



Neutral Citation Number: [2019] EWHC 847 (QB)

Case No: HQ18M00566

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 April 2019

Before :

MR JUSTICE DINGEMANS

Between :

Helen Rochester
- and -
Ingham House Limited

Claimant

Defendant

The Claimant in person
Beth Grossman (instructed by **Tom Street & Co**) for the **Defendant**

Hearing dates: 26th March 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Dingemans:

Introduction

1. This is the hearing of a preliminary issue as to the meaning of words published in: (1) an email dated 20 April 2017; (2) a written referral to the Disclosure and Barring Service (“DBS”); and (3) an email dated 11 May 2017; which form part of a claim for defamation brought by Helen Rochester, the Claimant, against Ingham House Limited, the Defendant (“the company”). The preliminary issue was ordered by Popplewell J on 5 December 2018, and the order was varied by Nicklin J on 4 February 2019.

Relevant background

2. There are disputes of fact between the parties and so this short summary of the facts is provided only to identify the background to the issues between the parties. Ingham House is a residential care home operated by the company providing care to about 37 elderly persons, including those with dementia. Ingham House is regulated by the Care Quality Commission (“CQC”). Mrs Rochester was recruited to be a team leader at Ingham House. Mrs Rochester worked four shifts at Ingham House on 12, 13, 14 and 15 April 2017 although the exact capacity in which she worked is a matter of dispute.
3. Mrs Rochester’s case is that she raised concerns about conditions at Ingham House and she resigned after the shift on 15 April 2017 with immediate effect in a conversation with Mrs Kemp, Deputy Manager at Ingham House. The company’s case is that issues were raised by Mrs Kemp about Mrs Rochester’s involvement with the distribution of medication to residents and that Mrs Rochester purported to resign during the conversation. Mrs Rochester confirmed her resignation by email and the company sent a letter to Mrs Rochester purporting to dismiss her. Mrs Rochester made disclosures to the CQC about Ingham House and notified the company about that. Mrs Rochester’s case is that the company sent emails to the CQC and made a referral to the DBS in an attempt to discredit Mrs Rochester’s report.

Legal principles to determine the meaning of the words

4. The test to be applied to ascertaining the meaning of words was not disputed. It is not necessary to repeat in full the relevant legal principles. In summary when deciding the meaning of words, a judge is providing written reasons for his or her conclusion as to the meaning to be attributed to the words sued upon. A Judge should not fall into the trap of conducting an over-elaborate analysis of the various passages relied on by the respective protagonists. The meaning is to be determined from the viewpoint of the layman, not by the techniques of a lawyer, see *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 and the principles set out at paragraph 14, *Waterson v Lloyd* [2013] EWCA Civ 136; [2013] EMLR 17 at paragraph 53 and *Koutsogiannis v Random House Group* [2019] EWHC 48 (QB) at paragraph 12-14. In libel there will be one single meaning to be determined from a reading of the words.
5. The exercise has been described as one of ascertaining the broad impression made on the hypothetical reader by the words. The natural and ordinary meaning of words includes what the reasonable person will infer from the words. The hypothetical reasonable reader will be taken to have read the whole of the publication which is the article. Bane and antidote must be taken together. It was common ground that the

Court is entitled to reach its own conclusions on meaning and is not required to adopt meanings advanced by either party, so long as the Court does not find a meaning more injurious than the claimant's pleaded meaning.

The email dated 20 April 2017

6. The email dated 20 April 2017 was sent by Ms Sterling to the CQC in response to the email sent by Mrs Rochester to the CQC about issues at Ingham House. The email is annexed to the judgment.
7. As appears from the recital to the order dated 4 February 2019 it was common ground that the email meant: **(a) that the claimant had committed gross misconduct such as to justify summary dismissal, which would comprise either dishonesty or serious incompetence or other serious breach of her employment contract; (b) that the claimant's conduct towards residents at the house caused or risked harm to vulnerable adults and/or were such as to cause justifiable concern as to whether she should be permitted to work with vulnerable adults or children.**
8. In the course of submissions before me Ms Grossman modified the suggested meanings to attempt to provide clarity about the reason provided for the gross misconduct and to make the meanings easier to read. Although I understand the reasons for doing that, and although the meaning recorded as agreed in the preamble to the order dated 4 February 2019 is not precisely how I would have framed the meaning, I adopt the agreed meaning as the meaning. This is because the suggested changes by Ms Grossman and my own way of expressing the meaning are not materially different from the agreed meaning, and if the parties have managed to agree a meaning I would accept it unless I did not consider it to be a reasonable meaning or there was some other good reason not to accept it.
9. There was a further disputed meaning of the email. Mrs Rochester contended that the email meant "the Claimant had lied about events at the care home and the circumstances of her dismissal". The company contended that the further meaning was "the Claimant's complaints about Ingham House were inaccurate and ill-founded".
10. It became apparent in the course of the submissions that Mrs Rochester relied on her disclosures to the CQC, to which the email of 20 April 2017 responded, to explain her disputed meaning. As discussed at the hearing this meant that Mrs Rochester was not relying on the natural and ordinary meaning of the words alone but was relying on a true innuendo being Mrs Rochester's disclosures to the CQC which would have been read by the person to whom the email dated 20 April 2017 was sent. There is an obligation to plead the extrinsic facts, namely Mrs Rochester's disclosures to the CQC in the Particulars of Claim to support the innuendo meaning, see Gatley on Libel and Slander, Twelfth Edition, at paragraph 3.20. However, given the contents of the Particulars of Claim which referred at paragraph 5 to "the claimant made protected disclosures to the Care Quality commission ..." and because the email dated 20 April 2017 begins by stating "you should by now have received a complaint from Helen Rochester" Ms Grossman accepted that I should consider this disputed meaning having regard to Mrs Rochester's disclosures to the CQC. Ms Grossman kindly supplied me with a copy of Mrs Rochester's disclosures to the CQC. I have not set out the relevant document in this judgment because it is available to the parties.

11. Mrs Rochester maintained that the email dated 20 April 2017, when read with her disclosure to the CQC meant that she was lying in her complaints. Ms Grossman submitted that the reasonable reader would have to be avid for scandal to give such a meaning, the proper meaning was that Mrs Rochester's complaints were inaccurate and ill-founded.
12. I have considered Mrs Rochester's disclosures to the CQC and the email dated 20 April 2017 together. It is apparent that the email dated 20 April 2017 does not accept Mrs Rochester's complaints to the CQC, although the accuracy of some of the matters is accepted, for example whether an agency worker was on duty on one of the nights. The accuracy of other matters was not accepted for example Mrs Rochester's complaint included the statement that a resident "has two grade 3 pressure sores on her sacrum and heel" where a grade 3 pressure sore is an open sore and the email stated "she had one unbroken sore on her sacrum, she has one unbroken sore on her left heel". The email explains why the company says that Mrs Rochester's complaints are inaccurate and in some cases explains how Mrs Rochester might have been mistaken, for example "Andrew commented that it is possible Helen saw him moving the stand aid on his own but the transfer ... was done by both Andrew and Drita".
13. In my judgment the meaning, by innuendo, is "**the Claimant's complaints about Ingham House were inaccurate and unreliable**". This meaning does not reflect exactly either meaning contended for by the parties but it does not include a meaning that Mrs Rochester lied. This is because the email dated 20 April 2017 takes the form of a rebuttal and explanation and the inaccuracy and unreliability of the complaints is all that is being alleged.

Written referral to the DBS

14. The company made a written referral to the DBS dated 26 April 2017, although there are issues about when it was sent, about Mrs Rochester. The terms of the written referral are set out in an annex to the judgment.
15. As appears from the recital to the order dated 4 February 2019 it was common ground that the referral meant: **(a) the claimant's conduct towards residents at the house caused or risked harm to vulnerable adults and/or were such as to cause justifiable concern as to whether she should be permitted to work with vulnerable adults or children.** I adopt that meaning.
16. Mrs Rochester submitted that there were two further meanings being: "the Claimant had lied about events at the care home and the circumstances of her dismissal; and the Claimant had lied about her previous employment or concealed discreditable facts about her professional career or told other lies".
17. The company submitted that the further meanings were: "the Claimant's complaints were inaccurate and ill-founded; the Claimant's account of her previous employment history had not been satisfactory; and there were grounds to investigate whether the Claimant had any 'pattern of behaviour' that could pose a risk of harm to vulnerable groups".
18. When I asked Mrs Rochester where in the DBS Referral it said or suggested that Mrs Rochester was lying Mrs Rochester accepted that it did not say that Mrs Rochester

was a liar, but it was saying things about her which were untrue. That may be an issue for the trial but it does not show that the meaning of the DBS referral is that Mrs Rochester is lying, and in my judgment the referral does not mean that Mrs Rochester was lying. However in my judgment the suggested meanings on behalf of the company do not pick up the combined meaning of the words that “Helen mentioned she had a spot of trouble at her last place of employment when she had complained about their health and safety practices and then been given a dismissal letter” when read together with “I was then informed and gathered the information and made a decision not to have Helen back and dismissed her because she had breached medication policy and procedures. She ... demanded I retract her dismissal letter and then sent a letter of resignation together with a list of health and safety concerns about safeguarding issues” and “this could be a pattern of behaviour that needs checking into”. The meaning in my judgment is that **“there were reasonable grounds to investigate whether the claimant had a pattern of exposing vulnerable groups to harm leading to her justified dismissal, before then making unjustifiable complaints about her employer’s health and safety record”**. This covers the second and third suggested meanings from both Mrs Rochester and the company.

Email dated 11 May 2017

19. The email dated 11 May 2017 was sent by the company to the DBS. I have not annexed the email dated 11 May 2017 to the judgment because it is very short. It reads:

“The issue is that she is saying she resigned before she was dismissed. She also has accused us of ignoring care issues and then dismissing her for bringing these up. She admitted to administering medication without training this is the reason she was dismissed”.
20. Mrs Rochester submitted that this email meant “the Claimant’s avowed whistleblower concerns were not honestly and genuinely held but were only raised as a response to her having been dismissed”. The company submitted that the email meant “the Claimant had been dismissed (or resigned in the course of dismissal) for gross misconduct; the Claimant’s conduct towards residents at the home caused or risked harm to vulnerable adults and/or were such as to cause justifiable concern as to whether she should be permitted to work with vulnerable adults or children; and the Claimant’s criticisms of Ingham House were inaccurate and ill-founded.”
21. In my judgment the meaning of the email is that **“the Claimant was dismissed for gross misconduct for administering medication without training and then claimed that she resigned and falsely claimed that the Defendant ignored care issues and had dismissed her for raising those issues”**. It is apparent that this meaning is closer to Mrs Rochester’s suggested meaning, but picks up the wording of the email. I have identified that the meaning is that Mrs Rochester falsely claimed that the company ignored care issues and dismissed her for raising those issues because the reasonable reader would consider that this was the meaning of the email from the words “accused us”.

Other matters

22. There are outstanding issues which need to be determined, as identified in paragraph 14(3) of the order dated 4 February 2019. There were some submissions about these matters at the hearing. As discussed with the parties I will remit this action to the Master so that the case can be managed to trial but it is right that I should record some matters. First it is apparent that both the Particulars of Claim and Defence are likely to require amendment in the light of this judgment. Secondly given that the alleged slanders are likely to form part of Mrs Rochester's case on malice there does not appear to me to be anything to be gained by staying those claims because Mrs Rochester will be relying on them as part of her claim for malice. Thirdly I raised with Mrs Rochester the desirability of her obtaining legal advice and representation. Mrs Rochester said that the cost of obtaining advice and representation was beyond her means, and I mentioned the Bar Pro Bono unit, the Personal Support Unit and the possibility of retaining legal representatives by way of conditional fee agreements. I commended to the parties the desirability of mediation in this case.

Conclusion

23. In my judgment the publications bear the meanings set out in bold above. I am grateful to both Mrs Rochester and Ms Grossman for their submissions and assistance.