Neutral Citation Number: [2020] EWHC 1276 (QB)

Case No: QB-2019-004063

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/05/2020

Before :

MR JUSTICE NICOL

- -

Between :

(1) BrewDog plc	**Claimants**
(2) BrewDog Retail Ltd	
- and -	
Frank Public Relations Ltd.	**Defendant**

- -
- -

James Wibberley (instructed by **TLT LLP**) for the **Claimants**
David Glen (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing dates: 1st May 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE NICOL

Mr Justice Nicol :

1. In this libel action there are two matters before me today. The first is the trial of a preliminary issue as to the meaning of the words complained of. The second is an application by the Defendant to strike out, in effect, the whole of the Particulars of Claim.

2. The Claimants describe themselves as the producers of craft beer. They own several breweries and bars in the UK and overseas. The 1st Claimant (BrewDog plc - 'Plc') is the holding company. The 2nd Claimant (BrewDog Retail Ltd – 'Retail') is the trading company and the direct owner of the bars. Where necessary they are referred to collectively as 'BrewDog'.

3. The Particulars of Claim allege that during 2016 the Claimants entered into an agreement with the Scofflaw Brewing Company ('Scofflaw') to launch Scofflaw's products in the UK. The Particulars of Claim continue,

> 'As part of the launch, BrewDog and Scofflaw arranged a series of six promotional events to be held in Retail's Shoreditch, Soho, Shepherd's Bush, Tower Hill, Leeds and Manchester bars between September and October 2018 ('the Events'). During the Events Scofflaw beer was to be sold to Retail's customers, with representatives of Scofflaw attending to raise the profile of their brand. To accompany the Events, Retail had also arranged to sell Scofflaw beer at its other 30 UK bars.'

4. It is said that Scofflaw engaged the Defendant ('Frank') to promote their relationship with the Claimants in general and the Events in particular.

5. On 27th September 2018 at about 11.00am the Defendant issued a press release.

6. The press release included the following words of which complaint is made,

> '**Free beer offered to UK Trump supporters this weekend by contentious US brewery 'Scofflaw'** This weekend see's [sic] redneck US brewers Scofflaw (known as the Jackass brand of the brewing industry) partner with badass beer brand Brewdog to launch in the UK. The self-confessed 'trailer trash' brewers are renowned in the states for their lawless attitude and have landed in London today — their aim? To get the UK 'beered up redneck style', completely free of charge! But there is a hook ... **you have to be a Trump supporter**. Scofflaw are putting tens of thousands of pounds behind Brewdog bars in Shoreditch, Soho, Shepherd's Bush, Tower Hill, Manchester and Leeds over the next 7 days and are intending to crash onto the UK beer scene ..."

(N.B. bold text is depicted as it appeared in the Press Release)

7. The Claimants describe their business as a 'punk' brewer, operating an anti-business' model. They say they are known as critics of US President Donald Trump.

8. The Particulars of Claim allege that,

> 'The Press Release was quickly picked up on social media (in particular Twitter) and was circulated by BrewDog's actual and potential customer base.

> The Press Release prompted criticism of BrewDog for associating with Donald Trump and led to complaints from Plc's "Equity Punk" investors.'

9. In consequence and to mitigate their loss the Claimants plead that they cancelled the agreement with Scofflaw and cancelled the Events. These measures were announced in a series of Tweets beginning at 12.19 on 27th September 2018.

10. At 18.14 on 27th September 2018 Scofflaw tweeted that they were 'not rooted in hate' and at 20.52 tweeted that Scofflaw had not approved the press release which had been issued without its knowledge or consent.

11. On 28th September 2018 the Defendant issued a statement saying that the press release had been issued without approval and apologising to Scofflaw and BrewDog.

12. The Claim Form was issued on 4th July 2019. It was issued in the Bristol District Registry, but it was transferred to the Royal Courts of Justice on 11th November 2019. The Particulars of Claim were served with the Claim Form.

13. The claim relies on:

    i) Defamation, and

    ii) Negligent misstatement.

14. There are, in fact, two claims in defamation.

    i) The first pleads (in paragraph 15 of the Particulars of Claim) that the natural and ordinary meaning of the words was that the Claimants were supporters of Donald Trump.

    ii) The second (in paragraph 16 of the Particulars of Claim.) relies on an innuendo (what is sometimes referred to as a 'legal innuendo' in distinction from a 'popular innuendo', which is no more than the alleged natural and ordinary meaning of the words complained of. A 'legal innuendo' is dependent on some at least of the recipients, or publishees, of the words complained of having knowledge of special facts which gives the words a defamatory meaning or an additional defamatory meaning.)

    Paragraph 16 reads,

> 'Further or in the alternative, by way of innuendo the words used within the Press Release meant and were reasonably understood to mean that:
>
> Particulars of Innuendo
>
> (a) BrewDog was a supporter of Donald Trump;
> (b) BrewDog was a supporter of the policies of Donald Trump and/or right-wing politics and/or politics of intolerance and prejudice of the kind supported by, or associated with, Donald Trump; and/or
> (c) By reason of the matters at subparagraphs (a) and/or (b) above, BrewDog was a hypocrite as, contrary to its stated and advertised values and ethos as described at paragraphs 2, 3 and 4 above, BrewDog supports a politician and/or policies commonly understood and regarded to be to directly contrary to that ethos and values.'

15. In summary, paragraphs 2-4 of the Particulars of Claim (which are referred to in paragraph 16(c)) plead that BrewDog is a 'punk brewer' adopting an anti-business model whose ethos and values include a belief in equality and inclusion and who are critical of the policies of Donald Trump.

16. The claim in negligent misstatement is pleaded in paragraphs 19 and 20 of the Particulars of Claim as follows,

> '19. In issuing the press release, Frank owed or assumed a duty of care towards BrewDog at common law:
>
> (a) To ensure that the Press Release was true, fair and not misleading;
>
> (b) Not to defame, and/or publish any words that might reasonably and foreseeably have the effect of damaging, BrewDog's character and/or reputation; and/or
>
> (c) To take reasonable care not to cause BrewDog foreseeable financial loss or damage.
>
> 20. In breach of the above duties, the Press Release:
>
> Particulars of Breach
>
> (a) Was untrue;
>
> (b) Defamed BrewDog and/or damaged its character and reputation. Paragraphs 15 and 16 above are repeated; and
>
> (c) Caused foreseeable loss and damage to BrewDog in the form of the cancellation of the Events and the need to issue an alternative promotion showing that the BrewDog was opposed to the politics of Donald Trump.'

17. On 12th February 2020 Master McCloud ordered that there should be a trial of a preliminary issue, namely the natural and ordinary meaning of the words complained of.

18. The Defendant's strike out application was issued on 26th February 2020. It was supported by the witness statement of Keith Mathieson, of Reynolds Porter Chamberlain, the Defendant's solicitors.

19. The Claimants rely in opposition to the strike out application on the witness statement of Richard Street, dated 24th April 2020. Mr Street is BrewDog's head of legal and property.

Meaning of the words complained of

20. The parties were agreed that the relevant principles were summarised by Nicklin J. in *Kutsogiannis v The Random House Group Ltd.* [2019] EWHC 48 (QB), [2020] 4 WLR 25 at [12], namely,

‘(i) The governing principle is reasonableness.

(ii) The intention of the publisher is irrelevant.

(iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

(iv) Over-elaborate analysis should be avoided and the court should certainly not take too literal approach to the task.

(v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.

(vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.

(vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.

(viii) The publication must be read as a whole, and any “bane and antidote” taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic “rogues’ gallery” case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).

(ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.

(x) No evidence, beyond the publication complained of, is admissible in determining the natural and ordinary meaning.

(xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication’s readership.

(xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.

(xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant’s pleaded meaning).’

21. James Wibberley, for the Claimant, accepted that as a result of the principle referred to in [12(x)] no evidence as the way in which any readers understood the press release was admissible. Accordingly, he rightly accepted that paragraph 16 of Mr Street's witness statement and the tweets he exhibited at pages 2-15 were not admissible.

22. The principles referred to in [12(viii) and [12(ix)] mean that the words complained of have to be judged in their context. The Claimants, as they were entitled to do, have complained of only some of the press release, but the potential importance of context, means that it should all be considered. I have therefore set it out in its totality in an annex to this judgment. I have added numbers for ease of reference.

23. As I have said, the natural and ordinary meaning which the Claimants ascribe to the words complained of is set out in paragraph 15 of the Particulars of Claim and is,

> 'BrewDog was a supporter of Donald Trump.'

24. Such an alleged meaning prompts a question as to whether that meaning is defamatory at common law and whether the order of Master McCloud, which requires me to determine the natural and ordinary meaning of the words complained of, is implicitly limited to meanings which are defamatory at common law. However, it is not necessary for me to engage with that question in view of the Defendant's strike out application which, in any event, would require me to consider the issue of whether such meaning or meanings as I attribute to the words complained of are reasonably arguably defamatory at common law.

25. Although my task is to determine the natural and ordinary meaning of the words complained of, it is appropriate to recall, as I have said, that the Claimants also rely on an innuendo meaning pleaded at paragraph 16 of the Particulars of Claim

26. On the Claimant's behalf, Mr Wibberley submitted:

    i) The theme of the press release was the partnership between Scofflaw and the Claimants and taking the 'synergies' between them a little further. The reason for doing that was that the two brands wanted to align their brands and ethos and emphasise the similarities between the two companies.

    ii) There was a clear message that this was a political promotion: supporters of Donald Trump were singled out for favourable treatment. This was a deliberate decision by Scofflaw and BrewDog.

    iii) The target audience for the press release was journalists. They would have understood the reference to Trump to have been deliberate and so looking to associate the beer sold with the ethos of Donald Trump.

    iv) As Nicklin J. said in *Koutsogiannis* the Court is not bound to accept the meanings advanced by the parties (though Mr Wibberley rightly accepted that the Court cannot find a meaning more favourable to the Claimants than that which was pleaded).

27. Mr Glen, for the Defendant, submitted as follows:

    i) The press release was, and would have been seen as, a marketing device.

ii) Moreover, and importantly, it was a marketing device on behalf of Scofflaw.

iii) The overall tone of the press release was light-hearted and played on Scofflaw's redneck image.

a) It played on Scofflaw's reputation as a 'Jackass', meaning someone behaving in a silly fashion, and 'trailer trash'

b) It gave a definition of 'Scofflaw' which emphasised the brewery's anti-establishment image.

c) It referred to various obvious publicity stunts of which free beer for Trump supporters would be seen as another example.

iv) The press release would not be seen as a serious statement of Scofflaw's political philosophy, still less as a statement of the political philosophy of the Claimants.

v) The recipients of the press release would recognise the offer of free beer for Trump supporters for what it was, a publicity gimmick.

28. In my judgment, the press release said little about the Claimants other than that they had embarked on a partnership with Scofflaw and Scofflaw was promoting its beer by offering free beer to supporters of Donald Trump. I agree with Mr Glen that the press release said nothing about the political philosophy of the Claimants. For the avoidance of doubt, so far as the Particulars of Claim should be interpreted as alleging an alternative formulation of the natural and ordinary meaning as 'BrewDog was a supporter of the policies of Donald Trump and/or right-wing politics and/or politics of intolerance and prejudice of the kind supported by, or associated with Donald Trump' (viz the formulation in the Particulars of Claim paragraph 16(b)), I reject that as well. My reasons are as follows:

i) The press release was issued on behalf of Scofflaw – see the Annex paragraphs 22-25.

ii) It announced a commercial partnership with the Claimants.

iii) Paragraph 16 of the Press Release explained what the two companies had in common, 'Shirah [the CEO of Scofflaw] and Watt [the Claimants' CEO] both built their breweries on a similar founding principle - to make good beer no matter the circumstances.' That emphasised that what they had in common was a desire 'to make good beer' rather than their political philosophy.

iv) Paragraph 17 continued, 'What first started as a successful beer collaboration between the two, 2-8-5 Quad IPA, quickly became a potential partnership opportunity.' None of this suggested that Scofflaw and BrewDog shared a political philosophy or that BrewDog supported Donald Trump.

v) The closest that the press release came to this was in paragraph 19 which quoted Shirah as saying, "so here we come...and our objective is simple...we're coming over to showcase independent beer and redneck hospitality." However, in my judgment that reference to a shared appreciation of 'redneck hospitality' and the term 'synergies' which Shirah also used in paragraph 19 are insufficient to

convey to the ordinary reader that the Claimants shared Scofflaw's alleged support for Donald Trump.

vi) It was Scofflaw who were providing the free beer and who had stipulated the condition that recipients had to be supporters of Donald Trump, see paragraphs 1 and 4.

vii) It was also Scofflaw which had the motto, 'there's a little dissent in everything we do' and whom the press release said was going to engage in the gimmicks of demolishing beer can pillars with a monster truck and beer can clay pigeon shooting (paragraph 5) and shooting up cans of beer that were not up to standard (paragraph 6).

Strike out application

29. CPR r.3.4(2) says that a Court may strike out a statement of case if it appears to the court that:

> '(a) that the statement of case discloses no reasonable grounds for bringing ... the claim;
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.'

30. In summary, Mr Glen submitted that:

i) The pleaded natural and ordinary meaning (The Claimants were supporters of Donald Trump) did not disclose reasonable grounds for bringing the claim in libel because it was not reasonably arguable that such a meaning was defamatory of the Claimants at common law.

ii) The innuendo meaning pleaded in paragraph 16 of the Particulars of Claim did not disclose reasonable grounds for bringing the claim because it depended on a natural and ordinary meaning which the words complained of did not bear.

iii) The innuendo did not accord with the requirements of Practice Direction 53 paragraph 2.3 (Since the Claim was issued on 4th July 2019 the current Practice Directions to Part 53 are not applicable. The references which follow are to the former Practice Direction). It says,

> '(1) The Claimant must specify in the particulars of claim the defamatory meaning which he alleges that the words or matters complained of conveyed both –
>
> (a) as to their natural and ordinary meaning; and
>
> (b) as to any innuendo meaning (that is a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the words complained of).
>
> (2) In the case of an innuendo meaning, the claimant must also identify the relevant extraneous facts.'

Contrary to the requirements of the Practice Direction, Mr Glen submitted that the Particulars of Claim did not identify the publishees (i.e. the recipients of the press release) who would have known the extraneous facts and thus understood the press release to bear the innuendo meaning.

iv) The Claimants' pleading of serious harm in paragraphs 17 and 18 of the Particulars of Claim was inadequate and incoherent.

v) The Claimants' pleading of their claim in negligent misstatement was incoherent and inadequate.

31. Before I elaborate on Mr Glen's submissions, it is convenient to spell out certain consequences that flow from my findings on the natural and ordinary meaning of the words complained of.

i) I have found that the natural and ordinary meaning said nothing about the political philosophy of the Claimants. For this reason, it is not necessary to consider whether, if the words complained of had associated the Claimants with Donald Trump, that would have been defamatory at common law. The issue simply does not arise.

ii) Mr Wibberley rightly accepted that the pleaded innuendo meaning in paragraph 16(c) (i.e. that the Claimants were hypocrites) depended on the premise that the natural and ordinary meaning of the words of the press release meant what was pleaded in paragraph 16 (a) (viz that the Claimants were supporters of Donald Trump) or paragraph 16(b) (viz that the Claimants were supporters of the policies of Donald Trump and/or right-wing politics and/or politics of intolerance and prejudice of the kind supported by, or associated with Donald Trump). However, I have found that the words complained of bore neither of these meanings. Since what Mr Wibberley accepted was the necessary premise for the innuendo claim does not exist, the innuendo claim must necessarily fail.

Natural and ordinary meaning not defamatory at common law

32. The well-known test of whether words are defamatory at common law is whether they

> 'would tend to lower the plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally.*'* (Sir Thomas Bingham, MR in *Skuse v Granada Television Limited* [1996] EMLR 278 at 286).

33. For the reasons which I have explained above, it is not necessary for me to decide whether it would be defamatory at common law to say of someone that they were a supporter of Donald Tump or his policies. Plainly he is a controversial politician. Mr Glen agreed that what mattered was how such words would be viewed in this jurisdiction and therefore the support for Donald Trump by some voters in the USA is not material. Nonetheless, even in England Mr Trump has supporters as well as opponents. In other words, simply to say of someone that they were a supporter of Donald Trump (or his policies) would not arguably lower that person in the eyes of right-thinking people *generally*.

Innuendo

34. Each innuendo gives rise to a separate cause of action - see *Lewis v Daily Telegraph Ltd.* [1964] AC 234. This issue also does not arise given my findings as to the natural and ordinary meaning of the words complained of and Mr Wibberley's concessions (which were quite correctly made).

35. I would add only two comments regarding Mr Glen's submissions that the innuendo was inadequately pleaded:

    i) I agree with Mr Glen that the identity of the publishees who had knowledge of the special facts should be pleaded. Publication of a defamatory imputation which depends on knowledge of special facts is only actionable if the words are published to recipients who know of those facts. Publication to such people is therefore essential if the cause of action is to be made out. Necessarily, the identity of such persons is a 'fact on which the claimant relies' and by CPR r.16.4(1)(a) must be pleaded in the Particulars of Claim – see *Fulham v Newcastle Chronicle and Journal Ltd* [1977] 1 WLR 651. That case was decided before the adoption of the Civil Procedure Rules, but RSC O.81 r.7(1) contained an obligation substantially the same as is now in CPR r.16.4(1)(a).

    ii) However, had that been the only obstacle in the way of the claimants in making out their innuendo claim, I would have been inclined to allow them an opportunity to cure the omission by giving the Claimants a limited opportunity to apply to amend the Particulars of Claim. There may be circumstances where the Court can be asked to infer from other facts that the publishees would have known the special facts. From Mr Wibberley's oral submissions that appeared to be the Claimants' case. Reliance on such an inference should itself be pleaded, together with the facts on the basis of which the pleader would invite the inference to be drawn.

36. Nonetheless, for the reasons which I have given,

    i) The words do not bear the natural and ordinary meaning which the Claimants have alleged or say anything about the Claimants political philosophy.

    ii) This is not a situation where the Claimants should be given an opportunity to amend their claim in light of the meaning which the Court has found the words to bear. My findings on meaning do not allow for that possibility.

    iii) The pleaded innuendo is rightly conceded to be dependent on the natural and ordinary meaning imputing a political philosophy to the Claimants (which is not the case).

    iv) Any newly pleaded innuendo would be a fresh cause of action which would be out of time – see Limitation Act 1980 s.4A.

    v) Since neither the natural and ordinary meaning or the innuendo meaning is sustainable, and there is no scope for making the deficiency good by amendment, it follows that the claim in defamation must be struck out.

The Claim in negligent misstatement

37. In my judgment, Mr Glen is right to say that the pleading of this cause of action is deficient.

    i) It does not presently plead the facts and matters on the basis of which it is alleged that the Defendant owed the Claimants a duty of care.

    ii) It does not plead the ways in which it is alleged that the Defendant was in breach of its alleged duty of care i.e. the facts and matters said to constitute negligence by the Defendant.

    iii) It does not plead the loss which each of the Claimants is alleged to have suffered as a result of the Defendant's alleged negligence.

38. In his witness statement Mr Street comments that a party is not obliged to plead issues of law (although the party *may* do so – see paragraph 16.4.1 in the White Book). While that is right, a party is required to plead the facts and matters on which it relies for the conclusions of law. As Mr Glen submitted, the alleged duty of care would be novel and a substantial extension of current duties of care. Whether such a duty of care is owed would ultimately be determined by the Court, but Mr Glen is correct that the Defendant is entitled to know the factual basis on which the Claimants will contend that such a duty was owed by them.

39. I also agree that the Particulars of Claim do not currently explain how it is alleged that the Defendant was in breach of the duty of care. Mr Street says that it is self-evident. With respect to him, I do not agree. The Defendant is entitled to know precisely how the Claimants allege that it failed to exercise reasonable care. For instance. Paragraph 20(a) says that the press release was untrue. That does not tell the Defendant in what respect the press release was untrue, nor does it tell the Defendant in what manner the Defendant failed to take reasonable care to see that the press release was true.

40. I also agree that the Particulars of Claim needed to plead what loss it is alleged that each of the Claimants suffered. At the moment, the Particulars of Claim in paragraphs 21-23 refer to losses suffered by 'BrewDog' which is the collective term used for both Claimants.

41. Mr Wibberley contends that, even if I regard the Particulars of Claim as deficient, it should not have the consequence that they are struck out. Rather the Claimants should be given the opportunity to make good the deficiency by amendment. He reminds me that the power to strike out a statement of case because of a failure to comply with a rule, practice direction or order is discretionary and he submits that striking out in the present circumstances would be disproportionate. He also refers me to the decision of Tugendhat J. in *Soo Kim v Young* [2011] EWHC 1781 (QB).

42. Mr Glen submits that striking out the Particulars of Claim is the appropriate order. He points out that in *Soo Kim* at[40] Tugendhat J. said,

> 'Where the Court holds that there is a deficit in pleading, it is normal for the court to refrain from striking out the pleading unless the Court has given the party concerned an opportunity of putting right the deficit by amendment, *provided that*

there is reason to believe he will be able to put the deficit right.' [Mr Glen's emphasis].

43. Mr Glen submits that the Defendant's solicitors had drawn attention to the deficiencies in the proposed claim for negligent misstatement in pre-action correspondence. The points made by his solicitors had not been addressed in the Particulars of Claim. The Claimants had had notice of the strike out application since February 2020. Their response had been to defend the adequacy of the existing pleading. Even now, there was no application to amend or for the Defendant's application to be adjourned to allow them to make such an application. Mr Glen submitted that, in these circumstances, there was no reason to believe that the Claimants could make good the deficits in their pleading. He argued that the position was comparable to that in *Spencer v Barclays Bank* [2009] EWHC B9 (Ch) (30th October 2009) and the right course was to strike out the claim in negligent misstatement.

44. I have no doubt that paragraphs 19(b) and 20(b) are unsustainable. There are two reasons for that conclusion. First, there is no need for a duty of care to avoid defaming someone. Liability arises in defamation irrespective of negligence. In those circumstances, there is simply no need or value in super-adding a duty to take care not to defame someone. Secondly, as paragraph 20(b) makes clear, the alleged breach of duty pleaded in paragraph 19(b) relies on paragraphs 15 and 16 of the Particular of Claim. However, I have ruled that neither of those paragraphs is sustainable.

45. As for the remaining claim in negligent misstatement, I consider that Mr Glen is right that the Claimants have been long been on notice that Reynolds Porter Chamberlain (the Defendant's solicitors) considered that no adequate particulars had been given of the facts and matters which gave rise to a duty of care or as to how any such alleged duty of care was breached and that from the absence of any proposed amendments to the Particulars of Claim I should draw the inference that the Claimants would not be able to draft any, even if given the opportunity to do so. As for Mr Glen's third complaint (the absence of pleaded financial loss for each Claimant), the position is a little different. Mr Street's witness statement does attempt to distinguish the loss suffered by the 1st Claimant from that suffered by the 2nd Claimant. While Mr Glen may be justified in saying that these losses need further particularisation, I would not conclude that those deficiencies were incapable of being made good. This though is immaterial. The inference that I draw that the Claimants are not able to plead an arguable case of duty of care or breach of any duty of care means that in any event, the claim in negligent misstatement should be struck out.

Conclusion

46.

i) The words do not bear the natural and ordinary meaning which the Claimants have alleged or say anything about the Claimants political philosophy.

ii) This is not a situation where the Claimants should be given an opportunity to amend their claim in light of the meaning which the Court has found the words to bear. My findings on meaning do not allow for that possibility.

iii) The pleaded innuendo is rightly conceded to be dependent on the natural and ordinary meaning imputing a political philosophy to the Claimants (which is not the case).

iv) Any newly pleaded innuendo would be a fresh cause of action which would be out of time – see Limitation Act 1980 s.4A.

v) Since neither the natural and ordinary meaning or the innuendo meaning is sustainable, and there is no scope for making the deficiency good by amendment, it follows that the claim in defamation must be struck out.

vi) I strike out the claim in negligent misstatement because there has been a failure to comply with a rule (r.16.4(1)(a)) and there is not good reason to believe that the Claimants would be able to make good the deficiency if given an opportunity to amend.

Annex – the whole press release

1. **`Free beer offered to UK Trump supporters this weekend by contentious US brewery 'Scofflaw'** This weekend see's [sic] redneck US brewers Scofflaw (known as the Jackass brand of the brewing industry) partner with badass beer brand Brewdog to launch in the UK.
2. The self-confessed 'trailer trash' brewers are renowned in the states for their lawless attitude and have landed in London today — their aim? To get the UK 'beered up redneck style', completely free of charge!
3. But there is a hook ... **you have to be a Trump supporter**.
4. Scofflaw are putting tens of thousands of pounds behind Brewdog bars in Shoreditch, Soho, Shepherd's Bush, Tower Hill, Manchester and Leeds over the next 7 days and are intending to crash onto the UK beer scene. with their tagline: "There's a little dissent in everything we do"
5. The brewers will also be doing various activities over the coming week including demolishing beer can pillars in a monster truck and beer can clay pigeon shooting.
6. One of the brewery's recent pieces of video content included the team 'shooting up' cans of beer which weren't up to standard — see stills below.
7. Is this of interest? Let me know if you'd like HR images at all.
8. Would you like to arrange to speak to one of the founders?
9. Best, Polly
10. Venue details:
    The dates are as follows 6pm — late (Addresses on each link):
    Saturday, September 29, 2018 — BrewDog Shoreditch
    Sunday, September 30, 2018 — BrewDog Soho
    Monday, October 1, 2018 — BrewDog Shepherd's Bush
    Tuesday, October 2, 2018 — BrewDog Outpost Tower Hill
    Thursday, October 4, 2018 — BrewDog Manchester
    Saturday, October 6, 2018 — BrewDoa Leeds
11. scofflaw
    'skofb:/ noun INFORMAL•NORTH AMERICAN
    1. a person who flouts the law, especially by failing to comply with a law that is difficult to enforce effectively.
    "scofflaws who have accumulated large debts in unpaid parking tickets"
12. Atlanta Brewery Partners with BrewDog to Bring Southern Craft Beer Overseas
13. Named one of the best new breweries in America by BeerAdvocate, RateBeer, Paste Magazine, USA Today and Craft Beer Brewing. This widely celebrated band of hooligans is entering a unique partnership between Scofflaw CEO Matt Shirah and BrewDog CEO James Watt.
14. Scofflaw, known for building its brewery out of a bootlegged brewing operation in an Atlanta, Georgia cellar, has grown substantially from its meager beginnings. In just two years' time, the brewery has been recognized as one of the fastest growing craft beer brands in the United States.
15. Known best for "raising hell" and shaking up the Atlanta beer market, Scofflaw is best recognized for its wide array of brews including Basement IPA, POG IPA (Passionfruit, Orange and Guava), and Sneaky Wheat.

16. Shirah and Watt both built their breweries on a similar founding principle - to make good beer no matter the circumstances.
17. What first started as a successful beer collaboration between the two, 2-8-5 Quad IPA, quickly became a potential partnership opportunity.
18. BrewDog, based in Columbus, Ohio and known for bringing American craft beer to the UK, will be the driving force behind bringing Scofflaw's independent brews to Europe.
19. "James [Watt] and I had just completed a hell of a huge collaboration beer and we decided we could take our synergies a little farther," Shirah reports, "so here we come...and our objective is simple...we're coming over to showcase independent beer and redneck hospitality."
20. With the efforts to expand their craft beer audience, BrewDog will be cold-chain shipping Scofflaw's most celebrated Basement IPA and front-running POG (Passionfruit, Orange and Guava) to the UK. The beer will be available in all 36 UK BrewDog locations that include guest taps. In addition, Shirah intends to airlift Double POG IPA and a Barrel Aged version of their highly-rated Vanilla Absentium Imperial Stout. This countrywide tour is set to bring Scofflaw to the masses - meaning delicious beer and debauchery for all.
21. SCOFFLAW BREWING ...THERE'S A LITTLE DISSENT IN EVERYTHING WE DO.
22. About Scofflaw Brewing Co. Scofflaw Brewing Co. is the brainchild of owner Matt Shirah, who enlisted the help of brewmaster and co-founder Travis Herman. Shirah walked away from his role as a corporate turnaround executive to follow his passion. Similarly, Herman left behind a career in the pharmaceutical development industry to attend brewing school at the University of California. Shirah and Herman have dedicated themselves to qualifying southern craft beer. After years of intense research and development,
23. Scofflaw operates in northwest Atlanta's Bolton neighborhood and boasts an 18,500 square-foot and growing production facility with a 3,000 square-foot tasting room. Scofflaw is located at 1738 MacArthur Boulevard NW, and is open daily from noon to 9 p.m. Within just two years, Scofflaw has been named one of the best new breweries in America by BeerAdvocate, RateBeer, Paste Magazine, USA Today and Craft Beer & Brewing and others by.
24. For more information, follow Scofflaw on Facebook and Instagram.
25. Media inquiries or more information, contact - Morgan Salmon, morgan scofflawbeer.com or 404-863- 6098.
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