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**DENNIS TANNER v (1) BLUEPRINT BOOKS LTD (2) PETER JOHN FILBY (2002)**  
[2002] EWCA 1429

**CA (Peter Gibson LJ, Potter LJ, Murray Stuart-Smith J) 16/10/2002**

CIVIL PROCEDURE - DEFAMATION

SETTLEMENT AGREEMENTS : CONSTRUCTION : INTENTION OF PARTIES : SUBJECTIVE : RELEVANT  
BACKGROUND : SURROUNDING CIRCUMSTANCES : NEGOTIATIONS : UNDERTAKINGS : ORAL  
AGREEMENTS : SIDE AGREEMENTS : COLLATERAL AGREEMENTS : VARIATIONS : AMENDMENTS :  
DRAFT CONSENT ORDERS : SIGNATURES : MEANINGS : ORDINARY ENGLISH : AMBIGUOUS :  
UNCERTAIN : WIDE : PURPOSIVE : KIT CARS : MAGAZINES : MALICIOUS FALSEHOOD : PUBLICATION :  
ARTICLES : LETTERS : ADVERTISEMENTS : NOTICES

**Words in a settlement agreement should have been given a wide purposive meaning such as would properly give effect to the subjective intentions of the parties, which were to be determined against the relevant background and surrounding circumstances.**

Appeal by the claimant ('T') from a judgment in his claim against the defendants ('D') for malicious falsehood. The second defendant was a director of the first defendant. T traded in kit cars and owned a trade magazine. D owned a competing magazine in which it published a reader's letter and commented on it that there were certain technical problems with a particular kit car made by T. T objected and brought his claim, seeking damages and an injunction to restrain publication of such comments or any other misstatements that adversely reflected on his products. Settlement discussions were held but no agreement was reached and D published further articles in what the magazine said would be a series of features exposing alleged faults in T's product and inviting readers to relate problems experienced by them. The parties then agreed, orally by telephone, that T would withdraw his claim and pay a contribution to D's costs in return for D relinquishing their claim to further costs and a mutual undertaking not to publish further articles concerning each other. A telephone note written by T described the wording of the undertaking as being subject to expansion in order to be "fully explicit". D stated that the terms agreed were intended to constitute a binding oral contract to be formalised in a consent order, a draft of which was supplied to T by D's solicitors. T sought an amendment expanding the word "article" in the undertaking to also include letters, advertisements and notices. T argued that he had stated that before signing the order he wished to take legal advice on whether the wording of the undertaking was "all-encompassing" so as to prevent both parties publishing anything about the other, good or bad. D argued that the precise terms of the undertaking were as set out in the draft order, although D accepted that a collateral agreement could be entered into to allow T, if necessary, to tighten up wording after taking legal advice. The consent order was not signed by T, but the judge mistakenly believed that it had been, although T had written to the court stating that there had been a settlement and referring to a consent order that would follow. The questions before the judge were: (i) whether a settlement agreement had been reached and if so on what terms; (ii) whether T had any contractual entitlement to vary the agreement; and (iii) whether the amendments sought were within that entitlement. The judge held that a concluded and legally binding settlement agreement had been reached and that the undertaking was limited to the non-publication only of articles and not of letters, advertisements or notices. He also held that T had no contractual right of variation, which obviated the third question. Although no finding was made, the judge commented that the word "article" in its ordinary sense did not include letters, advertisements or notices and that to imply such words would materially alter the substance of what the parties had already agreed, rather than merely clarifying the word "article".

HELD: (1) The judge had erred in concluding that the draft consent order accurately represented the scope and terms of the parties' agreement and that his task had then become one of construction of the word "article" based on his own view as to its ordinary meaning and excluding evidence as to the parties' intentions. (2) Given the ambiguity and uncertainty of the word in its ordinary use, it was for the judge to determine its meaning against the background of the dispute and the surrounding circumstances at the time the agreement was made. (3) The relevant background and circumstances were that: (a) T's original complaint related to a reader's letter and editorial comment on it; (b) the injunction sought to restrain any other misstatements adverse to T's products; and (c) the settlement talks arose after a threat by D of a sustained campaign of publishing letters, editorial, notices and advertisements that were unfavourable to T's products. The word "article" should therefore have been given a wide, purposive definition in order to constitute an effective undertaking to give effect to T's subjective intentions and to settle the dispute in an all-encompassing way. (4) The judge's order that an agreement had been reached would stand but the appeal would be allowed to the extent of such a meaning being given to the word "article".

Appeal allowed in part.

John da Silva of Clifford Chance for T. Simon Cheetham instructed by Streeter Marshall for D.

**LTL 16/10/2002 (Unreported elsewhere)**

Judgment Approved subject to editorial corrections - 14 pages

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