Neutral Citation Number: [2024] EWHC 3276 (KB)

Case No: KB-2023-004736

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/12/2024

Before :

DEPUTY HIGH COURT JUDGE SUSIE ALEGRE

- -

Between :

SMART SHIRTS LIMITED	**Claimant**
- and -	
SHEFFIELD HALLAM UNIVERSITY	**Defendant**

- -
- -

William Bennett KC and Richard Munden (instructed by **Wedlake Bell**) for the **Claimant**
Sara Mansoori KC and Aidan Wills (instructed by **Kennedys Law LLP**) for the **Defendant**

Hearing dates: 27 November 204

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Approved Judgment

This judgment was handed down remotely at 10.30am on 17 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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DEPUTY HIGH COURT JUDGE SUSIE ALEGRE

Susie Alegre :

Factual Background

1. The Claimant in this case, Smart Shirts Limited, is a Hong Kong based international supplier of garments and fabric. Its business has customers in the UK and the EU. It was represented at the Preliminary Issues Trial (PIT) on meaning before me by William Bennett KC and Richard Munden. The Defendant is Sheffield Hallam University ("SHU"), an English university. It was represented at the PIT on meaning by Sara Mansoori KC and Aidan Wills. The PIT on meaning followed the order of Master Brown dated 30 July 2024.

2. This is a claim for libel brought by the Claimant, Smart Shirts Limited about a report "*Tailoring Responsibility: Tracing Apparel Supply Chains from the Uyghur Region to Europe"* ("the report") published on 6th December 2023 by SHU's Helena Kennedy Centre for International Justice and an email (one of a series of emails with the same wording) sent to third parties on 21st and 23rd November 2023 prior to publication of the report ("the email").

The Report

3. The report was the result of research by SHU into apparel supply chains and, specifically, their connections with the Xinjiang Uyghur Autonomous Region (XUAR) in China. It documents human rights abuses related to cotton and other material manufacture in XUAR and highlights the cases of four suppliers that have connections with the region. That list of suppliers includes "Zhejiang Sunrise Garment Group Co./Sunrise Manufacture Group Co., Youngor Group, and Smart Shirts" ("the Sunrise Group"), the analysis of their connections with XUAR is featured on pages 10-12 of the report and is also mentioned in the Executive Summary. Annex A to the report includes responses to the email from all the companies mentioned in the report, suppliers, intermediaries and customers including the Claimant.

The Email

4. The email was one of a series of emails sent in advance of publication of the report seeking responses from companies mentioned in the report. For the purposes of this judgment, a sample email addressed to the clothing company Massimo Dutti was selected, but from the perspective of meaning, it is indistinguishable from 31 other emails sent to third parties. The email was initially sent on 21st November 2023 with a corrected version sent on 23rd November.

5. The Claimant also received a similar email on 23rd November 2023 asking for its response to the allegations in the report.

The Issues

6. While deciding the natural and ordinary meanings of the publications, I have considered whether the meaning refers to past or ongoing circumstances and whether the meaning of the publications refers only to cotton or to other materials. I have

also considered whether the meaning of each of the publications complained of, as determined by the Court, is defamatory of the Claimant at common law.

7. I have paid particular attention to the following issues which reflect differences between the parties' positions on meaning:

8. The Chase levels of meaning – i.e. the degree of culpability ascribed to the Claimant in the publications.

9. The relevance of Annex A to the meaning of the report.

10. The degree to which the Claimant is differentiated from the wider Sunrise Group in relation to connections with XUAR.

11. This is my judgment on those issues following a PIT hearing on 27th November 2024.

The Law on Meaning

12. In reaching a conclusion on meaning, the court should first reach a provisional meaning that the hypothetical reader would understand the words to mean (***Millett v Corbyn [2021] E.M.L.R. 19*** at [8]) before considering the application of the legal principles to determine a meaning.

13. The relevant principles on meaning as they apply today have been helpfully set out by Nicklin J in ***Koutsogiannis v Random House Group Limited [2020] 4 W.L.R. 25*** at [11] – [12**]**:

"[11] The Court's 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. It is well recognised that there is an artificiality in this process because individual readers may understand words in different ways: ***Slim -v- Daily Telegraph Ltd [1968] 2 QB 157***, 173D-E, per Lord Diplock.

[12] The following key principles can be distilled from the authorities: see e.g. ***Slim -v- Daily Telegraph Ltd*** 175F; **Charleston -v- News Group Newspapers Ltd [1995] 2 AC** 65, 70 ; ***Gillick -v- Brook Advisory Centres [2002] EWCA Civ 1263*** [7]; ***Charman -v- Orion Publishing Co Ltd [2005] EWHC 2187 (QB)*** [8]-[13]; ***Jeynes -v- News Magazines Ltd & Anor [2008] EWCA Civ 130*** [14]; ***Doyle -v- Smith [2018] EWHC 2935*** [54]-[56]; ***Lord McAlpine of West Green -v- Bercow [2013] EWHC 1342 (QB)*** [66]; ***Simpson -v- MGN Ltd [2016] EMLR 26*** [15]; ***Bukovsky -v- Crown Prosecution Service [2017] EWCA 1529 [2018] 1 WLR 18***; **Brown -v- Bower [2017] 4 WLR 197** [10]-[16] and ***Sube -v- News Group Newspapers Ltd [2018] EWHC 1234 (QB)*** [20]:

a. The governing principle is reasonableness.
b. The intention of the publisher is irrelevant.
c. 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.

d. Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
e. 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.
f. Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
g. It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
h. 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).
i. 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.
j. No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.
k. 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.
l. 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.
m. 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)."

14. Meanings will be considered defamatory at common law if they *"substantially affect in an adverse manner the attitude of other people towards a Claimant, or have a tendency to do so"* - **Triplark v Northwood Hall [2019] EWHC 3494 (QB)) at [11]**.

15. In order to decide on the seriousness of a particular meaning, Brooke LJ, in the case of **Chase v News Group Newspapers Ltd [2002] EWCA Civ 1772; [2003] EMLR 11** at [45] provided guidance, identifying three different levels of, meaning ("the Chase Levels"):

> **Level 1**: The sting of a libel may be capable of meaning that a Claimant has in fact committed some serious act, such as murder.

> **Level 2**: Alternatively it may be suggested that the words mean that there are reasonable grounds to suspect that he/she has committed such an act.
>
> **Level 3**: Is that they may mean that there are grounds for investigating whether he/she has been responsible for such an act.

16. These levels are shorthand for the broad spectrum of levels of meaning (***Brown*** per Nicklin J at [17]) and the reality of a given meaning may be more nuanced on that spectrum. All three levels may be defamatory of a Claimant but the "sting" of the libel is highest at Level 1 and lowest at Level 3.

17. The way in which publications appear online has given rise to the development of law in relation to the appearance of hyperlinks in a publication and the relevance of linked documents to meaning. In ***Poulter v Times Newspapers Ltd*** [2018] EWHC 3900 at [24] and [26], Nicklin J addressed this issue:

> "24. Whether readers follow links provided like this is influenced by a number of factors, including: (1) their familiarity with the story or subject matter and whether they consider they already know what they are offered by way of further reading; (2) their level of interest in the particular article and whether that drives them to wish to learn more; (3) particular directions given to read other material in the article; (4) if the reader considers that he or she cannot understand what is being said without clicking through to the hyperlink. It might be reasonable to attribute items (3) and (4) to the hypothetical ordinary, reasonable reader, but (1) and (2) will vary reader by reader.
>
> ....
>
> 26. Applying the principle from ***Dee,*** it seems to me that the "*Related Link*s" were not sufficiently closely connected as to be regarded as a single publication. It would not have been obvious to readers of one of the online articles that if read alone, it did not constitute or purport to be the full story. [...] The *"Related Links*" offered further reading, but did not suggest that it was *required* reading. Not following a "*related link"* would not make the reader 'unreasonable'.

The Meaning of the Publications

18. I have the artificial task of determining the "single, natural and ordinary meaning" of the words complained of in the report and the email taking account of the principles set out in ***Koutsogiannis*****.** I have applied legal analysis to the meaning without taking an overly analytical approach and note that I am not bound to adopt the meaning put forward by either the Claimant or the Defendant but I may not adopt a meaning that would be more seriously defamatory than the meaning put forward by the Claimant.

19. Taking account of the approach to a decision on meaning set out in ***Millett,*** I read the email and the report in order to get a first impression on the natural and ordinary meaning of the publications before considering the parties' skeleton arguments and pleaded meanings. In applying legal analysis to the meaning of both publications, I have borne in mind the principles set down by Nicklin J in ***Koutsogiannis***. In

particular, the approach to deciding meaning taking account of the "hypothetical reasonable reader".

20. In this case, the hypothetical reasonable reader of the email would be an employee of a customer or potential customer of the claimant – the addressee of the email or a relevant colleague. They would be likely to be someone aware of the issues around supply chains from the XUAR in clothing manufacturing and familiar with the overall context. Their view of these issues would likely come from the perspective of their own potential reputational exposure to supply chain issues related to XUAR which the email asks them to consider and respond to.

21. Readers of the report would come from a wider group. This could include readers of the email, but would, more broadly, be scholars, activists or other people interested in the issues set out in the report, including people involved in the industry as well as parliamentarians and decision makers in the EU and the UK to whom the report was addressed. They would be likely to have an awareness of the human rights abuses in the Uyghur Region and the problems with supply chains in clothing manufacturing and a familiarity with this type of publication. It is fair to assume that the issues covered in the report would not be news to them, but they would read the report for insights into specific cases and updates on the wider situation in relation to the clothing industry and connections with human rights abuses in XUAR.

Email - Arguments on Meaning

22. The claimant's pleaded meaning for the email is:

> *"The C is obtaining raw materials and products which have been obtained and/or produced using forced labour from the Xinjiang Uyghur Autonomous Region."*

23. The defendant's pleaded meaning is:

> *"There were strong grounds to suspect that the C was using raw materials or fabrics from the Xinjiang Autonomous Region of China which were produced or were very likely to have been produced using forced labour."*

24. While the claimant's meaning is clearly related to current behaviour, the defendant's meaning leaves a degree of ambiguity as to whether the activities are current or in the past. There is no substantive difference in the meanings as to what materials may be involved or of the issue of forced labour in supply chains for goods from XUAR. The most significant point of argument is the Chase level of the different meanings.

25. The claimant argues that the allegation in the email is at Chase level 1 – essentially a presentation of "findings" and "evidence". The defendant, by contrast, argues that the email does not bear a Chase level 1 meaning because it makes clear that there is room for doubt about whether the claimant was using raw materials or fabrics from XUAR. Passages referring to "allegations" and the awareness that "supply chains often change", along with the request to respond to the findings, the defendant says, would make the reader understand that no definitive conclusions had been reached on the matter.

26. At the hearing before me, Mr Bennett highlighted that the email was clearly not designed to investigate the allegations against the four companies set out in the report, rather it was investigating the recipients' awareness of the issues set out in the report. He stressed that the email explicitly said that "we write this letter to grant you the opportunity to respond to our findings" which indicated that "findings" had already been made.

Decision on Meaning – Email

27. The single, natural and ordinary meaning that I find in the words complained of in the email is:

Smart Shirts is a purchaser of textile inputs and/or apparel products from a company or companies that source material inputs and labour from the Xinjiang Uyghur Autonomous Region (XUAR), a region known for the use of forced labour.

The statement is one of fact and refers to an ongoing situation.

28. In my view, this would carry a Chase level 2 meaning, i.e. that there are reasonable grounds to suspect that the allegation is true. This is because the email alerts the reasonable reader to the existence of extensive research carried out by the defendant in the development of the report. It is clear from the wording that, by the time the email was sent, investigations had already been carried out by the defendant and findings reached such that a Chase level 3 meaning would not be sustainable.

29. The email invites a response from the recipient and clarifications on certain points raised in the report. It is clear that the recipient would not have read the report at that stage and therefore would only form a view of the contents of the email rather than the more in-depth analysis in the report. However, the nature of the email to seek clarification while recognising that supply chains vary over time leads to a meaning that is not sufficiently definitive for a Chase level 1 meaning. The email refers to a carefully researched report but recognises that the context is a changeable one. In these circumstances, it means that there are reasonable grounds to suspect that the findings outlined in the email are true giving a Chase level 2 meaning.

Report – Status of Annex A

30. The defendant submits that the report should be read to include Annex A.

31. Mr. Bennett for the claimant, in a supplementary skeleton argument and in the hearing before me, argued that Annex A is not an intrinsic part of the report. He suggested that it should not be considered as context because arguments relating to Annex A had not been pleaded (***Hijazi v Yaxley-Lennon*** [2020] EWHC 934(QB) at [14]) and to allow it in as context would open up a Pandora's Box by paving the way to consideration of the 173 hyperlinks contained in the report as a whole. If the defendant was permitted to argue that the reasonable reader would have followed the hyperlinks to Annex A and read it, he said that the court should find that the reasonable reader would not have read it in fact.

32. Ms Mansoori argued that the defendant was surprised that the claimant was seeking to exclude Annex A from the consideration of the court saying, in essence, that the

only reason the defendant had not raised it specifically as a separate issue was because it appeared clear that Annex A was a part of the report and had, indeed, been included by the claimant in the bundle.

33. Having read the report prior to reading the skeleton arguments and pleadings of the parties, I formed an independent view of the status of Annex A. It is mentioned in the contents of the report with a hyperlink that may be followed, and it is again referred to in both the Executive Summary and in the part of the report that refers directly to the claimant and the Sunrise Group.

34. Its inclusion in the contents page would indicate that it is a part of the report in the same way that acknowledgements or footnotes may be considered as part of the report. The status of an annex to a report is not the equivalent of a hyperlink to, for example, an article or report of a third party. Considering Annex A as part of the report does not, therefore, open up the question of the relevance of the significant number of other hyperlinks that lead to further reading. In this context, the hyperlink to Annex A is simply a structural point as it gives access to a different part of the report regardless of the technical route by which it is taken, including a separate landing page.

35. Having found that Annex A is a part of the report, I have gone on to consider whether the hypothetical reasonable reader would, in fact, have read it when reading the report as a whole. I noted in court that, while I had read the report to get an independent impression on meaning before considering the parties' written submissions, I had not read Annex A until I saw explicit reference to it in the skeleton arguments. This is because I did not feel that I needed to read Annex A in order to understand the report any more than I would have read footnotes or endnotes in any detail. I read the overarching position of the claimant denying the allegations set out in the text of the report and noted the hyperlink to their full response, but, taking the role of the hypothetical ordinary, reasonable reader with a baseline knowledge of the human rights situation in relation to supply chains and XUAR, I did not think it necessary to explore the companies' response to the allegations further.

36. It seems to me that Annex A should, therefore, be considered as a part of the report, albeit a part of the report that the reasonable reader would not necessarily have read. Having gone on to read it in detail, I am not persuaded that, even if the reasonable reader had read Annex A, it would have made much difference to their understanding of the sting of the report as a whole.

37. The section from the claimant consists of two pieces of correspondence from the claimant's lawyers in response to the email, it is not a clear refutation of the contents of the report itself. As Mr Bennett noted, the reasonable reader, in the context of such a report, might well think "they would say that wouldn't they" when considering the response of companies whose connection with XUAR is flagged in the report. Overall, therefore, I do not find that the status of Annex A, or its contents, make a significant impact on the meaning of the report.

Arguments on Meaning - Report

38. The claimant pleads that the natural and ordinary meaning of the report is that:

"The Claimant is obtaining raw materials and products which have been obtained and/or produced using forced labour from the Xinjiang Uyghur Autonomous Region. It is thereby complicit in the People's Republic of China's inflicting of genocidal policies on the Uyghur people and associated appalling human rights violations against them, including familial separation, land expropriation, cultural assimilation, forcible migration, mass surveillance, land expropriation, cultural erasure, resource exploitation and imprisonment in extrajudicial internment camps where detainees are subjected to physical and psychological torture, sexual violence and forced labour.
Smart Shirts conceals from its customers and generally the fact that its products have been produced/manufactured using forced labour in the Uyghur region."

39. The defendant argued in its Defence that the report did not bear a defamatory meaning but that:

. . . there were strong grounds to suspect that the Claimant was using raw materials or fabrics from the Xinjiang Autonomous Region of China which were produced or were very likely to have been produced using forced labour . . .

40. In its skeleton argument, the Defendant, while arguing that the report did not offer any settled conclusion on the situation, submitted the following meaning for the report:

"As a result of the Claimant having sourced materials from Sunrise, which in turn has sourced materials from Youngor, and both of which have ties to XUAR, there were grounds to investigate whether the Claimant has been using raw materials or fabrics from XUAR which were produced or were very likely to have been produced using forced labour."

41. This meaning is different from the "Lucas-Box" meaning referred to in the Defence, but the defendant says it did not apply to amend the Defence at this stage because both parties would be likely to have to amend their statements of case following my determination of meaning following the PIT. Given the nature of a PIT on meaning and the fact that the court is not bound to decide between the parties' meanings, but rather to identify a meaning of its own, this seems an appropriate approach to the issue at this stage.

42. The essence of Ms Mansoori's arguments before me was that the matters set out in the report were not conclusive but rather highlighted a "risk" of the claimant's having direct or indirect connections to XUAR in its supply chain. In particular, she highlighted the focus of the report on other parts of the Sunrise Group, notably Youngor, arguing that there was very little direct reference to the involvement of Smart Shirts in the XUAR exposure in supply chains highlighted in the report.

43. The claimant argues that the meaning is defamatory at Chase level 1. Before me, Mr Bennett argued that the report makes findings that are presented as being based on significant and credible research. The nature of the researchers, presented as experts in their field with direct knowledge of the situation in XUAR, and the significant funding behind the report presented in the acknowledgements, he says, indicates this is a report whose findings should be taken very seriously. Even with the Annex, there

is no reason to question the veracity of the report which is couched in terms of conclusions following a long period of research.

44. The defendant argues that there is no defamatory meaning as the report talks about the "risk" that the claimant was obtaining or had obtained raw materials or products using forced labour but did not draw conclusions that this was indeed the case. Before me, Ms Mansoori highlighted the use of the words "potentially" and "high risk relationship" to demonstrate qualification in the terms of the report. While Smart Shirts is mentioned in the report, she said, the thrust of the most serious allegations is directed at Sunrise or Youngor and the ordinary reasonable reader would recognise that Smart Shirts was in a different category to the wider Sunrise Group in terms of culpability.

Decision on Meaning – Report

45. Having read the report independently and subsequently considered the parties' submissions, I find that the single, natural and ordinary meaning of the report is:

Smart Shirts company and brand is owned by Zhejiang Sunrise. Zhejiang Sunrise sources from the Uyghur region, is likely operating in the Region and has described its entire supply chain as being rooted in the Region. Zhejiang Sunrise is either directly or indirectly engaged in state-sponsored labour transfer programs of Uyghur people and, it is alleged, also the forced labour of North Koreans. Zhejiang Sunrise's ownership of Smart Shirts means that Smart Shirts is also implicated in these human rights abuses by association.

46. The tense of the report, predominantly written in the present tense, indicates that the meaning refers to an ongoing situation, albeit one that may have begun in 2011 when Smart Shirts merged with the Sunrise Group. Although explicit reference is made to cotton, other apparel is also mentioned in the section on the Sunrise Group, therefore the meaning is not restricted to cotton but could include other materials such as PVC which is mentioned in the report.

47. I have taken note of the points made by Ms Mansoori about the difference in presentation in the report of Smart Shirts as opposed to the wider Sunrise Group. But I find that the ordinary reasonable reader would not be able to distinguish so clearly between the two as to be clear that Smart Shirts itself was not either directly or indirectly engaged in sourcing materials tainted by forced labour in the XUAR.

48. The section in the Introduction and Policy Recommendations section of the report entitled "Corporate Obfuscation" sets the reader up to doubt the distinctions apparently drawn between corporate entities meaning that the reader would be less likely to try to understand such clear differences.

49. The meaning I have found is one of fact, presented as findings based on extensive and ongoing research. It is clearly defamatory at common law. The allegation of selling goods created by the use of forced labour contributing to the genocide of the Uyghur people undermines basic principles of human rights and human dignity. As discussed in the report, the use of forced labour from North Korea could also violate national laws designed to prevent such activities, for example the US Countering America's Adversaries Through Sanctions Act (CAATSA). This is explicitly

referenced in the section of the report relating to the Sunrise Group. This would, of course, *"substantially affect in an adverse manner the attitude of other people towards a Claimant, or have a tendency to do so"* - **Triplark**, supra [11].

50. The claimant argues for a Chase level 1 meaning to the report indicating a high level of culpability. The defendant argues firstly that the publication is not defamatory, purely referring to "risk" and, in the alternative, submits that a Chase level 3 meaning would be appropriate.

51. On my reading of the report, the ordinary reasonable reader would understand the meaning to be that there are substantial grounds for suspecting that the claimant is, by association with Zhejiang Sunrise, involved, directly or indirectly, in sourcing material tainted by forced labour from XUAR – in other words, a Chase level 2 meaning.

52. There is a degree of qualification in the report in relation to the Claimant in particular such as to make a Chase level 1 meaning unsustainable. But the report is clearly presented as a credible source of information grounded in extensive research which goes beyond a Chase level 3 meaning - the investigations have already been carried out and the results give grounds for suspecting that the allegations are true.

Conclusion

53. The single natural and ordinary meaning of Publication 1 (the email) is as set out in paragraph 24 of this judgment and the single natural and ordinary meaning of Publication 2 (the report) is set out at paragraph 42 of this judgment.

54. The meanings of both publications are of fact and both are defamatory at common law with a Chase level 2 meaning.

Costs

55. Costs in the case.

Deputy High Court Judge Susie Alegre