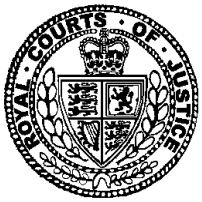

Neutral Citation Number: [2019] EWCA Civ 819

Case No: A2/2019/0192

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST
THE HONOURABLE MR JUSTICE NICKLIN
[2018] EWHC 3563 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/05/2019

Before:

THE RIGHT HONOURABLE LORD JUSTICE LONGMORE
THE RIGHT HONOURABLE LADY JUSTICE SHARP
and
THE RIGHT HONOURABLE LORD JUSTICE BEAN

- -

Between:

WILLIAM ANDREW TINKLER	**Appellant**
- and -	
1) IAIN GEORGE THOMAS FERGUSON	**Respondents**
2) WARWICK BRADY	
3) JOHN DAVID FRANCIS COOMBS	
4) RICHARD JOHN LAYCOCK	
5) ANDREW RICHARD WOOD	

- -
- -

Mr Tinkler the Appellant in person
Andrew Caldecott QC (instructed by **Herbert Smith Freehills**) for the **Respondents**

Hearing dates: 3rd April 2019

- -

Approved Judgment

Lord Justice Longmore:

Introduction

1. This is an appeal from Nicklin J in a libel and malicious falsehood action brought by the Claimant against five defendants. It concerns an announcement made on the London Stock Exchange's Regulatory News Service by Stobart Group Limited ("Stobart") on 29th May 2018 (the "Announcement").

2. The Claimant, Mr Tinkler was, at the time of the Announcement, an executive director and substantial shareholder in Stobart. He was the Chief Executive Officer of Stobart from 2007 until his resignation on 28th June 2017. The Claimant is also the sole director and CEO of Stobart Capital Limited ("Stobart Capital").

3. The First Defendant, Iain Ferguson, is a director and the non-executive Chairman of Stobart. The Second Defendant is Stobart's CEO. The Fourth Defendant, Richard Laycock, is Stobart's Chief Financial Officer. The Third and Fifth Defendants, John Coombs and Andrew Wood respectively, are non-executive directors of Stobart.

4. Mr Tinkler issued the claim form on 8th June 2018. The words complained of from the Announcement (with paragraph numbers added in square brackets) were:

> **"STOBART GROUP LIMITED.**
> **("Stobart Group" or "the Company")**
> **Update on Annual General Meeting and possible Board changes**
>
> [1] On 25th May 2018 the Company announced that the Board has been advised by Andrew Tinkler, Executive Director, that he will be voting at the AGM against the re-election of Iain Ferguson, as a Director and Chairman of the Company.
>
> [2] The Company also announced that the Ongoing Board* confirmed that it had full confidence in Mr Ferguson, both as a Director and as Chairman, and would therefore be recommending to shareholders that they vote in favour of Mr Ferguson's re-election.
>
> [3] The Ongoing Board would like to provide shareholders with some context for this regrettable situation. It is committed to the highest standards of corporate governance and believes that challenge, scrutiny and robust debate in boardrooms are part of the effective oversight of management and the decision-making process.
>
> [4] Under this commitment the Board has been forced to address a number of challenges posed by Mr Tinkler in the recent past. The Board has, throughout these challenges, sought to balance the benefits of harnessing Mr Tinkler's entrepreneurial talent whilst maintaining strong corporate governance on behalf of, and in order to create significant shareholder returns for, all investors.
>
> [5] The Ongoing Board had considered it in the best interests of the Company and its shareholders as a whole, at least until Mr Tinkler's move against Mr Ferguson, to seek to resolve these challenges through negotiation and discussion. However, the Ongoing Board no longer considers, in light of Mr Tinkler's position, such a course of action to be possible. It deeply regrets that Mr Tinkler has destabilised the Group

through his actions at this crucial time for the business and urges all shareholders to support the re-election of Mr Ferguson at the forthcoming AGM.

[6] Further, the Ongoing Board believes that a vote against the re-election of Mr Ferguson would weaken the Company's corporate governance and would not be in the best interests of shareholders:-

> [7] It would dilute the robustness and the diversity of opinion on the Board, which contains strong, varied expertise drawn from experience working with leading public and private companies;
>
> [8] It would impact the Group's planned growth strategy and its ability to optimise shareholder returns;
>
> [9] It would create instability. The Board had worked together effectively to provide a strong basis for growth, which is reflected in the Group's successful performance. During Mr Ferguson's chairmanship both Andrew Tinkler and Warwick Brady have benefited from a stable platform that has allowed the Company to deliver a total shareholder return of 185% in the three years to 28th February 2018 and provide £74.1m to shareholders through dividends and buybacks in the financial year ended 28th February 2018.

[10] Background to current composition of the Board.

[11] Between 2007 and 2013 Stobart Group received criticism for its corporate governance, principally in relation to engaging in perceived related party transactions. The Company also experienced a number of boardroom changes, in particular in relation to the role of Chairperson. Between 2007 and 2013 Stobart Group shares reached a peak price of 183p per share.

[12] As a result the Company put in place a structure for improved governance and oversight:-

> [13] Mr Ferguson was appointed as Chairman and Andrew Wood as Non-Executive Director in 2013 and additional Non-Executive Directors, John Coombs and John Garbutt, were appointed in 2014;
>
> [14] Mr Ferguson confirmed his remit with key shareholders before appointment which was to:-
>
> > [15] regularise governance, particularly regarding related party transactions;
> >
> > [16] fix the balance sheet;
> >
> > [17] clarify the future strategy;
> >
> > [18] plan management succession.
>
> [19] In mid-2016 Mr Tinkler:-

[20] advised Mr Ferguson he wanted to organise a successor CEO;

[21] requested Mr Ferguson to support as positive introduction into the business for Warwick Brady.

[22] In June 2017, and following six months as Deputy CEO, Mr Brady was appointed CEO, with the unanimous support of the Board.

[23] On Mr Brady's appointment, Mr Ferguson committed to Mr Brady and the Board to continue as Chairman until 2020 to ensure stability and a positive transition.

[24] He also supported Mr Tinkler's wish to remain as an Executive Director and to establish Stobart Capital as an independently owned business outside the Stobart Group, whilst harnessing Mr Tinkler's entrepreneurial skills for the benefit of the Group.

[25] **Management's achievements**

[26] The Company has achieved much since the stabilisation of its governance arrangements:-

[27] the structured sale of Eddie Stobart has resulted in cash proceeds to the Group so far of in excess of £300m over two partial disposals in 2014 and 2017, and gearing reducing significantly to stand at some 9% at 28 February 2018;

[28] £112.5m of dividends have been paid to shareholders since 1st March 2015;

[29] £74.1m has been returned to shareholders in the financial year ended 28 February 2018, including dividends of £58.1m and net share buybacks of £16.0m;

[30] the total shareholder return over the three years to 28 February 2018 is 185% including capital growth, dividends and share buybacks of £16.0m;

[31] Under Mr Brady, there is a clear strategy for growth:-

[32] core focus on execution of the Energy Division business plan and the development of the Aviation Division, particularly London Southend Airport;

[33] both core operating divisions have ambitious growth plans beyond delivery of previous targets;

[34] the Board's ambition is to double the value of the business by 2022;

[35] divestment of non-core assets and investments over the next 18 months to support the dividend until they are replaced by cashflows from operating divisions.

[36] Professional management teams are in place at key operating divisions to drive the business forward.

[37] **Mr Tinkler**

[38] The Board has been forced to address a number of challenges posed by Mr Tinkler in the recent past, including:

> [39] settlement of contractual issues arising from a previous related party transaction when Mr Tinkler was CEO;
>
> [40] a proposed selective buyback of part of his stake in the Company;
>
> [41] a proposed additional ex-gratia bonus for him of shares then worth some £8m;
>
> [42] a proposed buy-out of the Company when the share price was in the range of 100p to 120p;
>
> [43] a proposed related party transaction associated with the recent aborted airline transaction.

[44] Mr Tinkler's threat to vote against the Chairman presents a number of serious risks:-

> [45] significant Board resignations, both Executive and Non Executive (Mr Wood and Mr Coombs have now already confirmed that they will resign from the Board if Mr Ferguson is not re-elected);
>
> [46] sponsor and independent broker resignation;
>
> [47] operational management destabilisation and distraction;
>
> [48] potentially weakened corporate governance;
>
> [49] potential adverse market response and risk to shareholder value.

[50] Mr Tinkler is no longer key to delivery of the current management's operational strategy. His focus, during the 50% of his time which is committed to the Stobart Group, is on the non-operating divisions. The balance of his time is spent on his separate vehicle Stobart Capital, although:-

> [51] he is now in dispute with the co-founder of that business;
>
> [52] in its first year Stobart Capital has so far not generated any significant transactions for Stobart Group.

[53] **Ongoing Board support for Mr Ferguson**

[54] As announced on 25 May 2018, all of the Ongoing Board confirm that they have full confidence in Mr Ferguson, both as a Director and as Chairman, and will therefore be recommending to shareholders that they vote in favour of Mr Ferguson's re-election.

[55] Warwick Brady, CEO said: "Stobart Group now has a clear and focused strategy to drive growth in our core operating divisions in order to double the value of the business by 2022. The strategy was co-created between Andrew Tinkler and myself. I have been very clear that Stobart Group needs a stable board and management team to support the execution of this plan, underpinned by strong and effective corporate governance.

[56] On my appointment as CEO, as part of working with Andrew Tinkler, we all agreed that Iain Ferguson would remain in his role through to 2020, and our strategy for the growth of the business was unanimously validated by the Board. It's in the interest of the shareholders' (sic) that we continue to have stable leadership across the business and the ability to deliver our ambitions, as was the case when Andrew Tinkler was CEO."

[57] * The Ongoing Board comprises all of the Directors other than Mr Tinkler who are offering themselves for election or re-election at the AGM. As announced in the 2018 Preliminary Statement of Results, John Garbutt, the other Non-Executive Director, had decided to step down at the AGM."

5. Mr Tinkler contends that, in their natural and ordinary meaning, the words were defamatory of him in the following meanings:-

> a. Mr Tinkler had acted in breach of his duties as a director of [Stobart] by deliberately destabilising the Board at a crucial time for the business and/or
>
> b. Mr Tinkler had done so for selfish and self-interested reasons, to protect his own position, following his history of improper conduct and poor corporate governance which included forcing the Board to deal with unwarranted challenges including:-
>
> > i. the settlement of financial issues arising from a previous related party transaction when he was CEO; and/or
> > ii. a proposed selective buy back of part of his stake in Stobart; and/or
> > iii. a proposed additional ex-gratia bonus for him of shares then worth some £8 million; and/or
> > iv. a proposed buy-out of Stobart when the share price was in the range of 100p to 120p; and/or
> > v. a proposed related party transaction associated with a recent aborted airline transaction; and/or
> > vi. his failure to successfully manage Stobart Capital;
>
> c. in the premises Mr Tinkler has repeatedly shown himself to be so lacking in integrity that he is unfit to hold the office of company director.

6. Mr Tinkler has also pleaded a claim for malicious falsehood. He relies upon the same meanings that he contends the words bear for the purposes of his defamation claim.

He contends that the Announcement was false and published maliciously by the Defendants. Particulars of Falsity and Malice are set out in the Particulars of Claim.

7. On 27th July 2018, the Defendants applied to the Court for an order that the issues of meaning and whether the words complained of made allegations of fact or expressions of opinion be tried as preliminary issues.

8. On 28th September 2018, Master Gidden, by consent, ordered the trial of the following preliminary issues:-

    a. the meaning of the words complained of for the libel claim;

    b. whether the meanings advanced by the Claimant are "reasonably available meanings" for the purposes of the malicious falsehood claim; and

    c. whether the meanings the court finds the words to bear for the libel claim are:-

        i. fact or opinion; and/or
        ii. seriously defamatory of the Claimant (for the purposes of s.1 Defamation Act 2013).

The judgment

9. The judge set out the law in relation to (1) the single meaning rule for the purposes of a claim in libel; (2) by reference to Thornton v Telegraph Media Group Ltd [2011] 1 WLR 1985, the test for whether an imputation is defamatory; (3) the difference, for the purposes of a libel claim, between fact and opinion and (4) the requirement of serious harm pursuant to section 1 of the Defamation Act 2013. Having itemised the parties' submissions he then said that (as he always did) he read the words complained of without reference to the parties' contentions or submissions so as to capture his initial reaction as a reader. This is the correct approach for a judge at first instance. Doing that it appeared to him that the Announcement was reporting on a boardroom dispute at Stobart and alleged that Mr Tinkler was a destabilising influence who had presented several challenges to the Board, some of which, in relation to the challenge to the re-election of the Chairman, posed a number of serious risks to the Company. He did not consider (para 36) that the hypothetical reasonable reader would have understood the allegations being levelled at Mr Tinkler to imply that he was in breach of his fiduciary duties as a director nor (para 38) that he had acted without integrity or was unfit to be a director. He said:-

> "Disagreement, even vigorously so, with the management decisions of a company does not suggest, without more, a lack of integrity or unfitness. One can be a very difficult, even disruptive, element in a boardroom and still act with integrity. This is a forced meaning and not part of the natural and ordinary meaning. The Announcement is not capable, in my judgment, of conveying a suggestion that that the Claimant lacked integrity or was unfit to be a director."

10. The judge identified the single meaning of the Announcement to be:-

> "a. The Claimant had presented a series of challenges to the Board of Stobart which included those set out in [39] to [43], the most recent of which was his opposition to the re-election of Iain Ferguson as Chairman of Stobart.
>
> b. A vote to remove the current Chairman would weaken Stobart's corporate governance, create instability, present a number of serious risks to Stobart, identified in [45] to [49], and would not be in the best interests of the shareholders.
>
> c. The Claimant's behaviour was disruptive; and, in relation to the challenges identified in (a) unreasonable and his opposition to the re-election of the Chairman was regrettable and risked destabilising Stobart."

11. He expanded on this conclusion as follows:-

> "40. Meaning (a) is factual and not defamatory of the Claimant in a natural and ordinary meaning. None of the matters identified in [39] to [43] of the Announcement suggests misconduct on behalf of the Claimant. It is not defamatory to say of someone that he has presented a series of challenges to the board of a company.
>
> 41. Meaning (b) is an expression of opinion. It only indirectly refers to the Claimant and, in my judgment, not in a way that is capable of being defamatory of him at common law. To express the opinion that a suggested course is in the best interests of shareholders does not carry with it that those who are not prepared to support it are therefore acting not in the best interests of the shareholders. That is a non-sequitur.
>
> 42. Meaning (c) is also an expression of opinion. Readers of the Announcement will readily recognise and appreciate that this was the view of the "Ongoing Board". The fact that it was contained in an RNS does not prevent it from being seen as an expression of opinion. Indeed, whilst an RNS would be expected to contain facts (and the Announcement does so), that does not exclude the possibility that it will also contain expressions of opinion.
>
> …
>
> 44. Applying the Thornton common law test … I consider that meaning (c) is defamatory. It is an imputation that has at least a tendency substantially to affect, in an adverse manner, the attitude of other people towards him.
>
> 45. However, I do not consider that the allegation is of such serious[ness] as to raise the inference of serious harm [to]

> reputation (or the likelihood thereof) under s.1 of the Defamation Act 2013."

12. The judge's order incorporated these conclusions.

13. Before Mr Tinkler and his legal team parted company, his counsel submitted grounds of appeal complaining that the judge:-

    1) failed to take due account of the proper context of the announcement;

    2) wrongly concluded that parts of Mr Tinkler's pleaded meanings were inferred opinion;

    3) wrongly concluded that Mr Tinkler's integrity and fitness to be a director were not being questioned;

    4) wrongly concluded that none of the matters in [39]-[43] of the Announcement suggested misconduct on his part;

    5) wrongly concluded that meanings (b) and (c) were expressions of opinion;

    6) wrongly concluded that meaning (b) only referred indirectly to Mr Tinkler and was not capable of being defamatory;

    7) wrongly concluded that meaning (c) was not serious enough to raise an inference of serious harm pursuant to section 1 of the 2013 Act; and

    8) wrongly found that Mr Tinkler's pleaded meanings were not reasonably available meanings of the words complained of.

14. On 8th February 2019 I granted permission to appeal in the light of the accompanying skeleton argument signed by Ms Heather Rogers QC and Ms Jane Phillips. In his oral submissions Mr Tinkler sensibly adopted that skeleton argument before making various submissions of his own.

The Law

15. In the light of Stocker v Stocker [2019] UKSC 17, [2019] 2 WLR 1033, handed down by the Supreme Court on the day on which we heard the argument in this appeal, there was no essential dispute on the relevant law. That case laid down that the context of publication was all-important (Stocker related to an exchange on Facebook) and that it was for the judge, in a defamation case, to determine the single meaning of the statement about which complaint was made. Once the judge had determined that single meaning then, unless that determination was vitiated by an error of law, an appellate court should exercise "disciplined restraint" (para 59) before interfering with that determination. The judgment of the court was delivered by Lord Kerr JSC (with whom Lord Reed DP, Lady Black, Lord Briggs and Lord Kitchin JJSC agreed). Lord Kerr continued in para 59:-

> "… the trial judge's conclusion should not be lightly set aside but if an appellate court considers that the meaning that he has given to the statement was outside the range of reasonably

> available alternatives, it should not be deterred from so saying by the use of epithets such as "plainly" or "quite" satisfied … if the appellate court would just prefer a different meaning within a reasonably available range, then it should not interfere."

16. The question therefore in the present case is whether, taking the context of the Announcement into account, the judge's chosen single meaning was outside the range of reasonable alternative interpretations of that Announcement.

17. Lord Kerr had earlier (para 35) approved the essential criteria for determining meaning as laid down by Sir Anthony Clarke MR in this court in Jeynes v News Magazines Ltd [2008] EWCA Civ 130 at para 14 (subject only to a rider to the second criterion (which is not material for the present case) made by my Lady Sharp LJ, in Rufus v Elliott [2015] EWCA Civ 121 para 11):-

> "(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 produce 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 para 7 and Gatley on Libel and Slander (10th ed), para 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 Co [1897] AC 68 per Lord Halsbury LC at 73."

Context

18. A Stock Exchange Announcement is self-evidently a more measured statement than a Facebook communication. Its readership will be businessmen and investors who will be relatively well-informed, but these were considerations which the judge had well in mind. In the court below (para 21) Mr Tinkler's counsel had submitted that an RNS announcement would be seen as a medium by which companies announce facts to the market and (para 28) that it would signal that the matters contained in it were so grave and important as to require their immediate communication to the market place. This was then said to lead to the conclusion that Mr Tinkler was being accused of impropriety although that was nowhere stated in the Announcement. The judge (para 45b) accepted that the Announcement would have been read seriously by people who were financially aware but concluded that that could not of itself mean that Mr

Tinkler was being accused of improper conduct as opposed to forcefully expressing his opposition to the re-election of Mr Ferguson as chairman. The question of impropriety is, of course, central to the disposition of the appeal but the suggestion that the judge failed to take the context of the Announcement into consideration cannot be sensibly maintained. I would therefore reject the first ground of appeal.

Imputation of impropriety

19. As I say this is the essential question. Mr Tinkler submitted that the Announcement asserted that he was in breach of fiduciary duty as a director and was, for that or other reasons, unfit to continue as a director. The judge held that this was not the meaning of the Announcement and that, anyway, that would be an expression of opinion not a statement of fact.

20. Mr Tinkler challenged this conclusion by reference to the skeleton argument drafted on his behalf relying on imputations of breach of fiduciary duty as a director; he also orally submitted more generally that paragraphs 37-52 of the Announcement stated that he was selfish and self-interested in taking the stance he had taken, that he was impossible to work with and that there was a clear divide between the on-going board acting to high standards and Mr Tinkler who was not committed to those high standards.

21. The difficulty with these submissions is that the Announcement does not say any of these things. There is no reference to breach of fiduciary duty nor is there any inference of such breach. Mr Tinkler pointed out that there were various references to "related party transactions" in paras 11, 14, 39 and 43 of the Announcement and submitted that the reasonable reader would regard those as references to his getting what he could out of the company or feathering his own (or his associates') nests to his own advantage, which would be a breach of fiduciary duty or at least constitute conduct which showed he was unfit to be a director. I can only say that I do not agree. A person who so read those references would, in my opinion, be someone 'avid for scandal' or someone who 'selects one bad meaning where other non-defamatory meanings are available' within the second principle of Jeynes v News Magazines Ltd. Moreover, the whole tenor of the Announcement is that Mr Tinkler was difficult to work with not that he had committed any impropriety. There were issues that had to be addressed, including two issues relating to 'related party transactions'. But there was no prediction or assertion as to the likely outcome of the issues once they had been addressed.

22. It is fair to Mr Tinkler to say that the judge did not specifically address the references to 'related party transactions' before coming to his conclusion on the single meaning to be given to the Announcement. But he did say (para 35) that, on reading the Announcement for the first time, it seemed to him that it was reporting a boardroom dispute and alleged that Mr Tinkler was a destabilising influence who had presented several challenges to the Board, some of which posed a number of serious risks to the company; he also said (para 36) that he did not consider the ordinary reasonable reader would have understood the allegations to imply that Mr Tinkler was in breach of his fiduciary duties as a director.

23. I agree with that conclusion and do not think that the omission of any specific consideration of the reference to 'related party transactions' could justify this court in

reversing the judge's selected single meaning as set out in para 39 of the judgment and quoted in para 10 above.

24. Even the assertions that Mr Tinkler was difficult or impossible to work with, that he was selfish and self-interested and that he was not committed to the same high standards as the rest of the Board are not to be found in the Announcement. To the extent that the judge regarded them as matters of 'inferred opinion' (para 37) and may have used that finding as a reason for rejecting Mr Tinkler's preferred meaning he was correct to do so. Nor can these phrases be considered defamatory in themselves save as found by the judge in his meaning (c).

25. I would therefore uphold the judge's single meaning and reject the second, third and fourth grounds of appeal.

26. It may well, therefore, be strictly unnecessary to consider whether references to Mr Tinkler in meaning (a) and (b) were, fact or opinion. The judge held, however, that meaning (c) (that Mr Tinkler's behaviour was unreasonable and this his opposition was regrettable and risked destabilising Stobart) was defamatory but was an expression of opinion and was not so serious as to raise an inference of serious harm.

Opinion

27. On the basis of the judge's meaning he was, in my view, correct, in any event, to say that meanings (b) and (c) were expressions of opinion and also that meaning (b) was not capable of being defamatory at common law. As far as meaning (c) is concerned, an assertion that a person's behaviour is disruptive or unreasonable is not an assertion of verifiable fact. I would not, therefore, uphold the fifth and sixth grounds of appeal.

Serious harm

28. This is quintessentially a matter for the judge and this court should be slow to reverse a decision that an allegation is insufficiently serious to raise an inference of serious harm to reputation. That is particularly so when the allegation is a matter of opinion. Being said to be disruptive or unreasonable or to be behaving regrettably in the context of a boardroom dispute is part of the give and take of business life. If it is defamatory at all (as to which I would not wish to differ from the judge) it is very much at the lower end of the scale. I would therefore reject the seventh ground of appeal and hold, in agreement with the judge, that an inference of serious harm cannot be drawn. The result of that is that, if Mr Tinkler wishes to pursue his defamation claim by reference to the single defamatory meaning found by the judge, he will have to demonstrate by evidence that the Announcement has caused or is likely to cause serious harm to his reputation.

Malicious Falsehood

29. Mr Tinkler's claim for malicious falsehood differs from his claim in defamation because (among other things) there is no single meaning rule for the purposes of the tort of malicious falsehood; a claimant will be entitled to succeed if he can show that a substantial number of people would have reasonably read the Announcement in a way that accords with his preferred meaning. In other words, a claimant can seek to show

that any reasonably available meaning of the statement in question was false and made maliciously.

30. The judge held that Mr Tinkler's pleaded meanings were not reasonably available meanings but that a reasonably available meaning favourable to Mr Tinkler (which Mr Tinkler could try to prove was both false and malicious) was:-

> "a. The claimant destabilised the Board at a crucial time for the business; and/or
>
> b. The claimant required the Board to deal with challenges, including
>
> > i. the settlement of financial issues arising from a previous related party transaction when the claimant was CEO;
> >
> > ii. a proposed selective buy-back of part of the claimant's stake in [Stobart];
> >
> > iii. a proposed additional ex-gratia bonus for the claimant of shares then worth some £8 million;
> >
> > iv. a proposed buy-out of Stobart when the share price was in the range of 100p to 120p; and/or
> >
> > v. a proposed related party transaction associated with a recent aborted airline transaction."

31. The eighth ground of appeal asserts that Mr Tinkler's pleaded meanings were reasonably available meanings.

32. The judge did not separately analyse Mr Tinkler's pleaded meanings for the purpose of the malicious falsehood claim but his stated intention (para 56) in selecting his available meaning was to omit from Mr Tinkler's meanings the inferences drawn by Mr Tinkler but not stated in the Announcement. For the same reason as those inferences could not be part of the single meaning rule for the purposes of defamation, they cannot, in my judgment, be part of reasonably available meanings for the purpose of malicious falsehood. The judge has omitted the allegations of breach of duty and the assertions of selfishness, self-interest, improper conduct and such lack of integrity as to be unfit to be a company director. None of these assertions were made in the Announcement and cannot be part of any reasonable available meaning for the purposes of malicious falsehood.

33. That approach was, on any view, open to the judge on the determination of the preliminary issues in the case. In my view it was also the correct disposal of the preliminary issue in relation to malicious falsehood. The judge correctly refused to go any further and left all other matters to the trial, if there is to be one.

34. It follows that I would reject the eighth ground of appeal.

Overall conclusion

35. It further follows that, in spite of Mr Tinkler's admirably and courteously presented arguments, this appeal will have to be dismissed.

Lady Justice Sharp:

36. For the reasons given by Longmore LJ, and Bean LJ I agree that the appeal should be dismissed.

Lord Justice Bean:

37. Like Nicklin J, on receipt of the papers in a defamation case about meaning my practice is to read the words complained of before anything else, as an ordinary reader of the publication would do. My initial reaction on reading the Announcement was essentially the same as the judge's. It told me that there had been a boardroom dispute at Stobart; that in the view of his critics the Claimant was regarded as a disruptive or destabilising influence; and that they considered that his challenge to the re-election of the chairman posed serious risks to the company. I did not read the document as accusing the Claimant of lack of integrity or breach of fiduciary duty or of being unfit to be a director. This initial reaction was not displaced by the subsequent written and oral argument. It follows that I consider that the judge's meaning was well within a reasonable range of meanings: indeed I agree with it.

38. For this and the other reasons given by Longmore LJ, I agree that the appeal should be dismissed.