

Neutral Citation Number: [2021] EWHC 3683 (QB)

Case No: QB-2018-000752

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 7 December 2021

BEFORE:

THE HONOURABLE MR JUSTICE SAINI

BETWEEN:

HAMZA IJAZ

Claimant

- and -

GHAFOOR MANAN

Defendant

MR A DHILLON appeared on behalf of the Claimant
MR N LEVISEUR appeared on behalf of the Defendant

JUDGMENT

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1. MR JUSTICE SAINI: By a Claim Form issued on 28 December 2018, the claimant brings proceedings for breach of contract, libel and harassment against the defendant. The defendant owns a dental practice known as the Wandsworth Town Dental Practice, 140 Garratt Lane, Wandsworth, London SW18 4EE. The claimant worked at that surgery in various roles, including as a dentist, from 2016.
2. The claimant ceased working at the practice in or around 2 May 2018. There are a number of disputes of a financial nature between the claimant and the defendant. I am not concerned with those disputes. The issue before me concerns the libel claims. I should explain at the outset that both the claimant and the defendant are members of the Pakistani Ahmadiyya Community in London, as is the claimant's father, who lives in Pakistan.
3. This judgment is limited to determining the preliminary issues set out in Master McCloud's order of 19 October 2020. Under the terms of that order I am to determine whether the five publications pleaded in the Particulars of Claim bear the meanings pleaded by the claimant. I pause here to note that a sixth publication is pleaded at paragraph 17 of the Particulars of Claim, but counsel for the claimant has confirmed that it is not relied upon as part of the defamation claims and I direct it be removed from this part of the pleading. I attach in an annexe to this judgment the five publications which are the subject of the libel claim.
4. Although the Master's order for a trial of preliminary issues states my role is limited to determining whether the claimant's pleaded meanings are correct, I will proceed on the basis that my task is to actually determine the meanings in accordance with the now usual practice.
5. Counsel for the defendant resisted this and asked me to limit myself to simply determining whether the claimant's pleaded meanings were correct. I reject that submission. It would not be consistent with the overriding objective and efficient use of judicial resources to accept the defendant's invitation. Limiting myself in the way suggested would fail to move the case forward. I have also received full submissions from the parties on the issue of meaning and not just simply on the issue as to whether the claimant's pleaded meanings are correct.

6. By the Master's order, a second issue for determination is whether two of the publications, those pleaded at paragraphs 9 and 12 of the Particulars of Claim, constitute a serious and substantial tort under the *Jameel* jurisdiction. That is a reference to the case *Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75. I will refer to this as the *Jameel* issue below.
7. The specific publications relevant to the *Jameel* issue, those at paragraphs 9 and 12 of the Particulars of Claim, were texts sent by the defendant to the claimant's father in Pakistan (the April and May texts, as explained below). Somewhat unusually, the claimant elected to call evidence on this issue from the claimant's father, Hamid Ijaz, and he was cross-examined by Counsel for the defendant. The common course in *Jameel* abuse applications is generally to decide such matters on the basis of the pleadings and witness evidence without cross-examination. I must however proceed on the basis of all the evidence including the oral evidence before me called by the claimant from the sole publishee.
8. I turn then to the first of the preliminary issues, that is the meaning of the publications. I have taken the usual course of considering the publications as an ordinary reader and identifying an interim conclusion on meaning without considering the pleaded meanings in the written submissions. I have then used the written and oral submissions as a cross-check. I have applied the now well-known principles set out in the case law including *Koutsogiannis v The Random House Group Limited* [2019] EWHC 48 QB at [11] to [12]. The court's task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that a hypothetical reasonable reader would understand the words to bear.
9. Counsel for the defendant placed particular reliance on certain aspects of Nicklin J's summary of the principles. Specifically, he asked me to consider the 'bane and antidote' principle as well as the important guidance that one must consider the entirety of each publication in context. I note in this regard that in the course of submissions I was provided with a fuller version of the fifth publication. I considered that document in its entirety before giving my judgment.

10. The so-called Chase levels of meaning are a useful tool in approaching contests on meaning. Both counsel referred to the principles in that case which come from *Chase v Newsgroup Newspapers Limited* [2003] EMLR 11 at [45]. In that case, Brooke LJ identified three types of defamatory allegation. In very broad terms:
- (1) that the claimant is guilty of the act;
 - (2) that there are reasonable grounds to suspect that the claimant is guilty of the act;
and
 - (3) that there are grounds to investigate whether the claimant has committed the act.
11. I turn then to each of the publications and will state my conclusions as to meaning, having noted the particular emphasis placed by counsel on certain words (but noting that such submissions may well divert one from the relevant test). I will not set out the rival submissions. The determination of meaning in this case is relatively straightforward. As is usual, the claimant seeks to argue the publications are direct accusations of serious criminal wrongdoing, while the defendant seeks to persuade me of essentially much lower levels of Chase meaning. Both parties are guilty to some extent of deploying linguistic arguments of a subtlety which would not be apparent to the ordinary reader. I have given particular relevance to overall context in approaching the issue of meaning I have considered the entirety of each short publication.
12. I turn then to the first publication, which is a publication of 15 April, which was sent by the defendant to the General Dental Council ("the GDC"). In my judgment the meaning of this publication is that there are reasonable grounds to suspect that the claimant was guilty of committing fraudulent acts in the defendant's surgery while he was a VTE (vocational training by equivalence) trainee. As counsel recognised in their oral submissions, the real contest was between Chase levels 2 and 3. I note that this was a report to a professional regulator, but when its full terms are considered in context I consider that this is, in reality, a Chase level 2 meaning publication.
13. Turning then to the second publication, which is at Particulars of Claim paragraph 9, this has been called "the April text". It was sent by the defendant to the claimant's father. In my judgment the meaning of this text is that the claimant has dishonestly appropriated a

substantial sum of around £60,000 and perhaps more from the defendant's surgery accounts. This is plainly a Chase level 1 case.

14. The third next publication is a 2 May 2018 text - referred to by the parties as "the May text". It refers to "UDAs". The claimant's father, who was the recipient of this text from the defendant, is not a dentist and a "UDA" is a defined term of art within the dental world which would have meant nothing to him. I was informed that a "UDA" refers to Units of Dental Activity, and these are the units used to quantify work carried out that is chargeable to the NHS. When one goes to the May text it refers to the transmission of nearly 7,000 UDAs. There is no evidence before me as to any particular understanding that the claimant's father would have had of the term and therefore I proceed on the basis that the reasonable hypothetical reader would have read this text and been rather puzzled as to what UDA means.
15. That said, it is clear that the text does allege some form of Chase level 1 inappropriate conduct and my finding on the material and arguments before me is that the meaning of the May text is that the claimant has dishonestly taken some form of unspecified benefit while employed by the defendant.
16. I turn then to the fourth publication, which is pleaded at the Particulars of Claim paragraph 17. This is a communication from on or around 1 May 2017 sent to HMRC by the defendant. Having considered the terms of that communication, in my judgment the meaning is that there are grounds to investigate the claimant for having committed acts of fraud within the defendant company. I find this is a Chase level 3 form of allegation.
17. The fifth publication is an email sent in or around 20 October 2018 by the defendant to the claimant's then employer, a surgery known as Envisage Dental. Having considered both the parts of that email which are cited in the Particulars of Claim (and the fuller terms of the email provided to me in the course of submissions) in my judgment the meaning is that the claimant defrauded the defendant, forged a contract when employed by the defendant, and is likely to have forged references to obtain employment. Again, this is a Chase level 1 type of case. I note in particular that the reference to a contract in this email is to a "fake contract", but in the context of the email as a whole I consider the

hypothetical reasonable reader would not have drawn a distinction between an accusation that the claimant produced a "fake contract" and later on in the same email that he may have "forged the references". In my judgment, the hypothetical reasonable reader, unlike a lawyer, will regard "faking" and "forging" as essentially the same thing in the context of this communication.

18. I turn then to the *Jameel* issue, which arises only in relation to the April and May texts sent by the defendant to the claimant's father. As I have already indicated, this is a somewhat unusual case in that I heard direct oral evidence at this early stage in the proceedings from the specific publishee of these texts. There was no dispute between the parties as to the relevant legal principles and I take them from *Gatley* (12th edition) at paragraph 2.4.
19. In relation to the *Jameel* issue, the focus of the defendant's attack was not on the words used in the April and May text, which counsel for the defendant rightly conceded, were in themselves sufficiently serious to be defamatory, but rather on the wider *Jameel* concept of abuse which is described in this paragraph of *Gatley*.
20. As regards the principles to be applied, the threshold of seriousness for the purposes of the *Jameel* jurisdiction has been described as a multifactorial question. That question must be approached in the light of the rights in Articles 8 and 10 of the European Convention on Human Rights; and the sub-issues to be considered by a court include matters such as the nature and inherent gravity of the allegation, whether the publication was oral or written, the status and number of publishees, and whether the allegations were believed and the status of the publisher.
21. The status of the publisher is relevant because that may or may not make it more likely that the allegation will be believed. The transience of the publication is also relevant. As *Gatley* emphasises by reference to a number of cases, this is a fact-sensitive question depending upon the particular features that appear on the evidence in a specific case.
22. I start by noting that the two texts in issue, that is the April and May texts, were sent only to a single publishee, the claimant's father. I heard oral evidence from the claimant's father, Hamid Ijaz. He was plainly an honest witness who gave clear evidence that he

was proud of his son and that although he took the texts seriously (given that they emanated from a senior and professional person) he did not believe what was being said about his son. Although in re-examination it was sought to suggest that the understanding of the claimant's father was different at the time he received the texts, as opposed to a later period in 2019, in my judgment the claimant's father's evidence was clear that he simply did not believe what was being said about his son.

23. I also note the further text material in the bundle before me (which was not referred to in any detail in counsels' arguments) but which I have read, also support the evidence of Mr Hamid Ijaz that he did not ultimately give credence to what the defendant had said about his son.

24. Given this evidence, which counsel for the claimant realistically accepted posed difficulties for the claimant on the *Jameel* issue, I consider that this is a case where there has not been a real and substantial tort suffered as regards the April and May texts. I accept the allegations made against the claimant were serious. I find on the evidence that I have heard this morning that they did not have, in the eyes of the sole publishee, the claimant's father, a negative impact upon his son's reputation. I accordingly strike out the libel claims based on the April and May texts on the *Jameel* basis.

ANNEXE OF PUBLICATIONS

(1) GDC Email

On or around a time prior to 15th April 2018, the Defendant published or caused to be published to the GDC, an email (“the GDC email”).

...One of my VTE trainees Mr Hamza Ijaz is under investigation for fraud in my surgery. I wish to inform you that during the investigations he must not be allowed to work at other places. We are getting all the details together and forward those details to yourself...

(2) April Text

On 29th April 2018, the Defendant published or caused to be published to the Claimant’s father a text message (“the April Text”):

...I have thought about it and even told Hamza many time. He insists that he has done nothing. The actual truth is that he has been dishonest with me; filling his bank account and emptying my surgery’s bank account in return. He had fraudulently taken about £60,000 maybe more from my surgery account...

(3) May Text

On 2nd May 2018, the Defendant published or caused to be published to the Claimant’s father a text message (“the May Text”):

... Hamza has illegally transmitted nearly 7,000 UDAs under my name and number without permission despite having his own number and PIN. That constitutes a 100% fraud...

(4) HMRC Referral

On or around 1 May 2018, the Defendant published or caused to be published to HMRC a letter (“the HMRC Letter”).:

I wish to inform you that the above mentioned is a dentist registered with GDC & is under investigation for alleged fraud in our company. We will let you know the results of the investigation within 3-4 weeks.

(5) The ED Email

On or around 23rd October 2018, the Defendant published or caused to be published an email to the Claimant’s’s current employer known as Envisage Dental (“the ED Email”):

[Mr Ijaz was] *Dismissed from our Surgery for fraud in May 2018 this year... The Matter was reported to the GDC & NHS for fraud and is still under investigation...He has produced a fake contract with our Surgery in the past of which we have a copy and was found guilty of other misconduct by our internal investigation... Secondly he must have produced references to get a job with yourself and if so than who has signed his references as he might have forged the references*