Neutral Citation Number: [2024] EWHC 647 (KB)

Case No: KB-2023-000257

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2024

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

FRANK SINTON	**Claimant**
- and -	
(1) MAYBOURNE HOTELS LIMITED	**Defendants**
(2) MARC SOCKER	
(3) GIANLUCA MUZZI	
(4) FADY BAKHOS	
(5) MICHELE FAISSOLA	

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Adrienne Page KC and Alexandra Marzec and Felicity McMahon (instructed by **WP Tweed & Co.**) for the **Claimant**
Guy Vassall-Adams KC and Ian Helme and Aidan Wills (instructed by **Stephenson Harwood LLP**) for the **Defendants**

Hearing dates: 19th & 20th December 2023

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Approved Judgment

This judgment was handed down remotely at 10.00am on 21 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

1 The claimant, Frank Sinton, works as a project manager on major construction projects for luxury hotels. He brings a claim in libel, malicious falsehood and for breach of data protection law against a company and its directors. The corporate defendant is part of a group of companies involved in two large hotel construction projects. The claims for libel and malicious falsehood relate to publications following the defendants' decision in April 2022 to suspend his access to various sites at which he had been working. The defendants say that the suspension was necessary pending an investigation into allegations that he had behaved inappropriately towards other workers. Mr Sinton denies the allegations which he says were conveyed by the publications.

2 The defendants apply for summary judgment on the entirety of the libel and malicious falsehood claims pursuant to CPR 24.2 and 24.3, alternatively to strike out the claims as disclosing no reasonable grounds for bringing the claims pursuant to CPR 3.4(2)(a) and/or an abuse of process pursuant to CPR 3.4(2)(b). The truth or falsity of the underlying allegations is not among the issues to be determined on this application.

Key facts

3 The Maybourne Hotel Group ("**the MHG**") is a group of companies of which the ultimate beneficial owners are members of the Al Thani family of Qatar. One of these companies is the first defendant, Maybourne Hotels Ltd ("**MHL**"), which provides management and corporate services, including human resources services, to other companies in the MHG. Dilmon (UK) Services Ltd ("**Dilmon**") also supervises and provides advisory services to companies in the MHG. It is beneficially owned by the family office of His Highness Hamad bin Khalifa Al Thani, who was formerly the Emir of Qatar.

4 Two new hotels were being constructed on sites owned and/or operated by companies within the MHG: the Maybourne Riviera, near Nice, France ("**the Riviera site**"), which is owned by Société d'Exploitation et de Détention Hôtelière Vista ("**SEDHV**"); and the Emory Hotel in London ("**the Emory site**"), which at the relevant time was owned by Goldrange Properties Ltd ("**Goldrange**").

5 The construction work at these sites was managed by Hume Street Management Consultants Ltd ("**HSMC**"), an Irish company owned by the property developer Patrick McKillen, of which Mr McKillen and Liam Cunningham were directors. From March 2020, HSMC was also involved in managing three other MHG luxury hotels in London: Claridge's, the Connaught and the Berkeley.

6 HSMC engaged Frank Sinton and another individual, Ronnie Delany, as project managers for the Riviera and Emory sites. In the case of the Riviera site, Mr Sinton was engaged through a new French company, SOF Construction SAS ("**SOF**"), of which Mr Sinton was the director. Mr Sinton worked on the Riviera site from January 2020 and on both the Riviera and the Emory sites from early 2022.

7 The defendants say that, in early 2022, Marc Socker (a director of MHL and also Head of Real Estate at Dilmon) became aware of allegations that Mr Sinton, Mr Delany and

Mr McKillen had acted inappropriately towards staff at the Riviera and Emory sites. MHL's Board decided to appoint an external human resources specialist to investigate the allegations and, while the investigation was underway, suspended Mr Sinton's and Mr Delany's access to the Riviera and Emory sites and other MHG locations.

8 On 13 April 2022, Mr Socker and his colleagues on the MHL Board sent an email to Mr Cunningham and Annemarie Ryan (Mr McKillen's secretary), copied to Gianluca Muzzi, a fellow director and co-CEO of MHL. It contained as an attachment a letter on the MHG letterhead addressed to Mr McKillen in these terms:

> "Urgent Notice
>
> We are writing to inform you that we (and the relevant owning entities of the relevant hotels) have withdrawn any access rights that Frank Sinton and Ronnie Delany have to Berkeley Hotel, the Emory Hotel site, the Maybourne Rivera and the offices of Maybourne Hotels Limited (the **Sites**) whilst we look into a number of matters.
>
> We ask that you instruct them not to attend the Sites until further notice. We (and the relevant owning entities) have written to them directly to advise them of the same."

9 Similar letters were sent on the letterheads of MHG, Goldrange, SEDHV and the Berkeley Hotel to Messrs Sinton and Delany. On 12-13 April 2022, Mr Socker orally informed MHL's director of construction, Norman McKibbin (who was responsible for the Emory site) and the office manager at MHL's head office that Mr Sinton's access had been suspended. On 13 April 2022, he authorised Mr Bouquay, an employee of Dilmon, to inform the General Manager at the Riviera site that Mr Sinton's access to that site had been suspended. On 29 April 2022, Mr Socker sent an email to Jawad Sabir, MHL's Chief Information Officer, to instruct the general managers of Claridge's, the Connaught and the Berkeley Hotel to disable the building access cards for Mr Sinton (among others).

10 The investigation was undertaken by Sue Balcombe in May 2022. Ms Balcombe interviewed 25 people, not including Mr Sinton. She issued her confidential report on 1 June 2022, in which she set out evidence of misconduct by Messrs McKillen, Sinton and Delany.

11 Mr Sinton complains about four publications:

(a) publication to Mr McKillen, Mr Cunningham and Ms Ryan of the letter dated 13 April 2022;

(b) publication to Gilles de Boissieu (a director of SEDHV) of words said to bear the following defamatory meaning:

> "Frank Sinton is guilty of particularly serious reprehensible behaviour and, in view of the seriousness of his conduct and to protect all the people present at the Maybourne Riviera site, his access to the site should be suspended";

(c) publication to Nicolas Bouquay (an employee of Dilmon) of these words:

> "there is an investigation into Frank Sinton's conduct that was much more serious than people can think and there is a possibility that the authorities would be informed"; and

(d) publication to "unknown others" being management and security personnel at the sites from which Mr Sinton was excluded and management, receptionists and security staff at other MHG hotels, of the same words as in the letter of 13 April 2022, or words to similar effect, "in order to enforce the ban and obstruct his access".

12 Mr Sinton says that the words in the letter or words to the same effect must have been republished to "various other staff to enable staff to make all the arrangements necessary to enforce and police the ban and to replace [Mr Sinton] and Mr Delany on site". He pleads, in particular, that Jim Byrne (an independent consultant representing HSMC at the Riviera site), communicated information about Mr Sinton being banned from the site to about 30-40 employees on site, many of them British.

13 Mr Sinton pleads that the publications were malicious. In her skeleton argument for the present application, Adrienne Page KC for Mr Sinton summarises his case on malice as follows:

> "It is the Claimant's case that this action was taken against him by Ds in bad faith, without a belief in or indifferent to the truth of the defamatory imputations thereby conveyed and/or for the dominant improper motive of advancing the commercial interests of their principals, the Al Thanis. The latter had already embarked upon a number of extreme tactical measures against the party employing the Claimant, [HSMC], with whose owner, [Mr McKillen] and his business partner [Mr Cunningham], the Al Thanis were in very serious financial dispute. McKillen was also barred on 13 April 2022 from entering the same sites, literally days after he had been peremptorily thrown off D1's board by the Al Thanis."

The defendant's case on the summary judgment/strike-out applications

14 The defendants apply for summary judgment pursuant to CPR 24.2 and 24.3 in respect of the defamation claim on the basis that: (i) Mr Sinton has no real prospect of showing that publication of the letter caused or was likely to cause serious harm to his reputation; and (ii) the letter was published on an occasion of qualified privilege and Mr Sinton has no real prospect of establishing malice. The defendants apply for summary judgment in respect of the malicious falsehood claim, principally on the ground that Mr Sinton has no real prospect of establishing malice. The defendants also say that the continued pursuit of these claims amounts to an abuse of process of the kind identified in *Jameel v Dow Jones Inc.* [2005] EWCA Civ 75, [2005] QB 946 and should be struck out pursuant to CPR 3.4(2)(a) and/or (b).

15 Guy Vassall-Adams KC for the defendants identifies six issues:

(a) What is the extent of publication, republication and/or "*Slipper* damage" (if any) of each of the statements complained of that Mr Sinton has a real prospect of establishing at trial? (Issue 1)

(b) Does Mr Sinton have a real prospect of establishing that such publication has caused or is likely to cause him serious harm, within the meaning of section 1 of the Defamation Act 2013 ("DA 2013")? (Issue 2)

(c) Does Mr Sinton have a real prospect of establishing that such publication was not protected by qualified privilege? (Issue 3)

(d) Does Mr Sinton have a real prospect of establishing that the Ds (or any of them) were actuated by malice when making the publications? (Issue 4)

(e) Does Mr Sinton have a real prospect of establishing a cause of action in malicious falsehood in any event? (Issue 5)

(f) Is the claim an abuse of the Court's process? (Issue 6)

16 It is convenient to address these issues sequentially. First, however, it is necessary to set out the principles applicable on an application for summary judgment.

Summary judgment: the principles

17 The principles governing applications for summary judgment under CPR 24.3 have been stated on many occasions and are well known. One well-known source is *Easyair Ltd v Opal Telecom* [2009] EWHC 339 (Ch), [15] (Lewison J). This was approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098, [2010] Lloyd's Rep IR 301, [24]. A more recent summary can be found in *Amersi v Leslie* [2023] KB 1368 (KB), [142]:

> "(1) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success… The criterion is not one of probability; it is absence of reality.
>
> (2) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.
>
> (3) In reaching its conclusion the court must not conduct a 'mini-trial'. This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents…
>
> (4) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial…

> (5) Nevertheless, to satisfy the requirement that further evidence 'can reasonably be expected' to be available at trial, there needs to be some reason for expecting that evidence in support of the relevant case will, or at least reasonably might, be available at trial. It is not enough simply to argue that the case should be allowed to go to trial because something may 'turn up'. A party resisting an application for summary judgment must put forward sufficient evidence to satisfy the court that s/he has a real prospect of succeeding at trial (especially if that evidence is, or can be expected to be, already within his/her possession). If the party wishes to rely on the likelihood that further evidence will be available at that stage, s/he must substantiate that assertion by describing, at least in general terms, the nature of the evidence, its source and its relevance to the issues before the court. The court may then be able to see that there is some substance in the point and that the party in question is not simply playing for time in the hope that something will turn up. Fundamentally, the question is whether there are reasonable grounds for believing that disclosure may materially add to or alter the evidence relevant to whether the claim has a real prospect of success.
>
> (6) Lord Briggs explained the nature of the dilemma in *Lungowe v Vedanta Resources plc* [2020] AC 1045 [45]:
>
> '…On the one hand, the claimant cannot simply say, like Mr Micawber, that some gaping hole in its case may be remedied by something which may turn up on disclosure. The claimant must demonstrate that it has a case which is unsuitable to be determined adversely to it without a trial. On the other, the court cannot ignore reasonable grounds which may be disclosed at the summary judgment stage for believing that a fuller investigation of the facts may add to or alter the evidence relevant to the issue…'
>
> (7) The Court may, after taking into account the possibility of further evidence being available at trial, and without conducting a 'mini-trial', still evaluate the evidence before it and, in an appropriate case, conclude that it should 'draw a line' and bring an end to the action."

Issue (1): Publication

Submissions for the defendants

18 Mr Vassall-Adams submits that the letter and words to the same effect were published to a small number of people within MHG or associated companies and to three people at HSMC. Insofar as it is pleaded that the words were published to a large number of others, this is speculative and contrary to the defendants clear evidence. As to the publications to Messrs de Boissieu and Bouquay, there is positive evidence from both the alleged publishers and the alleged publishees that these publications did not take place and nothing to contradict this evidence. As to republication, there is no sound evidential basis

on which the court could conclude (whether by way of inference or otherwise) that persons to whom one or more defendants published the letter (or words to the same effect) republished those words at all, let alone to a large number of people. Mr Byrne did tell a large number of people that Mr Sinton had been banned from the Riviera and Emory sites, but he found out about the ban from Mr Delany and the publication was not by or on the authority of the defendants.

Submissions for the claimant

19 Ms Page responds that the extent of publication will depend on the evidence at trial. Mr Socker's statement provides no detail on what was said to Jawad Sabir, who was tasked with instructing staff at MHG's various sites to disable Mr Sinton's access. The Particulars of Claim allege that the defendants sent communications in the same or similar form as the letter to "a large (but presently unquantifiable) number of other people" and it is accepted that Mr Sinton managed hundreds of workers and sub-contractors and attended frequent meetings at MHL's offices in Knightsbridge. At trial, the court will have to consider whether any republications by HSMC were intended and authorised. There is a real prospect the court will conclude that they were, because the defamatory publication to HSMC authorised republication to whoever needed to know of Mr Sinton's suspension and HSMC had not at that stage been relieved of their obligation to continue construction work. There is evidence that the defendants knew very well that their letter would have serious implications for Mr Sinton's reputation, in the form of a message sent by Mr Socker on WhatsApp: "Wait for the fireworks". Mr de Boissieu's statement is silent about what he was told by the defendants. There is a dispute of fact about what Mr Bouquay was told.

Discussion

20 A defendant may be liable as primary tortfeasor for republication of a statement by a third party if he (a) intends or (b) authorises its republication: *Gubarev v Orbis Business Intelligence Ltd* [2021] EMLR 5, [105]-[106]. Reasonable foreseeability that the statement will be republished is not enough; there must be "knowing or deliberate action" by the defendant: ibid, [108]. Separately, a defendant may be liable for "*Slipper* damages" if republication is the "natural and probable consequence" of primary publication: *Slipper v BBC* [1991] 1 QB 283.

21 On this issue, it is important to be clear about the case pleaded by the claimant. The publication to Mr McKillen, Mr Cunningham and Ms Ryan was of the letter dated 13 April 2022. Publication to the "unknown others" was of the same words or words to similar effect. The question of whether these publications were authorised by the defendants is, in my view, one which could only be decided at trial. For present purposes I accept Ms Page's submission that there is a real prospect of Mr Sinton establishing that, in publishing the letter to HSMC, the defendants authorised republication to others who needed to know of Mr Sinton's suspension. If so, he will have made out a case for primary liability and will not need to rely on *Slipper* damage.

22 The publications to Mr de Boissieu and Mr Bouquay, however, are in a different category. As to the former, the only evidence of publication by the defendants is a letter from Mr de Boissieu to the claimant dated 21 April 2022 written in French in these terms:

> « Nous avons été contraints de prendre cette décision a votre encontre après que plusieurs personnes nous ont fait remonter des comportements repréhensibles particulièrement graves de votre part.
>
> Au regard de la gravité des faits allégués, et de la nécessite de protéger l'ensemble des personnes présentes sur le site, nous n'avons d'autre choix que de suspendre l'accès de Monsieur Frank Sinton au chantier le temps de procéder aux mesures d'investigations nécessaires. »

23 There is a dispute about the correct translation of this letter, but it can be taken that the "comportements repréhensibles particulièrement graves" attributed to Mr Sinton means something along the lines of "particularly serious misconduct". However, what is clear is that the letter was not saying that Mr Sinton was guilty of such misconduct. The letter says only that "several people have reported to us" ("plusieurs personnes nous ont fait remonter") particularly serious reprehensible behaviour. The words could not have meant that Mr Sinton was guilty of such behaviour, because if his guilt had already been established, there would be no need for an investigation. A meaning that Mr Sinton's guilt had already been established would also be inconsistent with the use of the phrase "the seriousness of the alleged facts" ("la gravité des faits allégués").

24 Mr Sinton is not suing in respect of the letter (which was sent to Mr Sinton himself). The significance of the letter is that it is said to be evidence of a publication made by or on behalf of the defendants to Mr de Boissieu. Mr Sinton is not able to plead in what form this publication took place. The difficulty with Mr Sinton's case is that it is for him to prove that the alleged publication took place, in the face of clear evidence from the second to fifth defendants that it did not.

25 There is no evidence that there was any written publication by the defendants of these words – or indeed of any words, beyond those in the letter of 13 April 2022. On this issue, disclosure was ordered by Master Brown, and has been provided by the defendants. So, it is difficult to see how Mr Sinton would be able to establish any written publication by the defendants at trial.

26 It is possible in theory that the publication alleged was made orally, but again Mr Sinton bears the burden of proving both that it was made and in what terms. If the only plausible way Mr de Boissieu could have learned of the information contained in his letter of 21 April 2022 was from the defendants, the contents of that letter might supply an inferential basis for concluding that the defendants had made the publication alleged. But by the time Mr de Boissieu sent his letter news of the decision to suspend access for Messrs McKillen, Delany and Sinton had been circulating at the sites for some time.

27 In the circumstances, the letter from Mr de Boissieu provides no secure basis for the inference that the publication was made, contrary to the clear evidence of the defendants. The fact that Mr de Boissieu's statement does not say in terms how he came by the information in the letter of 21 April 2022 does not assist Mr Sinton, given that he bears the burden of proof. On the evidence before me (and following disclosure on this issue), Mr Sinton has no real prospect of showing that the publication alleged at para. 15 of the Particulars of Claim to Mr de Boissieu took place.

28 The position in relation to the alleged publication to Mr Bouquay is similar. It is denied by the second to fifth defendants. After disclosure, there is no documentary evidence of any written publication. The only basis for the averment that there was a publication to Mr Bouquay comes from the witness statement of Mr Byrne, who describes a conversation with Mr Bouquay on 22 April 2022. There is a dispute on the evidence about whether Mr Bouquay said what he is alleged to have said. It is not possible to resolve this dispute on the papers. But, even assuming for present purposes that Mr Byrne is right about this, it would not assist in establishing that the information he conveyed came from the defendants. Mr Bouquay's evidence is that Mr Socker told him about Ms Bressi's allegations, so he would have been able to form his own view about their seriousness. Mr Byrne's own evidence is that, before the date of the alleged conversation with Mr Bouquay, "[w]ord spread fast about Frank [Sinton] on site". In short, there is no secure evidential basis for the allegation, and therefore no real prospect that Mr Sinton will establish, that the alleged publication to Mr Bouquay took place.

Issue (2): Serious harm/defamatory impact

Submissions for the defendants

29 Mr Vassall-Adams notes that, by s. 1 of the Defamation Act 2013, Mr Sinton must show that the publications complained of have caused or are likely to cause serious harm to his reputation. This can be established by "a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated": *Lachaux v Independent Print Ltd* [2019] UKSC 27, [2020] AC 612, [14] (Lord Sumption). In cases of publication to a limited group, it is unlikely that a claimant will be able to discharge the burden of showing serious harm by inference from the words themselves, whether at the summary judgment stage or at the trial stage: *Amersi v Leslie* [2023] EWHC 1368 (KB), [158]; see also *Sivananthan v Vasikaran* [2022] EWHC 837 (KB), [54]. There may be insuperable problems in demonstrating causation where a claimant has himself circulated a publication: *Amersi v Leslie* [2023] EWCA Civ 1468, [41]. In considering whether serious harm to reputation has been caused, any harm caused by publications that have been held to be lawful must be ignored: *Banks v Cadwalladr* [2023] KB 524, [41].

30 Mr Sinton has given evidence about the harm suffered "as a result of being banned from site", but this is nothing to the point. The question is not whether he suffered serious harm to his reputation as a result of being banned from the defendant's sites, but whether he suffered such harm as a result of the publications alleged. As to that, he has adduced no evidence that any publishee read or heard the words complained of and thought less of him. The highest the matter is put in the evidence adduced on Mr Sinton's behalf is the evidence of Messrs Byrne, Pena and Magill that they temporarily had doubts about him after becoming aware that he had been banned from the sites. But Mr Byrne learned of the decision to remove his access to the sites from Mr Delany, Mr Pena from three contractors (who had presumably been informed by Mr Sinton himself or by Mr Byrne) and Mr Magill cannot say how he learned of it.

Submissions for the claimant

31 Ms Page submits that the original statement complained of percolated quickly. It was republished to others who needed to know that Mr Sinton would not be on site (including

chairing the daily site meetings). There was also gossip, which was the natural and foreseeable consequence of the original publication. The evidence of Messrs Sinton, Byrne, Pena and Magill is that it is highly unusual for anyone to be banned from one site, let alone multiple sites. As such the barring will constitute a stain on his reputation. Mr Pena said that he had not immediately agreed to work on a project with Mr Sinton and needed "more of a moral guarantee from him".

Discussion

32 In my judgment, while some of Mr Vassall-Adams' points have force, it cannot be said that Mr Sinton has no real prospect of showing that the letter of 13 April 2022 or republications of it caused serious harm to his reputation. There is evidence that barring a senior individual such as Mr Sinton from multiple sites was highly unusual and that those who heard of it considered that it gave rise to a question mark over his reputation, at least. Whether the harm to his reputation was serious enough to surmount the statutory test is an issue better left for determination at trial. There is a live question as to whether *Slipper* damage can be taken into account when assessing whether a publication has caused serious harm to reputation, but on the law as it currently stands it is arguable that it can: see Warby LJ's judgment in the Court of Appeal in *Amersi*, at [63]. If so, Mr Sinton may be able to rely on the damage caused by the percolation of the statements communicated by letter, even if that percolation took place through the medium of republication by persons other than the defendant.

33 It follows that I would not grant summary judgment on the issue of serious harm alone.

Grounds 3 and 4: Qualified privilege and malice

Submissions for the defendants

34 Mr Vassall-Adams notes that, in most situations in which qualified privilege applies, the interests protected are business interests: *Gatley on Libel and Slander* (13th ed, 2022), §15-011. He relies on the analysis of Sharp J (as she then was) in *Bowker (t/a Lagopus Services) v Royal Society for the Protection of Birds* [2011] EWHC 737, [123]-[127]. The question is whether the communication is of such a nature that it could fairly be said that the maker had an interest in making such a communication, and those to whom it was made had a corresponding interest in receiving it: ibid, [126], citing Lord Esher MR in *Hunt v Great Northern Railway Co.* [1891] 2 QB 189, 191. The privilege attaches more readily where the publisher and publishee are in an existing and established relationship: ibid., [127], citing *Kearns v General Council of the Bar* [2003] EWCA Civ 331, [2003] 1 WLR 1357, [30] & [39]. Where a publication is made on a privileged occasion, the privilege extends to others whose participation is reasonably necessary to carry the privileged purpose into effect (such as secretaries or administrators): *David v Hosany* [2017] EWHC 2787, [4].

35 Mr Vassall-Adams submits that it is plain that the publication of the letter took place on an occasion of qualified privilege. The letter was sent on a confidential basis only to those with whom the defendants were in a pre-existing relationship. The defendants intended that the content would be republished only to those involved in the management of the sites and responsible for the safety and welfare of staff, who had an obvious interest in receiving the information. In any event, it is not necessary for each instance of

republication to be privileged for the defence of qualified privilege to succeed: see *Gatley*, §7-058.

36 Malice has the same meaning whether it is considered as part of the response to the qualified privilege defence in libel, or as an element of the tort of malicious falsehood. An assertion of malice is tantamount to fraud or dishonesty and must be pleaded with scrupulous care and specificity: *Henderson v London Borough of Hackney* [2010] EWHC 1651 (QB), [40]; see also *Sube v News Group Newspapers* [2018] EWHC 1234, [75] ("Speculative accusations of corporate dishonesty based on fuzzy generalities are not more acceptable in this context than they would be in a criminal court"). Thus, "[e]ach of the particulars relied upon by the Claimant is required to be indicative of this dishonest state of mind" and each must be "more consistent with the existence (of malice) than with its non-existence": *Huda v Wells* [2017] EWHC 2553 (QB), [73]. The state of mind required is knowledge that the statement was false or recklessness as to whether it was false or publication with the dominant intention of injuring the claimant, though there is no known recent case of "dominant intention" malice: ibid, [71].

37 Where several defendants are alleged to have acted with malice, the claimant must establish malice against each of them individually: *Egger v Chelmsford* [1965] 1 QB 248, 265. Since the test for malice is subjective, knowledge of falsity must be assessed by reference to the meaning the defendant intended to convey: *Cruddas v Culvert* [2015] EWCA Civ 171, [2015] EMLR 16, [111] (Hirst LJ). The court should not allow the defence of qualified privilege to be circumvented by "inflating the words complained of into something far beyond their obvious meaning and then saying that the defendant cannot have believed this to be true": *Halford v Chief Constable of Hampshire Constabulary* [2003] EWCA Civ 102, [64] (Sedley LJ).

38 The pleading of the claimant's case on malice is inadequate. The pleading is based solely on the claimant's own pleaded meanings. In any event, the matters relied on as supporting the inference of malice are not "more consistent with the existence of malice than with its non-existence" (see *Huda*). The "dominant improper motive" plea is not directed at the claimant. Moreover, the evidence fails to meet the required standard for the claim to go forward to trial.

Submissions for the claimant

39 Ms Page submits that it is not possible for the court to determine on a summary basis whether the defence of qualified privilege will succeed without knowing, in respect of each publication, to whom and in what circumstances the words were published. Whether any occasion of publication is privileged depends on a fact-sensitive assessment of the relationship between publisher and publishee and the surrounding circumstances. Here, the defendants only plead qualified privilege in relation to the publication to HSMC (including Messrs McKillen and Cunningham and Ms Ryan). Even on the defendants' own evidence, the letter was published to four additional individuals. And that is before one considers the wider republications for which Mr Sinton pleads the defendants were responsible.

40 In any event, Ms Page submits that there is a triable, pleaded allegation of malice, which cannot be said to have no real prospect of success. As to that, it is important to take account of the factual background to the decision to bar Mr Sinton. The evidence of Mr Cunningham shows that there are at least four commercial disputes between Mr McKillen

and his company HSMC on one side and entities owned by the Al Thani family on the other. All of these were connected with the ownership, management and/or construction of the Maybourne hotels. These disputes are potentially worth billions. At least two of these disputes began in late March/early April 2022. Although the claimant is not himself a party to these disputes, the defendants are. One of these disputes is pleaded in the particulars of malice (see Particulars of Claim, para. 27(j)), but the defendants have declined to plead to it in their defence (see Defence, para. 40(k)(i)). The defendants have also declined to provide answers to requests for further information, including as to the information said to have been received by the defendants about the claimant in March 2022.

41 Following Mr McKillen's and Mr Cunningham's removal from the Board of MHL on 1 April 2022, Mr Socker acknowledged to Mr Cunningham that the relationship between Mr McKillen and the Al Thanis had deteriorated. Accordingly, by late April 2022, the defendants knew very well that Mr McKillen had fallen out of favour with their ultimate bosses and that they were seeking to replace him and his people. Against this background, it is not surprising that Mr Socker and/or the Board of MHL decided to ban two of Mr McKillen's key project managers.

42 As to the case that there was a dominant improper motive in publishing the allegations (namely, to shore up their principals' position in the dispute between the Al Thanis and Mr McKillen), it is to be noted that Mr Socker in his witness statements has not addressed his position and role within Dilmon or how this interacted with his role as director and joint CEO of MHL, the circumstances of and reasons for the removal of Messrs McKillen and Cunningham from the Board of MHL, the circumstances of and reasons for his and Mr Muzzi's appointment as joint CEOs of MHL or the decision-making process leading to the decision to bar Messrs Sinton, Delany and McKillen from the sites and publish the allegations against them.

43 There is a complete absence of contemporaneous documents supporting the making of allegations against Mr Sinton so serious that he needed to be barred from the sites with immediate effect. There is no written record of the "preliminary investigations" pleaded at para. 12 of the Defence. All that has been produced are three email communications between the main players, all of which may be shown to be self-serving.

44 The email dated 21 March 2022 from Mr Bouquay to Mr Socker refers to "bullying behaviours from Paddy McKillen", but says nothing about any allegations about Mr Sinton. Although Messrs Socker and Bouquay say that the latter became aware of allegations against Mr Sinton through attendance at the Maybourne site, there is no written record of these supposedly troubling communications between January and April 2022 and no details are given of who they came from. Mr Bouquay's evidence to Sue Balcombe was confined to things said to him by Sally Lloyd, but none of this was substantiated by her in her evidence to Ms Balcombe. Only one individual from the Riviera site was mentioned in Ms Balcombe's report as having given evidence to her, Boris Messmer, and he had no complaints about Mr Sinton.

45 On 22 March 2022, Mr Socker forwarded an email sent by Mr Bouquay to him. But this looks suspect, because there is no disclosed notes of Mr Bouquay's conversations with Sally Lloyd and the Balcombe Report does not record her saying any of the things now attributed to her. Mr Socker was not interviewed by Ms Balcombe. In his third witness statement, for the first time, he says that he was made aware by a number of Maybourne

employees and external consultants that there was a pattern of bullying behaviour and intimidation at the company. But the names of those who made him aware of this have not been produced.

46 The third email dated 6 April 2022 is from Mr Socker to Mr Muzzi (his joint CEO). This is the first document in which Mr Sinton is named, but again it refers to allegations by unidentified individuals. There are no notes of any conversation between Mr Socker and the one complainant he claims to have spoken to (Eleanora Bressi), nor does he appear to have asked her to put down her allegations in an email. This is troubling, given that she is the only source of the allegations against Mr Sinton.

47 Thus, Ms Page submits:

> "It defies belief that Socker, if he had been acting in good faith, could have come to the conclusion that urgent action needed to be taken to safeguard employees against Sinton at all Maybourne sites and offices on the basis of his un-minuted conversations with one person Sinton had worked with, without even asking Sinton about her complaint or any of the hundreds of other people working with him at the Maybourne Riviera and Emory sites."

48 Ms Page also makes reference to a WhatsApp exchange between Messrs Socker and Bouquay on 13 April 2022, when the letters complained of were sent out, in these terms:

> "Socker: "Letters gone out by the way … Wait for the fireworks
>
> Bouquay: Thanks. Have locked my door. Maybe I should also sneak in another room or sleep in bathtub
>
> Socker: Ha ha"

Discussion

49 The first question is whether the publications Mr Sinton can prove were all made on occasions of qualified privilege. In my judgment, the answer is "Yes": there is no real prospect that the defendants will be unable to establish their qualified privilege defence in relation to the publication of the letter or the republication of the same or similar words.

50 The letter was sent on a confidential basis to a small number of individuals with whom the defendants were in a pre-existing business relationship. The claimant's pleaded meaning of the letter was that "there were strong grounds to suspect the Claimant of such serious misconduct in the performance of his duties that it was urgently necessary to bar his access to multiple MHL sites for the protection of those staff working at those sites" (see Particulars of Claim, para. 12). The defendants dispute this meaning and plead that the letter meant "that there were grounds to investigate whether the Claimant had engaged in improper conduct in connection with his work which justified suspending the Claimant's access to various sites whilst an investigation was carried out" (Defence, para. 22). The choice between these meanings is not among the issues for determination today, but the difference seems to me to be relatively slight; and I am prepared to assume for the purposes of the application that Mr Sinton's pleaded meaning is the true meaning.

51 If the letter meant what Mr Sinton says it meant, that can only be because any decision to suspend his access to the site pending an investigation necessarily implied that there were serious grounds to suspect him of serious misconduct. If so, there was no way of communicating the fact of his suspension without also communicating that there were serious grounds to suspect him of serious misconduct. It must follow that the communication of these or equivalent words was necessary to inform those who needed to know of the decision that Mr Sinton's access to the sites had been withdrawn. There is no serious dispute that the letter was sent only to a small group of individuals whose positions made it necessary to know about the decision to suspend his access.

52 Assuming for the moment that that decision was taken in good faith (an assumption which I shall have to consider when assessing the claimant's case on malice), there was no point in taking the decision if it could not be communicated. It needed to be communicated, at least, to those responsible for managing access to the relevant sites and to those who had been working with Mr Sinton on a daily basis up until that point. Those who received the communication had a corresponding interest in receiving the information communicated.

53 Ms Page's complaint that there is no plea of qualified privilege in relation to the republications of the content of the letter is, in my judgment, based on a misconception as to the law. As *Gatley* confirms at §7-058, the protection of the defence of qualified privilege extends to republication of a privileged communication, even if the republication takes place on an occasion which does not attract privilege, unless the original publisher directs or intends the statement to be republished in a manner which exceeds the protection of the privilege. Here, the terms in which the claimant pleads the case on republication seem to me to show that no such intention is alleged or can properly be inferred. At para. 14 of the Particulars of Claim, the claimant pleads as follows:

> "As a matter of course, management at the sites would have had to republish the words or words to the same effect to various other staff to enable staff to make all the arrangements necessary to enforce and police the ban and to replace the Claimant and Mr Delany on site. The Claimant is aware that Jim Byrne, an independent consultant representing HSMC at the Maybourne Riviera site, communicated information (in a manner unknown to the Claimant) as to the Claimant being banned from the Maybourne Riviera site to about 30 to 40 employees on site, many of them British" (emphasis added).

54 In other words, republishing the content of the letter was, on the claimant's case, something the site management were obliged to do in order to enforce and police the ban; and those to whom the content was published had a corresponding interest in receiving the information conveyed. This is confirmed by para. 24(b) of the Particulars of Claim, where the claimant explains that he himself was obliged to inform a number of sub-contractors at the sites where he had worked. The obligation pleaded arose, presumably, because those who had been working with the claimant needed to know that (and in broad terms why) he would no longer be working on site with them. See also paras 7(a) and (b) of the claimant's response to the defendant's request for further information, where the claimant says that he felt "obligated" to tell people in part out of "a sense of professional duty". This is also consistent with the claimant's evidence for this application. At para. 36 of his witness statement, Mr Sinton says: "I had to tell certain people connected with

the Riviera site about the ban, but I made sure to keep it as high level as possible". Mr Byrne's evidence at paras 10-17 of his witness statement is materially to the same effect.

55 As to malice, the evidence now before the court includes the witness statement of Mr Socker, who has explained that, by the time when the Board decided to suspend Mr Sinton's access, he had had two meetings with Eleanora Bressi, who had told him directly that: (i) Messrs Sinton, McKillen and Delany frequently shouted and screamed at employees and contractors; (ii) Messrs Sinton and Delany had subjected Ms Bressi to verbal abuse and bullying; (iii) Messrs Sinton, McKillen and Delany referred to her as a "Spanish cunt"; and (iv) Messrs Sinton and Delany were rushing to complete the Emory Hotel project and were instructing the teams working under them to cut corners, not to test certain items as required and to do things which were contrary to health and safety best practices and planning permissions. (These allegations are all denied by Mr Sinton.)

56 The fact that Mr Socker did not make a record of what Ms Bressi said at these meetings is, in my judgment, of less significance than Ms Page suggests. There is no evidence to contradict what Mr Socker says; and the findings of Ms Balcolmbe provide independent evidence that Ms Bressi had said similar things to other people. This is not a case where there is a conflict of evidence. All the evidence points one way. Unless there is something to show that the evidence is fabricated, the claimant has no real prospect of gainsaying it.

57 The basis for Mr Sinton's case that the evidence is fabricated is set out in particulars of malice in para. 27 of the Particulars of Claim. I have considered these particulars in turn:

(a) Para. 27(a) is a general assertion that the second to fifth defendants knew that the imputations were false, or did not care whether they were true or false. The general assertion is based on the particulars in the following sub-paragraphs.

(b) Para. 27(b) relies on a letter sent by the defendants' solicitors on 31 August 2022, which is said to acknowledge that the claimant was innocent and therefore to show that the defendants knew him to be so when they sent the letter. I have read the letter of 31 August 2022 carefully and can find nothing in it which could reasonably bear that meaning.

(c) Para. 27(c) relies on the fact that at no point either before or after the decision to suspend Messrs Sinton and Delany's access to the sites did the defendants inform Mr Sinton of any alleged misconduct against him. This is very far from the kind of matter which is "more consistent with the existence (of malice) than with its non-existence". Mr Sinton was not an employee of the defendants. There is nothing on the face of the claimant's pleadings to suggest that the defendants had any contractual obligation to inform Mr Sinton of the allegations, or seek representations from him, before suspending his access. But even if they did, the failure to do so would show nothing more than a breach of contract. Even in the employment context, procedurally unfair terminations are by no means unusual. Such unfairness would come nowhere close to establishing that the statements are more likely than not to have been made knowing of their falsity, indifferent as to their truth or with the dominant intention of injuring Mr Sinton.

(d) Para. 27(d) complains that the letter of 31 August 2022 shows that the defendants did not carry out an investigation into Mr Sinton's conduct prior to publication of

the letter. The difficulty with this is that the defendants did not say that they had carried out an investigation into Mr Sinton's conduct before publishing the letter on 13 April 2022. It said that they were suspending his access to the site while they carried out such an investigation. The planned investigation was something that was to happen in the future. Mr Sinton's access to the site was to be suspended pending the conclusion of that investigation. The meetings with Ms Bressi prior to the decision to suspend Mr Sinton's access were not themselves an "investigation". The fact that there is no note of those meetings may be evidence of poor practice on Mr Socker's part; it does not provide a basis for doubting that the meetings took place, or that Ms Bressi said what Mr Socker says she said. In any event, the defendant's evidence, and Ms Balcombe's report, shows that the planned investigation did take place and that report provides independent evidence that Ms Bressi had made to others the allegations Mr Socker says she made to him. Although the report was not in existence at the time of the decision to suspend Mr Sinton's access, that does not make it evidentially irrelevant. It is relevant because it casts light on what Ms Bressi had been saying to others prior to the decision.

(e) Para. 27(e) seeks to draw inferences from differences in wording between things said by the London solicitors instructed by the first and second defendants (who said that the investigation had been into a number of allegations of misconduct on the part of, amongst others, Mr Sinton) and the Irish solicitors (who on 16 December 2022 denied that the investigation had been "into" Mr Sinton). A small difference in emphasis between the way in which points are put by solicitors after the event does not begin to establish a proper basis for alleging malice. In any event, the best evidence of how the investigation came to be commissioned comes from Ms Balcombe herself, who has worked as a human resources professional, in-house and as a consultant, for over thirty years. She confirms that she was contacted on 22 April 2022 and asked to conduct an investigation "into allegations about Maybourne's culture, the conduct of individuals working for the company and how it had been run in recent years". There is no basis whatsoever for doubting the honesty or reliability of her evidence.

(f) Para. 27(f) relies again on the alleged inconsistency between what was said by the London and Irish solicitors as a basis for inferring that the investigation referred to in the letter was "a made-up event". It is unclear what this means. Ms Balcombe's evidence establishes that the investigation was commissioned on 22 April 2022. Ms Balcombe's report shows that the investigation was not a "made-up event". It took place, according to the procedure outlined in the report; and (rightly or wrongly) Ms Balcombe reached the conclusions she sets out.

(g) Paras 27(f) and (g) rely on the unlikeliness of the coincidence that the defendants received allegations against both Mr Sinton and Mr Delany at precisely the same time. It is said to be more probable that the allegations were "cooked up" in order to justify Mr Sinton's and Mr Delany's removal from the site. To my mind, it is not at all surprising that the defendants decided at one point in time to investigate allegations of a "toxic culture" involving misconduct on the part of more than one individual. Inappropriate behaviour is often enabled by a poor workplace culture. The fact that allegations against Mr Sinton and Mr Delany emerged at roughly the same time provides nothing close to an adequate basis for a pleaded allegation that the investigation was "cooked up". In any event, there is now very good evidence

in the form of Ms Balcombe's report that the allegations were not "cooked up". For example, Ms Balcombe recorded evidence from one interviewee that the build team (which included Mr Sinton) referred to Ms Bressi as "the Spanish cunt" (para. 3.1.7). Separately, an external consultant, Inge Theron, said that Mr Sinton and Mr Delany had been "effing and blinding and telling her what to do" and that Ms Bressi had broken down in tears and told her that she was constantly screamed and shouted at and told to "go back to Mummy" when she challenged them (para. 3.4.1). If the allegations had been "cooked up", that presumably would have involved a wide-ranging conspiracy to which Ms Theron and Ms Bressi were party. But there was no allegation of dishonesty against either of them; and no evidential basis for one.

(h) Para. 27(h) invites the inference that, by the time of publication, either (i) the defendants had not been made aware of any allegations that could potentially justify the decision to suspend Mr Sinton's access to the sites or (ii) they were aware of such allegations but chose not to ask Mr Sinton about them, or investigate them, because they did not care if such allegations were true or false. There is no proper evidential basis for either inference. The defendant's evidence is that Mr Socker spoke directly to Ms Bressi. This is consistent with what is said in Ms Balcombe's report (albeit reported second hand via Ms Theron). The matters set out in Ms Balcombe's report provide strong evidence that there was at least a basis for thinking that Mr Sinton had referred to Ms Bressi in a highly derogatory and unpleasant way (causing her significant distress) and had shouted and sworn at Ms Theron.

(i) Para. 27(i) a general assertion that the letter and other publications were made with the dominant improper motive or motives. The particulars are set out in the following sub-paragraphs.

(j) Para. 27(j) pleads the existence of a commercial dispute between the Al Thanis and Mr McKillen. As Ms Page noted, the defendants have chosen not to plead to this. I have therefore proceeded on the basis that it is true. But, if the existence of allegations of improper conduct is established, the fact that there was at the same time a commercial dispute between the Al Thanis and Mr McKillen does not establish that the decision to suspend Mr Sinton's access to the sites was taken for a dominant improper motive. Mr Cunningham's evidence takes matters little further. It establishes that the decision to suspend Messrs McKillen, Sinton and Delany's access to the sites was close in time to the removal of Mr McKillen from MHL's Board. But the defendants do not say that the deterioration of the business relationship and the development of a toxic working culture were wholly independent. Indeed, Mr Socker positively avers that they were related. If the allegations Mr Socker says were made to him were in fact made, they justified an investigation; and the fact that the investigation took place against the background of a deteriorating business relationship between Mr McKillen and MHL would not assist in establishing a dominant improper purpose.

(k) Para. 27(k) invites the inference that "the decision to ban the Claimant and Mr Delany from the sites was part and parcel of a strategy to remove Mr McKillen's people from the Maybourne sites, to shore up the Al Thanis' negotiating position and as a marker that the business relationship had gone sour". For the reasons set out under sub-paragraph (j) above, I do not consider that there is any adequate evidential foundation for this inference.

(l) Para. 28(l) points out that the defendants have not sought to respond to the improper motive case "except for a bare denial made by the first and second defendants". But, if the case is false, it is difficult to see what more they could say about it, beyond a "bare denial".

58 For these reasons, this is a case in which Mr Sinton has no proper evidential basis, and therefore no real prospect, of establishing that the publications, all of which were clearly made (if they were made at all) on occasions of qualified privilege, were made (i) knowing that they were false; (ii) reckless as to whether they were false; or (iii) with the dominant motive of injuring Mr Sinton.

59 This means that the claims for defamation have no real prospect of success.

Ground (5): Malicious falsehood

Submissions for the defendants

60 Mr Vassall-Adams submits that the claimant must, but cannot, establish the falsity of the statements. For the purposes of the tort of malicious falsehood, the single meaning rule does not apply. What matters is the subjective understanding of the individual publishes: *Peck v Williams Trade Supplies Ltd* [2020] EWHC 966, at [13]. There is no evidence of this subjective intention. In any event, the claim fails because there is no real prospect of proving malice, which has the same meaning as in the tort of defamation. There are also no pleaded facts on which it can be said that damage flowed from the falsity of the statements.

Submissions for the claimant

61 Ms Page submits that Mr Sinton has an arguable case that the statements, given their pleaded meaning, were false. He also has an arguable case on malice, which is identical to the case deployed to defeat the qualified privilege defence to the defamation claims. Ms Page notes that there is no serious harm threshold in the tort of malicious falsehood, but that if that threshold is surmounted then the position in relation to malicious falsehood is *a fortiori*.

Discussion

62 In my judgment, the defendants are entitled to summary judgment on the malicious falsehood claim because Mr Sinton has no real prospect of establishing malice, for the reasons set out at paras 55-57 above. It is not, therefore, necessary to consider the other bases for summary judgment in respect of the malicious falsehood claim.

Issue 6: Abuse of process

63 In the light of my conclusions on the other issues, it is not necessary to address in detail the contention that the claim should be struck out as an abuse of process under CPR 3.4(2). However, I do not consider that the evidence enables me to draw any firm conclusion that the claim is being funded by Mr McKillen, let alone that it is actuated by an improper motive on Mr McKillen's or Mr Sinton's part.

Conclusion

64 For these reasons, I grant summary judgment to the defendants on the defamation and malicious falsehood claims. I shall invite further submissions on any appropriate directions for the resolution of the data protection claim, including as to whether it should be transferred to the county court.