



Neutral Citation Number: [2020] EWHC 3121 (QB)

Case No: QB-2019-002482

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/11/2020

Before :

MR JUSTICE NICOL

Between :

Walter Tzvi Soriano
- and -
(1) Société d'exploitation de l'Hebdomadaire le
Point SA
(2) Marc Leplongeon

Claimant

Defendants

David Sherborne (instructed by **Rechtschaffen Law**) for the **Claimant**
Jonathan Price (instructed by **Ince Gordon Dadds LLP**) for the **Defendants**

Hearing dates: 10th November 2020

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.

.....
MR JUSTICE NICOL

Mr Justice Nicol :

1. This is the trial of a preliminary issue as ordered by Master Eastman.
2. The Claimant is an English businessman.
3. The first Defendant is the publisher of a French-language weekly called ‘Le Point’. It also publishes an on-line version of the magazine at <https://www.lepoint.fr>.
4. The 2nd Defendant is a journalist employed by the 1st Defendant.
5. The claim arises over an article published in French in ‘Le Point’ on 21st June 2019, under the headline, “*United States: Israeli Agent targeted by Russian interference investigation*” (or “*Etats-Unis: un agent Israélien visé par l’enquête sur l’ingérence russe*”)
6. The claim form was issued against the defendants on 17th July 2019. The claim is in libel and relies on the publication of the article in the hard copy edition of ‘Le Point’ and the publication of the same article on the website. The claim was first served on 23rd August 2019. Although that service was said to have been deficient, the alleged defect was remedied.
7. Particulars of Claim were served on the same date or followed on an unspecified date in July 2019.
8. As required, the Particulars of Claim in paragraph 3 quote the words complained of in their French original.
9. As the Claimant was also obliged to do, he pleaded in paragraph 5 of the Particulars of Claim what is said to be a ‘true and literal translation’ of the words complained of into English.
10. The natural and ordinary meaning which the Claimant attributes to the words complained of is as follows,

‘The Claimant is a dangerous and unscrupulous secret agent with close connections to Donald Trump and his circle of advisers and the KGB, who knowingly uses illegal and “offensive” information gathering techniques (such as mobile data interception) and was responsible for spying on the Israeli police who were investigating charges against Prime Minister Benjamin Netanyahu.’
11. The time for the Defence has been extended and no Defence has been served, but the Defendants have suggested that the words complained of have the following natural and ordinary meaning,

‘The Claimant is a private security and intelligence consultant and there are grounds to investigate whether he has directly or indirectly used surveillance, military methods or data interception technology in his work; whether he was involved in the surveillance of police officers investigating President Netanyahu; and whether he was involved in Russia’s attempt to interfere in the 2016 election in the USA.’

12. So far as meaning is concerned, the only evidence which is admissible is the words complained of and their context (if relevant). It is different so far as the first part of the preliminary issue is concerned. The correct English translation of the words is a proper subject of expert evidence and Master Eastman made directions for such evidence. I accept (as did Mr Price for the Defendants) that what matters is the natural and ordinary meaning which would be given to the words complained of by a French speaking reader. To some extent, therefore, the experts are able to assist on the second part of my task (the determination of meaning) as well as the first (the correct translation of the article), but I agree with Mr Price that the experts' role is limited. I must be alert to see that they do not exceed it. In saying this, I am not intending to be critical of Dr Labeau or Professor Marnette-Piepenbrock. Each responded to the instructions which they were given.
13. The translation included in the Particulars of Claim is contentious. The preliminary issue which Master Eastman ordered to be tried was in two parts:
 - i) To the extent not agreed between the parties, the correct English translation of the words complained of in paragraph 3 of the Particulars of Claim.
 - ii) The single meaning or single meanings of the words complained of in paragraph 3 of the Particulars of Claim.
14. In accordance with Master Eastman's directions I have the report commissioned by the Defendants of Professor Sophie Marnette-Piepenbrock dated 15th June 2020, the report commissioned by the Claimant of Dr Emmanuelle Labeau dated 2nd July 2020 (wrongly dated as 15th June 2020 in the hearing bundle index) and the Joint report of the experts dated 18th September 2020. Neither party wished to cross examine the other side's expert and the reports therefore stood as their evidence (with, of course, the joint report).
15. In paragraph 5 of the Joint Report:
 - i) The experts agree that the translation of the article by the Claimant (I assume in the Particulars of Claim) contains a number of inaccuracies.
 - ii) All the corrections suggested by Professor Marnette-Piepenbrock are accepted.
 - iii) With a qualification (see below) it would be fine for the Court to refer to the translation of Madame Huret-Morton. I attach as Annexe 2 Madame Huret-Morton's translation of the article in question (with paragraph numbers added for ease of reference).
 - iv) The qualification is that the word 'relais' (see paragraph 17 of the translation) should not be translated as 'networks' but as 'middlemen' (Dr Labeau) or 'go-between' (Professor Marnette-Piepenbrock).
16. I attach as Annexe 1 to this judgment a copy of the Joint Report of the experts. Without diminishing the importance of the remainder of the Joint Report, it included the following.

‘6. It is agreed that, in his article, the journalist uses several methods to show that he is reporting information rather than stating undisputed facts or directly expressing his own views. As one would in English, he uses reported discourse and quotation marks as well as expressions such as “*selon X*” or “*d’après X*” (according to X) to mark that distance. In addition, he also uses a linguistic strategy specific to French, the *conditionnel journalistique* (press conditional).

7. From a linguistic point of view it is noted that M. Leplongeon (i) evokes a number of sources, presented as reliable, provides quotes and (iii) exerts caution in his claims as shown by the use of distance markers such as ‘selon X’ or ‘d’après X’ (according to X). The form of the article thus suggests a measured approach.

8. It is acknowledged that all articles using quotes – and the one under discussion, as any, not more or less – run the risk of taking words out of context unwillingly or on purpose. When the original quote is in a foreign language, there is the added risk of mistranslation. Overall, when compared to their original English sources, the quotes in the French article were found to be accurately translated but Dr Labeau noted that one was truncated. Mr Leplongeon signals that the information presented in the article comes from external sources by attributing opinions to their authors. This is conveyed by two prepositions, ‘selon’ (5 occurrences) and ‘d’après’ (1 occurrence) that can both be translated as ‘according to’. Those authors are identified when referring to precise documents, such as the Senate’s letter of summons. However the sources invoked with ‘selon X’ or ‘d’après X’, which are presented by the journalist as well informed and reliable, are not identified - with the exception of a newspaper. From an inquisitive journalist’s point of view, reasons for not identifying one’s sources can be varied. This might be to protect the source but in some cases it might also reveal that the source is not reliable [footnote: The Defendants’ expert understands that the precise reasons for not naming journalistic sources are outside the scope of her report. However, the Claimant’s expert considers it as part of her instructions “to analyse an article authored by Marc Leplongeon and published in ‘Le Point’ on 21st June 2019 and to comment on its meaning and its likely impact on a native French readership.”

17. The first part of my task has been considerably eased by the agreement between the experts. Neither party disowned that agreement and, as will have been seen, Master Eastman required me to determine the correct English translation ‘so far as it was not agreed’.

18. Consequently, I adopt the translation of Madame Huret-Morton with the following qualifications:

- i) The experts are agreed that the word ‘relais’ has not been correctly translated as ‘networks’. The joint report of the experts settles on ‘middlemen’ as the correct translation of ‘relais’. I also adopt the translation of that word.
- ii) The use of the *conditionnel journalistique* has no ready equivalent in English as the experts agree. They also agree that it may be used to convey uncertainty of three types: (a) modal (indicating some degree of uncertainty about the piece of information); (b) evidential (indicating the piece of information comes from a discourse other than the speaker) or (c) Alethic (indicating that the speaker does not responsibility for the utterance). Mr Price for the Defendants submitted that I should accept that its use in this article was (a) i.e. modal. Mr Sherborne submitted that it did no more than convey the English term ‘allegedly’ or ‘reportedly’ and so came squarely within the repetition rule by which a publisher cannot escape liability for what has been published by adding such words. This tips into the second part of my function i.e. to determine the single meaning or meanings of the words complained of. The best I can do at this stage is to adopt the linguistic translation as ‘reportedly’ (as indeed Madame Huret-Morton does) but with a note to myself that further refinement may be necessary at the stage of determining meaning or meanings.
- iii) The third remaining area of dispute concerns the word ‘offensives’, the feminine plural form of the masculine adjective ‘offensif’. The experts are agreed that this does not mean ‘causing offence’; there is another French word for that, ‘offensant’. The joint Report says at paragraph 18,

‘Dr. Labeau does not agree with Professor Marnette-Piepenbrock’s suggestion that “offensif” does not have a meaning including the seme (meaning component) of aggression on the basis of the etymology of the word and its definitions and synonyms in a range of dictionaries. Professor Marnette-Piepenbrock maintains that the word can be used in sport or military jargon without the specific meaning of aggression. However, as mentioned above, both experts agree that the use of quotes by Mr Leplongeon indicates that the choice of the word is not his.’

19. I turn to the issue of meaning. The parties are agreed that the relevant principles of law were summarised by Nicklin J. in *Koutsogiannis v Random House Group* [2020] 4 WLR 25. I will apply these principles.
20. I note first that the Claimant relies on what is said to be the natural and ordinary meaning of the words complained of. It is in relation to such a meaning that Nicklin J. explained the relevant principles of law. The natural and ordinary meaning is contrasted with a true innuendo i.e. a meaning which the words bore by virtue of knowledge possessed by certain readers. In this case the Claimant does *not* rely on a true innuendo. That, in turn, has a bearing on some of Dr Labeau's comments. She explains, for instance, that the term 'barbouze' (translated as spy or spook) would be understood as conveying a pejorative meaning to a French speaker in part because of its association with the Algerian war. Again, Dr Labeau refers to the association which a French reader might draw from a film from 1937 called 'L'Etrange Monsieur Victor'. However, reliance on such matters would be dependent on the Claimant establishing that at least some readers of the article knew of these external facts. As I have said, that is not a task which the Claimant has undertaken since he relies exclusively on the natural and ordinary meaning of the words complained of.
21. The meaning of the words complained of may be affected by their context. In his skeleton argument for the present hearing, Mr Sherborne argued that was the case here. He referred to the other articles which had been referred to in the words complained of and for which hyperlinks had been provided (at least in the on-line version of the article). For the Defendants, Mr Price objected to these other articles being relied upon. He submitted that such matters should have been pleaded, but they were not. He said that the first notice the Defendants had had of the Claimant's reliance on these other articles was when they received Mr Sherborne's skeleton argument, the day before the trial of the preliminary issue. A further difficulty was that the other articles were all in French and there was no English translation of them, let alone an agreed translation.
22. In my view, there was force in both of Mr Price's objections. However, in the course of his oral submissions, Mr Sherborne said that the Claimant wished to rely only on the words complained of. Those included what was said about the other articles in the words complained of. He was not inviting me to look further at the referenced articles themselves. Limited in this way, I agree that course is open to the Claimant, indeed, I did not understand Mr Price objecting to him doing so. This limited use of the cross-referenced articles also meant that it was unnecessary to consider whether the hard copy of the article (if such there was) also included an equivalent ready means of accessing the referenced articles and (if it did not) the potentially different meanings of the on-line version of the article and the (alleged) hard copy version.
23. The parties agreed that, while I had not been asked to determine whether the words complained of were defamatory at common law, if they were not, at least, arguably defamatory at common law, the Claimant would have no cause of action in relation to them and the meaning would be of no legal consequence.
24. In the course of his submissions, Mr Price also said that there had been no hard copy article and none had been produced. However, that is a matter which the Defendants will be able to plead in due course. Master Eastman did not require

that matter to be examined. I am concerned with what is pleaded in paragraph 3 of the Particulars of Claim. The pleading is that those words were published in hard copy and on-line. After determining the correct translation of the French into English, my task is to consider the natural and ordinary meaning of those words.

25. I can summarise the differences between the parties' meanings in this way:
- i) Whether the words complained of meant that the Claimant was guilty of the matters in question (i.e. *Chase* level 1) or whether they meant that there were reasonable grounds to investigate whether he was so guilty (i.e. *Chase* level 3).
 - ii) Setting i) aside, whether the words meant that the Claimant was 'dangerous'.
 - iii) Whether the words meant that the Claimant was 'unscrupulous'.
 - iv) Whether the words meant that the Claimant was a secret agent.
 - v) Whether the words mean that the Claimant had close connections with Donald Trump and his circle of advisors, and, if so, whether that was arguably defamatory at common law.
 - vi) Whether the words meant that the Claimant had close connections with the KGB.
 - vii) Whether the words meant that the Claimant had knowingly used illegal information gathering techniques.
 - viii) Whether the words meant that the Claimant had used 'offensive' information gathering techniques, such as mobile data interception.
 - ix) Whether the words mean that the Claimant was responsible for spying on Israeli police who were investigating charges against Benjamin Netanyahu.
26. Although it is useful to identify these points, as both parties reminded me, I need to consider the article as a whole and how it would be understood by the ordinary reader of the French text.
27. Mr Sherborne submitted that, in determining the meaning of the article, I should bear in mind the following,
- i) The intention of the publisher was irrelevant. That was a matter which I should bear in mind particularly when considering the impact of the 'press conditional' tense.
 - ii) This was an example of where the defamatory impact of the publication was the greater because of those with whom the article associated the Claimant. It was a 'Rogues Gallery' effect.

- iii) As the Defendants accepted, the repetition rule meant that they could not avoid liability for what they published by attributing the defamatory allegation to some other person.
 - iv) Paragraph 1 cast the Claimant as a spy or spook. He was not portrayed simply as a businessman or security consultant.
 - v) It was said that he had been summoned to the US Senate. Since he had had to be summoned that implied involvement in wrongdoing.
 - vi) Paragraph 3 spoke of him using ‘offensive’ methods. According to Dr Labeau, that imported an element of aggressivity. The ordinary reader would have understood his offensive cyber methods as illegal.
 - vii) Paragraph 5 referred to the Claimant using Circles Bulgaria, ‘one of whose specialties is making technology to intercept mobile data.’ The interception of mobile data was plainly a reference to hacking which, Mr Sherborne said, was plainly illegal.
 - viii) Paragraph 8 says that Benjamin Netanyahu was forced to deny a connection with the Claimant (see also paragraph 2).
 - ix) Paragraph 10 says, ‘The man seems particularly displeased when the media link him to a number of Russian oligarchs. And for good reason ...’ Mr Sherborne submitted that this was a good example of the Rogues Gallery effect. It indicates to the reader that his connection with Russian oligarchs is something disreputable and which he would wish to hide from the media.
 - x) Paragraph 11 spoke of the Claimant being summoned to give evidence before the US Senate. That suggested that he had not given evidence voluntarily about Russian interference.
 - xi) Paragraph 12 said that the Senate wanted him to give evidence about his connections with President Trump’s circle of advisers and whether Israel had influenced the election.
 - xii) Paragraph 15 is part of a section on Oleg Deripaska. It is said that at times the Claimant and Mr Deripaska met in London ‘accompanied by their respective advisers among whom figures Evgeny Fokin, a former KGB agent.’
 - xiii) Mr Sherborne submitted that only a naive reader would regard the article as meaning no more than that there were grounds to investigate these matters. There was at least a *Chase* level two (reasonable grounds to suspect) if not *Chase* level 1 (guilt).
28. On the Defendants’ behalf, Mr Price argued,
- i) It was too simplistic to see the press conditional as an example of the repetition rule.

- ii) The Defendants were not relying on the intention of the publisher, but what the reader would understand was that the use of that tense had been chosen deliberately in place of the present tense because what was being presented would be understood as something other than a concluded fact.
 - iii) In deciding the impact of the press conditional tense, it was important to consider the tense in combination with other features. There were other markers which the ordinary reader would understand as distancing the writer from a simple assertion that these were true facts, such as denials.
29. I recognise that I am not bound to adopt either party's contentions as to meaning (though I cannot find a meaning more defamatory than that pleaded by the Claimant). But in my judgment the Defendants have correctly identified the natural and ordinary meaning of the words complained of with certain changes
30. Thus, I find that the words complained of meant,

The Claimant is a spy or a spook and there are grounds to investigate whether he has directly or indirectly used surveillance, military methods or data interception technology in his work; whether he was involved in the surveillance of police officers investigating President Netanyahu; and whether he was involved in Russia's attempt to interfere in the 2016 election in the USA.

31. My reasons are as follows;
- i) The agreed translation of the article includes the terms 'spy' and 'spook'. It will be a matter for future consideration whether those terms are defamatory at common law, but they are at least arguably so. Both terms may imply the use of covert methods and it is arguable that a reader would regard that as derogatory so as to lower the Claimant in the eyes of right-thinking members of society generally. I have explained that the Claimant has not relied on a true innuendo. He cannot, therefore, rely on the association which some French readers might draw with the Algerian war. However, Dr Labeau gives other reasons why the term 'barbouze' would be regarded as derogatory by the ordinary French reader. In my judgment that is sufficient for me to conclude that the application of that word *might be* defamatory at common law.
 - ii) I consider that the reference to Donald Trump and his circle of advisers is not arguably defamatory. Even if the words complained of did include the allegation that the Claimant had such a connection, it would not therefore be legally significant.
 - iii) I also consider that it was not legally significant for the article to say (as it did) that the Claimant had attended meetings with a former KGB agent, Evgeny Fokin who was said to be one of his advisers. There are a number of reasons for this conclusion. It is said only that the Claimant attended meetings with Mr Fokin. The article does not say anything further came of the meetings. Further, Mr Fokin is described as a *former* KGB agent. That says little about his present activities. The article says nothing about the nature of the advice which he gave to the Claimant.

- iv) I do not accept Mr Sherborne's 'Rogues Gallery' argument. In my judgment none of those with whom the Claimant is said to be associated (at least what is said of the nature of the associations) significantly changes the meaning from what I have held it to be.
- v) I agree with Mr Price that the article was at *Chase* level 3. The natural and ordinary meaning is that there were grounds to investigate, but, I find, the natural and ordinary meaning is not more than that. As the experts agree, at several points the author has used the 'press conditional' tense. That is one of the devices by which a French reader would recognise that the author was conveying uncertainty about the truth of what is being stated. I recognise that the 'press conditional' tense may be used in the three ways which the experts have identified. In my view, however, the reasonable French reader would understand the journalist to be using it to convey the 'modal' meaning. Of course, the journalist's actual intention is nothing to the point when determining the natural and ordinary meaning. My conclusion does not contravene that principle. What I am concerned with is the meaning which the French reader would take away. In my view, he or she would take away the message (from the press conditional and the other devices used in the article) that the journalist does not add his own endorsement to the allegations about the Claimant's activities. As for the other devices, I have in mind those identified by Professor Marnette-Piepenbrock. Nor do I consider that this conclusion is contrary to the repetition rule. As Mr Price analysed in his skeleton argument, the impact of the repetition rule and the different *Chase* level meanings was considered by Nicklin J. in *Hewson v Times Newspapers Ltd.* [2019] EWHC 650 (QB) at [35]-[42]. It was not the Defendants' case that the defamatory sting of the article was entirely neutralised, but an article could be written in such a way that it conveyed no more than a *Chase* level 3 meaning. In my view that was the case here.
- vi) I do not accept that the word 'offensives' imported a meaning of illegality or aggressivity. Dr Labeau's opinion that it did was influenced by the article's use of hyperlinks and illustrations, but, as I have said, Mr Sherborne relied only on the words in the article itself, not on the content of the other articles referenced in it or for which hyperlinks were given. The words complained of do not include any illustration in the article itself. Professor Marnette-Piepenbrock disagrees that the word 'offensives' connotes illegal activity or even aggressivity. She notes that its use has expanded beyond its military origins and is now deployed, for instance, in sport and management terminology. Taking account only of what is relevant, I prefer her opinion to that of Dr Labeau. I do not accept Mr Sherborne's submission that other elements of the article lead to a different conclusion. Even in conjunction with the references to Circles Bulgaria in paragraph 5, I do not accept that the ordinary reader would understand the author to be saying that the Claimant had been involved in illegal activity.
- vii) I do not accept that the defamatory sting of the article was added to because it said that the Claimant had been summoned to give evidence at the US. Senate hearing. The reasonable reader would know that there may be many reasons why someone is not willing to testify voluntarily but will

do so if compelled. I do not consider that this arguably adds to the sting of the libel.

- viii) Beyond what I have said already, I do not accept that the words complained of had the meaning contended for by the Claimant or any of its elements.

Annexe 1

The Joint Report of the Experts

Executive summary

1. This report is prepared by the parties' expert witnesses in the field of linguistics. It is intended to comply with Part 35.12 of the Civil Procedure Rules. That provision reads,

“(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to –

(a) identify and discuss the expert issues in the proceedings; and

(b) where possible, reach an agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court setting out those issues on which –

(a) they agree; and

(b) they disagree, with a summary of their reasons for disagreeing.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

2. The requirement to provide this joint report derives from paragraph 3(c) of the Order for Directions of Master Eastman dated 24th February 2020 as varied by consent between the parties' legal representatives.
3. Dr Labeau is instructed by the Claimant. Professor Marnette-Piepenbrock is instructed by the Defendants.

Introduction

4. Dr Labeau and Professor Marnette-Piepenbrock had a without prejudice meeting on 12 August 2020 and then wrote the present joint report.

Points of agreement

5. It is acknowledged that the translation provided by the claimant contains a number of inaccuracies. All the corrections mentioned by Prof. Marnette-Piepenbrock in her report are accepted. In addition, it is agreed, as suggested by Dr Labeau, that *relais* should not be translated as 'networks' as proposed by Mrs Huret-Morton, but should rather be translated by 'middlemen' (or possibly 'go-between' as later suggested by Prof. Marnette-Piepenbrock). Pending that correction, it would therefore be fine for the Court to refer to Mrs Huret-Morton's translation, which also has the advantage of keeping with the paragraphs structure of the original French article. However, the claim revolves around the French original and its impact on the original readership.
6. It is agreed that, in his article, the journalist uses several methods to show that he is reporting information rather than stating undisputed facts or directly expressing his own views. As one would in English, he uses reported discourse and quotation marks as well as expressions such as

“selon X” or “d’après X” (according to X) to mark that distance. In addition, he also uses a linguistic strategy specific to French, the *conditionnel journalistique* (press conditional). Markers such as the press conditional and expressions like “selon X” (according to) do not only report utterances but also modalise their enunciation, i.e. they express the speaker’s attitude about the truth, the reliability or the degree of certainty of what is being spoken about.

7. From a linguistic point of view, it is noted that Mr Leplongeon (i) evokes a number of sources, presented as reliable, (ii) provides quotes and (iii) exerts caution in his claims, as shown by the intensive use of distance markers such as “selon X” or “d’après X” (according to X). The form of the article thus suggests a measured approach.
8. It is acknowledged that all articles using quotes – and the one under discussion as any, not more or less - run the risk of taking words out of context unwillingly or on purpose. When the original quote is in a foreign language, there is an added risk of mistranslation. Overall, when compared to their original English sources, the quotes in the French article were found to be accurately translated, but Dr Labeau noted that one was truncated.
9. Mr Leplongeon signals that the information presented in his article comes from external sources by attributing opinions to their authors. This is conveyed by two prepositions, *selon* (5 occurrences) and *d’après* (1 occurrence) that can both be translated in English by ‘according to’. Those authors are identified when the claimant and his lawyer are quoted or when referring to precise documents such as a senate letter of summons. However, the sources invoked with “selon X” or “d’après X”, which are presented by the journalist as well informed and reliable, are not

identified – with the exception of a newspaper. From an inquisitive journalist’s point of view, reasons for not identifying one’s sources can be varied. This might be to protect their sources but also in some cases it might also reveal that the source is not reliable.¹

10. As linguistic experts, Dr Labeau and Prof. Marnette-Piepenbrock note that the journalist does not assert the information he presents in the indicative present, which would ‘verify’ (etymologically: make true) it but chooses to use the conditional, which allows three readings that both experts presented in their reports:

- a. Indicating some degree of uncertainty about the piece of information (the Modal use)
- b. Indicating that the piece of information originates from a discourse other than the speaker’s (the Evidential use)
- c. Indicating that the speaker does not take responsibility for the utterance (the Alethic use)

11. According to reading (a), the conditional can be used when you do not know for sure whether the information is true or not. However, it is only one of the possible interpretations of the use of the conditional in this article. There is no way to know for sure which of the three readings the writer favours. It is impossible to translate that ambiguity in English. The translation by Mrs Huret-Morton using ‘reportedly’ is accurate but conveys reading (b), through which the author does not indicate his opinion about the information. The French conditional could as accurately

¹The Defendant’s expert understands that the precise reasons for not naming journalistic sources are outside of the scope of her report because it is a legal concept, not a linguistic one. However, the Claimant’s expert considers it a part of her instruction “to analyse an article authored by Marc Leplongeon and published in *Le Point* on 21st June 2019, and to comment on its meaning and its likely impact on a native French readership.”

be translated by 'allegedly', thus favouring readings (a) and (c), through which the author would express doubt about or question the statement.

12. As mentioned above, both experts agree that the journalist's careful use of the press conditional was not accurately translated by the Claimant.
13. In any case, the use of the so-called press conditional clearly shows that Mr Leplongeon is distancing himself from his sources/information, but the reason for this (genuine objectivity or desire to cover one's back while conveying unverified claims) cannot be assessed.
14. It is not within the experts' remit to assess Mr Leplongeon's level of research and evidence in his article, and they have no linguistic means to assess the research he has carried out. Mr Leplongeon's choice of linguistic devices suggests a measured approach. By using the *conditionnel journalistique* (press conditional), Mr Leplongeon gives the reader the opportunity to question the veracity of the information he reported. The experts can only concord on the formal care taken by the journalist, but are unable to assess the reliability of the article's contents.
15. With regard to the word 'offensives', the quotation marks can indicate (i) a verbatim quote and possibly (ii) the non-endorsement of a quote by the writer, i.e. Mr Leplongeon. When using that punctuation mark, Mr Leplongeon indicates that the choice of word is not his. On the basis of the text, it is not possible to attribute the term to a specific author, beyond 'not Mr Leplongeon'. It is possible that Mr Leplongeon might consider the term inappropriate but this cannot be deemed certain.

Points of disagreement

16. Despite acknowledging that Mr Leplongeon adopts a measured approach, Dr Labeau notes that all of the sources but one (a newspaper) invoked by Mr Leplongeon to support his accusations cannot be identified, which, in her view, leaves a less favourable impression about the contents of the article. In her view, the linguistic study of the article does not allow her to claim that its contents are accurate and well-researched any more that it allows her claim they are not. Prof. Marnette-Piepenbrock does however point to the fact that Mr Leplongeon also balances some of his quotes with reactions and quotes from W. Soriano, his lawyers or other relevant sources (e.g. Roman Abramovich's assistant) which are in line with the journalist's general use of distancing strategies such as the press conditional. Dr Labeau disagrees and considers that the reactions from W. Soriano and his lawyer mentioned in the article do not allow to present their point of view but reinforces their negative image: they refuse to comment ("Walter Soriano refuse tout commentaire"), they decline to justify their claims ("Me Shlomo Rechtschaffen a cependant refusé de nous dire ce qui était faux dans l'article du site d'information américain"), they are uncooperative ("L'avocat de Walter Soriano se refuse désormais à tout commentaire: 'Vous ne nous avez pas fourni une version de l'article que vous comptez publier, et nous ne sommes donc pas en mesure de le commenter'") and even threatening ("nous vous recommandons fortement", "il n'hésite pas à attaquer").²

² Translation of the above excerpts (by Mrs Huret -Morton): "Walter Soriano refuses any comment "; "Shlomo Rechtschaffen, however, declined to tell us what was false in the article published by the U.S. news site" ; "Walter Soriano's lawyer has since declined to comment, stating, 'You have not provided a copy of the article you intend to publish and we are thus in no position to comment on it.'"; We strongly recommend not taking part in it" ; "he would not hesitate to file suit " .

17. While it is agreed that Mr Leplongeon makes a skilful use of the methods journalists have at their disposal to present information without vouching for it and that the accumulation and frequency of linguistic markers expressing distances suggest that the journalist uses them strategically, Dr Labeau sees this strategy as possibly giving a misleading impression of objectivity while Prof. Marnette-Piepenbrock sees it as intended to express a balanced report of information.
18. Dr Labeau does not agree with Professor Marnette-Piepenbrock's suggestion that 'offensif' does not necessarily include the seme (meaning component) of aggression on the basis of the etymology of the word and its definitions and synonyms in a range of dictionaries. Professor Marnette-Piepenbrock maintains that the word can be used in sport and military jargon without the specific meaning of aggression. However, as mentioned above, both experts agree that the use of quotes by Mr Leplongeon indicates that the choice of word is not his.
19. Dr Labeau included in her report a multimodal analysis taking into account the images and hyperlinks provided in the online version of the French article. In her opinion, those elements can contribute to the online reading experience and may contribute to the development of an unfavourable perception of the claimant, while Professor Marnette-Piepenbrock saw these items as excluded from the Court's brief.

Summary

20. In conclusion, the experts agree on the careful linguistic strategies of modalisation and distanciation used by the journalist in the French article but they slightly disagree on their purpose. They disagree on the possible

perception of the article by the readers and on the need to analyse the images and hyperlinks in the text. The experts also agree to recommend Mrs Huret-Morton's translation, save that *relais* should be translated as 'middlemen'.

Statement of Truth

The parties' expert witnesses believe that the facts stated in this joint report are true. They understand that proceedings for contempt of Court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Dr Emmanuelle Labeau, for the Claimant



Dated: 18th September 2020

Professor Sophie Marnette-Piepenbrock, for the Defendants

Dated: 18th September 2020

Annexe 2 – Translation of the article by Madame Huret-Morton

United States: Israeli agent targeted by investigation into Russian interference

Walter Soriano, a security consultant, was summoned by the U.S. Senate owing to his ties to Russia and Donald Trump's entourage.

By **Marc Leplongeon**

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(picture)

His influence is such that we allocated space for him last February in our special edition on "the return of the spies" and spooks of all sorts. Four pages of revelations about Walter Soriano, a perfect stranger who in a few years became one of the world's most powerful business intelligence agents. Close to Benjamin Netanyahu and a number of businessmen, in particular Russian billionaires, Soriano was summoned last April by the United States Senate, as part of its probe into Russian interference in the American elections.

For a better understanding, let's go back a few years. In 2017, several Israeli media outlets reported that police officers responsible for corruption investigations targeting Benjamin Netanyahu, the Jewish state's Prime Minister, believed they had been placed under surveillance. The name of Walter Soriano surfaces. A man with connections, particularly in intelligence and orthodox Jewish circles, Soriano is the head of USG Security Limited, a security firm based in London, a few steps from Buckingham Palace.

Also see EXCLUSIVE. Business **intelligence: the mysterious Mr Soriano**

The power of a network

The man nurtures a veritable culture of secrecy to the extent that no official photographs of him exist. According to Israeli newspaper *Globes*, the agent has carved out a strong reputation among wealthy businessmen and is reported to not balk at using methods called "offensive", thanks to his contacts in the Israeli army and at Israeli cyber security firms. The world's mighty reportedly employ his services to investigate competitors in the event of business disputes, for example, or judicial enquiries.

Ruth Parasol, who sits atop an immense fortune and an online gambling empire, PartyGaming, used his services when, in 2006, she was under investigation by the U.S. Department of Justice (DoJ). Also, in England, real estate developers the Candy Brothers were accused by a competitor of having used Soriano's company, USG Security Limited, to spy on him — something never proven — according to a legal document found by *Le Point*.

According to one of our sources, Walter Soriano reportedly uses a network of sub-contractors in his service missions for billionaires, so as to never appear in the limelight, such as a company called Circles Bulgaria, one of whose specialities is making technology to intercept mobile data. Contacted, the person concerned said through his lawyer that this information was "incorrect".

An influence in football circles

According to a very knowledgeable source inside the international intelligence-gathering community, Walter Soriano reportedly has within a few years become the right-hand man of many oligarchs. A sort of "super-consultant" for Russian billionaires. According to our sources, Dmitri Rybolovlev, who heads AS Monaco, the principality's football club,

employed him — as we reported in February — to investigate Yves Bouvier, an art dealer, as well as personalities tied to the football world. A world he knows well: Walter Soriano was Diego Maradona's agent and was once tasked with finding him a coaching position in the Premier League.

Although Walter Soriano did not want to comment on that information, it was confirmed to us by another oligarch in the person of Roman Abramovich, the owner of Chelsea FC. While several media outlets assert that Soriano was employed on several occasions by the businessman to settle business disputes, Roman Abramovich assured us through his assistant that their relations were limited to football during the time Soriano was an "agent".

The right-hand man of oligarchs?

In 2017, the *Globes* newspaper's reporting about alleged spying on investigators in charge of probes targeted at Benjamin Netanyahu went unnoticed in Europe and the United States, but caused a scandal in Israel. The case was of such magnitude that Benjamin Netanyahu was compelled to deny on Facebook any connection to Soriano, while Soriano, who fiercely denied having played any role in the case, decided to sue Raviv Drucker, a star Israeli journalist who had dared to name him in a TV broadcast. The lawsuit was perceived by the person concerned as an attempt to muzzle the press, as reported by Israeli news site The7eye, which was also sued!

Walter Soriano, who abides by being discreet, has indeed made up his mind to sue any publication that would bring up his secret activities. The7eye site paid the price, as did Richard Silverstein, an American blogger who reported the entire story in English. Richard Silverstein, who just won a decisive legal battle (as he tells here), was the target of a \$75,000 lawsuit by Soriano for defamation and reputational harm.

The man seems particularly displeased when the media link him to a number of Russian oligarchs. And for good reason...

Soriano summoned by the Senate in probe on Russian interference

On Wednesday 5 June, the U.S. news site Politico reported that Walter Soriano had been summoned last April to appear at a closed hearing by the Senate committee investigating Russian interference. The letter of summons addressed to Soriano — and of which *Le Point* was able to be apprised — was written by Richard Burr, Republican Senator from North Carolina, and Mark R. Warner, elected Democrat from Virginia, just a few days after special prosecutor Robert Mueller issued his report ruling out the indictment of the American president.

The letter was particularly instructive. It requested Walter Soriano to provide all his communications from 16 June 2015 to date with a number of Russian, American and Israeli personalities and companies. In substance, the Senate was asking Walter Soriano to explain his connections to almost all of Trump's staff during Trump's 2016 electoral campaign, from Paul Manafort, Trump's campaign manager, and Steve Bannon, Trump's spin doctor, to David Bossie, the Republican candidate's deputy campaign manager, and Erik Prince, a businessman close to Trump.

Oleg Deripaska in the crosshairs

In its letter sent in April, the Senate also wanted to question Walter Soriano about Israeli intelligence companies, including among them Psy-Group, Black Cube, Wikistrat, and Orbis Business Intelligence. The latter company was founded by Christopher Steel, a former British spy who was the first to report potential Russian interference in the American electoral process. The enquiry later showed that Steel had been paid by the Democratic National Committee to conduct his investigations.

In concrete terms, the Senate was curious about whether or not Israel had played a role in the election of Donald Trump as head of the United States through persons and companies who gravitate around Russian billionaires, as is the case of Walter Soriano. That's why the upper chamber of the American Congress is particularly interested in Oleg Deripaska. Dubbed the "aluminium king" by the press, Deripaska is blacklisted in the United States, with the U.S. Treasury Department accusing him of having played a role in Russian interference in the presidential campaign, which he has always denied.

Soriano is considered by the intelligence-gathering world as one of Oleg Deripaska's most reliable consultants. According to a source very familiar with the case, the two men know each other personally and meet, at times in London, accompanied by their respective advisers, among whom figures Evgeny Fokin, a former KGB agent. Another independent consultant, who for a time worked for Wikistrat and whose father was a member of the FSB, Russia's internal intelligence gathering service, is reported to have served as Deripaska's intermediary. Contacted, the consultant, who asked not to be named, expressly denied this.

A network of subcontractors

The boss of USG Security Limited also reportedly offered private security missions in London to Oleg Deripaska's entourage, including his father-in-law, Valentin Yumashev, who was part of Boris Yeltsin's corps of bodyguards. Soriano was also named for his connections to the British financier, Nat Rotschild, an adviser to Oleg Deripaska. Those two men made headlines in 2008, when festivities aboard a yacht off Corfu in the presences of George

Osborne, a Conservative Party figure and David Cameron's former Chancellor of the Exchequer, were made public.

The presence in the UK of numerous Russian billionaires and their business circle contacts, some of who have backgrounds in the world of intelligence gathering, is a matter taken very seriously by Britain's internal security services. This is particularly so since the Skripal case, named after a man, a former double agent who was poisoned in March 2018 in Salisbury under mysterious circumstances, and is today in recovery after a long stay in the hospital.

Walter Soriano declines to comment

Asked about his relations with Russian billionaires, Shlomo Rechtschaffen, Soriano's lawyer, told us without further details that his client was currently the target of a "campaign" to denigrate him. "We strongly recommend not taking part in it," he concluded. The lawyer made it clear to us that he would not hesitate to file suit against media outlets disseminating "rumours" and "false statements", noting that he had already written to Politico, which in early June first reported Soriano's summoning by the Senate.

Shlomo Rechtschaffen, however, declined to tell us what was false in the article published by the U.S. news site. Contacted, Natasha Bertrand, who wrote the article, told us that she had personally not heard about a court summons. A bluff by an agent expert in destabilising? Walter Soriano's lawyer has since declined to comment, stating, "You have not provided a copy of the article you intend to publish and we are thus in no position to comment on it." Meanwhile the investigating Senate committee declined to say whether Walter Soriano replied to the summons and whether or not he appeared before that American body.

