[GB] English High Court sets out circumstances where abusive words are not necessarily defamatory

IRIS 2014-7:1/21

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In a defamation action in the Queen's Bench Division of the English High Court presided over by Mr Justice Dingemans, it was determined in a judgment given on 9 April 2014 that the broadcaster, Channel 5, and the production company, Endemol UK Limited, were not liable for vile and abusive words used by one contestant against another in the reality television show Big Brother. Although the words were vile and abusive, they were not deemed to be defamatory of the recipient of the verbal attack.

During the broadcast on the 25th June 2012, one contestant, Mr McIntyre, was abusive towards another contestant, Ms Uppal, using a rap song to question her sexual conduct, cleanliness and ethnic background. The verbal abuse was clearly stated in anger and the producers of the show on air via "Big Brother Voice" warned Mr McIntyre about his conduct. He recognised that he had acted inappropriately and said that he had spoken in anger. However, another incident occurred between Mr McIntyre and Ms Uppal, and the producers again admonished Mr McIntyre and warned him that he might be ejected from the show. Upon viewing a playback of the footage Mr McIntyre appeared genuinely contrite and appalled by his actions towards Ms Uppal.

Ms Uppal issued defamation, breach of contract, and negligence claims against the broadcaster and production company; the defamation claim was also taken against Mr McIntyre. In respect of the defamation claim, Mr Justice Dingemans applied the principles arising from the case Jeynes v. News Magazine Limited, which include: consideration of the words in their full context and taking account of any "bane and antidote"; avoiding over-elaborate analysis of the words; taking into account that the reasonable reader, or in this case viewer, is neither naive nor unduly suspicious.

Further, he applied the principle laid down by Sir Thomas Bingham, Master of the Rolls, in the Court of Appeal case Skuse v. Granada Television Limited where he said: "A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally".

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In this case, although the words were abusive, it was the court's view that no one would take a lesser view of Ms Uppal as a result of them; it was more likely that the viewing public would form a negative view of Mr McIntyre given his conduct towards Ms Uppal.

Further, one had to take account of the "bane and antidote" including the rebuke of Mr McIntyre and threat of his expulsion from the Big Brother production, as well as his own contrition.

Looking at all the events, it was not likely that a reasonable person would take an adverse view of Ms Uppal's reputation, and as such, the words whilst abusive were not defamatory given the overall context and circumstances.

Deana Uppal v. Endemol UK Limited (1) Channel 5 Broadcasting Limited (2) Conor McIntyre(3) [2014]EWHC 1063(QB)

http://www.bailii.org/ew/cases/EWHC/QB/2014/1063.html

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