

Depp Libel Case Seen As Outlier In 'Claimant Friendly' London

By **Bonnie Eslinger**

Law360, London (November 4, 2020, 8:31 PM GMT) -- Actor Johnny Depp's high-profile loss in a libel battle against a British tabloid is unlikely to deter other claimants from seeking to defend their public images in the U.K., despite the recent blow to its reputation as a "claimant friendly" jurisdiction for defamation cases, experts say.

There's been a dramatic rise in recent years in the number of such cases brought before the English courts, in large part due to the growing popularity of social media and disputes playing out in the court of public opinion, said Nick McAleenan, a partner with the media law team at JMW Solicitors LLP.

"I don't think this [Depp decision] will reverse that trend really," McAleenan said.

Part of the attraction is that under English law, the publisher has the burden of proving a statement isn't defamatory. In the U.S., that burden falls on the person who brings a libel claim.

"That's probably one of the big differences between the U.S. and the U.K.," McAleenan said. "So to that extent, it's quite helpful for a claimant because the defendant has got to prove the truth of what was alleged, which is quite a difficult thing to do."

Depp had sued The Sun newspaper in response to a 2018 column that accused the Hollywood superstar of being physically violent and abusive toward actress Amber Heard during their marriage. On Monday, High Court Judge Andrew Nicol ruled that the article describing him as a "wife-beater" was not defamatory because what the tabloid said was **"substantially true."**

In Depp's case, the tabloid's publisher, News Group Newspapers, beat the odds.

"NGN did a particularly good job," McAleenan said. "They collated all the evidence, the circumstantial evidence and the texts and all the rest of it, and it was deployed to help them prove the truth of what they were saying."

In his ruling, Judge Nicol found there was enough evidence to show that 12 out of 14 incidents of abuse that Heard accused Depp of had occurred.

News Group News also managed to deflect Depps' attacks on Amber Heard's credibility.

The judge noted that a recurring theme in Depp's evidence was that Heard's allegations of domestic violence were a constructed hoax and that she was a "gold digger." The judge said he did not accept that characterization.

Heard is not a party in the litigation in London, although she provided evidence to News Group and was the tabloid's key witness. That proved to be a big advantage, McAleenan said.

"I still think the process is relatively claimant friendly," McAleenan said. "You've just got to question why he brought the claim, knowing as he must have that some of these things did happen."

Mark Stephens, a partner at Howard Kennedy LLP who specializes in defamation and reputation management, also said he saw Depp's case as being an outlier.

"We're known as a libel tourism destination because our libel laws are so claimant friendly," Stephens said. "We have no public figure defense, the burden of proof is on the defendant, the publisher has to prove the truth of what they publish, [and] it's presumed to be false."

The vast majority of libel claimants win in the U.K., Stephens said, putting Depp in a tiny minority.

"I don't think that's changed much; you pretty much have to be a moron in a hurry to lose a libel case in London," Stephens said.

The decision is unappealable, the lawyer said, adding that Judge Nicol is the author of a book on media and libel law.

"It's flawless," Stephens said. "He dissects the evidence over 585 paragraphs in a 129-page carefully reasoned judgment."

And that ruling will carry across the Atlantic to the actor's defamation case against Heard in Virginia over a Washington Post essay she penned about her experience as a domestic abuse victim. The article does not name Depp.

"This judge has put a torpedo with his analysis through that case," Stephens said.

He noted that in 2010 under the Obama administration, the U.S. passed the Securing the Protection of our Enduring and Established Constitutional Heritage, or SPEECH, Act, that makes foreign libel judgments unenforceable in U.S. courts.

The exceptions are when it is shown the defendant would have been found liable even if the case had been heard under U.S. law, or if the foreign legislation applied offers as much protection as those granted under the First Amendment in the U.S.

Emily Cox, a partner and media expert at Stewarts Law LLP, said Depp's loss in England is a "disaster" for the actor.

"If he cannot make out his case in 'claimant friendly' London, then this does not bode well for his libel claim against Amber Heard personally in the U.S.," said Cox.

She added that the English court decision will be used as evidence, making it even harder.

"Given that we're perceived as a more claimant-friendly jurisdiction, if he was unable to make out his case over here, it does suggest it will be an uphill battle in the U.S.," Cox said.

England and Wales are considered attractive for claimants forum-shopping for defamation cases, not only because of the burden of proof on the publishers, but also because a claimant doesn't have to show that malice was involved, unlike in the U.S.

And while most libel cases go before a jury in the states, very few do in England and Wales as a result of a 2013 change to the U.K.'s defamation law.

Cox added that even more libel claims might have been filed in the U.K. in recent years, but the legislative changes raised the threshold that claimants need to meet in order to proceed with their cases.

The U.K.'s Defamation Act 2013 now requires claimants to prove that statements complained about have caused or are likely to cause "serious harm" to their reputations.

Alex McCready, director and head of reputation and privacy at law firm Vardags, said that with social media now acting as a court of public opinion, many high-profile individuals and celebrities feel that pursuing a libel case in England's courts is the only way to clear their name.

It is possible, however, that Depp's loss will change this.

"In order to pursue the claim, he was forced to be cross-examined on all manner of intimate and personal details only to go on to lose," McCready said. "Only time will tell if would-be claimants will think twice about turning to the English courts, both in terms of justice and jurisdiction."

--Editing by Philip Shea and Alyssa Miller.