



Neutral Citation Number: [2020] EWHC 2922 (QB)

Case No: QB-2020-002192

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/11/2020

Before :

MRS JUSTICE COLLINS RICE

Between :

SIR STELIOS HAJI-IOANNOU

Claimant

- and -

(1) TELEGRAPH MEDIA GROUP LIMITED

(2) BEN MARLOW

Defendants

Mr Hugh Tomlinson QC and Mr Edward Craven (instructed by Vardags) for the Claimant
Ms Adrienne Page QC and Mr Ben Gallop (instructed by Ince Gordon Dadds LLP) for the
Defendants

Hearing date: 27th October 2020

Approved Judgment

Covid-19 Protocol: This Judgment was handed down remotely by circulation
to the parties' representatives by email and released to BAILII.

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THE HONOURABLE MRS JUSTICE COLLINS RICE DBE

Mrs Justice Collins Rice:

Introduction

1. The claimant, Sir Stelios Haji-Ioannou, is a prominent businessman, the founder of the well-known airline easyJet. He brings this libel and data protection action because of an item about him in a column written by Mr Ben Marlow and published in the print and online versions of *The Daily Telegraph* on 7th May 2020.
2. By order of 27th August 2020 Mr Justice Nicklin directed a preliminary issues trial to determine:
 - a) the natural and ordinary meaning of the words complained of;
 - b) whether in that natural meaning the words complained of are defamatory of the claimant at common law;
 - c) whether the words complained of are a statement of fact or opinion.

The matter was listed for trial on 27th October 2020.

3. I adopted the standard approach to determination of meaning. I first read the words complained of, in both versions, without knowing what either party wanted to say about their meaning. I formed and noted some provisional views. I then read the preliminary issues trial bundle and the skeleton arguments lodged for both parties. I heard oral submissions at trial and reserved judgment.

The words complained of

4. The whole item is complained of. The print version appeared under a sub-headline “*Has sun gone to SHI’s head?*”, two-thirds of the way down a column by-lined at the top with Mr Marlow’s name and picture. The online version appeared under the sub-headline “*Come Fly with SHP*”, again towards the end of a column under Mr Marlow’s by-line, identifying him as *The Daily Telegraph*’s chief city commentator. In each case the column’s headlines refer to other, unrelated, matters written about in the column.
5. The text is identical in each case. It is reproduced below.

“Surely there are better things to do on St Barts? How about a bite to eat at Le Select, the restaurant that supposedly inspired Jimmy Buffett’s smash hit Cheeseburger in Paradise? Or Maya’s To Go (bikinis allowed, according to Vogue) for a leisurely breakfast?”

“Not if you’re Sir Stelios Haji-Ioannou, who has decamped to the Caribbean paradise to concentrate on an entire series of increasingly wild conspiracy theories it seems.”

“His latest offering is a peach fit for his new sunny surrounds: apparently a trio of shareholders that have publicly backed easyJet in its looming showdown with SHI, as he is now fondly referred to by the airline, aren’t what they seem.

“The tycoon has somehow convinced himself that the three are Airbus “strawmen”, sent to stop his campaign to force easyJet to cancel a £4.5bn order of planes. Still, at least he has some strong evidence to back up this wild allegation against a group of major shareholders accounting for 14pc of the shares: “They sound like the Airbus chief marketing officer.”

“Not only that, but two of them – “Phoenix something” and “Ninety something” are “newcomers out of nowhere”. That would be Phoenix Asset Management and Ninety One, the South African investment giant formerly known as Investec, that have been investors since 2016 and 2017 respectively.

“The only thing that is made out of straw is his bizarre vendetta.”

Legal principles and approach

6. There is no dispute as to the applicable legal principles or the correct approach. Three issues are identified for determination – the natural and ordinary meaning of the words, whether they constitute fact or opinion, and whether they are defamatory at common law. The authorities provide guidance both as to each aspect, and as to their interrelationship. The modern guidance is relatively detailed, but its purpose is to simplify and clarify the exercise, not to over-elaborate or complicate it. I direct myself to the guidance in that spirit.
7. I start with the encapsulation of the principles of ‘meaning’ distilled from the authorities and set out in *Koutsogiannis v Random House Group* [2020] 4 WLR 25, at paragraphs 11 and 12. The governing principle is reasonableness. My task is to “*determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear*”. The intention of the publisher is irrelevant.
8. I keep in mind, as guided, the perspective of an ordinary, reasonable reader of the business pages of *The Daily Telegraph*, reading the entire article once through in either format, and forming an impression of what it conveys on its face. The reader is neither naïve nor suspicious; is able to read between the lines and pick up an implication; and is allowed a certain amount of loose thinking without being avid for scandal. Context is important, and ‘common knowledge’ can be factored in, but no evidence beyond the publication complained of is admissible.
9. I am guided away from over-elaborate analysis of text. I need to avoid both exegesis and literalism, and any strained or forced interpretation. I can and must determine the single meaning I myself consider correct, and am not bound by the meanings advanced by the parties, so long as I do not alight on something more injurious than the claimant's pleaded meaning.

10. I have further directed myself to *Koutsogiannis* at paragraphs 16 and 17 for guidance on considering whether the words complained of contain allegations of fact or opinion. On this, again, the question is how the words would strike the ordinary reasonable reader. Subject matter and context can be especially important here. “*Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.*” but sometimes care is needed: there is a difference between comment which is pure opinion and comment which is an imputation of underlying fact.
11. I am reminded by *Triplark v Northwood Hall (Freehold) Limited* [2019] EWHC 3494 (QB) that the test for the difference between fact and opinion is an objective one. That comes back to how the words would strike the ordinary reasonable reader.
12. *Triplark* also summarises, at paragraph 11, the state of the authorities on the test at common law for whether a (natural and ordinary) meaning is defamatory: whether it substantially affects in an adverse manner the attitude of other people towards a claimant, or has a tendency to do so. That is not about actual impact, it is about the meaning of the words and their inherent tendency to damage someone’s reputation. ‘Substantially’ imports a threshold of gravity or seriousness.
13. While there are three issues I am required to determine, the authorities also counsel against the dangers of trying to solve them in too linear or compartmentalised a fashion. *Triplark* (paragraph 16) and *Barron v Collins* [2015] EWHC 1125 (QB) (paragraphs 20-21) point me to reflecting on whether this is a case in which the questions of ‘meaning’ and ‘fact/opinion’ might throw light on each other, such that it would be wrong to tackle them in an order which proves to be a trap of false logic. I note the risk and seek to avoid it.

The dispute

14. My initial view about this item, coming to it fresh, was that it proposed a number of things as what might be described as outline or background facts. These included that the claimant had gone to a Caribbean island; that he was engaged in a dispute within easyJet in which he was seeking to persuade the company to cancel a large order with Airbus; that three major easyJet shareholders had publicly backed the opposing view; and that the claimant had had something to say about that. I do not understand any of that to be a controversial reading, and it sets the scene for the matters that are in dispute.
15. The claimant’s concern is that the natural and ordinary meaning of the remainder of the item complained of is that he:

“...has made false and malicious claims that a group of major shareholders in easyJet have conspired with Airbus to prevent the cancellation of easyJet’s £4.5bn order of planes.”

He fears that, however dressed up stylistically, what the item conveys to the reasonable reader – as fact – is that he has publicly alleged improper collusion between three major easyJet shareholders and Airbus designed to prevent the cancellation of the Airbus contract; that these allegations are wholly false and baseless, since the only evidence given for them is itself incredible; that that is

completely obvious, as he knows; and that the article therefore amounts to an unqualified allegation that the claimant has made false and malicious claims of wrongdoing. The facts conveyed are: as to the allegations made, that they are completely false, and as to the claimant's malicious state of mind.

16. He says that this portrayal is clearly defamatory. He is a major and well-known businessman. If people thought he was deliberately making completely false allegations of serious wrongdoing as part of a baseless campaign against established investment companies, they would consider that outrageous and think much the worse of him for it.
17. The defendants contend that the words complained of are non-defamatory statements of opinion that the claimant:

“...has advanced a new conspiracy theory about why large shareholders in easyJet intend to support the company against him in his ongoing battle with the company and which is of very doubtful validity.”

They say that the article would be read as personal commentary, light in tone, and falling some considerable way short of a statement or insinuation that the claimant had deliberately made a serious allegation that was false and malicious. They accept that the claimant is being teased for saying something outlandish. But they say that is very different from representing as fact that the underlying proposition is certainly false or that no *other* evidence for it is conceivable.

18. They say that this is clearly a comment piece – evaluative in language, tone and context. It amounts to the expression of a personal view, a good-humoured mocking of a specific incident - the claimant's public comments and his decision to make them – not his standing or personal attributes more generally.

Discussion

19. My task is not to choose between these interpretations or propositions. It is, guided by the authorities, and bearing in mind my original impression of the item, to reflect on the submissions the parties have now made, and in the light of them to test – thoughtfully but not over-analytically – what that ordinary reasonable reader described above would make of the article.
20. My initial view had been that the reader would have absorbed the context first. The text complained of appeared at the end of a by-lined column: the genre of the column read as a whole is informed commentary. The style is opinionated and breezy – especially so when it gets to the item complained of at the end, where it has the flavour of a diary-style postscript. The reader's orientation would be set to expect informed and entertaining comment.
21. Context is important, but not determinative, in understanding and characterising content. A reader can expect that an informed commentator writing in the business pages of a national newspaper knows what he is talking about, and the cancellation of a major contract in the air industry is not an intrinsically frivolous topic. A comment piece may well include assertions of fact (beyond the scene-setting). I have

particularly taken into account the claimant's concern that sarcasm can be 'knowing' – a nod and a wink to an underlying reality or imputation of fact. The reader is not naïve enough to think, for example, that tacking on an ironic "allegedly" successfully disguises an allegation of fact as a mere opinion.

22. Turning to the text itself, then, the least it can reasonably be said to convey, once the scene is set, is that the claimant has said something unsustainable about his opponents. The question of how the rest would be read requires assessment of whether what is being conveyed is further colour and comment, as the defendant says, or something more serious and hard-edged, however archly expressed, as the claimant fears.
23. My initial view had been that what the reader finds is mocking copy: a few selective quotations attributed to the claimant, taken out of whatever context they may originally have appeared in, and satirised against the backdrop of a Caribbean paradise island: a brightly coloured and sunny theme established from the outset. The cumulative impression given by the headlines (especially the allusion to a touch of the sun), the scene-setting opening (holiday mood), the tone (jocular), and the choice of language (hyperbolic) is that the reader would understand that what the claimant said about his opponents was similarly over the top and impossible to take seriously.
24. The reader can spot (and enjoy) satire when they see it. But satire has a sting. The task of determining the ordinary and natural meaning of satirical writing must not make the category error of literalism nor of assuming that all humour is good humour. The claimant's concern here is that this is satire whose sting is poisonous allegation of fact.
25. What does this satirical piece convey, between the lines, by way of sting? In my initial view, a reader would come away with an overall understanding that the claimant cared passionately about the future of easyJet, could not have felt more strongly about the need to cancel the Airbus contract, and was therefore exasperated by his opponents. He had given vent to his exasperation, including in terms that might signal two wholly rhetorical questions – who are these people? and do they care about easyJet? – and perhaps a slightly less rhetorical question – where is all this coming from?
26. A reader would, in my view, have to bring a distinctly suspicious and sour turn of mind, or indeed to be 'avid for scandal', to get anything more troubling than that from reading this item without more. That is not the reader I have to keep in mind. This is a brief item; what the claimant actually said in full – never mind why he said it – is a second-order issue beside the fun he poked at a few overblown quotations. The sting of the satire seems to me to be the relatively mild one of portraying the claimant as someone who, on a given occasion, expressed his exasperation in rhetoric which cannot be taken literally or seriously.
27. My initial reading was closer to that contended for by the defendant than that by the claimant. I found the parties' submissions helpful in testing it, and I have now returned to the legal framework and guidance for a final test and to ensure that I reach conclusions for which there is sound reasoning but not excessive analysis. I remind myself in particular that opinion "*is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.*"

(Koutsogiannis). In my view, aside from the uncontroversial scene-setting, and the factual proposition that the claimant used the words quoted, considered objectively these are the sorts of words that best describe the content of this article. I am satisfied that the reasonable reader would understand that they were likely to be in the realm of opinion.

28. From that perspective, I begin by applying the governing principle of reasonableness to determining what the law requires: a single, correct, natural and ordinary meaning for this item. I have reflected on the claimant's concern that the sting of the satire is an imputation that he has made claims of improper conduct which are baselessly false and hence attributable to malice. He arrives at that reading by inferring that the imputed allegation that the shareholders are acting for Airbus is to be understood seriously, at least at some level, that the quotations cited give patently incredible reasons to support it, that he can neither believe them himself nor have any better reasons, and that the allegations are therefore malicious. I consider that to be a strained or forced interpretation, a much worse inference than a reader has need or occasion to make in order to savour the satire. It requires a degree of suspiciousness, scandal-hunger or pre-formed ill opinion which it would be wrong to expect of an ordinary reader. I remind myself that it is no part of my task to speculate on whether there is any other extraneous evidence for the imputation of fact which the claimant fears. I am considering only the meaning of this short item.
29. A more natural understanding of the item is that it simply satirises the intemperance of the claimant's rhetoric it samples, including by means of its own rhetorical style. I am satisfied that this is neither an over-literal nor a naïve reading. It reads between the lines and acknowledges the satire without reading more into a slight piece consumed in under a minute than a reasonable reader would have the time or inclination to think of.
30. On that basis, the meaning of the article arrived at is along the lines that the claimant felt so strongly that cancellation of the Airbus contract was the right thing for easyJet that on one occasion he caricatured his opponents with rhetoric that does not stand up to sober scrutiny and cannot be taken seriously.
31. In my view that is, and would be read by an ordinary reader as, an expression of the columnist's opinion. I have considered the questions of meaning and fact/opinion together and in parallel, without allowing conclusions about one to stifle or foreclose thinking about the other. In particular, I have reflected on the possibility that a comment piece or satire may be a vehicle for factual allegation. I have at the same time avoided any assumption that just because a proposition is said to be unsupported by certain comments, that is tantamount to a factual allegation that the comments are deliberately false or the proposition necessarily baseless or malicious; that is an extrapolation, not a logical deduction, and other less over-extended readings are clearly available.
32. On the understanding that I have determined that the reader would reach, I do not consider that that ordinary, reasonable reader would think worse of the claimant in any serious respect on the strength of this piece alone. A reader might at worst think that the claimant was so passionate about the best interests of easyJet and so fixed in his view that the cancellation was necessary, that he was driven to intemperate and indeed risible public expostulation about anyone who disagreed, even important

shareholders. I am satisfied that the reader would not seriously think less of him as a businessman or public figure for that, nor that the words in their ordinary and natural meaning would otherwise substantially affect in an adverse manner the attitude of other people towards him. “Substantially” is an important word in this context, and sets a threshold not reached or approached in this case.

Conclusion

33. The meaning of this item, beyond the uncontroversial facts summarised at paragraph 14 above, is that the claimant:

“... felt so strongly that easyJet should cancel the Airbus contract, and that the opposition of some major shareholders to that was misconceived, that on one occasion he caricatured them and their motivation dismissively using samples of rhetoric that cannot be taken literally or seriously.”

It is an expression of the columnist’s opinion. It is not defamatory at common law.