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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

[2018] EWHC 1728 (QB)



Claim No. HQ18M00939

Royal Courts of Justice

Tuesday, 22 May 2018

Before:

MR. JUSTICE NICKLIN

B E T W E E N :

GIDEON FALTER

Claimant

- and -

GILAD ALTZMON

Defendant

MR W. BENNETT (instructed by Seddons Solicitors) appeared on behalf of the Applicant.

MR A. WOLANSKI (instructed by Simons Muirhead & Burton) appeared on behalf of the Respondent.

J U D G M E N T

MR. JUSTICE NICKLIN:

- 1 These are libel proceedings and this is the trial of meaning as a preliminary issue that was ordered by Deputy Master Sullivan on 19 April 2018.
- 2 The Claimant is the chairman of the Campaign Against Anti-Semitism ("CAA"). The Defendant is a jazz musician and author and he has a personal website at www.gilad.co.uk. He is of Jewish origin and grew up in Israel.
- 3 The claim for libel arises from an article that was written by the Defendant and published, it is alleged, on the Defendant's website from about 18 July to 20 December 2017. The article was in the following terms.

The heading was, "Anti-Semitism is merely a business plan"

There is an illustration of what appears to be a business plan bearing what appears to be the logo of the CAA. The article appears underneath. I have added paragraph numbers for ease of reference.

- [1] While the Crown Prosecution Service attests that there has been no increase in anti-Semitism in Britain, in the following Sky News interview, Jewish ethnic activist, Gideon Falter, insists that Jew hatred is on the rise."

[A YouTube website address is then given by hyperlink together with what appears to be an imbedded video which visitors to the website could access. This is apparently an extract from a Sky News interview that is referenced in the first paragraph of the article.]

The article continues:

- [2] We are asked to choose between two versions of the truth, that delivered by Falter who leads the Campaign Against Anti-Semitism (CAA) and basically makes his living manufacturing anti-Semitic incidents and the judicial approach of the CPS: a public body, subject to scrutiny and committed to impartiality. This is hardly a difficult choice.
- [3] Falter and the CAA obviously fabricate anti-Semitic incidents. Falter interprets condemnation of Israel and Jewish politics as, 'hate crimes'. It seems the CPS does not buy Falter's duplicitous claims. Against the odds and despite the traitorous zionised British political elite, the CPS insists upon defending freedom of expression so that Britain may still be able to regard itself as an, 'open society'.
- [4] Openly and in the name of the Jews, Falter condemns the Crown Prosecution Services (sic). Falter conspicuously operates to wipe out the British liberal heritage of freedom of speech. This attempt may not be very popular amongst Brits and could lead to some unfortunate circumstances for British Jews. I guess that this is exactly what Falter and the CAA are after. Since Falter makes a living out of the 'rise of anti-Semitism', it shouldn't surprise us that he, himself, propels such a rise.

- [5] This dynamic is at the core of the Zionist philosophy: Since Israel presents itself as a 'Jewish shelter', its existence becomes meaningful only when a shelter is desired. As we often witness, it is Israel's politics and policies that instigate Jew hatred and that hatred actually affirms Israel's existence as a safe haven for world Jewry. Falter and the CAA employ the same method. A decrease in anti-Semitic incidents or Jews being loved and cherished could have fatal consequences for Falter and his CAA business plan. They need anti-Semitism and a lot of it. When it isn't there, they just invent it.
- [6] The only issue that concerns me here, is where does this as leave the Goyim, the gentiles, and the non-Jews?
- [7] Falter and the CAA need the Jews to be hated so they can collect more and more British taxpayer money. But what is the role of the ordinary Brit? If hating the Jews means working for Falter and the CAA, what is left for the non-Jews? Not a lot, I can tell you."

The Rival contentions on meaning

- 4 The Claimant's pleaded meaning is that in its natural and ordinary meaning, the article meant and understood to mean:
- “(a) The Claimant is deliberately encouraging British people to hate Jews. His business plan is to insight anti-Semitism so that he can get more and more money from the British taxpayer. Where anti-Semitism does not exist, he dishonestly fabricates anti-Semitic incidents in order to defraud the British taxpayer into giving him money.
- (b) For these reasons, the Claimant is a devious fraud and a hypocrite. He publically campaigns against anti-Semitism but in reality, his business plan is that he wants Jews to be hated so that he can make money.”
- 5 No Defence has yet been served; an extension of time for filing the defence has been granted pending the determination of meaning. Nevertheless, the Defendant has set out his case on meaning in a letter from his solicitors dated 6 April 2018. He contends that the meaning of the article is that:

"In order to justify the existence of and raise funds for the CAA, the Claimant dishonestly fabricates anti-Semitic incidents. That is to say he characterises conduct as anti-Semitic when he knows it is not and knowingly exaggerates the prevalence of anti-Semitism and anti-Semitic activity."

Relevant legal principles

- 6 The task I have to perform in assessing the meaning of the Article is very familiar. The court is required to determine the sole natural and ordinary meaning of the words. No evidence is admissible. The principles to guide the court in assessing meaning have been set out by Judges on a number of occasions. A convenient summary of them is set out in the judgment of Sir Anthony Clarke MR in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 [14]. Strictly, this was a decision on rulings as to the capacity of words to bear meanings. When libel actions were tried by jury, the court's role was limited to de-limiting the range of

capable meanings; it being the role of the jury to determine the actual meaning of the words. Nevertheless, a number of the principles apply equally to the determination of the actual meaning. Extracting from the *Jeynes* decision, the principles are as follows:

1. The governing principle is reasonableness.
 2. The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines, he can read 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 abet for scandal and someone who does not and should not select one bad meaning where other non-defamatory meanings are available.
 3. Over-analysis is best avoided.
 4. The intention of the publisher is relevant.
 5. The article must be read as a whole and any ‘bane and antidote’ taken together.
 6. The hypothetical reader is taken to be representative of those who would read the publication in question.
 7. The court should reject meanings which ‘can only emerge as the product of some strained or forced or utterly unreasonable interpretation...’
- 7 One of the earlier authorities from which these principles have been distilled was *Skuse v Granada Television* [1996] EMLR 278. That was a decision on actual meaning following a trial of a preliminary issue. Further principles from *Skuse* not summarised above from *Jeynes* are:
8. The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary, reasonable viewer watching the programme once.
 9. In relation to the third principle from *Jeynes* in deciding what impression the material would have been likely to have had on the hypothetical reasonable viewer, the court was entitled (if not bound) to have regard to the impression made on it.
 10. In determining the meaning of the material complained of, the court was not limited by the meanings which either the plaintiff or the defendant sought to place on the words.
 11. The defamatory meanings pleaded by the Claimant was to be treated as the most injurious, meaning the words were capable of conveying. The questions a judge sitting alone had to ask himself were,
 - (a) was the natural and ordinary meaning of the words that which was alleged in the Particulars of Claim,
 - (b) If not, what, if any, less injurious meaning did they bear?

The relevance of the Sky interview

- 8 A point arose in relation to the Sky interview, a clip of which was apparently embedded in the article. Mr. Bennett for the Claimant contended that, as the Claimant does not complain

about the contents of the video and that the Defendant does not contend that the readers of the article watched the video, the video was irrelevant to the issue of meaning. Those submissions were made before he had the benefit of seeing Mr. Wolanski's skeleton argument for the defendant.

9 Mr. Wolanski has submitted that, having regard to all the circumstances, it is to be inferred that the publishers or the reasonable reader of this article would also have watched the Sky interview. In particular, he relies on the facts, that the Article:

- (a) contained a prominent hyperlink to the Sky interview.
- (b) invited readers to watch the interview in the very first paragraph and,
- (c) centred on what both the CPS and the claimant had said in the interview, so readers would, inevitably, he says, have wanted to watch it to understand what the piece was about.

10 He submits that the Sky interview therefore provides context and should be taken into account when determining meaning, relying upon *Bukovsky v Crown Prosecution Service* [2018] 4 WLR 13 and *Charleston & Smith v News Group Newspapers Ltd* [1995] 2 AC 65, 74 *per* Lord Nicholls. Mr. Wolanski submits that the Claimant himself appears to acknowledge the importance of the Sky interview as context, since he makes reference to the imbedded interview in the paragraph in the Particulars of Claim where he sets out the words complained of.

11 There has been further debate at the hearing about what approach the court should adopt. I observed in argument that *Charleston & News Group Newspapers* comes from a different era where print copies of newspapers were essentially the main medium through which people were defamed. In such cases it was relatively straightforward, given that the totality of what was provided to the reader was readily available, to treat the ordinary reasonable reader as having read the entirety of an article including its text, headline, text, furniture, things like that.

12 The Internet provides a degree of challenge to that orthodoxy because it is possible to set out in on-line publications many hyperlinks to external material. It is perhaps unrealistic to proceed on the basis that every reader will follow all the hyperlinks, but everything depends upon its context. For example, if in a single tweet there is a single statement that says, "X is a liar" and then a hyperlink is given, it is almost an irresistible inference to conclude that the ordinary reasonable reader would have to follow the hyperlink in order to make sense of what was being said. At the other end of the spectrum, a very long article could contain a very large number of hyperlinks. Only the most tenacious or diligent reader could be expected to follow every single one of those hyperlinks. Such a reader could hardly be described as the ordinary reasonable reader. How many links any individual reader would follow would depend on an individual's interest in or knowledge of the subject matter or perhaps other particular reasons for investigating each of the hyperlinks in question.

13 It therefore does not seem to me to be possible to put forward a hard and fast rule that hyperlinks imbedded in an article that is complained of should be treated as having been read by the ordinary reasonable reader.

14 Warby J dealt a little bit with this principle and wrestled with the difficulty it presents in *Monroe v Hopkins* [2017] 4 WLR 68. Mr. Wolanski referred me to that authority and what the judge said was this under the heading, “Principles applied to Twitter”:

[34] These well-established rules are perhaps easier to apply in the case of print publications of long standing such as books, newspapers, or magazines, or static online publications, than in the more dynamic and interactive world of Twitter, where short bursts of pithily expressed information are the norm, and a single tweet rarely exists in isolation from others. A tweet that is said to be libellous may include a hyperlink. It may well need to be read as part of a series of tweets which the ordinary reader will have seen at the same time as the tweet that is complained of, or beforehand, and which form part of what Mr Price has called a 'multi-dimensional conversation'.

[35] The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter.

[36] As to the characteristics of the readership, it has been said that in a Twitter case, "The hypothetical reader must be taken to be a reasonable representative of users of Twitter who follow the Defendant": *McAlpine* [58] (Tugendhat J)...

[37] There has been some debate about another issue: what are the limits of categories (a) and (b) at [35] above? How much should be regarded as known to a reader via Twitter, or as general knowledge held by such a reader? ... A matter can be treated as known to the ordinary reader of a tweet if it is clearly part of the statement made by the offending tweet itself, such as an item to which a hyperlink is provided. The external material forms part of the tweet as a whole, which the hypothetical reader is assumed to read. This much seems to be common ground in this case...

[38] The third point concerns material on Twitter that is external to the tweet itself. This is perhaps less straightforward. I would conclude that a matter can be treated as part of the context in which an offending tweet if it is on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader's view, or in their mind, at the time they read the words complained of. This test is not the same as but is influenced by the test for whether two publications are to be treated as one for the purposes of defamation: *Dee v Telegraph Media Group Ltd* [2010] EWHC 924 (QB) [2010] EMLR 20 [29] (Sharp J).

15 *Monroe v Hopkins* gives very helpful guidance, but it does not extend the principle of *Charleston v News Group* into a rigid rule that requires the court, when determining meaning, to include in consideration material that is available to be read or watched by way

of hyperlink. What, if I might summarise, I derive from *Monroe v Hopkins* is that everything is going to depend upon the context in which material is presented to the reader.

- 16 I suppose, ultimately, if it is a matter of dispute, the court is going to have to take a view as to what hypothetical reasonable reader is likely to do when presented by an online publication and the extent to which s/he would follow hyperlinks presented to him/her.
- 17 A Claimant always has the option in order to make beyond doubt what he or she is relying upon, if necessary, to expressly plead the hyperlinks by way of context. Out of an abundance of caution, a claimant could also plead an innuendo meaning which relies on the hyperlink material as material that at least a large proportion of the readers would have read. That is one practical way of avoiding what may be some uncertainty about the extent to which hyperlinks can be taken into account when determining meaning.
- 18 Happily, I do not need to decide the point because having read the article and watched the video, it has not, in my judgment, altered the view I take as to the meaning of the article as a whole. It seems to me that broadly speaking, the Sky interview is accurately described in the article itself: i.e. a dispute between Mr. Falter and the CPS about the proper prevalence or numbers of incidents of anti-Semitism that are recorded. In my judgment, those who watch the video would not collect a materially different meaning from the article compared to those who had not watched it.
- 19 To an extent, prolonged consideration of submissions of the parties falls foul of the principles identified above because it risks performing the over-elaborate analysis that the authorities caution against. When I am asked to adjudicate on meaning, it is my practice to read the words complained of and form at least a preliminary view as to meaning before I look at the rival meanings or read the parties' submission.
- 20 The Claimant submits that the article clearly suggests that the Claimant, "dishonestly fabricates anti-Semitic incidents". There appears to be no quarrel about that by the Defendant. However, the Defendant has added a gloss or an explanation, Mr. Bennett suggests, with the addition to the meaning of the words, "that is to say that he characterised conduct as anti-Semitic when he knows that it's not and knowingly exaggerates the prevalence of anti-Semitism and anti-Semitic behaviour."
- 21 The Claimant submits that the verbs used in the article: "manufacture", "fabricate" and "invent" are plain and they are not reconcilable with mere characterisation. Mr. Bennett also submits the Defendant's meaning simply omits the second element of the meaning advanced by the Claimant that the Claimant is accused of encouraging or inciting anti-Semitism. Mr. Bennett contends that this emerges clearly from paras.4 and 5.
- 22 Mr. Wolanski raises, as the first question (and he says the most significant), whether the words bear the separate and distinct meaning that the Claimant is himself anti-Semitic. He submits that whilst the Claimant does not plead explicitly as a part of his meaning that the Claimant is an anti-Semite, this is an integral and inescapable part of his pleaded meaning. In support of this, he submits that the Claimant complains that the words mean that he is a person who deliberately encourages British people to hate Jews, who has a business plan to insight anti-Semitism and who wants Jews to be hated. It is also implicit in the pleaded accusation that the Claimant is a hypocrite, that he is an anti-Semite since the charge of hypocrisy can only be a reference to the Claimant's purported but supposedly inauthentic desire to fight anti-Semitism.

23 The second issue that Mr. Wolanski submits relates to what the words say about who the Claimant seeking to mislead or defraud. He notes that the Claimant contends that they impute that the Claimant has sought specifically to defraud the British taxpayer. The Defendant contends that the words do not narrow the class of those the claimant is seeking to mislead in this way.

24 A further point that has been raised in argument by Mr. Wolanski today is whether a meaningful distinction is to be drawn between who it is said is the beneficiary of the dishonesty. Mr. Wolanski points out that in almost every incident in the article where Mr. Falter is raised, he is bracketed at the same time with the CAA. There are numerous instances where the two are referred to together in the article. However, there are also two very clear instances where Mr. Falter's living is said to depend upon his activities.

Decision

25 Applying the principles I have identified above and for reasons I will explain shortly, I consider that the meaning of the article is that,

- (a) the Claimant dishonestly fabricated anti-Semitic incidents and has deliberately exaggerated the prevalence of anti-Semitism and anti-Semitic activity (including being too ready to characterise as anti-Semitic legitimate criticism of Israel);
- (b) by doing so, he risks increasing anti-Semitism;
- (c) his motivation for doing so was obtain funds (including from British taxpayers) to support the activities of CAA and to provide his own income.
- (d) the funds obtained by this fabrication and misrepresentation were consequently obtained by the Claimant's fraud, and
- (e) the Claimant is guilty of hypocrisy: he publicly campaigns against anti-Semitism, yet he is content with its continued prevalence (even resorting to manufacture of incidents) because his income and that of a CAA depends upon it.

26 Put briefly, and trying not to be over-analytical in the process, my reasons for deciding the meaning in this way are as follows.

27 Meaning (a) emerges as the central contention of the article and it appears to be common ground that this is part of the meaning. It is important in my judgment when looking at the context and the article as a whole that although Mr. Wolanski submits that, in para.3, one of the ways in which it is said that Mr. Falter fabricates anti-Semitic incidents is by interpreting condemnation of Israel and Jewish politics as hate crimes. As I mentioned in argument, it depends whether one reads the first and second sentences of para.3 conjunctively or disjunctively.

28 In my judgment, an ordinary reasonable reader would not read them conjunctively. The reason for that is paras.1 and 2 have already given general indications that this is a case of manufacture. Para.2 makes the general allegation that the Claimant makes his living

manufacturing anti-Semitic incidents. In my judgment, the ordinary reasonable reader would think that interpreting condemnation of Israel and Jewish politics as hate crimes was just an example of the way in anti-Semitic incidents were manufactured.

- 29 Meaning (b) arises from paras.4 and 5 for the reasons identified by Mr. Bennett. There is a clear suggestion that what Mr. Falter risks doing is to actually increase the hostility or anti-Semitic behaviour as a result of the activities of fabricating anti-Semitic incidents.
- 30 Meaning (c), which is the venality of the Claimant, emerges from the express references of the Claimant making his living from campaigning against anti-Semitism in paras.2 and 4 and the fact that without the exaggeration and/or manufacture of anti-Semitic incidents, the true (limited) extent of that anti-Semitism "could have fatal consequences for Falter and his CAA business plan."
- 31 Meaning (d) I am satisfied is the plain implication of the article as a whole, particularly the reference to the sources of funding in para.7 and in my judgment, meaning (e) emerges clearly also by implication. I do not, however, consider that the hypocrisy alleged is that the Claimant *wants* people to hate Jews. It is his willingness to invent and exaggerate the prevalence of anti-Semitism which gives rise to the risk that will be a consequence.

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This transcript has been approved by the Judge