



1 December 2010

PRESS SUMMARY

Spiller and another (Appellants) v Joseph and others (Respondents) [2010] UKSC 53 *On appeal from the Court of Appeal [2009] EWCA Civ 1075*

JUSTICES: Lord Phillips (President), Lord Rodger, Lord Walker, Lord Brown and Sir John Dyson SCJ

BACKGROUND TO THE APPEAL

This appeal required the Supreme Court to consider the defence of fair comment in defamation proceedings, in particular the extent to which the factual background giving rise to the comment had to be referred to with the comment itself and be accurately stated.

The respondents are members of a musical group known as The Gillettes or Saturday Night at the Movies. The appellants provide entertainment booking services. The respondents appointed the appellants to promote their acts, entering into a contract which included a re-engagement clause, under which any further bookings at the same venue in the following 12 months had to be made through the appellants.

The appellants arranged a booking for the respondents at Bibis restaurant in Leeds. The respondents agreed to perform again at Bibis three weeks later without reference to the appellants. The first appellant emailed the first respondent to complain of the breach of the re-engagement clause. The first respondent replied, contending that the contract was '*nearly (sic) a formality and holds no water in legal terms*' and that the other respondents were not bound by the re-engagement clause as they had not signed the contract. The appellants thereafter posted a notice on their website announcing that they were no longer representing the respondents as they were '*not professional enough to feature in our portfolio and have not been able to abide by the terms of their contract*' and that '*following a breach of contract Craig Joseph who runs The Gillettes and Saturday Night at the Movies has advised 1311 Events that the terms and conditions of "contracts hold no water in legal terms" (27.03.07). For this reason it may follow that the artists' obligations for your booking may also not be met....*'

The respondents issued proceedings for libel, alleging that the posting meant that they were unprofessional and unlikely to honour any bookings made for them to perform. The appellants relied principally on the defences of justification and fair comment. Both were struck out in the High Court. The Court of Appeal reinstated the defence of justification but upheld the striking out of fair comment.

JUDGMENT

The Supreme Court unanimously allows the appeal and holds that the defence of fair comment should be open to the appellants. The substantive judgment is given by Lord Phillips (President), with some additional comments from Lord Walker.

REASONS FOR THE JUDGMENT

The elements of the defence of fair comment had been set out by Lord Nicholls in the Hong Kong case of *Tse Wai Chun Paul v Albert Cheng* [2001] EMLR 777. His fourth proposition, namely that the comment must indicate in general terms the facts on which the comment is based, so that the reader was in a position to judge for himself how far the comment was well founded, had attracted criticism and was challenged by the appellants in this appeal [para 70].

The defence had originated in respect of comments about work products such as books and plays, which necessarily identified the product. It had been complicated by developments which extended the defence to cover the conduct of individuals, where this was of public interest. Sometimes the facts underlying the comment were notorious; at other times they might be only known to the person making the comment. The only defence to a bare comment which implied the existence of unidentified discreditable conduct was justification [para 89]. Fair comment could however be raised where the comment identified the subject matter in general terms. Particulars could then be given in the defence which identified the features which led to the formation of the view expressed [para 96]. Lord Nicholls' requirement, that readers should be in a position to evaluate the comments for themselves, could not be reconciled with the authorities [para 98]. This was so, even where the subject matter was not within the public domain. Today many people take advantage of the internet to make public comments and the defence would be robbed of much of its efficacy if readers had to be given detailed information to enable evaluation of the comment [para 99]. The fourth proposition should be re-written as follows:

'Next, the comment must explicitly or implicitly indicate, at least in general terms, the facts on which it is based.'

The Supreme Court agreed that there was a case for reform of a number of aspects of the defence of fair comment which did not arise directly in this case [paras 112-116]. The whole area merited consideration by the Law Commission or an expert committee. The only more general reform being made by this judgment was the re-naming of the defence from 'fair comment' to 'honest comment' [para 117].

Applying the law to the facts of this case, the posting by the appellants referred to the breach of contract relating to the Bibis restaurant, and to the respondents' email, and these facts could be relied on. The email arguably evidenced a contemptuous approach to the respondents' contractual obligations to the appellants. The email as quoted arguably evidenced a contemptuous attitude to contracts in general. It would be a matter for the jury to decide whether the inaccuracy in the quotation made a significant difference [para 124]. The defence should therefore be reinstated.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgements are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html