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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST
[2022] EWHC 2469 (QB)



Claim No. QB-2022-000400

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 26 July 2022

Before:

MR JUSTICE NICKLIN

BETWEEN:

SIR JAMES DYSON

Claimant

- and -

MGN LIMITED

Defendant

JUSTIN RUSHBROOKE QC and CHLOE STRONG (instructed by Schillings International LLP)
appeared on behalf of the Claimant.

BEN GALLOP (instructed by MGN Ltd's solicitor) appeared on behalf of the Defendant.

J U D G M E N T

MR JUSTICE NICKLIN:

1 This is the determination of meaning and associated preliminary issues in the libel claim brought by the Claimant, Sir James Dyson, against the Defendant, MGN Ltd, the publishers of the Daily Mirror newspaper online and in hardcopy.

2 The article complained of was published online on 28 January 2022 and in the print edition of the newspaper, on p.19, on 29 January 2022 (“the Article”). The text in the online version of the Article is set out in the appendix to this judgment, with paragraph numbers added in square brackets. The text in the body of the online print versions were the same. There were some differences between the two versions in terms of surrounding material and presentation: principally, the headline was slightly different; the online version included a subheading that did not appear in the print version; different photographs and captions were used in the two versions; and the newspaper article included a ‘pull-quote’ which was omitted from the online version. Neither party contends that these differences affect the issues that I have to decide.

3 The Claim Form was issued on 7 February 2022. Particulars of Claim followed on 18 February 2022. In the Particulars of Claim, the Claimant selected for complaint the headline, the sub-headline, paragraphs [5], [6] and [14] of the Article.

4 The natural ordinary meaning the Claimant contended the publication bore, in the context of the Article as whole was:

“... the Claimant was a cheat and a person who sought to advance his own interests through dishonest means, who had screwed his country by voting for the UK to leave the European Union in the 2016 Referendum whilst subsequently moving Dyson’s global head office to Singapore.”

5 No Defence has yet been filed. On 26 April 2022, directions were given for the trial of the following preliminary issues:

- (a) the natural and ordinary meaning of the online print version of the Article;
- (b) whether the meaning or meanings found is or are defamatory at common law;
- (c) whether the article was a statement of fact or was, or included, an expression of opinion; and
- (d) insofar as the Article contained an expression of an opinion, whether, in general or specific terms, the basis of the opinion was indicated.

6 I should make clear that the court is only dealing with these issues in this judgment. As no Defence has yet been filed, the court is not adjudicating on any issues such as the truth of what was alleged. If that issue arises, it will be determined later in the proceedings.

7 Complying with further directions that were given in the Order of 26 April 2022, the Defendant filed and served its written case on the preliminary issues, on 17 May 2022. The Defendant’s case, as set out in that document, is:

- (a) The natural and ordinary meaning of the article is:

“The claimant was a confusing choice of role model for schoolkids by the chair of the Commons Education Committee, being someone who talked the talk and then screwed his country, having championed Vote Leave due to the economic opportunities it would bring to British industry before moving his global head office to Singapore.”

- (b) This meaning is not defamatory at common law;
- (c) The Article was an expression of opinion, and the underlined words in the meaning advanced by the defendant are expressions of opinion; and
- (d) The basis of the opinion was sufficiently indicated by the words, “...*who championed Vote Leave due to the economic opportunities it would bring to British industry before moving his global head office to Singapore.*”

THE LEGAL PRINCIPLES

- 8 The legal principles are well established and not in any dispute between the parties. In determining that the ordinary meaning of the article and that the article is, or contains, a statement of fact or expression of opinion, the principles can be taken from *Koutsogiannis -v- The Random House Group Ltd* [2020] 4 WLR 25 [11]-[17].
- 9 In each case, some of the *Koutsogiannis* factors are likely to have more importance than others. In this case, Mr Rushbrooke QC stresses the importance of context which he says is likely to be particularly important because he contends this is a “rogues’ gallery” case. The effect, he argues, is to clothe the words referring to the claimant in a more serious, defamatory meaning than they would otherwise bear. This principle, he submits, is explicitly recognised in *Koutsogiannis* principle (viii).
- 10 On the issue of fact and opinion, in his skeleton argument, Mr Gallop referred to Warby J’s decision in *Triplark Ltd -v- Northwood Hall (Freehold) Ltd & Anor* [2019] EWHC 3494 (QB) [14]-[17]. He emphasised what the Judge said about the relationship between the first and second requirements of honest opinion defences, and that [17]:

“Put simply, the more clearly a statement indicates that it is based on some extraneous material, the more likely it is to strike the reader as an expression of opinion.”
- 11 For his part, Mr Rushbrooke QC referred to the Court of Appeal decision in *Hunt -v- Star Newspaper Co Ltd* [1908] 2 KB 309, 319-320 *per* Fletcher Moulton LJ, later approved in *London Artists Ltd v Littler* [1969] 2 QB 375, 395, for the principle that where a publisher has failed to distinguish sufficiently between the facts upon which an opinion is based and the opinion, the words may be held to be allegations of fact.
- 12 As to whether the statement is defamatory at common law, the test was stated by Warby LJ in *Corbyn -v- Millett* [2021] EMLR 19 [9]:

“At common law, a meaning is defamatory and therefore actionable if it satisfies two requirements. The first, known as ‘the consensus requirement’, is that the meaning must be one that ‘tends to lower the claimant in the estimation of right-thinking people generally.’ The Judge has to determine ‘whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society’: *Monroe -v-*

Hopkins [2017] 4 WLR 68 [51]. The second requirement is known as the ‘threshold of seriousness’. To be defamatory, the imputation must be one that would tend to have a ‘substantially adverse effect’ on the way that people would treat the claimant: *Thornton -v- Telegraph Media Group Ltd* [2011] 1 WLR 1985 [98] (Tugendhat J).”

- 13 When determining these issues, in order so far as possible to put him or herself in the position of the ordinary, reasonable reader, the judge should read or watch the publication to capture an initial reaction before reading or hearing any argument: *Tinkler -v- Ferguson & Ors* [2019] EWCA Civ 819 [9]. That is the approach I adopt for each meaning determination and this case has been no different.

SUBMISSIONS

- 14 Mr Rushbrooke QC for the claimant contends:

- (a) The overarching theme in the Article, clearly flagged by the headlines and [1] (and revisited in the final paragraph [14]), is that young people of today who want to do the right thing are being set deplorable examples to follow by the people who run the country such that the message they must take away is that “cheats do prosper”, honesty and decency are not the best policy, and “looking after number one is”. The body of the Article explains why this is the case by reference to a series of specific examples.
- (b) The third example on the list after a reference to (i) criminal firms who have stolen £4.3bn from taxpayers by abusing the furlough schemes ([2]), and (ii) Prince Andrew ([4]).
- (c) The Article refers to the claim by the chair of the Commons Education Select Committee that if school children want to succeed, they need to follow the example of the Claimant ([5]) but then explains why he is, in truth, a deplorable role model.
- (d) The Article states that the Claimant championed Vote Leave due to the economic opportunities it would bring to British industry for moving his global head office to Singapore ([5]). It goes on: “*In other words, ‘Kids, talk the talk but then screw your country and if anyone complains, tell them to suck it up’.*”
- (e) The Article then moves on to cite the next, and most prominent, example in the form of the Prime Minister who is presented in terms as a liar and a cheat.
- (f) In the final paragraph of the Article, the reader is told: “... [o]ur revised advice to kids should be that cheats do prosper and honesty’s not the best policy. Looking after No.1 is.”

- 15 Mr Rushbrooke QC contends that the overall theme, that comes across clearly, is that cheats do prosper and the Claimant is cited as an example of such a cheat and someone who is not doing “*the right thing*”. In his written submissions, Mr Rushbrooke QC put it this way:

“The claims included in the Articles only make sense to readers if he is seen as an incident of the phenomenon that the journalist was criticising, i.e. of young people being set a terrible moral example by people in positions of power and authority.”

16 He contends that the meaning of the Article is defamatory at common law, and, because it mixes the allegations of fact with an opinion, the whole falls to be understood as making an allegation of fact, essentially dishonesty. For similar reasons, the Claimant's primary argument is that the Article does not sufficiently indicate to readers the basis for the defamatory imputations. Mr Rushbrooke QC has, however, a fallback position, in the event that the Court finds that the Article does properly separate allegations of facts and comment, then the Claimant would accept that the basis of the opinion is indicated within [5], namely that the Claimant:

“...championed Vote Leave due to the economic opportunities it would bring to British industry before moving his global head office to Singapore.”

17 For the Defendant, Mr Gallop submits:

- (a) The words complained of are the headline and four paragraphs within a weekly column written by a Daily Mirror columnist Brian Reade whose byline reads, “*Frank and fearless ... and funny*”.
- (b) In that column, Mr Reade offers his own ‘take’ on political stories current in the news. It is clearly signposted as a vehicle for his opinions and the reader would know immediately that this was what they were reading, as opposed to a factual report.
- (c) That is firmly reinforced by the language of the piece including the headline. This is a satirical and sarcastic ribbing of those in powerful positions. The clear focus is on the Prime Minister.
- (d) The piece has a clear structure: six short introductory paragraphs which then move to a “polemic” about the Prime Minister’s handling of the “partygate” scandal;
- (e) Those introductory paragraphs employ a repeated device: a clear set up and then a punchline. This is done in respect of the Chancellor ([2]), Prince Andrew ([3]-[4]), and the Claimant ([5]-[6]). Each punchline reflects, he submits, a conclusion particular to each person. In respect of the Chancellor and the Claimant, these are parodies of moral “lessons” or proverbs. They are light-hearted in tone and develop a theme which is then referred back to in the weightier part of the Article.
- (f) After this opening section, the Article then pivots to the clear focus: the Prime Minister. Here, specific criticism is developed in more detail and clearly relates to the “partygate” scandal and moves, for the first time, to the issue of honesty. It is the Prime Minister (and only the Prime Minister) who is characterised as a liar and a cheat ([6]). This is accompanied by a change of tone and more detailed commentary on the Prime Minister’s response to the scandal. This is the subject matter of the remainder of the Article.
- (g) In context, the headline and the final paragraph clearly reflect the punchline or “lesson” concerning the Prime Minister (the columnist calling back to the structure adopted in the introductory paragraphs). This is, as Mr Reade puts it “*the revised advice to kids*” that “*cheats do prosper and honesty is not the best policy*”, drawing together the threads of the criticism being made of Mr Johnson. This flows, he submits, naturally in the reader’s mind from what has been said about the Prime Minister’s conduct and pertains directly to him.

18 In this context, both as a whole and in respect of the specific criticism of the Claimant, the Article, he submits, is plainly an expression of an opinion. The central charge against the Claimant, Mr Gallop argues, is that if you are going to support Brexit on the basis that it would be good for British industry, then you ought to ‘walk the walk’ and focus the development of your business operation in the UK, and not move your global head office to Singapore. No reasonable reader, he submits, would think that the Claimant was being accused of dishonestly seeking to advance his own interests or of ‘cheating’. What the columnist is saying in the Article about the claimant is perfectly plain, and it was an expression of an opinion.

Decision

19 Broadly, I accept Mr Gallop’s argument as to whether this Article, and specifically what it says about the Claimant, is an expression of an opinion. That is plain both from the type of article it was, its structure, and the language used. In my judgment, the ordinary reasonable reader could not fail to understand that the Article was expressing the columnist’s opinion. However, as Mr Rushbrooke QC rightly noted in argument, that does not mean that a column piece is incapable of containing and making specific factual allegations, but the court must be careful to identify (particularly when it comes to the assessment of whether the overall message communicated about a claimant is defamatory) from where the defamatory flavour comes. I also accept Mr Gallop’s submission that the main focus of the article is on the Prime Minister. In their different ways, in the presentation of both the online and print versions of the Articles makes that very clear, particularly through the use of photographs and captions.

20 In my judgment, as concerns the Claimant, the message is clear. It is not an allegation of dishonesty. It is an allegation of hypocrisy. Someone who is willing to ‘talk the talk’ but not ‘walk the walk’, to use that familiar colloquialism. The criticism is perfectly clear: the Claimant had “*championed Vote Leave*” on the ground of the anticipated economic benefits it would bring to UK businesses only then to move his global head office to Singapore. The allegation that, by so doing, the Claimant had “*screwed his country*” could only be understood as an expression of opinion. It is clearly expressed and would be understood to be Mr Reade’s criticism of the Claimant’s actions. The remarks which follow about the apparent unimportance of truthfulness are directed, not at the Claimant, but towards the Prime Minister, Boris Johnson. In my judgment, therefore, the Claimant’s meaning significantly overstates what the Article is saying about him.

21 In my judgment, the natural ordinary meaning of the Article is:

“(a) the Claimant had publicly supported the benefits of Brexit to British industry, yet following Brexit he had moved the global head office of his business to Singapore.

(b) by so doing, the Claimant was a hypocrite who had screwed the country and who set a poor moral example to young people.”

22 The first meaning is an allegation of fact, but it is not defamatory at common law. The second meaning is an expression of opinion. Overall, I am satisfied that the meaning is defamatory, but that is only because of the defamatory element of hypocrisy, harming the country and being a poor moral example that is supplied by meaning (b). As Mr Rushbrooke QC properly conceded, the basis of opinion was taken from the article in [5] and captured in meaning (a).

23 Meaning (b) could have included, possibly, a further opinion, which was sought to be captured by the Defendant’s meaning of the claimant being a “confusing role model”. I have not

included this in the natural and ordinary meaning as it (i) was not something complained of by the Claimant; and (ii) is not itself defamatory. The meaning should concentrate and identify the defamatory sting.

- 24 As will be clear from my decision, I have rejected those parts of the Claimant's meaning which suggest dishonesty or cheating. The Article does not convey these very different allegations against the Claimant. The final paragraph is the high point of the Claimant's case on meaning in this respect. However, this final paragraph is drawing together the thesis presented in the Article: broadly that cheats do prosper, and honesty is not the best policy. This does not convert the clear message of hypocrisy made against the Claimant into an allegation of dishonesty. The 'rogues' gallery' cases have their force where the reader detects that there is a common theme and that those named exemplify it. Here, the common theme is not dishonesty, it is that identified by Mr Rushbrooke QC in his submissions: that all of those identified in the article were people in positions of power and authority who, for their different reasons, set terrible moral examples for young people.
- 25 I have considered whether I should attempt to give a meaning to the words "screw the country" that I have included in meaning (b). I have decided that I should not. Principally, that is because those words were included in both the Claimant's and Defendant's meanings, and I am satisfied that this is an expression of an opinion. I should be careful not to supply a definition of that phrase. Ultimately, it will be for the author, if a defence of honest opinion is advanced, to defend the publication of his opinion.
- 26 For those reasons, the preliminary issues are determined as follows:
- (a) the natural and ordinary meaning of that set out in [21] above;
 - (b) meaning (a) is a non-defamatory allegation of fact and meaning (b) is an expression of opinion;
 - (c) overall, the meaning is defamatory at common law because of the defamatory nature of the opinion; and
 - (d) the article indicated the basis of the opinion.
- 27 If the claim is now to continue, the next stage will be for the claimant to amend his Particulars of Claim to bring them into line with the Court's determination of the meaning. I will give directions for a time within which that is to be done and, thereafter, a time by which a Defence is to be served and filed.

APPENDIX

“Our government is making young people believe that cheats do prosper’

Brian Reade says young people are being set a terrible example by the current government

- [1] It must be very confusing at the moment to be a young person who wants to do the right thing.
- [2] We tell them that crime never pays. Yet we’ve just seen the Chancellor write off £4.3billion stolen from taxpayers by criminals who abused the furlough schemes. Lesson: don’t be exploited on the minimum wage by amoral firms kids, set up your own one.
- [3] We tell those who want to become a senior public servant, such as an MP, that they must swear an oath to the Queen vowing ‘true allegiance’ to herself and all her ‘heirs and successors, according to law’.
- [4] Yet one of them, her second son, is Prince Andrew. The very sight of whom, I’m guessing, makes most young people want to swear in a different way.
- [5] Then there’s Robert Halfon, chair of the Commons Education Select Committee, claiming that if schoolkids want to succeed they need to follow the example of James Dyson. That’s the vacuum cleaner tycoon who championed Vote Leave due to the economic opportunities it would bring British industry before moving his global head office to Singapore.
- [6] In other words, kids, talk the talk, then screw your country, and if anyone complains, tell them to suck it up. But what must really puzzle them now is why they need to be truthful. We teach them that honesty is the best policy and cheats never prosper, yet the man elected to the top job in the country is acknowledged by even his closest colleagues to be a liar and a cheat.
- [7] Treating the truth like a house guest with fleas hasn’t done the Prime Minister’s prospects any harm, has it? What must young people make of that?
- [8] What must they make of Britain spending the last couple of months in political paralysis over Downing Street’s refusal to admit it was Party Central when their parents will soon struggle to heat the house and Russia threatens war? All because Boris Johnson lacked the moral decency to be honest when Partygate surfaced.
- [9] There would have been no need for a drawn-out Sue Gray report or the drip-drip of leaks about illegal drinks in No10 if the people who made the rules we were all ordered to follow had owned up to breaking them and faced the consequences.
- [10] And as Johnson looks to ride out whatever damning conclusions are in that report and carry on as though nothing happened, what does that tell young people on the cusp of adult life?
- [11] Especially one who has a Tory MP, who, rather than call Johnson out for what he is, cheered him on as he brazened out his shame in the Commons.
- [12] Or a Tory MP who waits to see how the report’s conclusions play with their constituents before calculating the best course for themselves.

- [13] Then there's the country's top cop, whose skin has been repeatedly saved by the PM, refusing to investigate criminal allegations against him until a report about them is set to be released, then stepping in to effectively censor it.
- [14] Our revised advice to kids should be that cheats do prosper and honesty's not the best policy. Looking after No.1 is. But the next time you give a young person a lecture about decency don't be surprised if, like the people running the country, they laugh in your face."
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This transcript has been approved by the Judge.