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Case No: KB-2023-003818

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 July 2024

Before :
His Honour Judge Lewis
(sitting as a Judge of the High Court)

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Between:

DALE VINCE OBE

Claimant

- and -

ASSOCIATED NEWSPAPERS LIMITED

Defendant

- -
- -

Godwin Busuttil instructed by **Brett Wilson LLP** for the claimant
Alexandra Marzec instructed by **Reynolds Porter Chamberlain LLP** for the defendant

Hearing date 19 February 2024

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Approved Judgment

This judgment was handed down remotely at 10:00am on 15 July 2024 by circulation to the parties or their representatives by e-mail and release to the National Archives

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HIS HONOUR JUDGE LEWIS

1. The claimant describes himself as a well-known green energy industrialist and environmental activist who has made substantial financial donations to the Green Party and the Labour Party.

2. The defendant is the publisher of the Daily Mail.

3. On 9 June 2023, the defendant published an article in the Daily Mail (and through the Mail+ app) under the heading "Labour repays £100,000 to 'sex harassment' donor" ("the Article").

4. In broad terms, the Article was about donations received by the Labour Party. It reported that the Labour Party had returned a £100,000 donation made by Davide Serra, who was said to be "a high-flying City financier accused of sex harassment". It also said that the claimant had donated £1.5m to the Labour Party, but then caused the Party embarrassment by joining an "eco-protest" in London, which had blocked traffic around Parliament Square.

5. The Article comprised the headline identified above, eleven paragraphs of text, two photographs of the claimant and the caption "Road blockers: Dale Vince in London yesterday, and circled as he holds up traffic with Just Stop Oil".

6. On 2 October 2023 the claimant issued proceedings for libel. He seeks up to £100,000 in damages, an injunction to prevent republication, and an order under section 12 of the Defamation Act 2013 that the defendant publish a summary of the court's judgment.

7. The claimant acknowledges that upon reading the text of the Article, the ordinary reader would appreciate very quickly that he was not the person being accused of sexual harassment.

8. The claimant does not, therefore, allege in his Particulars of Claim that the words complained of were defamatory of him in their natural and ordinary meaning. He does, however, plead a meaning by way of innuendo.

9. In ***Grubb v Bristol United Press Ltd*** **[1963] 1 QB 309**, Upjohn LJ explained the difference between a case based on the "natural and ordinary" meaning of words, and one where there is an innuendo meaning, at p.331:

> "For the plaintiff to establish his action of libel, he must satisfy the jury that the words are defamatory of him either (a) in their natural and ordinary meaning, or (b) alternatively or in addition, by reason of the fact that, in the light of some extrinsic evidence the words would bear to the reader some meaning defamatory of him which, without such evidence, the words would not bear in their ordinary and natural meaning. This latter branch is properly called the innuendo."

10. An "innuendo meaning" is now defined in CPR PD 53B at 4.2(4)(b) as "a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the statement complained of".

11. A claim brought by innuendo constitutes a separate cause of action from any based on the words in their natural and ordinary meaning. The claimant is required to plead and prove the facts or circumstances which are said to give the statement a special meaning. In addition, "the plaintiff must prove that the words of the article would convey a defamatory meaning concerning himself *to a reasonable person* possessed of knowledge of the extrinsic facts. This requirement postulates… not merely a reasonable person but also a reasonable conclusion. Mere conjecture is not enough.", per Lord Donovan in ***Morgan v Odhams Press Ltd*** **[1971] 1 WLR 1239** at 1264B.

12. The claimant's innuendo case is pleaded as follows:

    a. The "statement complained of" in the proceedings comprises the headline, two photographs and a caption, but not the text of the article.

    b. It is said that a substantial but necessarily unquantifiable number of readers knew certain "extraneous facts", namely that: "headlines, prominent photographs, and captions to such photographs appearing in articles published in the mainstream popular UK press summarise and encapsulate in an accurate and informative way what is going to be said in the rest of the article, such that they knew they did not need to read any further than to understand what the article was saying".

    c. A substantial number of readers would have read the "statement complained of" in the knowledge of the 'facts' identified in (b) above. Those readers would have understood that the newspaper was saying that he was "guilty of, or had been reasonably been accused of, sexual harassment, such that the Labour Party had repaid the claimant a £100,000 donation that he had made to them".

13. The defendant has applied to strike out the claim pursuant to CPR rule 3.4(2)(a) on the following grounds:

    "1. The Claimant's Particulars of Claim disclose no reasonable grounds for bringing the claim because the article containing the statement complained of is not arguably defamatory of the Claimant, whether in its natural and ordinary meaning or by way of innuendo.

    2. The statement complained of, when read in its proper context, namely the whole article comprising the headline, related text and caption to the photograph, does not bear any natural and ordinary meaning defamatory of the Claimant. The Claimant does not allege that it does.

    3. The Claimant's pleaded innuendo meaning discloses no properly arguable case on meaning, because:

(a) It established by the highest authority that a claim in libel may not be founded on a headline, or on headlines plus photographs and captions, in isolation from the related text, and it is impermissible to carve the readership into different groups, those who read only headlines (or headlines and captions) and those who read the whole article: ***Charleston v News Group Newspapers Ltd*** **[1995] 2 AC 65**.

(b) Even in an innuendo case, the hypothetical reader is deemed to have read the entire text. Readers who read only part of an article are not reasonable readers: ***[Carruthers] v Associated Newspapers Limited*** **[2019] EWHC 33 (QB)** at [17].

(c) The "extraneous facts" relied on… are not facts at all, but a statement of opinion about the content and presentation of articles in "the mainstream popular UK press" and whether it is necessary for a reader to read whole articles to understand them. These "facts" are incapable of proof and should be struck out. Any evidence of the so-called "extraneous facts" would be inadmissible opinion evidence.

(d) In the premises, the Claimant's innuendo case is an impermissible attempt to circumvent the principle in Charleston that, in determining meaning, the readership of a newspaper article may not be partitioned into two or more groups, each group containing readers who read different constituent parts of the article."

Law – Strike Out

14. CPR rule 3.4(2) provides: "The court may strike out a statement of case if it appears to the court – (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim".

15. The approach to be taken on a strike out application was considered by the Court of Appeal in ***Hughes & Ors v Richards (t/a Colin Richards & Co)*** **[2004] EWCA Civ 266** at [22]:

> "The correct approach is not in doubt: the court must be <u>certain</u> that the claim is bound to fail. Unless it is certain, the case is inappropriate for striking out (see ***Barrett v Enfield London Borough Council*** **[2001] 2 AC 550** at p. 557 per Lord Browne-Wilkinson). Lord Browne-Wilkinson went on to add: "[I]n an area of the law which was uncertain and developing (such as the circumstances in which a person can be held liable in negligence for the exercise of a statutory duty or power) it is not normally appropriate to strike out. In my judgment it is of great importance that such development should be on the basis of actual facts found at trial not on hypothetical facts assumed (possibly wrongly) to be true for the purpose of the strike out."

16. The core principles to be applied were also considered by Warby J (as he then was), sitting as a Judge of the Chancery Division, in ***HRH The Duchess of Sussex v Associated Newspapers Limited*** **[2020] EWHC 1058 (Ch)** at [32] - [33]. An application under CPR 3.4(2)(a) calls for analysis of the statement of case, without

reference to evidence. The primary facts alleged are assumed to be true, and must be relevant and sufficient, in the sense that, if proved, they would establish a recognised cause of action. Warby J observed that the Court should not be deterred from deciding a point of law, and if it has all the necessary materials it should "grasp the nettle", ***ICI Chemicals & Polymers Ltd v TTE Training Ltd*** **[2007] EWCA Civ 725**. Where a court is certain that a case as pleaded discloses no reasonable grounds of claim, Warby J noted that the court has a discretion and "it should consider whether the defect might be cured by amendment; if so, it may refrain from striking out and give an opportunity to make such an amendment.".

The decision in *Charleston*

17. The claimants in *Charleston* were actors who played characters Harold and Madge Bishop in the television soap, Neighbours. A tabloid published an article under the headline "Strewth! What's Harold up to with our Madge?", with a sub-heading "Porn shocker for Neighbours stars". It was accompanied by a photograph seemingly showing the two actors having sex with each other. The text of the article made clear that the photographs had been produced by the makers of a pornographic computer game by superimposing the faces of the two actors onto graphic images.

18. In the House of Lords, Lord Bridge summarised the issue to be determined at 69F:

> "The single question of law to which the appeal gives rise is whether the plaintiffs have any remedy in the tort of defamation on the basis of their pleaded claim, and this in turn narrows down to the question whether a claim in defamation in respect of a publication which, it is conceded, is not defamatory if considered as a whole, may nevertheless succeed on the ground that some readers will have read part only of the published matter and that this part, considered in isolation, is capable of bearing a defamatory meaning."

19. Lord Bridge noted that the claimants' case was being put on the basis that "the eye-catching headline and the eye-catching photograph will first attract the reader's attention, precisely as they were intended to do, and equally plain that a significant number of readers will not trouble to read any further". He considered, though, that such an approach would fall foul of two principles of libel (at 71F):

> "The first is that, where no legal innuendo is alleged to arise from extrinsic circumstances known to some readers, the "natural and ordinary meaning" to be ascribed to the words of an allegedly defamatory publication is the meaning, including any inferential meaning, which the words would convey to the mind of the ordinary, reasonable, fair-minded reader. This proposition is too well established to require citation of authority. The second principle, which is perhaps a corollary of the first, is that, although a combination of words may in fact convey different meanings to the minds of different readers, the jury in a libel action, applying the criterion which the first principle dictates, is required to determine the single meaning which the publication conveyed to the notional reasonable reader and to base its verdict and any award of damages on the assumption that this was the one sense in which all readers would have understood it".

20. Lord Nicholls also considered the position of the reader who only looked at the headline (at 73F):

> "At first sight one would expect the law to recognise that some newspaper readers will have seen only the banner headline and glanced at the picture. They will not have read the text of the accompanying article. In the minds of these readers, the reputation of the person who is the subject of the defamatory headline and picture will have suffered. He has been defamed to these readers. The newspaper could have no cause for complaint if it were held liable accordingly. It has chosen, for its own purposes, to produce a headline which is defamatory. It cannot be heard to say that the article must be read as a whole when it knows that not all readers will read the whole article.
>
> To anyone unversed in the law of defamation that, I venture to think, would appear to be the common sense of the matter. Long ago, however, the law of defamation headed firmly in a different direction. The law adopts a single standard for determining whether a newspaper article is defamatory: the ordinary reader of that newspaper. I leave aside cases where some readers may have special knowledge of facts which would cause them to give the words a different meaning.
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> In principle this is a crude yardstick, because readers of mass circulation newspapers vary enormously in the way they read articles and the way they interpret what they read. It is, indeed, in this very consideration that the law finds justification for its single standard. The consequence is that, in the case of some publications, there may be many readers who understand in a defamatory sense words which, by the single standard of the ordinary reader, were not defamatory. In respect of those readers a plaintiff has no remedy. The converse is equally true. So a newspaper may find itself paying damages for libel assessed by reference to a readership many of whose members did not read the words in a defamatory sense.
>
> I do not see how, consistently with this single standard, it is possible to carve the readership of one article into different groups: those who will have read only the headlines, and those who will have read further. The question, defamatory or not, must always be answered by reference to the response of the ordinary reader to the publication".

21. The principle in *Charleston* has been applied consistently in many subsequent cases, including:

    a. By the Court of Appeal in ***Jeynes v News Magazines & another*** **[2008] EWCA Civ 130** at [14]: "The article must be read as a whole, and any "bane and antidote" taken together".

    b. By the Court of Appeal in ***Butt v Secretary of State for the Home Department*** **[2019] EWCA Civ 933** at [12]: "The court must identify the notional single meaning that the statement complained of would convey to a hypothetical reasonable reader, who must be assumed to have read the whole of the statement: see *Charleston*…"

c. By Sharp J (as she then was) in ***Dee v Telegraph Media Group Limited*** **[2010] EWHC 294 (QB)** at [27]:

> "27. When one is considering a single article the ordinary reasonable reader is taken to read the whole article before reaching a conclusion on meaning, even though, as the courts have readily recognised, many readers will not in fact have read the whole article… So too, where one article is spread over a number of pages, presumably for space or other editorial reasons, the ordinary reasonable reader is to be taken to have turned over the pages and found and read what he or she is directed to, on the continuation pages.
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> 28. Mr Caldecott submits there is a real distinction between cases where an article is "free standing" so that some readers will have read it on its own, and cases where there is a continuation page. In the latter case he submits, it is to be presumed the reasonably careful reader will not ignore a continuation page, whereas no such presumption can arise in respect of the former.
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> 29 However, in my view the key question in this context is whether the various items under consideration "were sufficiently closely connected as to be regarded as a single publication"—and this is so whether or not the items in the same publication are continuation pages or different items of published material relating to the same subject matter. It seems to me this approach is consistent with the flexibility as to the manner and form in which information and ideas may be expressed and imparted protected by the right to freedom of expression under art.10 of the European Convention on Human Rights, and with the relevant Strasbourg jurisprudence.
>
> 30 This will be the case even though the reality is that many people will have read one of the relevant articles only. That is not to say however, that the separation of the relevant articles, or the way they are presented may not be relevant on meaning, since meaning is affected by the mode of publication (that is, the relative prominence or emphasis given to what is published) as well as by context, as Lord Nicholls emphasised in *Charleston*.".

d. By Eady J in ***Crossley & another v Newsquest (Midlands South) Limited*** **[2008] EWHC 3054 (QB)** at [40]:

> "… the caption should be read in the context of the article as a whole. It would be taken by any reasonable reader to be an attempt at summarising the nature of the allegations or findings as to what constituted the nuisance. It is not appropriate, as a matter of English law, to interpret headlines or captions as though they stood on their own: see e.g. *Charleston*"

e. By Gray J in ***Charman v Orion Publishing Group Ltd*** **[2005] EWHC 2187 (QB)** at [12]:

> "It is well established that the tribunal of fact, whether judge or jury, must take the bane and antidote of the publication together: ... As Lord Nicholls pointed out in *Charleston*... at 73-74, there is an artificiality about this approach since, especially in the case of a book, not all readers will read it from cover to cover. It is, however, clear from that and earlier authorities that the publication must be taken as a whole."

f. By Tugendhat J in ***Cruddas v Calvert & another*** **[2013] EWHC 1427 (QB)** at [93] and [105], confirming the rule that the reader is assumed to have read the whole of the words complained of, with any bane and antidote taken together.

g. By Nicklin J in ***Carruthers v Associated Newspapers Limited & another*** **[2019] EWHC 33 (QB)** at [17]:

> "I understand why the Claimant believes that the juxtaposition of the allegations made against her about the sending of messages and photographs with reports of the Baby P and Victoria Climbie cases might lead some readers to make a connection between these two matters. However, for the purposes of defamation, the Court must fix the meaning that the hypothetical reasonable reader would understand the relevant article to bear. As I have noted, there is necessarily some artificiality in this process. Some people do not read much of an article beyond the headline and the first few paragraphs before moving on to the next article. But the law has established, clearly, in Charleston, that such readers are not reasonable readers. The notional ordinary reasonable reader is taken to have read all of the article." (emphasis added).

h. By Nicklin J in ***Brown v Bower (No 2)*** **[2017] EWHC 2637** at [10]: "The same case [*Charleston*] establishes the principle that the ordinary reasonable reader is taken to have read the whole of a publication; in this case, the whole of the Book".

i. By Nicklin J in ***Poulter v Times Newspapers Limited*** **[2018] EWHC 3900 (QB)** at [16], when considering two articles in the same newspaper: "A reader that read only one and not the other print article is not an ordinary, reasonable reader... The *Charleston* principle requires that the single meaning be ascertained by considering the words complained of in context. The ordinary, reasonable reader would have read both articles."

j. By Warby J (as he then was) in ***Spicer v the Commissioner of the Police of the Metropolis*** **[2019] EWHC 1439 (QB)** at [2]:

> "Established legal principle holds that the meaning of a published article or statement must be collected from the article or statement as a whole. The law does not permit a claimant to sue for damages in respect of a headline, however defamatory, if the headline and article

are mismatched, and the impact of the headline is contradicted or neutralised by the remainder of the article."; and at [18] "Experience shows that there is quite often a disconnect between a headline and the body of an article. A headline can create a libel, even if the text contains none… That is especially so, when one bears in mind the (reasonable) tendency of ordinary readers to give weight to that which is most prominent, and most negative. But there are cases in which the text neutralises what would otherwise be a libel in the headline - the headline being the poison, to which the body of the article provides the antidote."

k. By Warby J in ***NT1 & another v Google LLC*** **[2018] EWHC 799 (QB)** at [82] (albeit in a case about data protection):

> "A claim for libel cannot be founded on a headline or other matter, read in isolation from the related text; the Court must identify the single meaning of a publication by reference to the response of the ordinary reader to the entire publication: *Charleston*….
>
> And at [83] "… I do not regard the principles identified in *Charleston* as artificial. Nor do I think them inapposite in the present context. They have been developed over centuries to meet the needs of a cause of action that addresses issues arising from the publication of words and their impact on reputation."

22. The claimant accepts the principle established by *Charleston*, in so far as it applies to cases based on "natural and ordinary meaning". The claimant also accepts that if the position in law is that readers, to be deemed reasonable readers, must be taken to have read the whole article, or all of the available written material, in every case, then his claim fails.

23. Mr Busuttil says, however, that *Charleston* is not about innuendo meanings, only natural and ordinary meanings. He has identified points in the judgment in *Charleston* which he says show that the House of Lords was keen to emphasise the distinction between the two:

    a. Lord Bridge 70F: "It is well settled, as Mr. Craig accepts, that, save in the case of a legal innuendo dependent on extrinsic facts known to certain readers, no evidence is admissible as to the sense in which readers understood an allegedly defamatory publication. No legal innuendo is here alleged…".

    b. Lord Bridge 71E: "I believe that it falls foul of two principles which are basic to the law of libel. The first is that, where no legal innuendo is alleged to arise from extrinsic circumstances known to some readers, the "natural and ordinary meaning" to be ascribed to the words of an allegedly defamatory publication is the meaning, including any inferential meaning, which the words would convey to the mind of the ordinary, reasonable, fair-minded reader...".

    c. Lord Nicholls 73H "The law adopts a single standard for determining whether a newspaper article is defamatory: the ordinary reader of that newspaper. I

leave aside cases where some readers may have special knowledge of facts which would cause them to give the words a different meaning…".

24. Mr Busuttil says there is no principle in English law, derived from *Charleston* or otherwise, to the effect that innuendo readers of a defamatory article – in contrast to 'natural and ordinary' readers – must be taken to have read the whole article if they are to be regarded as reasonable readers, regardless of their special knowledge or characteristics. He says innuendo readers with special knowledge or characteristics *which have caused them to read the text differently* must be taken to have read only what they have read, and to have read it reasonably.

25. The claimant's case is, therefore, focussed on what Mr Busuttil says is a special class of readers (owing to their special characteristics and knowledge), how they go about reading defamatory material and whether they read all, or only some, of the material presented to them.

26. Mr Busuttil relies on dicta in Nicklin J's decision in ***Falter v Altzmon*** **[2018] EWHC 1728 (QB)** which, he says, proceeded on the footing that some innuendo readers may have special knowledge or characteristics which caused them to read a text reasonably, in a way which they otherwise would not. Mr Busuttil says that case is materially indistinguishable from the present one, the only distinction being that while the *Falter* scenario related to innuendo readers reading something *more* than ordinary readers, the present case concerns innuendo readers, owing to their special characteristics and knowledge, reading *less* than ordinary readers.

27. Mr Busuttil says that the claimant's pleaded case is not "so obviously untenable that it cannot possibly succeed" or "manifestly groundless". He says it is pleaded in accordance with established innuendo authority including *Falter* and is legally orthodox. He says that even if the court considers that the case is "unorthodox but potentially viable", it should regard it as falling within an area of developing jurisprudence, and allow it to be tried, to enable the facts to be found.

28. Ms Marzec says that the issue before the court was resolved definitively by the House of Lords in 1995, with the court's decision having been applied consistently and uncontroversially, since then. The principle in *Charleston*, that words complained of cannot be read in isolation, applies just as much to innuendo cases as it does to cases where the claimant relies on a "natural and ordinary" defamatory meaning.

29. Ms Marzec says that the courts have made clear that a reasonable reader is one who reads the whole of an article: again, this is something that applies as much to a reader who is said to be in possession of extrinsic knowledge as to one who comes to an article without such knowledge. She says it is, therefore, irrelevant what an innuendo reader believes about headlines and articles because, if they are a hypothetical reasonable reader, they would have read the whole article because that is what reasonable people do. This must obviously be correct, she says, since it could not be said to be reasonable for someone to glance at a headline or photo and on that basis reach a decision about what an article is saying. She says that any reasonable person would know that they need to read the whole thing.

30. The defendant says there is no substantive difference between this case and *Charleston*, except the form of pleading. Here the claimant is attempting to repackage the unsuccessful arguments in *Charleston* as a case said to be based on innuendo, where there are no significant factual differences that justify such a departure. Ms Marzec says that this case is on all fours with *Charleston* and so should be struck out. If this attempted work around was successful, she points out that it could be done in every case, which would in effect be the reversal by the High Court of a decision of the House of Lords.

Discussion

31. I am going to consider the application on the basis of the claimant's pleaded case.

32. I will assume for present purposes that the claimant's case is properly characterised as being one of innuendo, although for reasons I will return to, I do not think that it is.

33. The primary question is whether *Charleston* applies to an innuendo case or whether it is confined to "natural and ordinary meaning" cases, and ordinary readers.

34. It is for the party seeking to rely on an innuendo meaning to prove the extrinsic facts on which their proposed meaning is based. If a claimant can do so, the court must go on to consider how the ordinary and reasonable reader (with that additional information), would view the words complained of. In doing so, many of the usual principles of meaning apply, including the need to consider the context and circumstances of the publication, which remain a material and necessary part of the determination, see for example ***Stocker v Stocker*** **[2020] AC 593** and the discussion in ***Riley v Murray*** **[2020] EWHC 977 (QB)** from [13]. The relevant context in this case includes the text of the article. There is no reason in principle why it could be said that this relevant context should be excluded, and doing so would appear to be contrary to clear authority.

35. Mr Busuttil's case is put on the basis that the special knowledge caused innuendo readers to read the text differently, he says relying on *Falter*.

36. *Falter* was a claim in respect of an online blog. The defendant had published an article looking at the contrast between the position of the Crown Prosecution Service, which was said to have indicated that there has been no increase in anti-Semitism in Britain, and the position set out by "activist" Gideon Falter in an interview on Sky News, that attacks were on the rise. The website article contained a prominent hyperlink to the interview on Sky News, and invited readers to watch the interview. The defendant in that case argued that readers would inevitably have wanted to watch the Sky News clip to understand what the piece is about, and that this interview provided context that should be taken into account when determining meaning.

37. Nicklin J observed that it was not possible to put forward a hard and fast rule that hyperlinks imbedded in an article should be treated as having been read by the ordinary reasonable reader. Everything will depend on context.

38. Nicklin J observed that he did not need to decide the point in his case since he did not consider the Sky News interview affected the view that he would have taken as to the

meaning of the article. He did, however, recognise the care needs to be taken when pleading a case based on hyperlinked material. At [17] he said:

> "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".

39. I do not read this as supporting Mr Busuttil's position. In suggesting that a claimant might consider pleading an innuendo meaning, it seems to me that Nicklin J was not commenting on how a class of readers go about reading material. He appears to be applying traditional principles of innuendo, namely recognising that that some readers of the article might have knowledge of extrinsic facts from having viewed the Sky News interview. Nicklin J was not saying that a claimant could seek to exclude parts of an article, or relevant context, by pleading an innuendo meaning.

40. I cannot see any principled basis for the principles in *Charleston* not being applicable in this case. The House of Lords considered the position of readers who only look at headlines and photographs, referred to by Lord Bridge at 70C as "limited readers". For the reasons already outlined, the House of Lords established a clear principle which has been applied consistently in the Court of Appeal and the High Court. Whilst Mr Busuttil is correct in highlighting that the House of Lords referred in places to innuendo claims, in each of the examples given, the court was summarising a legal principle that would not apply in the same way to innuendo cases. There is nothing in the judgment to suggest that the Court was saying that the core point under consideration would not apply in an innuendo case.

41. It follows that I am certain that this claim is bound to fail, even assuming that the claimant can establish that this is a true innuendo claim and prove the key facts upon which the claim is based. The principle in *Charleston* is binding on this court, meaning that the headline, photos and caption must be read together with the article. Taken together, it is agreed that the article was not defamatory of the claimant at common law, and so the claim must fail.

42. I have considered whether to allow the claimant a further opportunity to re-plead his case, but I can see no basis for doing so. The claimant has conceded that if, as a matter of law, *Charleston* applies, then he does not have a claim to pursue.

43. I have also considered whether to exercise a discretion to allow the case to proceed, on the basis that the case raises issues that are uncertain and developing, or better considered on the basis of a factual matrix determined at trial.

44. I do not consider the principles in *Charleston* to be uncertain, nor developing.

45. For the purposes of this application, I have taken the claimant's pleaded case at face value. I did, however, hear further argument about the merits of that claim, which is

relevant when considering whether to exercise discretion and allow the case to proceed.

46. As noted already, I am far from satisfied that this is properly described as an innuendo case. The extrinsic 'facts' relied upon are not actually facts. The special knowledge that must be pleaded and proved to establish an innuendo claim must be of facts, and those facts must be objectively true. Ms Marzec points out that there is no authority for the proposition that a cause of action in libel can be founded upon a reader or readers holding certain opinions. Here, she points out that the claimant's pleaded case sets out no more than an explanation as to why some readers might take the view that they do not need to read an article as a whole before deciding what it means, based on "a set of very vague and wrong opinions as to the way in which "*the mainstream UK press*" (whatever that is) publishes content".

47. Mr Busuttil says that the pleaded case is of matters of fact. He says they would be clearly capable of proof by evidence, and asks the question whether "*headlines, prominent photographs and captions to such photographs appearing in articles published in the mainstream popular UK press summarise and encapsulate in an accurate and informative way what is going to be said in the rest of the article"* is an issue of fact. He asks: "do they or don't they?".

48. This is of course an impossible question to answer in the manner suggested, which brings us to the second difficulty with the claim.

49. Ms Marzec accepts that the court should assume factual issues in the claimant's favour, but not where they are glaringly false. This has been recognised by the courts before, for example where facts pleaded are "contradictory or obviously wrong**"** (***Mohamed Razeem v Vibhutiben Desai*** **[2024] EWHC 689 (Ch)**) or "manifestly incapable of proof", ***Morgan Crucible Company Plc v Hill Samuel & Co. Limited and ors*** **[1991] Ch 295**.

50. Ms Marzec says the "knowledge" relied upon by the claimant to support his innuendo case is not up for debate. The courts, including the House of Lords, have recognised that isolated parts of articles, such as headlines plus captions, do not always accurately summarise the gist of an article. As we have seen, Warby J also considered the point in ***Spicer*** (supra) at [18]. Ms Marzec says that this is why the *Charleston* principle exists.

51. It seems to me that it is impossible for the claimant to prove the extrinsic facts relied upon as a statement of universal application. There is a contradiction in the claimant's case. The claimant accepts that the headline and photograph do <u>not</u> accurately summarise the article, although his pleaded case on "extrinsic facts" is that they always do. There are numerous examples of cases where headlines have failed to accurately summarise an article, including *Charleston* itself. At its highest, it could be said that <u>some</u> readers will have believed that headlines always accurately summarise the underlying article, but this is no more than an opinion, and is insufficient to support an innuendo meaning. The claim is not potentially viable, and there is no basis for exercising discretion in the claimant's favour.

52. Against this background, I grant the defendant's application to strike out the claim.