged to prove the truth of those facts it follows that the plaintiff must be provided with particulars so that it can know the case that it has to meet.

28. It will be recalled also that the plaintiff in his first replies to particulars had stated that the broadcaster of the programme on which the defendant's remarks were published had contacted the plaintiff in advance of the broadcasts in order to obtain and publish a response from the plaintiff, which response was both obtained and published during the course of the broadcasts. In its request for further particulars the plaintiff asked for full and detailed particulars of how the defendant came to participate in the programme in question, and how the defendant verified that the plaintiff's full responses were obtained and published during the broadcasts. To those requests for further information, the defendant had stated that this was a matter of evidence. However the plaintiff submits that this is not so, and that in circumstances where the defendant concedes that he did not contact the plaintiff in advance of the broadcast it is essential that the plaintiff knows how the defendant came to participate in the program. The plaintiff further submits that since the defendant is relying upon the defence of fair and reasonable publication, the onus is upon him to prove that he published the statement in good faith, and that the particulars sought go to the question of the good faith or otherwise of the defendant, and to the question of whether it was fair and reasonable to publish the statement, given that the defendant himself had not contacted the plaintiff in advance of the publication.

29. In answer to this motion, the defendant has submitted that it has provided sufficient particulars for the plaintiff to know the case which it has to meet. It emphasises also that many of the particulars requested have been provided, and that the plaintiff makes no complaint in relation to the majority of the replies given. There are in effect only a small number of matters which are the subject of the present motion. Counsel has referred to the judgment of Ms. Justice Dunne in *Quinn Insurance Limited and others v. Tribune Newspapers Plc and others*, unreported, High Court, 13th May 2009. That was a case where the plaintiffs had sought further and better particulars of certain matters which the defendants had stated were a matter for evidence, and this led to the plaintiffs bringing a motion for further and better particulars under Order 19, r. 7 RSC. The learned judge concluded that the matters in question had been adequately particularised in replies already given, and refused to make the order sought. In so doing she considered the provisions of Order 19, r.3 RSC which provides for what pleadings should contain, and she considered a number of judgments on that topic, and stated:

"There is no doubt whatsoever that a party is entitled to know the nature of the case being made against them. However, the role of particulars is not to require a party to furnish detailed particulars of specific aspects of the case. It is sufficient that the issues between the parties should be adequately defined and that the parties should know in broad outline what is going to be said at the trial of the action."

30. She considered other authorities to which she was referred, and then considered how the principles should be applied to that case. She stated in that respect:

"I think it is clear from the outline of the arguments I have set out, that the issue I have to consider is whether the defendants have, in fact, provided a broad outline of the case being made in justification against the plaintiffs, or are the plaintiffs attempting, by means of the notices for particulars, to force the defendants to disclose the names of the witnesses who will be giving evidence on their behalf at the trial of the action."

31. Having set out an extensive consideration of quite a number of authorities on the question of particulars, she concluded:

"Having referred at length to the authorities opened to me in the course of argument, it seems that certain principles can be derived from those authorities. It goes without saying that a party is entitled to know the case being made against them. If necessary, particulars may be ordered to clarify the issues or to prevent the party from being taken by surprise at the trial of the action. However, a party is only entitled to know the broad outline of the case that he/she will have to meet. A party is not entitled to know the evidence that will be given against them in advance of the hearing. Further, it is not usual to order the names and addresses of witnesses to be furnished in advance of the action."

32. Counsel for the plaintiff has submitted that the *Quinn Insurance* case was one where the defence of justification was in play, and that the judgment should be read in that light. However, I do not think that the general principles which emerged from that case are less applicable to the present case. The question in the present case is whether the defendant should be required to provide the further particulars being sought, which he has refused to provide on the basis that they are a matter for evidence. I am satisfied that he ought not to be required to provide any further particulars in relation to the small number of outstanding matters raised. I am

satisfied that from the pleadings and such replies to particulars as have been furnished, the plaintiff knows not just broadly, but with some particularity, the issues being raised by the defendant by way of defence to these defamation proceedings. The plaintiff is not entitled, by way of replies to particulars, to the level of detailed information now being sought in the present motion. Ultimately the question is whether the plaintiff is at a litigious disadvantage by the defendant not having adequately particularised his defence so that the plaintiff in an unfair way is not aware of the issues being raised. That is not so in the present case. Of course, I accept that the plaintiff may wish to have as much information as possible in advance of the hearing of exactly what evidence is going to be given and who is going to give it. But that is not the same as saying that the defendant has not, for the purpose of the rules, adequately particularised the claims which he is making by way of defence to the plaintiff's proceedings.

33. I therefore refuse the plaintiff's application for an order under Order 19, r.7 RSC.

The plaintiff's motion for discovery:

34. Two categories of documents are sought by the defendant. The need for these categories of documents is said to arise from some matters raised by the defendant in his Defence to the plaintiff's proceedings. As part of that Defence, as already seen, the defendant relies upon the defence of Truth. Under the heading "Particulars of Truth" the defendant gave particulars of two matters that would be relied on in relation to passenger safety, namely the plaintiff's fuel policy and also the plaintiff's pilot hire policy.

35. In relation to the plaintiff's fuel policy, particulars were given in relation to 26th July 2012 when it is alleged that three of the plaintiff's passenger planes which were en route to Madrid airport had to divert to Valencia airport because of bad weather over Madrid. It was stated also within these particulars that these three planes were forced to declare a "fuel Mayday" over Valencia airport because of an apprehension on the part of the respective pilots that they could not land without going below the legally required level of final reserve fuel. Reference was made also to a Chilean plane which was similarly diverted but on account of engine failure. It was stated that all of these Mayday calls were made within a 15 minute period on that date and all four planes landed within a 16 minute period in circumstances where Valencia airport has only one landing runway, and it is suggested that these events represented a potential disaster scenario. The particulars went on to state that this potential disaster scenario was a direct result of a culture within the plaintiff's business of prioritising fuel efficiency even at the expense of passenger safety, that the plaintiff encourages its pilots not to carry extra fuel on flights because the additional weight will lead to increased fuel consumption, and that the plaintiff operates a fuel burn league that lists the individual fuel consumption of each of its captains, and ranks at the bottom those captains who are considered to use too much fuel. It was stated also within these particulars that the plaintiff company admonishes pilots who appear at the bottom of that fuel burn league, while complimenting pilots who appear at the top, and further that the plaintiff severely limits the discretion of pilots to carry additional fuel over and above the amount prescribed in the Original Flight Plan. It was stated also that these factors have caused or contributed to a situation in which Ryanair aircraft have experienced an unusually high number of fuel emergencies.

36. In relation to the plaintiff's pilot hire policy, these particulars of Truth stated that the plaintiff company employs a very large proportion of young and relatively inexperienced pilots, that it bases many of its pilots far away from their place of residence, which causes stress to pilots and means that they must use their rest days in order to travel, thereby leaving them socially exposed and frustrated. The particulars went on to say that the rosters designed by the plaintiff make it difficult for pilots employed by the plaintiff to get holidays at times that suit them and their families, and mean that they fly for a long time without leave. It was stated also that the threat to passenger safety represented by these factors is compounded by a fear on the part of the plaintiff's pilots to speak out or otherwise criticise the plaintiff, and that this fear arises in large part due to the employment structure employed by the plaintiff. It was further particularised that the plaintiff is at liberty to effectively terminate its relationship with contract pilots, even those with contracts for a definite period, by simply refusing to allocate any flights to those pilots, and further that the plaintiff reacts in a very aggressive and angry manner to any perception of criticism, so that pilots are reluctant to complain. Finally it was stated that the plaintiff pursues a policy of intimidation and ridicule to discourage trade union membership.

37. The two categories of documents sought by way of discovery are set out in the notice of motion as follows:

Category 1:

(a) All documents relating to in-flight fuel-related incidents which took place: –

- During the five years prior to 26th July 2012
- On 26th July 2012
- from 26th July 2012 date

to include both internal corporate communications and communications with third parties such as:

- Communications with domestic and foreign regulatory authorities/aviation investigation bodies
- Communications with Chief Pilot/communications with Base Captains.
- Communications with the plaintiff's public relations advisers, both the plaintiff's Communications/Internal PR Department and external/PR advisers (to include the manner of presentation of explanations of any/all such fuel related incidents).

In relation to the 26th July 2012 fuel incidents, all correspondence between the plaintiff and: –

- The Irish and Spanish Aviation Regulatory Authorities/Investigation Agencies
- The Irish and Spanish Ministries of Transport
- And all documentation deriving from, and correspondence between, the plaintiff and the above-mentioned entities.

(b) all documents recording details of the plaintiff's flight fuel policy since 1st January 2008 to include operation of fuel burn league tables, instructions given and/or agreed with Chief Pilot from time to time regarding fuel usage/planning policy, and all communications between the plaintiff companies/its Chief Pilot/its Base Captains/its management with its

pilots generally concerning aircraft fuel usage and, in particular, all policies/changes to policies regarding the carriage of fuel in excess of flight plan fuel.

Category 2:

All documents in the possession, power or procurement of the plaintiff generated during the period 28 December 2007 and 28 December 2012 relating to the plaintiff's pilot hire policy and in particular records of all discussions and decisions relating to the plaintiff's policies concerning the contract hire of Ryanair pilots as well as records detailing the number of such pilots hired during the period in question and their operational locations throughout Europe.

38. The defendant submits that these documents are necessary because they will tend to support the defendant's claim of Truth, and are directly relevant to the matters pleaded at paragraphs (h) to (n) in the Particulars of Truth contained in his Defence.

39. The plaintiff on the other hand has stated in its replying affidavit that the alleged fuel policy and any associated stress for pilots was not the subject of any part of the broadcasts. To this, the defendant responds that he is raising this as part of the justification for content of the programmes about which the plaintiff is complaining. The defendant states also that the fuel policy of the plaintiff company is relevant to the issues around the 3 emergency 'maydays' at Madrid airport on the 26th July 2012 which were part of the broadcasts in question.

40. I am satisfied that the documents sought in Categories 1 and 2 of the Notice of Motion are relevant to the issues between the parties in this case, and are necessary for the full and proper determination of the issues which arise from the pleadings in this case. They may either assist or damage either party's case, but they are clearly relevant and necessary for a proper determination. This application cannot be described as a fishing exercise. The plaintiff has made its case clearly in its Statement of Claim. The defendant has availed of a number of Defences and has clearly nailed his colours to the mast by pleading honest opinion, truth and fair and reasonable comment on matters of public interest. In so far as he is able at this stage to do so, he has given particulars of the basis for these defences. He has not made mere bald assertions. He has provided certain particulars. He has satisfied this Court that the documents sought by way of discovery are relevant and are likely to assist him in mounting his defence to the plaintiff's claim.

41. In relation to Category 1, I will order discovery of all documents relating to in-flight fuel-related incidents which took place from 26th July 2009 to 26th July 2012 (including those that took place on the 26th July 2012), to include all the documentation set forth in the Notice of Motion, save that in relation to the final paragraph setting out documents recording details of the plaintiff's fuel policy, those should be produced in respect of a two year period from 28th December 2010 to 28th December 2012, rather than from 1st January 2008 as sought. I am not ordering discovery of the documents sought from the 26th July 2012 to date.

42. In relation to Category 2, I will order that those documents shall be discovered in respect of a period of two years from 28th December 2010 to 28th December 2012.