Defamation: When the Game Is Not Worth the Candle

The Case of *Payam Tamiz v Google Inc* [2013] EWCA Civ 68

The Facts

Google provides a range of internet services including '*Blogger.com*' which is a platform that allows internet users to create a blog that can be hosted on Blogger's website address. Other internet users can access, and comment on, the blog.

On 28 April 2011, a blogger posted a blog that was hosted by Blogger.com that was followed by various comments.

Mr Tamiz believed eight of the comments made between 28 and 30 April 2011 were defamatory of him and so he sent a formal letter of claim to Google which it received around 5 July 2011. Google forwarded the letter of claim to the blogger on 11 August 2011 and asked the blogger to remove the allegedly defamatory comments within three days. This was despite Google had the capability to remove those comments from its platform.

The blogger removed all eight comments on 14 August 2011.

Nevertheless, Mr Tamiz brought a defamation claim against Google and at a Court hearing early in the litigation process, Mr Justice Eady found that three of the comments were arguably defamatory, namely, Mr Tamiz (a) was a drug dealer (b) had stolen from his employers and (c) was hypocritical in his attitude to women.

The Issues

1. Whether Google was, in common law, a '*publisher*' of the arguably defamatory comments.

2. If so, whether Google could successfully defend the defamation claim on the grounds that:

    a) It was not a '*publisher*' of the defamatory statements as defined by section 1 of the Defamation Act 1996 ('the Act');

    b) It took reasonable care in relation to the continued publication of the statements by passing the complaint on to the blogger; and

    c) It did not know, and had no reason to believe, that what it did caused or contributed to the publication of the statements.

3. If it could not defend the defamation claim on such grounds, whether Google's potential liability in respect of the very short period between notification of the complaint and the removal of the defamatory statements was so trivial that there was no justification to maintain the proceedings.

The Court of Appeal's Decision

Lord Justice Richards gave the Court of Appeal's decision on 14 February 2013 to which the Master of the Rolls and Lord Justice Sullivan agreed.

On the first issue, the Court decided that it was arguable Google was a '*publisher*' after it had been notified of the defamatory material and then allowed that material to remain on the blog. The Court believed Google might be inferred to have associated itself with, or at least to have made itself responsible for, the continued presence of that material on the blog but only after the expiry of a reasonable time for Google to remove the defamatory material. The Court added that it would be '*a very short period*' from notification to the inference and certainly less than the six weeks from 5 July 2011 to 18 August 2011.

On the second issue, the Court held that:

a) Google was not a '*publisher*' as defined by the Act because (i) it did not issue material to the public and (ii) it had no effective day-to-day control over the blogger who transmitted, or made available, the defamatory statements.

b) Google had taken reasonable care taking into consideration (i) six weeks to pass the complaint to the blogger was not outside the bounds of a reasonable response (ii) it had no responsibility for the content of the defamatory comments or the decision to publish them (iii) the vast number of blogs that are hosted on Blogger.com justifies a longer response time and (iv) there was no evidence of anything in the previous conduct of the particular blogger that might have called for speedier action to be taken.

c) However, after Google had been notified of Mr Tamiz's complaint, there *was* a reason for Google to believe that it was causing or contributing to the continued publication of the defamatory comments and so it was unlikely that Google could rely on section 1 of the Act to defend the defamation claim.

On the third and last issue, the Court found in favour of Google and held that it was required to stop a defamation claim on the ground that it would be an abuse of the Court's process if the claim would not serve the legitimate purpose of protecting the claimant's reputation against unlawful damage. In this case, the damage to Mr Tamiz's reputation would have been trivial taking into consideration:

1. Google's liability would have commenced shortly after 5 July 2011 when it was notified of the complaint.

2. By then it was highly improbable that any significant number of readers would have accessed the comments made between 28 and 30 April 2011 especially because the blog, and the offending comments, would have receded into history due to numerous other comments following in the chain.

Lord Justice Richards agreed that '*the game would not be worth the candle*'.

The Message

On the face of it, this case does not appear to assist those who feel aggrieved about defamatory comments made about them on the internet.

That said, three factors would vastly increase a claimant's prospects of success. The first factor lies within the claimant's power whereas the second and third factors do not.

1. The claimant should notify the business hosting the defamatory comments as soon as possible after the comments are made.

   In this case, the defamatory comments were first made on 28 April 2011 but Google did not receive Mr Tamiz's complaint until around 5 July 2011.

2. The Claimant's prospects of success will increase the longer it takes the business hosting the defamatory comments to ask the blogger to remove the comments.

3. The Claimant's prospects of success will increase further the longer it takes the blogger to remove the defamatory comments (and will increase further still if the blogger does not remove them).

   In this case, the defamatory comments were removed by the blogger within three days of Google asking for them to be removed.

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