Neutral Citation Number: [2020] EWHC 3156 (QB)

Case No: QB-2020-002028

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 November 2020

Before:

THE HON. MR JUSTICE WARBY

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Between:

Rebekah Vardy	**Claimant**
- and -	
Coleen Rooney	**Defendant**

- -
- -

Hugh Tomlinson QC and Sara Mansoori (instructed by **Kingsley Napley LLP**) for the **Claimant**
David Sherborne and Ben Hamer (instructed by **Brabners LLP**) for the **Defendant**

Hearing date: 19 November 2020

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Approved Judgment

I direct that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WARBY

Mr Justice Warby:

1. This judgment is given after the trial of meaning as a preliminary issue in this claim for libel.

2. The claimant is a well-known media and television personality. She is married to the England football player, Jamie Vardy.

3. The defendant is a well-known media and television personality. She is married to the England footballer, Wayne Rooney.

4. Ms Rooney has a personal Instagram account, a public Instagram account with 885,000 followers, and a Twitter account with 1.2 million followers.

5. On 9 October 2019, Ms Rooney published the following words on her public Instagram account (I have added the paragraph numbering):

> "**[1]** For a few years now someone who I trusted to follow me on my personal Instagram account has been consistently informing The SUN newspaper of my private posts and stories.
>
> **[2]** There has been so much information given to them about me, my friends and my family – all without my permission or knowledge.
>
> **[3]** After a long time of trying to figure out who it could be, for various reasons, I had a suspicion.
>
> **[4]** To try and prove this, I came up with an idea. I blocked everyone from viewing my Instagram stories except ONE account. (Those on my private account must have been wondering why I haven't had stories on there for a while.)
>
> **[5]** Over the past five months I have posted a series of false stories to see if they made their way into the Sun newspaper. And you know what, they did! The story about gender selection in Mexico, the story about returning to TV and then the latest story about the basement flooding in my new house.
>
> **[6]** It's been tough keeping it to myself and not making any comment at all, especially when the stories have been leaked, however I had to. Now I know for certain which account / individual it's come from.
>
> **[7]** I have saved and screenshotted all the original stories which clearly show just one person has viewed them.
>
> **[8]** It's ……. Rebekah Vardy's account"

6. On the same day, Ms Rooney posted the above text on her Twitter account. She did so in the form of an image embedded in a tweet which said the following:

> "This has been a burden in my life for a few years now and finally I have got to the bottom of it ……"

7. On 12 June 2020, Ms Vardy issued these proceedings seeking damages for libel, an injunction, and an order that Ms Rooney should publish a summary of the judgment in these proceedings. Particulars of Claim setting out her case were served with the Claim Form.

8. The parties agreed, and on 17 September 2020 Mr Justice Nicklin ordered, that the issue of what natural and ordinary meaning was borne by the words complained of should be tried as a preliminary issue in the action. This is now the norm in any libel action. It is almost always helpful for the meaning of the alleged libel to be identified at an early stage. Sometimes this will lead to the end of the case, because the words are not defamatory, or because they bear a meaning which the defendant cannot defend, or for some other reason. In any event, a decision on meaning will always have a bearing on at least one of the other issues in the case. As this case illustrates, the process of deciding meaning is a quick and efficient one. I have heard this trial and given judgment only two months after the order for such a trial was made.

9. As is standard practice, the consent Order required Ms Rooney to set out, before the preliminary issue trial, the natural and ordinary meaning which she contends was borne by the words complained of and extended time for service of a Defence until 28 days after the determination of the preliminary issue. On 2 October 2020, the deadline for stating Ms Rooney's case on meaning, she chose to file and serve a full Defence. This set out her case on meaning; but it also stated her case in full.

10. Because this trial is not concerned with anything other than meaning I paid no attention to the rest of the pleaded case before the hearing. At the hearing, I was referred by both leading Counsel to certain aspects of the Defence, but only by way of forensic flourish. Nobody suggested that the fact that the existence or nature of Ms Rooney's substantive defences, or any other aspect of her pleaded case, is relevant to the issue I now have to decide.

11. There is no dispute that the words complained of are defamatory of Ms Vardy.

12. The claimant's case is that the words complained of bore the following defamatory meaning about her:

> "that the Claimant has consistently and repeatedly betrayed the Defendant's trust over several years by leaking the Defendant's private and personal Instagram posts and stories for publication in the Sun Newspaper including a story about gender selection in Mexico; a story about the Defendant returning to TV; and a story about the basement flooding in the Defendant's new house."

13. Ms Rooney's case is that the meaning of the words complained of is this:

> "there are reasonable grounds to suspect that the Claimant was responsible for consistently passing on information about the Defendant's private Instagram posts and stories to *The Sun* newspaper."

14. At a trial such as this, the Court is making a finding of fact, albeit one of a slightly unusual nature. Its task is to identify a single, natural and ordinary meaning of the words complained of. This is the meaning that would be conveyed to the hypothetical "ordinary reasonable reader". The only evidence that is relevant and admissible is the publication that is complained of – in this case, the tweet and the Instagram post. (In defamation law any communication of words to a person other than the claimant herself counts as a "publication"). No evidence is admissible about what the defendant intended the words to mean, or about what people actually took them to mean.

15. The legal principles the Court must apply were helpfully re-stated by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB) [2020] 4 WLR 25 [12] (I omit internal citations):

> "The following key principles can be distilled from the authorities:
>
> (i) The governing principle is reasonableness.
>
> (ii) The intention of the publisher is irrelevant.
>
> (iii) The hypothetical reasonable reader is not naïve, but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
>
> (iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
>
> (v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
>
> (vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
>
> (vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.

> (viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).
>
> (ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.
>
> (x) No evidence, beyond the publication complained of, is admissible in determining the natural and ordinary meaning.
>
> (xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.
>
> (xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.
>
> (xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."

16. All of this is firmly established, and has been common ground at this trial; but as is often the position, the facts of the case mean that some principles are more resonant than others.

17. Principles (iv), (v), (vi) and (xii) can all be seen as reflections of a single overriding rule. In *Lord Mohamed Sheikh v Associated Newspapers Ltd* [2019] EWHC 2947 (QB) I said this:

> "24. The overriding rule when dealing with both meaning and the question whether a statement is factual or opinion is encapsulated … above. It is always a question of how the reasonable reader would respond to the words.
>
> 25. One important principle that follows from that overriding rule is the need to avoid unduly elaborate analysis. This is a constant theme of the jurisprudence. It applies to the arguments of Counsel, to the reasoning process undertaken by the Judge, and to the reasons to be given by the judge when explaining his or her conclusions on meaning."

This is all the more important when, as here, the statement complained of is short, fairly straightforward, and published in a popular medium and not in some technical context.

18. As to principles (iv), (viii) and (ix), the following points deserve mention in the context of this case:-

(1) The publications complained of in this case are social media posts. The authorities explain that it is particularly important for a Judge deciding such a case to beware of indulging in elaborate analysis. Twitter is a conversational and fast-moving medium. People will tend to scroll through messages relatively quickly. The reader's reaction to a post is impressionistic and fleeting. The reader is likely to absorb the essential message quickly, before moving on. Readers of social media do not have advocates beside or in front of them, making arguments about what a tweet means. See *Stocker v Stocker* [2020] UKSC 17 [2020] AC 593 [41-46] (Lord Kerr) approving my judgment in *Monroe v Hopkins* [2017] EWHC 433 (QB) [2017] 4 WLR 68 [35], that of Nicklin J in *Monir v Wood* [2018] EWHC 3525 (QB) [90], [92], and Eady J's observations in *Smith v ADVFN plc* [2008] EWHC 1797 (QB) [13-16]. All of this applies equally to an Instagram post.

(2) Because "context" always includes the whole of the publication complained of, in this case the introductory words of the tweet have to be taken into account when assessing the meaning of the words complained of.

19. As to principles (x) and (xi), the "context" of any publication also includes matters of common knowledge, that is to say "facts so well known that for practical purposes everybody knows them": *Riley v Murray* [2020] EWHC 977 (QB) [16(i)] (Nicklin J). The court can take "judicial notice" of such facts; they do not need to be proved by evidence. But other facts, if relevant, need to be admitted or proved.

20. The practice at trials such as this reflects the principles I have identified. As I noted in *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB) [16]:-

> "In the light, in particular, of principles (iv) to (x) and (xii), it is common practice among judges dealing with issues of meaning in defamation claims to read the article complained of and form a provisional view about their meaning, before turning to the parties' pleaded cases and the arguments about meaning. …"

In a judgment handed down on the same day, the Court of Appeal approved the practice of reading the words complained of without reference to the parties' contentions or submissions as "the correct approach for a Judge at first instance": *Tinkler v Ferguson* [2020] EWCA Civ 819 [9] (Longmore LJ). The purpose is "to capture the Judge's initial reaction as a reader" (ibid.). The parties' pleaded cases and arguments will then be considered. They may modify the Judge's initial and provisional conclusion, but they are unlikely to make a fundamental difference. This is the approach I followed in this case.

21. The meaning complained of by Ms Vardy is what libel lawyers call a Chase level one meaning. The meaning contended for by Ms Rooney is a Chase level two meaning. In *Allen v Times Newspapers*, I explained these terms:

> "17. … This is a convenient shorthand way of referring to different levels of gravity, which derives from the judgment of Brooke LJ in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 [45]. Brooke LJ identified three types of defamatory allegations, broadly, (1) the claimant is guilty of the act; (2) there are reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant committed the act."

22. I have kept in mind that

> "… not every published statement conveys a meaning at one or other of the "Chase" levels. 'Reflecting the almost infinite capacity for subtle differences in meaning, they are not a straitjacket forcing the court to select one of these prescribed levels of meaning …': *Brown v Bower* [2017] EWHC 2637 (QB) [2017] 4 WLR 197 [17] (Nicklin J). As ever, all depends on the context."

Allen v Times Newspapers Ltd [18].

23. That said, in my judgment, the position in this case is clear. The words complained of bear a Chase level one meaning about Ms Vardy. Their natural and ordinary meaning is this:

> "Over a period of years Ms Vardy had regularly and frequently abused her status as a trusted follower of Ms Rooney's personal Instagram account by secretly informing The Sun newspaper of Ms Rooney's private posts and stories, thereby making public without Ms Rooney's permission a great deal of information about Ms Rooney, her friends and family which she did not want made public."

24. This is the meaning that I arrived at before reading and hearing the arguments advanced on behalf of the parties. It is substantially the same as the claimant's meaning. The written and oral arguments have not affected my conclusion.

25. The warnings in the authorities about the right approach to Twitter posts are important, but of rather less relevance in this case than they are in some others. This was, on its face, a considered post, using wording composed with some care. It would be clear to the ordinary reader from the outset that it was meant seriously, and intended to convey a message of some importance. It tells a story. The story is one of careful investigation, and builds to a revelation. The reader would pay more attention to this story than they might to a more obviously casual tweet or post. But I do not think it really matters how one approaches this publication. Whether it is read swiftly and casually or at greater leisure, the impression conveyed is the same.

26. The reader is told straight away that the message is about bad behaviour by "someone who I trusted". The post then takes the form of a "whodunnit". Paragraphs [1] and [2] describe the behaviour. Paragraph [3] tells the reader that Ms Rooney had a suspicion about "who it could be". Paragraphs [4] and [5] describe the process which she

undertook "to try and prove this". Paragraph [6], second sentence, states unequivocally the result of that process: "Now I know for certain which account/individual it's come from." Paragraph [7] explains why Ms Rooney is certain, identifying the evidence and telling the reader that it "clearly" points to "just one person". Paragraph [8] contains the "reveal", identifying Ms Vardy. In my judgment, the tweet and post complained of clearly suggest that the claimant is the person who is guilty of the wrongdoing identified in paragraph [1]. These were my thoughts when initially reading the words complained of, in their context.

27. The Defence maintains that the claimant's meaning is "artificial", because "the words complained of refer to the stories being derived from 'Rebekah Vardy's account' as opposed to pointing the finger at the claimant directly, and therefore bear at their highest a Chase level two meaning." I disagree.

28. The main basis for this argument is the use of the word "account" in paragraphs [4], [6] and [7]. Absent that word, it seems to me the defence contention would be unarguable. I do not believe the ordinary reasonable reader would pay much attention to that word, in its context. I certainly do not think that the ordinary reader would take that single word, albeit repeated, to indicate that Ms Rooney remains in doubt about who the wrongdoer was. Everyone knows that it is possible, in theory, for someone to use another person's social media account. But nobody regards that as an everyday or normal occurrence for all social media users. There is nothing in these words, apart from the word "account", that in any way suggests that the behaviour of which Ms Rooney is complaining might have been carried out by anyone other than the account holder, Ms Vardy. On the contrary.

29. Paragraphs [1] and [3] speak of "someone" and ask "who it could be?". Paragraph [6] says in terms that the evidence shows "just *one person* has viewed them" (my emphasis). The only person mentioned is Rebekah Vardy. The message was not that Ms Vardy might or might not be the wrongdoer. The reader was not being told that the "one person" could be someone else, who had in some way gained access to Ms Vardy's account and then misused it in order to misuse Ms Rooney's personal information. If that had been the message, the ordinary reader would expect to see a good deal more than the word "account". In the context of the post as a whole, that word would be read as just another way of identifying Rebekah Vardy as the wrongdoer. Again, these were my thoughts on reading the words before reading and hearing argument.

30. It is submitted in the skeleton argument for the defendant that, given the nature of posts of this kind, "there would be a natural focus on the beginning and end of the text which represents the nature of how an ordinary social media reader scans posts in their feed". For the reasons I have given, I disagree. Even if this may be true of Twitter and Instagram posts generally, it is not the case with this one. And even if it was true, it would not help Ms Rooney. Reading paragraphs [1] and [8] alone, or paying greater attention to them than to the rest of the words, the reader would take away the same message as the one I have identified.

31. I do not agree with the defence submission, however attractively it is put, that the use of multiple dots followed by the word "account" in paragraph [8] "dilutes" the meaning. Indeed, the element of suspense introduced by the multiple dots seems to me designed to raise expectations of a dramatic revelation. It tends to emphasise the importance of the name that is then provided. It would be a poor *denouement* if all that was being said

was that the named individual was to be suspected of the wrongdoing, but it might be someone else.

32. It is submitted for Ms Rooney that it would be "a matter of common knowledge" that a media personality and celebrity such as Ms Vardy would not be the only person to have access to her Instagram account. In support of this submission, Counsel characterise Instagram as a platform known to be "towards the highly commercial end of social media platforms and dominated by 'influencers' and tailored marketing". In their skeleton argument Counsel submit that the ordinary reader of Instagram and Twitter would have in mind that media personalities such as the claimant "have agents and PR teams who cultivate their social media output". Some of this I can accept, but not all.

33. The warning against impressionistic assessments (principle (ix)) is important here. The wording of this principle derives from *Simpson v MGN Ltd* [2015] EWHC 77 (QB) [10], where I noted that the process of deciding meaning requires the court to bear in mind "the reader's familiarity with the nature of the publication in question; and any expectations created by that familiarity" but warned that the Court "should beware of reliance on impressionistic assessments of the characteristics of a newspaper's readership". That was in a case about an article in the Mirror newspaper, but the point is one of general application. In *Monroe v Hopkins* [2017] EWHC 433 (QB) [2017] 4 WLR 68 [5], I made a similar point in the context of a case about a tweet:

> "Twitter is still a relatively new medium, and not everyone knows all the details of how it works. Where something is not a matter of common knowledge a Judge is not entitled to bring his or her own knowledge to bear. The facts normally have to be proved. In this case, however, many of the relevant facts about Twitter have been agreed"

34. In general, I think I can go so far as to take judicial notice of the fact that (a) Twitter and Instagram are used for marketing as well as purely social exchanges, and are used (Instagram in particular) by social influencers, (b) some social media platforms are used extensively by some individuals in the public eye, and (c) some celebrities put out content that appears to be carefully managed. As a general proposition, I can accept that the ordinary reader of Twitter or Instagram would be alert to the possibility that some celebrities might delegate responsibility for some of their social media output. But that general awareness that celebrities use agents and PR people, and might do so in relation to their social media, is not enough to support the defence submission. And I do not believe I can go further.

35. To be common knowledge, a fact must be one which the Judge knows, and believes is known to everyone else. I do not believe that *all* media personalities use agents and PR teams to run their social media, and I do not believe or assume that anything done on social media in the name of a personality might be done by someone else, without the knowledge or approval of the account holder. Nor do I believe that everyone thinks or believes or assumes these things. It is more likely that there is a range of facts, and a range of opinions, with some cynics thinking every tweet by every celebrity is made up by some PR and others naively believing that every such tweet is always the celebrity's own unassisted work.

36. Debate at the hearing illustrated the problem. In oral argument, Mr Sherborne said that there may be some older lawyers who do not share the knowledge he relies on, but that it is common knowledge *among all users of the two social media platforms* with which this case is concerned. It does not matter whether (as Mr Tomlinson suggested) he and/or I were supposed to be in the category who do not know the true position. The concession that there is such a category discloses the true nature of the argument. It is not an invitation to identify something as common knowledge. It is an invitation to make an assessment of the characteristics of the relevant readership, a sub-group of the population as a whole; and an invitation to find that a group of people, that does not include the Judge, know or believe certain facts which the Judge does not.

37. A case of that kind would require pleading and proof of particular facts that are *not* common knowledge, but *were* known to the readers of the offending posts, and would be likely to affect those readers' understanding of the post. I refer to what defamation lawyers call a "reverse innuendo": a meaning less injurious than the ordinary meaning of the words, that will be conveyed to readers because of some facts they know, which go beyond matters that are common knowledge. It is clear law that a defendant who wishes to advance a case that words complained of bore such a meaning must serve a statement of case that identifies the facts that are said to have been known, and the basis for saying that readers knew them. If Ms Rooney wished to make a case that readers of her post would have read it thinking (for reasons unconnected with her own words) that Ms Vardy's account might have been managed or used "consistently" for years by someone else, she would need to say why, and prove it. She has not done so.

38. In any event, the defence argument fails to engage directly with the facts of the case. I am not concerned with a single, random or isolated item of social media output on Ms Vardy's account, that a reader might suppose was or may have been someone else's doing. The allegation is one of misuse of an account in Ms Vardy's name to engage in "consistent" breach of trust over a period of years, by leaking another user's posts to the press. In the absence of some indication to the contrary, the reader's natural inference would be that the miscreant was Ms Vardy herself. There is no indication to the contrary. In context, the use of the term "account" does not have that effect.

39. I agree with the submissions for the claimant. The whole purpose of the post, on the face of it, is to identify publicly the *someone*, the *person* whom Ms Rooney has "clearly" identified as being guilty of the serious and consistent breach of trust that she alleges. The ordinary reader would not regard the post as merely telling him or her who it is that Ms Rooney suspects, or as simply raising Ms Vardy's guilt as no more than one possibility, among others. As Mr Tomlinson submits, the reader is told early on that Ms Rooney formed a suspicion; the rest of the post is telling the reader how she established the truth. And there is "no hint" in the post that Ms Vardy's account could be accessed or operated by anyone other than the named account holder. I do not consider that the "hint" can be supplied by resorting to alleged "common knowledge" that people like Ms Vardy have teams to curate their social media output.

40. I add that in the case of the tweet, the introductory words provide context that lends further support to my clear conclusion on meaning.