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Ref: MAG10553

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 28/2/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

2016/088335

BETWEEN:

BERNADETTE COUSINS

Plaintiff;

-and-

ASDA STORES LIMITED

First named defendant;

-and-

MGN LIMITED

Second named defendant;

-and-

THE TONTINE ROOMS HOLDING COMPANY LIMITED

Third named defendant

-and-

THE POLICE SERVICE OF NORTHERN IRELAND

Fourth named defendant.

MAGUIRE J

Introduction

[1] The court has before it a meanings application brought on behalf of the third named defendant, the Tontine Rooms Holding Company Limited. The application is made in the above entitled proceedings taken by the plaintiff. The other defendants are not involved in the application and the application has proceeded as an issue involving only the plaintiff and the third named defendant.

[2] The relevant context in which the application is made is that the plaintiff, who describes herself as a self-employed registered childminder, aged 32 now, has sued the third named defendant in respect of alleged defamation of character in the form of libel.

[3] The alleged libel arises from an article published by the third named defendant in a newspaper called "The County Down Outlook". The publication was in the newspaper's edition for 30 December 2015. The article in question is found at page 4 of the edition of the newspaper. The headline to the article is: "Women sought over theft of food, a Hoover and clothes." Under the headline there are photographs of four different women. The third named defendant, for the purpose of this application, accepts that one of these women is the plaintiff. She is identified as the woman in the far right photograph. In respect of her and the woman whose picture is to the left of her, there is an associated narrative.

[4] The text of the narrative reads as follows:

"Police are investigating the theft of goods worth £440 from Asda, Newcastle Street, Kilkeel on Saturday 10 October. Police believe the two females pictured above may be able to assist them with their enquiries. Police are asking these individuals or anyone who has information in relation to this incident to contact them on 101, quoting reference 1031 10/10/15 or VIU:1207/15."

[5] In the most recent edition of the plaintiff's statement of claim in respect of the above it is stated at paragraph 10:

"The said words referred to were understood to refer to the plaintiff, and were understood to mean to an ordinary observer that:

(a) That the plaintiff is a thief;

- (b) That there are grounds to suspect that the plaintiff is a thief;
- (c) That the plaintiff is the subject of a police investigation in relation to theft;
- (d) That the plaintiff removed items from the store without making payment;
- (e) That there are grounds to suspect that the plaintiff removed items from the store without making payment;
- (f) That there is a police investigation into the allegation that the plaintiff removed items from the store without payment.”

[6] The third named defendant’s application is concerned with the question of the court determining whether the words complained of are capable of bearing one or more of the meanings contended for by the plaintiff and contained in paragraph 10 of the statement of claim aforesaid.

[7] In the third named defendant’s application it is suggested that the words complained of do not bear a meaning greater than that there were grounds for investigating whether the plaintiff had been guilty of theft.

[8] The relief which is sought by the third named defendant is that the court should strike out those meanings in paragraph 10 which the words complained of are not capable of bearing and those meanings which are repetitious.

Legal principles

[9] There has been no more than a peripheral dispute between the parties as to the legal principles which govern an application of this sort.

[10] Order 82 Rule 3A of the Rules of the Court of Judicature, which deals with defamation actions, (where relevant) provides:

“(1) At any time after service of the statement of claim either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a particular meaning or meanings attributed to them in the pleadings.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the pleadings, he may dismiss the claim or make such other order or give such judgment in the proceedings as may be just."

[11] A substantial number of cases have been cited to the court which, both sides accept, provide useful guidance to the court. The court will set out some of the key passages from these cases. In *Bennett v News Group Newspapers* [2002] EMLR 39 Robert Walker LJ said at paragraph [14]:

"The importance of clearing the decks was emphasised by O'Connor LJ in *Polypeck (Holdings) v Trelford* [1968] QB 1000 at 1021 when he said that one important principle:

'is that the trial of the action should concern itself with the essential issues and the evidence relevant thereto and that public policy and the interest of the parties requires that the trial should be kept strictly to the issues necessary for a fair determination of the dispute between the parties'."

[12] As regards meanings, the court's attention was drawn to the judgment of Carswell LCJ in *Neeson v Belfast Telegraph* [1999] NIJB 200. The LCJ stated at page 201d:

"It is a difficult task for a court to strike a fair and proper balance between the right of a plaintiff in a libel case to rely upon any inferences which may correctly [be] drawn from the words published and the interest of a defendant in having the issues simplified to a proper extent and preventing the jury from being misled by prolix, repetitive or unsustainable assertions relating to meanings propounded."

[13] The case of *Jeynes v News Magazine Limited* [2008] EWCA 130 was also referred to. In his judgment in this case Sir Anthony Clarke MR stated:

"The legal principles relevant to meaning have been summarised many times and are not in dispute. ...

They are derived from a number of cases including, notably, *Skuse v Granada Television Limited* [1996] EMLR 278, per Sir Thomas Bingham MR at 285-7. They may be summarised in this way:

- (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 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.
- (3) Over-elaborate analysis is best avoided.
- (4) The intention of the publisher is irrelevant.
- (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) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the product of some strained, or forced, or utterly unreasonable interpretation...' (see Eady J in *Gillick v Brook Advisory Centres* approved by this court [2001] EWCA Civ 1263 at paragraph 7 and *Gatley on Libel and Slander* (10th Edition), paragraph 30.6).
- (8) It follows that 'it is not enough to say that by some person or another the words *might* be understood in a defamatory sense.' *Neville v Fine Arts Company* [1897] AC 68 per Lord Halsbury LC at 73."

[14] Reference was also made to *Charleston v News Group Newspaper* [1995] 2 AC 65. In that case it was made clear that the meaning of the words is to be obtained from the entirety of the words complained of, including any headline or other contextual material. This clearly also includes photographs.

[15] Another quotation advanced to the court was taken from *Chase v News Group Newspapers* [2003] EMLR 11 at [45]. This stated that:

“The sting of a libel may be capable of meaning that a claimant has in fact committed some serious act, such as murder. Alternatively it may be suggested that the words mean that there are reasonable grounds to suspect that he/she has committed such an act. A third possibility is that they may mean that there are grounds for investigating whether he/she has been responsible for such an act.”

[16] The typology in the citation above have become known, the court has been told, in descending order of seriousness, as *Chase* levels 1, 2 and 3.

[17] Of interest in connection with the facts of the present application, the case of *Lewis v Daily Telegraph* [1964] AC 234 was referred to. In particular the words of Lord Reid at pages 259/260 were cited:

“In this case it is, I think, sufficient to put the test in this way, ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question. So let me suppose a number of ordinary people discussing one of these paragraphs which they have read in the newspaper. No doubt one of them might say - ‘Oh, if the Fraud Squad are after these people you can take it they are guilty’. But I would expect the others to turn on him, if he did say that, with such remarks as - ‘Be fair. This is not a police state. No doubt their affairs are in a mess or the police would not be interested. But that could be because Lewis or the cashier has been very stupid or careless. We really must not jump to conclusions. The police are fair and know their job and we shall know soon enough if there is anything in it. Wait till we see if they charge him. I

wouldn't trust him until this is cleared up, but it is another thing to condemn him unheard'.

What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression. I can only say that I do not think that he would infer guilt of fraud merely because an inquiry is on foot. And, if that is so, then it is the duty of the trial judge to direct the jury that it is for them to determine the meaning of the paragraph but that they must not hold it to inpute guilt of fraud because as a matter of law the paragraph is not capable of having that meaning. So there was here, in my opinion, misdirection of the two juries sufficiently serious to require that there would be new trials."

The court's assessment

[18] In the light of the submissions made to the court by Mr Simpson QC for the third named defendant and Mr Lavery QC for the plaintiff, and in the light of the consideration of the above legal authorities (and some others placed before the court which are not referred to above), the approach of the court is to consider each of the pleaded meanings found at paragraph 10 of the statement of claim (as amended) before reaching its conclusions.

Meaning (a) - That the plaintiff is a thief

[19] The court is disinclined to accept the proposition that an ordinary observer of the impugned article would regard this meaning as one capable of arising from it. This is because there is nowhere in the article where it is stated that the person whose photograph appears at the far right hand side of the four photographs shown is to be viewed as, or is, a thief. Mr Lavery, correctly in the court's view, conceded that the narrative below the two photographs at the right of the article would not sustain the view that the plaintiff was a thief but he argued that this meaning was available when the narrative, photograph and the headline (in particular) were read together. The court finds itself unable to accept this argument. While the photograph is there to be seen, and while it may be inferred that it comes from CCTV footage, and while it is clear that the police wanted to speak to the woman in question, these factors cannot reasonably be viewed as establishing that the meaning to be given to the article as a whole, taking all aspects of it into account, is that the person depicted is a thief and/or is guilty of theft. The use of the words "sought over theft of food...", when read in context, indicates no more than that the police wish to speak to the woman shown in the photograph and/or investigate the alleged thefts. The court reaches this conclusion while acknowledging that the headline will be likely to attract more attention than the narrative. The court makes clear that in

reaching its conclusion on this point, the court's concern has been with how the reasonable observer or reader would view the article. While it may be that some observer would infer guilt from the article's headline read with its photograph and narrative, this does not mean that a reasonable reader would do so.

Meaning (b) - That there are grounds to suspect that the plaintiff is a thief

[20] The court is inclined to accept the proposition that an ordinary or reasonable observer of the impugned article may take this meaning from it. In the court's view, this is so because the headline makes it clear that the women photographed are sought by the police (whose job it is to investigate crime) in connection with thefts; because the police, as the narrative indicates, believe that the photographed persons may be able to assist them with their enquiries; because the person, who the police wish to speak to, appears to be identifiable by reason of the CCTV image which was published; and, by way of inference, because the police would not be approaching the matter in this way without having grounds to suspect that the person sought might be a thief in connection with the thefts referred to.

Meaning (c) - That the plaintiff is subject to a police investigation in relation to theft

[21] The court is inclined to accept that the ordinary observer would view the article as having this meaning also for the reasons already given in the last paragraph. The court does not understand Mr Simpson to dispute that this meaning would be one which the objective observer could reasonably take from the article.

Meaning (d) - That the plaintiff removed items from the store without making payment

[22] This meaning, it seems to the court, is largely a variation of meaning (a) *supra* and, for the reasons given in respect of (a), this meaning similarly, in the court's view, would not be capable of bearing the meaning, in the eyes of an objective observer, that the woman in the picture was guilty of theft. In the court's opinion, the emphasis in meaning (d) is on the guilt of the woman depicted in the photograph, albeit that it is less explicit than meaning (a) in this regard. If the court should be wrong about this, and if the meaning which occurred to the reader implied no sense that what had allegedly occurred (removing the items without payment) was the commission of theft it is difficult to see how then this meaning could be viewed as a defamatory one, as an innocent removal of the items without more would lack a defamatory element.

Meaning (e) - That there are grounds to suspect that the plaintiff removed items from the store without making payment

[23] It seems to the court that this meaning is a variation of meaning (b) above. Both are concerned with the idea of there being grounds to suspect the plaintiff of something which would amount, in the objective observer's mind, to a crime.

Meaning (f) - That there is a police investigation into the allegation that the plaintiff removed items from the store without payment

[24] It seems to the court that this meaning is a variation of meaning (c) and that what is said about (c) applies also to (f).

Conclusion

[25] Given the court's views as expressed above, the court will strike out meanings (a) and (d). Additionally, the court believes that there is an importance in the notion of "clearing the decks" as that phrase has been used in the authorities. The essential issues in this case, as they relate to meaning, are found in the context of meanings (b) and (c). The variations of meanings (b) and (c), at (e) and (f), are, in the court's estimation, surplusage. Their removal would clarify the issues in the case and would assist in the fair determination of the dispute between the parties. Accordingly the court will order the striking out meanings (e) and (f) in order to help achieve this object.

[26] The court is of the view that the approach which it has adopted above is consistent with the thrust of the authorities which have been referred to.