



THE COURT OF APPEAL

Neutral Citation Number: [2017] IECA 15

Record No. 2015/495

**Finlay Geoghegan J.
Irvine J.
Hogan J.**

BETWEEN/

DAVID SPEEDIE

RESPONDENT/

PLAINTIFF /

AND

SUNDAY NEWSPAPERS LTD.,

COLM MCGINTY AND MICK MCCAFFREY

APPELLANTS/

DEFENDANTS

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 2nd day of February 2017

1. The plaintiff, Mr. David Speedie, is a former professional footballer who played with great distinction for a number of prominent English Premier League clubs - including Chelsea and Liverpool - in the 1980s and early 1990s. He was also capped for Scotland on some 10 occasions. After his retirement from the professional game, Mr. Speedie became involved as a commentator on football matters. At some point he moved from the U.K. to Dublin to be with his then fiancée, a Ms. Grey. Ms. Grey's sister is in turn married to the brother of a notorious criminal figure.

2. The defendants are, respectively, the publishers of the "Sunday World" newspaper, Mr. McGinty, the editor of the newspaper and Mr. McCaffrey, a specialist crime reporter who is employed by the newspaper.

3. In 2011 the plaintiff issued defamation proceedings against the defendants following the publication of two articles in The Sunday World on 10th April 2011 ("Article 1") and 24th April 2011 ("Article 2") concerning him. The first article described how the plaintiff had been stopped by Gardaí on a number of occasions and how his relationship with Ms. Grey had brought him into contact with known criminals. The opening paragraphs sum up the essence of Article 1:-

"A former top Premier League striker who has been stopped and quizzed by Gardaí on 17 occasions insisted that he is not a member of [X's] drug gang.

The Sunday World has learned that retired Liverpool striker, David Speedie, is involved in a relationship with a relative of [X] and has been associating with known gangsters. Speedie, who last week appeared on RTÉ radio as a pundit, is frequently stopped by detectives around Dublin's south inner city and has even had his car seized.

He was drinking in a Dublin pub when major criminal [Y] was attacked and had his leg broken while his wife was viciously slashed"

4. Article 2 was headed "Speedie the Snake" and referred to the fact that the plaintiff had caused a solicitor's letter to be written to the newspaper claiming that he had been defamed by Article 1. The rest of Article 2 largely repeated in compressed form the essence of what had been stated in Article 1, save that it also showed a photograph of Mr. Speedie handling a live snake and it further stated that he had been drinking with Y, who was a brother of X. Both X and Y were stated to be well known criminal figures.

5. The essence of that particular complaint by Mr. Speedie in that correspondence was that he contended that the newspaper had alleged either that he was engaged in criminal activity or that the Gardaí had reason to believe that he was involved in gangland crime. In that correspondence Mr. Speedie further denied that he had associated with known criminals.

6. Those complaints were repeated in the defamation proceedings and in his statement of claim the plaintiff alleged that both Article 1 and Article 2 bore these meanings. The newspaper's defence was a carefully drafted pleading. It denied that the articles in question bore the meaning that the plaintiff had been involved in crime or that he had been wanted for questioning by the Gardaí. The newspaper, however, approached the two articles differently so far as its defence was concerned.

7. So far as Article 1 was concerned, the newspaper denied that it bore the defamatory meanings contended for the plaintiff, but that based solely on the meaning which it submitted the article bore (associating with known criminals), the newspaper contended Article 1 was true in substance and in fact. It is important to note that the newspaper never sought to advance the defence of truth in relation to the allegation that the plaintiff was involved in or reasonably suspected of being involved in crime, since, in any event, it denied that Article 1 bore this meaning.

8. So far as Article 2 was concerned, the newspaper admittedly denied that it bore the meanings for which the plaintiff contended. Critically, however, the newspaper also submitted that even if these meanings ascribed to Article 2 by the plaintiff were the correct ones, the article was nonetheless correct in truth and in substance. No such approach had been taken by the newspaper in respect of Article 1 where the principal defence was to deny that it bore either of the meanings contended for by the plaintiff.

9. The libel action itself took five days before Hedigan J. At the trial the newspaper's witness were directed at the issue of whether the plaintiff had been associating with criminals. On the fourth day, however, following a lengthy discussion and submissions from counsel for both sides, an issue paper with eight questions was agreed. Counsel made closing submissions to the jury and the judge directed the jury accordingly.

10. As the questions put to the jury and, indeed, the precise sequence of those questions have assumed considerable importance so far as this appeal is concerned, it may be convenient if the issue paper and the jury's response to those questions is reproduced at this point:-

Question Jury's Answer

1. Does Article One mean that the plaintiff engaged in criminal activity? "No"
2. Does Article One mean that Gardaí have reason to suspect the plaintiff

of being involved in criminal activity? "Yes"

3. If the answer to either 1 or 2 is yes, assess damages. "Yes"

Damages in the sum of €85,000

4. Does Article One mean that the plaintiff associated with known criminals? "Yes"

5. Does Article Two mean that the plaintiff is treacherous like a snake? "Yes"

6. Does Article Two mean that the plaintiff has links to the activities of

[X] "No"

7. If the answer to any of 4 - 6 above is yes, have the defendants proved that this meaning is true?" "Yes"

8. If the answer to question 7 is no - assess damages. "N/A"

11. The jury's verdict was to the effect that Article 1 meant that the plaintiff had been reasonably suspected of involvement in criminal activities. The plaintiff was awarded €85,000 damages in respect of that defamation. The jury further found that the allegations contained in Article 2 to the effect that the plaintiff had associated with known criminals and that he was treacherous as a snake were true in substance.

12. The newspaper has appealed this verdict to this Court. The essence of the argument advanced by counsel for the newspaper, was to the effect that there was a mis-trial in that the jury verdict was inconsistent and the trial judge had infringed the "single meaning" rule by allowing Question 2 (Garda suspicion of involvement in criminal activity) and Question 4 (associating with known criminals) both to go to the jury. He further alleged that the sequence of the questions was wrong, since by directing the jury to award damages in question 3 if they found that the newspaper had in fact alleged that the plaintiff was involved in crime or suspected of being involved in crime, this had the effect of depriving the newspaper of its s. 16(2) defence, a topic to which I shall later return. For his part, counsel for the plaintiff, contended that the single meaning rule had not been infringed, since the newspaper had in fact made distinct allegations. He further submitted that the s. 16(2) defence did not apply (again, for reasons to which I shall later return) and that even if did, the newspaper was debarred by its own conduct from challenging the sequence on the issue paper. He finally submitted that the damages award of €85,000 should be increased by this Court.

The single meaning rule

13. In defamation proceedings the court – and, in a jury action, in effect the jury – must settle on a single meaning to be ascribed to the relevant words of a particular, discrete charge contained in the publication in question. The rule in question was explained thus by Warby J. in *Yeo v. Times Newspapers Ltd.* [2014] EHC 2853, [2015] 1 W.L.R. 971, 995:-

"The starting point is that in a libel action where meaning is disputed the court must settle on a single meaning ("the single meaning rule"). Defamation law ignores the fact that different people may take different meanings from the same set of words. It treats a given set of words as having only one meaning. The court must identify this meaning, which may be inferential or implied, by considering the words used and identifying what the hypothetical reasonable reader would have understood them to mean. See *Slim v Daily Telegraph* [1968] 2 QB 157, 172 *per* Diplock L.J., *Charleston v News Group Newspapers Ltd* [1995] 2 A.C. 65, 72.

This does not mean that a newspaper article or broadcast can only ever convey a single defamatory charge. More than one charge can be contained in a single publication. As already noted, there may be both a defamatory factual meaning and a defamatory comment. The single meaning rule is that the same words cannot be treated as conveying two or more charges which are different from and inconsistent with one another such as, for instance, both a meaning that the claimant is guilty and that he is reasonably suspected of some particular wrongdoing."

14. The real object of the single meaning rule is, accordingly, to promote certainty so far as the parties are concerned by fixing on one, single objectively determined meaning to the relevant words of a particular article and thereby to avoid the possibility of inconsistent verdicts. As Warby J. observed in *Yeo*, this does not mean, however, that one article may not contain more than one defamatory meaning.

15. For my part, however, I do not think that the single meaning rule has been breached in the present case. The only alleged breach of the rule so far as this appeal is concerned was that it was submitted that the trial judge should not have permitted both Question 2 (suspicion of criminal activity) and Question 4 (associating with known criminals) to go to the jury. There was no suggestion that the trial judge had infringed the rule by permitting Question 1 (did the plaintiff engage in criminal activity?) and Question 2 (Garda suspected the plaintiff of involvement in criminal activity) both to go to the jury.

16. The jury expressly found in its answer to Question 2 that Article 1 meant that the Gardai had reason to suspect that the plaintiff had been involved in criminal activity and in an answer to a separate question in Question 4 also found that he had associated with known criminals. These, however, are two distinct allegations, each of which are capable of bearing separate defamatory meanings: it was never suggested that these two allegations were conveyed by the *same set of words* used in Article 1.

17. A suggestion that the Gardai had reason to believe that a person named in a newspaper article was involved in criminal activity speaks for itself. The claim that a person associates with known criminals does not, however, in and of itself imply that he or she has engaged in criminal activity. Depending on the context of the article, such a claim may suggest poor judgment and may imply an implicit condonation of these criminal activities. An allegation to this effect is certainly capable of bearing a defamatory meaning.

18. At the same time it is perfectly possible for an individual not to be involved in crime while at the same time associating with known criminals. This, in effect, is what the jury found concerning the plaintiff in this case. In such circumstances he is entitled to damages for defamation in respect of the untrue allegation, but not, of course, in respect of the allegation found to be true and, indeed, this is precisely what the jury decided in the present case.

19. None of this, however, involves any breach of the single meaning rule and I would accordingly reject the argument of the newspaper to this effect.

Section 16 of the 2009 Act

20. The other objection raised by the newspaper was that the sequence of the questions on the issue paper prevented the jury from properly considering the scope of the newspaper's s. 16(2) defence. In order to assess this argument it is necessary first to consider the terms of s. 16(1) of the 2009 Act which provides:

"It shall be a defence (to be known and in this Act referred to as the 'defence of truth') to a defamation action for the defendant to prove that the statement in respect of which the action was brought is true in all material respects."

21. Section 16(2) of the 2009 Act provides:-

"In a defamation action in respect of a statement containing 2 or more distinct allegations against the plaintiff, the defence of truth shall not fail by reason only of the truth of every allegation not being proved, if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining allegations."

22. It is clear from this Court's decision in *McDonagh v. Sunday Newspapers Ltd.* [2015] IECA 225 that this sub-section is essentially a liability defence. In essence, the defence of the newspaper in relation to Article 1 was that it did not bear either of the two meanings for which the plaintiff contended (*i.e.*, involved in crime or suspected by Gardai of being involved in crime), but that if it did bear either of these meanings, it not seek to defend the truth of either such allegation. The newspaper nonetheless submitted that even in such circumstances it should be permitted to run a s. 16(2) defence by reason of its success in respect of the third allegation in Article 1 (*i.e.*, that the plaintiff had associated with known criminals), the words "not proved to be true" did not materially injure his reputation "have regard to the truth of the remaining allegations."

23. On this basis, therefore, the newspaper argued that the sequence of the questions on the jury's issue paper prevented the jury from giving proper consideration to this question. It contended that the sequence of the questions on the issue paper meant that in the event that the jury considered that Article 1 bore either of the meanings for which the plaintiff contended – and which meanings were denied by the newspaper – the jury must proceed immediately to an assessment of damages and was thereby deprived of the opportunity of considering the s. 16(2) defence.

24. The plaintiff for his part contended that s. 16(2) had no application at all on the facts of the present case precisely because the newspaper never sought to rely on the defence of truth in respect of either of the first two meanings in respect of Article 1 for which he had contended. Specifically, counsel for the plaintiff observed that the newspaper had never advanced the defence of truth at all in the case of the allegation in Article 1 regarding the suspicion of engagement in criminal activities, since its defence in relation to that plea was simply that Article 1 never bore that meaning. He contended that the circumstances of the present case rather came within the parameters of s. 31(4)(i) of the 2009 Act which requires the jury to have regard to a range of factors when making an award of general damages, including:-

"(i) if the defence of truth is pleaded and the defendant proves the truth of part but not the whole of the defamatory statement, the extent to which that defence is successfully pleaded in relation to the statement."

25. The issues raised by the parties in relation to the construction of s. 16(2) of the 2009 Act are undoubtedly difficult. For the sub-section to apply must, for example, the newspaper seek to defend the proceedings on the basis of the truth of every distinct allegation of every distinct allegation? If that were so, then let us suppose that a newspaper alleged that a particular person had accumulated a large number of motoring offences (including convictions for drunk driving and no insurance), but also alleged that he had been convicted for not wearing a seat belt. Would it then follow that if the newspaper offered no evidence to support the (relatively minor) no seat belt conviction, but could prove a long series of drink driving and no insurance convictions, the s. 16(2) defence could not come into play on the ground that the newspaper had not attempted to prove every element of the defamatory imputation? Or, alternatively, is the newspaper confined in such a case simply to the damages defence provided for in s 31(4)(i), to which reference has just been made?

26. A further difficulty is highlighted by the following passage in *Gatley on Libel and Slander* (12th ed.) (at 11.16) with regard to the corresponding provisions of s. 5 of the (English) Defamation Act 1952 (which itself has been subsequently amended):-

"Evidently s. 5 postulates that there can be a standard or scale of values by which the relative worth of multiple defamatory charges may be weighed or measured. No guidance is given, however, on how this scale is to be calibrated. If D alleges that C is an adulterer and a thief, and proves only that he a thief, it is not clear by what reasoned scheme a judge or jury is to determine whether the unproved charge of adultery does or does not materially injure C's reputation. The logic of the provision is that the harm to reputation caused by the allegation(s) found to be true, in respect of which damages may be recovered, is such as to render any injury to reputation that notionally might have been caused by the unproven allegation nugatory to the point of irrelevance."

27. In my view, however, it is unnecessary to decide any of these potentially difficult issues having regard to the run of the case; the discussion before the trial judge on the 4th day of the trial on 26th June 2015 and the conclusions reached in relation to the issue paper.

28. It is clear from that discussion that the issue concerning s. 16(2) of the 2009 Act was not raised at all during the debate in relation to the issue paper itself. Indeed, counsel for the newspaper conceded that there was no need to re-organise the issue paper:

"So you can leave the issue paper as it is, judge, I think with the meanings question first and then there is a question about truth. You can tell the jury which meanings are open to them as capable of being true and then the last question is the damages question. So I don't think one needs to reorganize the order of the Court's draft issue paper."

29. Nor was the issue of s. 16(2) raised by the newspaper during the course of the closing speeches to the jury. In fact, save for a passing mention towards the close of the trial judge's address to the jury, the issue of s. 16(2) really first arose following a question from the jury concerning the meaning of Question 7 on the issue paper some three hours after the jury had commenced its deliberations. The question from the jury was in the following terms:-

"Query on Question 7. Does this question mean that if any one of the Questions 4 to 6 are proved by the defendants, then there is no assessment of damages even if another question of 4 – 6 is not proved?"

30. It was at that point that the newspaper made it clear that it wanted to run the s. 16(2) defence in respect of Question 4 (associating with known criminals) in the event that the newspaper failed in its defence that Article 1 did not imply that the plaintiff had engaged in criminal activity (Question 1) or that the Gardaí had reason to suspect that the plaintiff had engaged in such criminal activity (Question 2). Counsel for the plaintiff objected to this, saying:-

"Well, except that it is not on the issue paper, judge....I know in a justification case that section is there, but it is a basic question on the issue paper, and if it is not on the issue paper, I would respectfully urge not to add another question to the issue paper now. In my respectful submission, that would not be right."

31. There was then a further discussion between counsel and the judge on this question. Counsel for the newspaper submitted that s. 16(2) had to be addressed as a matter of law. The judge ultimately answered the jury's question by answering the question in the negative, but he also drew attention in what, in effect, was a form of re-charge to the jury to the s. 16(2) issue but only *so far as the Questions 4 to 7 were concerned*. In other words, the s. 16(2) re-charge was on the assumption that the jury would or might find that the various meanings contended for by the plaintiff in Questions 4, 5 and 6 were correct, but that some (but not all) of the defamatory imputations would be found to be untrue.

32. As it happens, however, by reason of the jury's findings, the question of the application of s. 16(2) to Questions 4 to 7 simply did not arise. By their answers to these questions the jury found that while the newspaper articles did imply that the plaintiff associated with known criminals and was as treacherous as a snake, they also found that these allegations were true.

33. Reviewing, therefore, the specific questions contained on the issue paper and the jury's answers to them, the only circumstances where on these facts s. 16(2) might have come into play was in respect of Question 2 (Gardaí suspect plaintiff of involvement in crime) (false) and Question 4 (plaintiff associated with known criminals) (true).

34. If the newspaper would have been entitled as a matter of law to run the s. 16(2) defence in respect of these two issues, then I agree with counsel for the newspaper that it would have been necessary to alter the sequence of the questions with Question 3 and Question 4 inverted, so that the jury could not immediately proceed to award damages if they found that Article 1 implied that the plaintiff was either guilty of crime or was suspected by Gardaí of being involved in such activity. In addition, however, a further question would have been necessary directed specifically to the substance of any such s. 16(2) defence. In other words, the jury would have to have been directed not to award damages (Question 3) if (i) they found that Article 1 had implied that the Gardaí suspected the plaintiff of involvement in crime (false) (Question 2), but that (ii) he had associated with known criminals (true) (Question 4) if they also concluded (iii) that the "words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining allegations."

35. By that stage, however, it was, I think, too late to run the s. 16(2) defence in respect of these particular issues since the issue paper had already been in the hands of the jury for several hours. The issue paper was already very long (with eight questions) and any proper consideration of this issue would, have required – as I have just noted – the re-organisation of the sequence of the questions, together with the addition of a further question addressed to the s. 16(2) defence. Furthermore, both parties had already made their closing speeches to the jury and been charged accordingly by the trial judge by reference to the existing issues as identified by the issue paper. In such circumstances the potential for confusion on the part of the jury would have been too real and the risk of injustice arising from that confusion would have been just too great.

36. In my view, in these particular circumstances the newspaper must be held to be estopped by its own conduct from objecting to the procedure which was actually adopted. It was, after all, a matter for the newspaper to decide whether it would run that particular defence (even assuming as a matter of law it were available) and the failure to raise that defence at the appropriate time – at the latest when the issue paper inviting the special verdicts of the jury was being drafted – can only be regarded as a *de facto* waiver of the point.

37. This point is illustrated by the two well known decisions of the Supreme Court from the late 1970s. In *Corrigan v. Irish Land Commission* [1977] I.R. 317 the plaintiff went ahead with a hearing before an appeal tribunal, which tribunal later confirmed a compulsory purchase order in respect of his property. The plaintiff then claimed that one member of the tribunal was disqualified from adjudicating by reason of his prior involvement in the matter. The plaintiff had, however, known of the tribunal member's prior involvement and had nonetheless elected to proceed with the hearing. A majority of the Supreme Court held that the plaintiff was debarred by his conduct – and, specifically, his failure to raise the objection in a timely fashion – from later complaining about the eligibility of the tribunal member.

38. A similar approach is evident in *The State (Byrne) v. Frawley* [1978] I.R. 326. In that case the applicant was on trial before the Circuit Court and a jury when in the course of that trial the Supreme Court held in another case, *de Búrca v. Attorney General* [1976] I.R. 38, that the provisions of the Juries Act 1927 were unconstitutional. The applicant nonetheless elected to proceed with the trial and was convicted. Although he later sought to assert that the trial was unconstitutional in view of the decision in *de Búrca*, a majority of the Supreme Court held that he was debarred by his conduct from asserting that unconstitutionality. He had failed to raise the objection in a timely fashion and having elected to proceed with his trial, he was later held to be estopped from raising the point.

39. While it is true that the elements of knowing election which were present in both *Corrigan* and *Byrne* are not present here, the result is nonetheless the same. The newspaper allowed the issue paper to go to the jury and for closing speeches to be made without having raised the s. 16(2) defence in respect of Question 2 and Question 4 at the appropriate time and in the appropriate fashion. It

is true that the newspaper subsequently endeavoured to raise the sequence of the questions on the issue paper and the s. 16(2) defence when the jury came back with a question regarding the meaning of Questions 4 to 7. But by that stage it was just too late.

Quantum of damages

40. It remains only to consider the question of the quantum of damages. Although counsel for the plaintiff urged us to consider increasing the award of €85,000, I do not think that this Court could say that this award in some way failed to recognise the seriousness of the libel or that it was disproportionate in some way. I see no basis for interfering with the jury's finding so far as the size of the award is concerned.

Conclusions

41. In summary, therefore, I am of the view that:

42. First, I do not consider that the single meaning rule was infringed in the present case. The single meaning rule exists essentially to ensure that the same set of words contained in a published piece has a fixed, settled meaning, thereby providing certainty for the parties and mitigating the risk of inconsistent jury verdicts arising from confusion as to the meaning of the words in question. The single meaning rule is not, however, infringed where (as here) a particular publication contains two or more distinct allegations which are conveyed by different sets of words in the publication in question.

43. In the present case two distinct allegations were made by different words in Article 1 (suspicion of involvement in crime and associating with known criminals). It was perfectly possible to conclude that Article 1 carried these two imputations and that one was true while the other was false.

44. Second, no objection was taken to the sequence of the questions on the issue paper and nor was s. 16(2) itself raised as a specific question for the issue paper. Even assuming that the s. 16(2) defence could properly have been raised by the newspaper, it would have to have been raised in a timely fashion. It would also have been necessary to alter the sequence of the present Questions 3 and 4 and to add a question relating to the potential operation of s. 16(2) in the context of Article 1.

45. The parties, moreover, made their closing speeches to the jury without reference to the s. 16(2) defence and saving for a passing mention in the judge's charge to the jury, the first time that s. 16(2) was raised in terms at this point in the trial was following a question from the jury in respect of Questions 4 to 7 some three hours into their deliberations. But by that stage it was too late to undo the manner in which the issues had been formulated, closing speeches made and the issue paper entrusted into the hands of the jury. It must also be recalled that the newspaper never sought to prove the truth of allegation in Q. 2 (Gardai had reason to suspect the plaintiff of criminal activity) on the issue paper. That did not form part of the newspaper's defence. In all the circumstances, the newspaper must be adjudged to have waived its right to raise the s. 16(2) defence in relation to the meaning alleged (and disputed) that the Gardai suspected the plaintiff of involvement in crime.

46. Finally, I see no basis upon which the amount of the jury's award of €85,000 should be interfered with.

47. It follows, therefore, that the appeal must be dismissed.