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

Royal Courts of Justice  
Strand  
London

**Before THE HONOURABLE MR JUSTICE LINDEN**

**IN THE MATTER OF**

**PATRICK MICHAEL ERAUT (Claimant)**

**-v-**

**MR NICHOLAS GEORGE BRIAN CHEYNEY (Defendant)**

**MR W MCCORMICK KC, appeared on behalf of the Claimant  
MR M COLE, appeared on behalf of the Defendant**

**JUDGMENT  
18<sup>th</sup> JULY 2024**

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MR JUSTICE LINDEN:

INTRODUCTION

1. This is the trial of preliminary issues in a claim for libel which was filed on 25th October 2023.
  
2. On 17th May 2024 Master Dagnall ordered that the issues to be determined were as follows:
  - a. Firstly, the nature and ordinary meaning of the statement complained of by the Claimant.
  - b. Secondly, whether the statement complained of is, or includes, a statement of fact and/or opinion.
  - c. Thirdly, whether it is in any meaning found defamatory of the Claimant at common-law.

BACKGROUND

3. The parties are next door neighbours. They live in two of approximately 15 properties which comprise a development known as the Old Racecourse near Lewes in Sussex which was built on land which previously formed part of the Lewes Racecourse. The land other than the individual properties, including access roads, services and infrastructure, is owned by Lewes Old Racecourse Management Company Limited (the Company) of which the Claimant, the Defendant and one other person were at all material times the directors and holders of the A shares. The B shares were held by approximately 17 other people who own, or have an interest in, the 15 properties.
  
4. The Claim relates to an email which was sent by the Defendant to the Claimant and a number of other recipients, the majority of whom are other shareholders in the Company, on 31st October 2022. The same email is alleged to have been caused by the defendant to have been sent again on 16th November 2022. In each case the subject line of the email says, "Termination of your appointment as director of the Lewes Old Racecourse Management Company Limited." The body of the email then contains the following: "STRICTLY PRIVATE AND CONFIDENTIAL." Then, below that, "Notice of a special meeting of the Lewes Old Racecourse Company Limited." Then, below that, this paragraph,

"In accordance with section 168 of the Companies Act 2006 (CA 2006) Special Notice is hereby given that a meeting of the board of the Lewes Old Racecourse Management Company Limited will be held at the Tote House, Lewes Old Racecourse, BN71 UR on 28th November 2022 at 12 p.m. when an ordinary resolution for the formal termination of your appointment as director of the above company will be moved by reason of loss of confidence due to malpractice. The termination will be notified to Companies House by the Company Secretary on form TM01 accordingly. Following this process you will be required to surrender your A share and any company property in your possession to the Company Secretary in accordance with the articles of association. This formality will proceed unless a formal resignation in writing is received from you during the interim period. By order of the board.

SIGNED

Nick Cheyney, Ann Ffitch-Hayes, directors."

On the face of it, the email was sent and addressed to the Claimant Cc the two other directors, but it is common ground that it was also Bcc'd to the other 12 recipients.

#### THE PARTIES' CASES

5. The meaning contended for by the Claimant is pleaded at paragraph 12 of the particulars of claim as follows:

"The Claimant was guilty of malpractice in his capacity as a director of the Company, which malpractice was so serious that his removal from that position was required."

6. The Defendant has not filed a Defence. His pleaded position as to the natural and ordinary meaning of the words complained of by the claimant is set out at paragraph (ii) of a document entitled "Defendant's further information" which was served pursuant to an order of Master Dagnall dated 26th March 2024. This is as follows:

"The Claimant had not complied with his duties as a director of the Company, and it was appropriate for the board and shareholders to consider whether they continued to have confidence in him, and whether he should continue as director."

7. In the same document the Defendant pleads that:

"(1) The words complained of are a mixed statement of fact and opinion. The words underlined in the passage above are imputations of fact, and the remainder is an imputation of opinion; (2) It is not disputed that the Claimant's meaning is defamatory at common law; and (3) The Defendant's meaning is, however, not defamatory at common law, because it does not meet either the consensus requirement or the required threshold of seriousness."

8. Mr Cole confirmed on behalf of the Defendant that his position was that on the Claimant's meaning the statement that the Claimant was guilty of malpractice as a director of the Company was one of fact, and the statement that it was so serious that his removal was required was a statement of opinion. Mr McCormick confirmed on behalf of the Claimant that his position was that, firstly, on the Claimant's meaning the words complained of are imputations of fact, and secondly, even on the defendant's meaning the words complained of are defamatory at common-law.

#### LEGAL FRAMEWORK

9. As far as the approach to meaning is concerned, I was referred to the well-known summary provided by Mr Justice Nicklin in *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB); [2024] WLR 25 at paragraphs 11 and 12 of the principles to be applied by the court when determining meaning. At paragraph 11 he said that the court's task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear. At paragraph 12 he said that the following key principles could be distilled from the authorities:

“(i) The governing principle is reasonableness.

(ii) The intention of the publisher is irrelevant.

(iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

(iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.

(v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.

(vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.

(vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.

(viii) The publication must be read as a whole, and any “bane and antidote” taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic “rogues’ gallery” case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e g bane and antidote cases).

(ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.

(x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.

(xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication’s readership.

(xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.

(xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant’s pleaded meaning)."

10. In relation to the distinction between fact and opinion, I was referred to paragraph 16 of *Koutsogiannis*, where Mr Justice Nicklin said:

"(i) The statement must be recognisable as comment, as distinct from an imputation of fact. (ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc. (iii) The ultimate question is how the word would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion. (iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, ie the statement is a bare comment. (v) Whether an allegation that someone has acted "dishonestly" or "criminally" is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact."

11. I also reminded myself of paragraph 24 of *Millett v Corbyn* [2021] EWCA Civ 567; [2021] EMLR 19 where Lord Justice Warby said:

"The question is would the words used strike the ordinary viewer as a statement of fact, or opinion? The answer does not turn on whether any given word is an adjective, noun or verb, or some other part of speech. This is a matter of substance, not a formal analytical matter of grammar or linguistics."

12. I was referred by Mr Cole to *Blake & Ors v Fox* [2022] EWHC 3542 (KB) at paragraphs 28 to 31, and in particular the statement at paragraph 31 as to the difficulty in identifying the boundary between allegations of fact and expressions of opinion.

13. As for the concept of defamation, I was referred to paragraph 9 of *Millett* where Warby LJ said this:

"9 At common law, a meaning is defamatory and therefore actionable if it satisfies two requirements. The first, known as "the consensus requirement", is that the meaning must be one that "tends to lower the claimant in the estimation of right-thinking people generally." The judge has to determine "whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society": *Monroe v Hopkins* [2017] EWHC 433 (QB); [2017] 4 W.L.R. 68 at [51]. The second requirement is known as the "threshold of seriousness".

14. To be defamatory, the imputation must be one that would tend to have a “substantially adverse effect” on the way that people would treat the claimant: *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB); [2011] 1 W.L.R. 1985 at [98] (Tugendhat J). Mr Cole also referred me to *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB) at paragraphs 18 and 29 to 30.

#### THE NATURAL AND ORDINARY MEANING OF THE WORDS COMPLAINED OF

15. In accordance with standard practice I read the disputed email before considering the other documents in the case, in order to form a provisional view as to the meaning of the relevant parts. The positions of the parties were set out in helpful skeleton arguments, which counsel then developed orally at this hearing.

16. Taking into account the arguments of counsel, I have concluded that the meaning of the words complained of is that, "The Claimant was guilty of wrongdoing in his capacity as a director of the Company, which was so serious that his removal from that position was required."

17. By way of explanation, the following points particularly struck me, although they overlap to a significant degree.

18. I agree with Mr McCormick by way of context that various features of the disputed email indicate that the matter at hand is a serious and sensitive one. These include the subject line, the fact that the recipients received the email by blind copy, the fact that it is marked in capitals "STRICTLY PRIVATE AND CONFIDENTIAL", the fact that this is "Special Notice" of a "special meeting", the fact that the subject of the meeting is termination of the Claimant's office, and that it appears that this is the only possible outcome, and the degree of formality indicated, including by the document being signed by the other directors and "by order of the Board."

19. I also agree, with very little hesitation, that the reference to "malpractice" in the email goes significantly further than simply suggesting that the Claimant had not complied with his duties as a director, as the Defendant contends. In the mind of the hypothetical reader the

word "malpractice" plainly refers to wrongdoing, i.e. conduct which is legally or morally wrong, or both.

20. I also agree with Mr McCormick that the meaning of the words complained of in this case is informed by the fact that the only outcome contemplated by the email is the immediate termination of the Claimant's office, whether as a result of the resolution or resignation. Moreover, the email presents the termination of the Claimant's office as the inevitable outcome if the meeting takes place. The word "formality" in the final sentence is apt. Although there are arguments the other way, it appears that the formality referred to is the moving of the resolution itself. This description is consistent with the rest of the email, including that it says that the resolution will be for "formal termination of the Claimant's appointment.", thus giving the impression that the decision has been made, and possibly implemented informally, and merely remains to be formalised. The statements that "the termination will be notified to Companies House" and "You will be required to surrender your A shares" etc also tend to confirm that the decision has been taken, or is at least inevitable.

21. Contrary to the Defendant's case I do not agree that the email was merely calling for consideration of whether there had been a loss of confidence in the Claimant, and whether he should continue as a director. This was notification that the board of the Company intended to terminate the Claimant's appointment as a director. In addition to the points I have already made, it is in my view significant, though not decisive, that the meeting of which notice was given was said to be a meeting of the Company. The email is addressed to the Claimant, rather than to those who are copied, and they are BCC'd. It says that the resolution will be moved, but does not suggest that there is anything to be considered by anyone, directors or recipients of the email, as to whether the resolution should be passed. Nor are the recipients provided with any information which it is suggested should be considered in coming to a decision.

22. I prefer Mr McCormick's argument that, in effect, the recipients were being copied FYI, or for their information, rather than sent notice of the meeting as a way of inviting them to attend; there is nothing in the text of the email which indicates that they are being invited to do so. I also reject Mr Cole's argument that my reading of the email is inconsistent with the governing principle of reasonableness referred to in *Koutsogiannis*, and that it involves



selecting a hypothetical reader who adopts a bad meaning, when a less serious or non-defamatory meaning is available, and who is avid for scandal.

23. In my view the purport of the email is clear: the Claimant was guilty of malpractice in his capacity as a director, and it followed that his office was to be terminated.

#### ISSUE 2, FACT OR OPINION

24. On the meaning which I have determined, which is essentially the meaning contended for by the Claimant, the statement that the Claimant was guilty of malpractice, or wrongdoing, in his capacity as a director, is one of fact. Mr Cole did not argue otherwise.

25. With more hesitation, I have concluded that the statement that the malpractice was so serious that the Claimant's removal from office was required was also a statement of fact. Although, arguably, this statement reflects a judgment on the seriousness of the Claimant's conduct, the use of the word "malpractice", the absence of any information as to the nature of the malpractice, and the absence of any suggestion in the email that there could be any outcome other than the immediate termination of the Claimant's appointment - in short, the points which I have developed more fully earlier in this judgment - have persuaded me that the statement was to the effect that the conduct of the Claimant necessitated termination. This, in my judgment, was a statement of fact that the removal of the Claimant was required and that this was what was going to happen.

#### ISSUE 3: WERE THE WORDS COMPLAINED OF DEFAMATORY?

26. It is conceded that the Claimant's meaning was defamatory, as I have noted.

#### CONCLUSION

27. I therefore give judgment on the three preliminary issues accordingly.

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