

Online troll ordered to pay £10,000 for anonymous abuse

The High Court has granted relief against an unknown defendant who posted defamatory articles on a satirical website. Samuel Collingwood Smith, a former borough councillor, was falsely accused of various serious sexual offences. Mr Justice Green granted default judgment, summary disposal of the proceedings and injunctive relief. He also made an order for £10,000 in damages, the maximum available on a summary disposal, in light of the need for vindication.

Background

The defendants were operators and users of the satirical website EncyclopediaDramatica.se (**ED**). They took steps to anonymise themselves by using pseudonyms, hiding the country from which the site was operated and the real IP address of the servers.

The defendants posted articles on ED that falsely accused the claimant of being a paedophile and child rapist. The false accusations included assertions that the claimant was a “known child molester”, and that his “salivating lust for young ass is apparent”. It was said that he loves being able to have violent sex with his mother (the actual text used more evocative language), which she “forgets five minutes later”. This was accompanied by graphic mock-ups of the claimant engaging in sexual activity. The claimant denied having any criminal convictions, cautions or warnings that were remotely relevant to the words used.

In accordance with the online Wiki complaints procedure (ED used the Wiki software), the claimant posted his initial complaint on the “talk pages” of ED. After being told to “F*** Off”, the claimant served a notice under section 5 of the Defamation Act 2013, to which the response was: “LOL Don’t care faggot, go for it.”

Proceedings were stayed against the first and third defendants when they removed the offending material. Mr Smith, who appeared as a litigant in person, proceeded with applications against the second defendant for judgment in default under CPR 12.3(1) and 12.4(2) and summary disposal of proceedings under section 8 of the Defamation Act 1996. Relief was also sought in the form of:

- a declaration of falsity under section 9 of the Defamation Act 1996;
- an order for damages in the sum of £10,000;
- indemnity costs;
- a permanent order restraining the defendant from repeating allegations or publishing new allegations to similar effect; and
- an order requiring the defendant to remove any such allegations placed anywhere else.

Availability of relief against persons unknown

The ability of the court to provide protective injunctive relief against persons unknown has long been recognised. The persons unknown must be capable of identification by description in such a way as to identify with sufficient certainty those who are included within the order and those who are not.¹ As Warby J stated in the *Brett Wilson* case,² this criterion is satisfied if the unknown persons can be

¹ For example, see *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] EWHC 1205.

² *Brett Wilson LLP v Person(s) Unknown* [2015] EWHC 2628 (the www.solicitorsfromhelluk.com case).

described as “persons unknown responsible for the operation and publication of the website [...]”, which they clearly could be in this case.

In addition, Green J noted the importance of ensuring compliance with procedural safeguards. He was satisfied that proceedings had been duly served, as the administrators of ED had not only replied to the pre-action documents, but had published those on the site itself.

Judgment in default

The conditions for obtaining judgment in default had been met: no acknowledgement of service or defence had been filed, and proceedings had been duly served on the defendant. The court followed CPR 12.11(1), which enables the court to proceed on the basis of the claimant’s unchallenged particulars of claim, namely that the statements were both false and malicious. Green J saw no possible basis on which the allegations of defamation could be countered.

Ability to proceed in the absence of the defendant

The court had to consider whether the case could be heard and disposed of in the absence of the defendant. Green J followed the approach in *Sloutsker v Romanova*,³ which refers to the court’s ability to proceed in the absence of the defendant under CPR 23.11 and provides that the defendant must have been adequately notified of the hearing date and provided with sufficient information as to the matter and evidence to be considered before the court. The court must also examine any evidence as to why the litigant has failed to appear. Green J was satisfied that the defendant had been adequately notified, and the evidence suggested that the defendant simply wished to remain anonymous and was hiding from the proceedings. The judge concluded that it was both right and just to hear and dispose of the proceedings in the absence of the defendant.

Section 12 of the Human Rights Act 1998 was also engaged, as the court was considering whether to grant relief which, if granted, might affect the exercise of the Convention right to freedom of expression. Section 12(2) provides that, if a respondent is neither present nor represented, the court must be satisfied that the applicant has taken all reasonable steps to notify the respondent, and that there are no compelling reasons for the respondent to be tried. Green J was satisfied in both respects.

Summary disposal of the case

Section 1 of the Defamation Act 2013 provides that, for material to be defamatory, its publication must have caused or be likely to cause serious reputational harm, or financial harm in the case of a body that trades for profit. Green J found that there was a likelihood of harm in both respects, and this was exacerbated by photographs and mock-ups of the claimant engaging in sexual activity.

As such, the court had the power to grant summary disposal under sections 8 and 9 of the Defamation Act 1996. Green J was satisfied that there was no defence that had a realistic prospect of success, nor any other reason why the case should be tried. He ordered injunctive relief and damages as sought by the claimant, stating that the maximum level of damages available on a summary disposal was appropriate given the need for vindication. The defendant was given 14 days from the date of the judgment in which to apply to vary the order for damages, as long as the defendant’s true name and address was disclosed.

³ *Sloutsker v Romanova* [2015] EWHC 545.

Comment

The decision is consistent with the existing law in this area and has further highlighted the court's willingness to look at substance rather than form. In this case there was no doubt that the defendant was aware that proceedings had been served. Not to proceed due to the absence of the defendant would have unjustly delayed proceedings and led to further costs, and would have been against the interests of the overriding objective.

It is questionable, however, whether the injunctive relief and order for damages will be effective: it is likely that enforcement will be necessary in this respect. But the value in this judgment really lies in the declaration of falsity, as without it the claimant would have had those wholly false allegations hanging over him forever, which would have had an insidious effect on his reputation, given that people often assume "there is no smoke without fire". He now has the benefit of a court order to counteract such damage.

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