

Court of Appeal upholds High Court decision to dismiss Ryanair defamation action

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Introduction

In its recent decision in *Ryanair DAC and Another v Van Zwol and Others [2020] IECA 105*, the Court of Appeal refused an appeal by Ryanair against the dismissal of defamation proceedings arising from the publication by the Ryanair Pilots Group (RPG) of an email bulletin to pilots employed by Ryanair, which the airline contended was defamatory and insinuated that it had manipulated the market for its shares. In refusing the appeal, The Court of Appeal found that the High Court had correctly ruled that publication of the email bulletin was protected by qualified privilege. The Court of Appeal also held that the qualified privilege defence was not defeated by any malice on the part of RPG in publishing the bulletin.

In making its ruling, The Court of Appeal gave careful consideration to the scope of the qualified privilege defence under the Defamation Act 2009 and in particular whether publication to “disinterested parties” could operate to defeat the defence. Qualified privilege is one of a number of defences available to a defamation claim under Irish law and usually applies in situations where a defendant has either a legal or moral duty or interest in publishing the information complained about to another party who has a corresponding duty or interest in receiving the information published. The defence can be defeated by evidence of malice on the part of the individual in publishing the impugned report.

Background

In 2013, Ryanair issued defamation proceedings against three pilots who were members of the Interim Council of RPG, a form of nascent trade union for Ryanair pilots which was in its early stages of formation with assistance from the Defendants. The leadership of RPG had been drawn from outside Ryanair as at that time it was the airline’s policy not to recognise trade unions. Evidence was given during the course of the trial that Ryanair pilots felt it was disadvantageous to them to be seen to have an involvement with any form of union activity and as a result the three Defendants became responsible for the setting up of RPG.

In September 2013, RPG distributed a “pilot update” update via its email mailing list with a piece entitled “*What the Markets are Saying About Ryanair*”. The pilot update was circulated to approximately 2,000 email addresses, a proportion of which were not associated with any Ryanair pilots. This item referenced media reports about a fall in Ryanair’s share price following the issue of a negative profit warning by the company. The update noted that these developments had taken place in spite of Ryanair having given positive indications to investors only a few months previously. The relevant part of the update reported that:

“The company’s share price fell sharply last week (down 11.54%) as markets reacted to a negative statement issued by the company management. It has been indicated that profit targets for 2013 - 2014 may need to be revised downwards as the autumn-winter outlook remains weak. This is in spite of positive indications to investors in June which encouraged a share price increase and a sell off of shares by managers in late June, ahead of the winter period.”

The publication of the pilot update prompted Ryanair to issue proceedings alleging that the update was defamatory on the basis that it insinuated that Ryanair was guilty of market manipulation, had misled investors and had conspired to abuse the market for its shares. Ryanair’s claim was dismissed in the High Court following a 27 day trial. Although a jury found that the words complained of were capable of having a defamatory meaning, the Defendants had not acted with any malice and since the trial judge had previously ruled that the publication occurred on an occasion of qualified privilege, Ryanair’s claim failed.

Qualified Privilege

Among the grounds of appeal raised by Ryanair was a contention that the High Court had erred in concluding that the details reported in the pilot update were protected by qualified privilege. In support of this proposition, Ryanair argued that the Defendants had not established that a substantial portion of those who received the pilot update were Ryanair pilots or RPG members. Ryanair also argued that there was no evidence that the RPG had an interest or duty in distributing the update such that the defence of qualified privilege could apply.

In rejecting these arguments, The Court of Appeal examined the defence of qualified privilege as provided for under the Defamation Act 2009 and concluded that this had been correctly applied by the trial judge. The Court upheld the High

Court's finding that the RPG did have an obvious interest in publishing the update. Although they were not Ryanair employees themselves, they had a duty to publish the update and alert the Ryanair pilots, whose interests they represented, to matters of concern. In the Court's view, it was perfectly permissible for Ryanair pilots to elect external parties to represent their interests, particularly given their reluctance with having any public association with a representative or trade union movement.

The Court of Appeal also found that the fact the pilot update may have been published to individuals who were not Ryanair pilots (i.e. "disinterested parties" for the purposes of the Defamation Act 2009) did not prevent the application of the qualified privilege defence. The evidence before the High Court was that the pilot update was received by approximately 500 individuals who were not Ryanair pilots and who did not therefore have an equivalent level of interest in receiving the update. However, in The Court of Appeal's view, this was not fatal to the operation of the qualified privilege defence. The Court recognised that it is sometimes impossible to prevent some level of incidental publication to disinterested parties. This did not defeat the defence provided that such publication was merely incidental and the mode of publication used was reasonable in all of the circumstances. In this case, the incidental publication was reasonable as the RPG at all times believed that it was engaging only with Ryanair pilots and was not aware that there may have been any wider publication involved. On this basis, The Court of Appeal found no reason to interfere with the High Court's ruling that the defence of qualified privilege ought to apply.

Comment

This decision should be welcomed as evidence that the Irish courts are prepared to invoke the qualified privilege defence in order to ensure that information which was of interest to Ryanair pilots could be communicated to them and that email bulletins of this kind would be protected under Ireland's defamation laws.

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