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Case No: HQ 17 M 03785

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 28 June 2018

Before:

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between:

STEVE MORGAN CBE **Claimant**

- and –

ASSOCIATED NEWSPAPERS LIMITED **Defendant**

- -
- -

MR JUSTIN RUSHBROOKE QC and MISS FELICITY MAHON (instructed by Himsworths) for the **Claimant.**
MS CATRIN EVANS QC and MS SARAH PALIN (instructed by Wiggin) for the **Defendant**

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Approved Judgment

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MR JUSTICE NICKLIN:

1. This is a claim for libel brought by Steve Morgan CBE against Associated Newspapers Limited, the publishers of the Daily Mail, over an article that appeared in the print edition (and with some minor differences also online) on 24 August 2017.

2. This judgment deals with my ruling on two issues: (1) the meaning of the article; and (2) whether any defamatory imputations conveyed by it are allegations of fact or expressions of opinion. I directed that these two issues be determined as preliminary issues by my order of 19 June 2018. The claimant had issued an application notice dated 18 May 2018 seeking the trial of these issues, together with some further applications that I am not going to be determining at this hearing.

3. The headline of the article was "Building tycoons using staff discounts to snap up homes meant for families".

4. The text of the article was as follows (with paragraph numbers added in square brackets):

> # Building tycoons using staff discounts to snap up homes meant for families
>
> [1] Bosses at some of Britain's biggest building firms are using company perks to buy cut-price properties at their own developments.
>
> [2] Multi-millionaire chief executives have saved tens of thousands by taking advantage of staff or shareholders' schemes to build up property empires.
>
> [3] Many homes were specifically intended for young families and first-time buyers – who are desperate to get on the property ladder but have been thwarted by low pay rises and soaring prices.
>
> [4] Yet critics say builders are lining their own pockets with 'unethical practices' instead of concentrating on making well-built affordable homes for young families. Fat cat bosses – who are among some of Britain's best paid – have already seen their fortunes rocket thanks to windfalls from state-backed schemes such as Help to Buy.
>
> [5] Some others have seen their profits inflated by taking cash from leasehold deals attached to the properties. A probe into the rip-off arrangements, where developers can sell homes that charge annual ground rent, revealed many can double every decade. Big developers have also faced accusations they are cutting costs by building shoddy homes – while enjoying profit margins of around 20 per cent.
>
> [6] The huge perks enjoyed by building bosses come as Britain faces a chronic shortage of homes for young families. Estate agents report that the number of properties on their books has fallen to the lowest level since 1978.
>
> [7] Yet big developers are snapping up affordable homes. A Mail investigation found that Pete Redfern, the boss of Taylor Wimpey, has bought four houses in five years, saving himself £80,000 off the asking prices.

[8] The 46-year-old is worth more than £20million, having been paid £10.7million over the past two years, and with shares and bonuses worth another £10million. Steve Morgan, the boss of developer Redrow, asked for special permission from Cheshire West and Chester council to snap up four affordable homes that should have been sold to buyers who were less well-off but failed to sell.

[9] Mr Morgan, who is worth around £831million, then sought permission to use the properties to house staff working on his country estate.

[10] Ted Ayres, who runs Bellway, used a shareholder discount to save £34,000 on a family home at a development in Welling, Kent. And David Thomas, the 54-year-old boss of Barratt Developments, bought a £579,995 show home in Surrey under a little-known 'sale and licence back' deal that allows him to rent the house back to his own company for two years.

[11] But experts last night hit out at such practices. Paula Higgins, of the Homeowners Alliance, said: 'I wish that these house builders would focus on giving people what they want, and that is well-built affordable homes, instead of focusing on these unethical practices and lining their own pockets.' Justin Madders, Labour MP for Ellesmere Port and Neston in Cheshire, said: 'This is morally unacceptable. To hear that the big bosses of these developers are helping themselves to significant discounts while my constituents are suffering is an insult.'

[12] Paul Roberts, a former Lib Dem councillor in Farndon, Cheshire, called Mr Morgan's Redrow deal 'immoral'. The full details of the perks come from an audit of the accounts of the firms by the Mail.

[13] Details of all these executives' dealings are tucked away deep in the small print of corporate documents – and in two cases have been rubber-stamped by housing 'experts' now occupying well-rewarded boardroom posts.

[14] Among the directors who recommended Mr Morgan's housing deal was former BBC Trust chairman Sir Michael Lyons, who as an adviser to Ed Miliband wrote a report calling for a dramatic increase in shared ownership homes to help solve the housing crisis.

[15] Vast pay deals totalling £10.7million over the past two years for Mr Redfern, plus up to £7million in bonuses, were signed off by the chairman of Taylor Wimpey's pay committee, Dame Kate Barker.

[16] A 2004 review she carried out for then chancellor Gordon Brown called for more homes to meet the housing shortage. Taylor Wimpey said the discount scheme gives 5 per cent off one property purchase a year and is open to all staff.

[17] Bellway said any qualifying shareholder is entitled to a discount of £2,000 per £25,000 on a new home. Barratt said anyone can buy a property under a sale and leaseback deal. Redrow declined to comment.

A 'pull-quote' of "*Morally unacceptable*" appeared in the midst of paragraph 5 of the article. It was drawn from the attributed words of Justin Madders quoted in paragraph 11 of the article.

A box dominates the article. It is divided by a dotted line into what Mr Rushbrooke QC for the claimant says, I think accurately, would be understood to be 'case studies'. In the upper half of the box there is a large photograph of the claimant and his wife. There is a sub-headline: "*Fat cat bought 6 houses… and rents 4 back to staff*".

Under that, this time using letters in square brackets to identify the paragraphs, appeared the following:

> [A] Construction boss Steve Morgan once described council officials as 'jobsworths'.
>
> [B] So the Redrow owner must have been quietly delighted when Cheshire West and Chester Council changed planning rules on affordable homes at his firm's Stretton Green development in Cheshire.
>
> [C] Mr Morgan, the firm's chairman, was then able to buy six houses off the company for £860,000. Now four of the homes, which had been put up under rules requiring the firm to offer 'affordable housing', are being let to staff on his estate at nearby Carden Park Hotel. The development mainly comprises 27 four and five-bedroom homes worth more than £1million. The six affordable homes were on the market for £350,000 each but after they failed to sell, Mr Morgan, who is worth £831million, bought them at a discount. The Liverpudlian collects at least £640 a month from each household.
>
> [D] The former owner of Wolverhampton Wanderers FC lives with his third wife, Sally Toumi, 48, at nearby Carden Hall, which boasts a great hall, library, sauna and stables.
>
> [E] The 64-year-old, who has five children, made headlines in 2000 when he quit Redrow. But he retained a large stake through another firm, Bridgemere.

Under the dotted line there is a further sub-headline: "*Boss who built £1.7 million portfolio got 5% off*."

That part of the article refers to Taylor Wimpey 'boss' Pete Redfern. I do not need to set out the further 5 paragraphs relevant to him, but I have read them for context.

Finally, the article concludes with the words "*Comment – page 16*", which would be understood by a reader to be directing him or her to the comment page of the newspaper. Again, although the claimant has not made a complaint about the comment piece, I simply note that I have read it for context. The five paragraphs in that comment stated under a heading "*Homes for fat cats*":

> "While millions suffer from the housing shortage, these are boom times for the bosses of Britain's biggest building firms.

> Many have grown rich at taxpayers' expense, as profits have soared from state-backed schemes such as Help to Buy.
>
> Others have cashed in on rip-off leasehold deals, charging unsuspecting home-buyers ground rent that can double every decade.
>
> Now the most distasteful ploy of the lot. Today, the Mail reveals how multi-millionaire developers take advantage of substantial discounts to snap up affordable homes meant for young families and first-time buyers.
>
> Isn't it sickening how often schemes intended to help the needy end up enriching those least in need?"

5. The claim form was issued on 16 October 2017. Particulars of claim were served on or around 25 October 2017. The meaning that the claimant says the words complained of bore is set out in paragraph 4 of the particulars of claim:

> "In their natural and ordinary meaning, and in the context in which they appeared, the said words meant and were understood to mean:
>
> 4.1 the Claimant had exploited company staff and/or shareholder schemes in order to secure for himself, at a massive discount to their true value - i.e. for a total of just £860,000 instead of the £350,000 each that they had been on the market for - six houses from Redrow's Stretton Green development which should have been sold to people in need of affordable housing, so that he could rent them out to staff on his estate instead;
>
> 4.2 the Claimant and Redrow had had these reprehensible dealings, rubber-stamped by tame directors who had been rewarded for doing so with remunerative boardroom posts, and had hidden the dealings from public scrutiny by tucking away the details in the small print of corporate documents; and
>
> 4.3 the claimant was thereby guilty of lining his own pockets in a thoroughly greedy, unethical and morally unacceptable way."

6. A defence was served on 9 March 2018. I have noted that it advances a defence of opinion. I have deliberately not read the pleading beyond identifying the meaning advanced by the defendant under its opinion defence. I have not read further, or indeed any of the correspondence including in the bundle, because in order to perform the task of an ordinary, reasonable reader in assessing meaning, I should exclude from my mind any alleged inaccuracies in the facts, because those would not be known to readers. The best way of ensuring that these do not encroach upon my decision is not to read them in the first place.

7. The meaning the defendant seeks to defend as opinion is set out in paragraph 5 of the defence:

> "The claimant had put the staffing needs of his estate and hotel before the affordable housing needs of persons not employed by him and/or had acted in an unethical way that was worthy of public criticism when he:

(a) took advantage of his position as chairman of Redrow to secure for himself six affordable homes at his company's Stretton Green development;

(b) which had been built under rules requiring his company to offer affordable homes and should have been sold to less well-off buyers in need of affordable housing until the rules were changed at the claimant's request so that the claimant could instead let the properties to staff working on his nearby estate and hotel."

8. I noted during argument that this is the second case that I have seen in a month in which a defence has been filed, with fully pleaded defences, *before* the Court has been asked to determine meaning.

9. One of the great advantages of the removal of trial by jury in defamation cases is the opportunity it presents for greater case management of defamation claims. Previously, disputed issues of fact (that could not be disposed of under Part 24) had to be left to trial to be determined by the jury. Unless the parties agreed, that effectively prevented the Court ruling on the actual meaning of the words complained of. In consequence, it was quite common to have defamation actions where the parties advanced rival contentions as to the actual meaning of the words. Defences were pleaded upon the defendant's contention as to what the words might be found to mean. That could potentially be hugely wasteful of costs. If the defendant sought to defend meaning X as true, but the jury found it meant Y and that the defendant's defence of truth in consequence failed, litigation of whether X was true is rendered largely (if not completely) pointless.

10. Now, the natural and ordinary meaning of the words complained of in a defamation claim can be determined, in most cases, as soon as the Particulars of Claim have been served. No evidence, beyond the words complained of is admissible, so the hearing can be accommodated, as this one was, in a couple of hours. It is potentially hugely wasteful of costs for a defendant to plead a full defence if meaning is in dispute. Following the court's ruling on meaning, the defence may no longer be viable, or it may require amendment in light of the Court's ruling. I asked the parties whether they could identify an advantage that they could see in having a fully pleaded defence *before* the court determines meaning. Neither was able to advance a clear or cogent reason for doing so. It is not my place to issue practice directions, but consistent with the overriding objective the parties must consider whether the expense of a defence is justified before the Court has ruled on meaning, if meaning is disputed. Active case management includes, under CPR 1.4(2), identifying issues at an early stage: deciding promptly which issues need full investigation and trial and accordingly disposing summarily of others; and deciding the order in which issues are to be resolved. Under CPR 1.3, the parties are required to help the court to further the overriding objective. The overriding objective is to deal with cases justly and at proportionate cost. All of those point, clearly, to disputes as to meaning being disposed of as a preliminary issue sooner rather than later (see also Warby J in ***Yeo -v- Times Newspapers Ltd*** **[2015] 1 WLR 971** [69]-[70]).

11. Turning to the two substantive issues I must resolve, first is the meaning of the words and the second is whether any defamatory imputations conveyed are allegations of fact or expressions of opinion.

12. The law in relation to the former is well established. Although rightly set out in their skeleton arguments, neither counsel spent any time at the hearing rehearsing the law. There is no dispute between them as to the principles to be applied and it is very familiar territory. In summary:

    (a) the natural and ordinary meaning is the objective meaning that the hypothetical ordinary reasonable reader would understand the particulars to bear – *Lachaux -v- Independent Print Limited* [2016] QB 402 [15(2)] *per* Davis LJ;

    (b) the single natural and ordinary meaning is assessed by the court using the principles identified in *Jeynes -v- News Magazines Limited* [2008] EWCA (Civ) 130 [14] *per* Sir Anthony Clark MR;

    (c) in assessing meaning no evidence beyond the words complained of is admissible – *Charleston -v- News Group* [1995] 2 AC 65 [70] *per* Lord Bridge; and

    (d) the ordinary and reasonable reader is taken to have read the whole of a publication. That can be important in cases because the context in which the words complained of appear will often influence the overall meaning – *Bukovsky -v- Crown Prosecution Service* [2018] EMLR 5 [14]-[16] *per* Simon LJ.

13. In relation to the determination of whether defamatory imputations are fact or opinion, again both counsel are agreed as to the law. Drawn from Warby J's judgment in *Yeo -v- Times Newspapers Limited* [2015] 1 WLR 971 [88]-[89]. When determining whether the words complained of contain allegations of fact or opinion, the court will be guided by the following points:

    (a) The statement must be recognisable as comment, as distinct from an imputation of fact.

    (b) Comment is "*something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.*": *Branson -v- Bower* [2001] EMLR 32.

    (c) The ultimate question is how the word would strike the ordinary reasonable reader: *Grech -v- Odhams Press* [1958] 2 QB 75. The subject matter and context of the words may be an important indicator of whether they are fact or comment: – *British Chiropractic Association -v- Singh* [2011] 1 WLR 133.

    (d) Some statements which are, by their nature and appearance comment, are nevertheless treated as statements of fact where, for instance, a comment implies that a claimant has done something but does not indicate what that something is, i.e. that the statement is a bare comment.

    I bear well in mind the warning of the Court of Appeal in *Singh* contained in paragraph 32 that the court must be careful when tackling the issues of meaning and fact and opinion together that assessing them in that order may impair the correct determination of the issue of fact and opinion.

The parties' submissions.

14. I will not set out the parties' submission in any detail, not because I have not considered them but because, faithful to the instruction not to be over analytical, it is important that I step back and, so far as possible, assess the meaning as it would have struck a hypothetical ordinary reasonable reader. The parties' submissions do however help focus on particular themes.

15. Mr Rushbrooke QC, for the claimant, points to the headline and the opening paragraphs. This is, he says, an article that is condemnatory of "*building tycoons*" that are identified in the article, one of whom is the claimant. Ms Evans QC, I think, accepts that much, but she contends that readers would appreciate that the article is making defined allegations against each of the individuals who are identified in the article. Certainly, the upper part of the box would be understood by readers as being solely referable to the claimant. Equally, the claimant is identified (and particular statements made about him) in paragraphs [8] and [9]. The third parties who expressed criticism in the article make unspecific remarks in paragraph [11], and in paragraph [12] there is specific criticism of the claimant attributed to Paul Roberts, a former Liberal Democrat councillor from Cheshire.

Decision

16. In my judgment, the meaning of the article, so far as it concerns the claimant, is

    (a) the Claimant was able to take advantage of an opportunity to purchase six houses built by his company that were intended to be sold for less-well off buyers as affordable homes – but which had failed to sell - after his company had been successful in getting local authority planning rules changed;

    (b) he purchased the six properties at a substantial discount, £860,000 against a market value of £2.1m and, as a result, stood to make a very large personal gain; and

    (c) in consequence, the Claimant had exploited his position to line his own pockets in a greedy, unethical and morally unacceptable way.

17. Without being too over-analytical, I will briefly explain why I have reached this conclusion.

    (a) I consider paragraphs (a) and (b) distil the essential factual allegations being made in the article. There are stray factual allegations in the article. For example, the reference to details of the dealings being "*tucked away deep in the small print*", and the claim that the claimant had rented out 4 of the properties that he purchased to staff that worked for him at his estate. I considered whether some element of acting covertly should be added. However, I have decided that, as against the claimant, that would be a strained meaning. That allegation is not anchored in the article to any particular transaction. Further, secrecy is not the key message that is being given by the article as regards the claimant. The facts about the properties being rented to

staff seems to me not to be particularly relevant and, in my judgment, neither of these factors contributes to the defamatory sting that would be understood by the hypothetical ordinary reasonable reader.

(b) I am quite satisfied that a reader would fully appreciate from the article that it was not being said that the claimant was not able to take advantage of the opportunity that was presented to him. That theme is common to all of the individuals referred to. It is not said to have been unlawful or a breach of any rules for the claimant to have purchased the properties. On the contrary, the clear implication is that he was fully entitled to do so. In my judgment that is important because it affects both meaning and the decision as to fact/opinion.

(c) The defamatory sting of the article is that by so taking advantage of that opportunity he was acting in the way identified in meaning (c).

(d) I regard the balance of the claimant's meaning in paragraph 4.2 to be forced. It arises from the same paragraph 13 of the article that suggests secrecy, and for the same reasons I reject this as part of the natural and ordinary meaning.

(e) I am quite satisfied that the article suggests that the claimant obtained a personal financial gain. The article is not clear, as regards the claimant, how this had been obtained, otherwise to state that he purchased the properties at a discount. It is not, in his case, clearly attributed to a specific shareholder or other discount. Paragraphs [14]-[16] refer to the discount or shareholder schemes offered by some companies, but the claimant's company, Redrow, is not one of them. I do not consider that the ordinary reasonable reader would collect that as part of the meaning as against the claimant, but I am satisfied that the article does suggest an element of personal gain.

18. As to fact or opinion, Mr Rushbrooke submits that this is a newspaper article making factual allegations upon the back of what readers are told is an investigation by the newspaper and an audit of the relevant firm's account. I accept that, so far as it goes, but, in my judgment, Ms Evans QC is substantially correct. The factual allegations made in the article, which I have captured in meanings (a) and (b) are not themselves defamatory. As I have noted ([17(b)] above), the article makes plain that the claimant was not acting unlawfully or breaking any rules. Meaning (c) is an expression of opinion on the claimant's conduct. It is clearly flagged as such to readers. The criticism comes from the quotes from the third parties in paragraphs [11] and [12]. I am satisfied that readers would have recognised the opinion as distinct from factual allegations. Because the criticism is attributed to third parties, who are clearly expressing their view as to the claimant's actions, a reader would clearly recognise this as opinion. Not that it is definitive in relation to the test, but any reader, in my judgment, would be able to make up his or her own mind as to whether taking advantage of the opportunity that presented to the claimant is worthy of the expressed condemnation. Ultimately, the question is how the word would strike the ordinary reasonable reader. I am satisfied that the reader would have understood the defamatory imputation contained in paragraph (c) of the meaning to be an expression of an opinion. The fourth aspect identified on the test, concerning bare comment, does not arise in this case.

19. Finally, I have considered whether small differences in the online version of the article make any difference to the decisions I have made, and I am satisfied that they do not.