Neutral Citation Number: [2022] EWHC 996 (QB)

Case No: QB-2021-002150

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 April 2022

Before:

HIS HONOUR JUDGE LEWIS
(sitting as a Judge of the High Court)

- -

Between:

NASEEM SHAH MP	**Claimant**
- and -	
MUHAMMAD ASHRAF CHOHAN	**Defendant**

- -

David Mitchell (instructed by Eve Solicitors LLP) for the Claimant
John Stables (instructed by Patron Law) for the Defendant

Hearing date: 7 March 2022

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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HIS HONOUR JUDGE LEWIS

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 29 April 2022.

1. The claimant in these proceedings is the Labour MP for Bradford West. She tweets under the username @NazShahbfd.

2. The defendant is a retired physician and active member of the Conservative Party. He tweets under the username @DrAshrafChohan.

3. The claimant sues for libel in respect of a tweet published by the defendant on Twitter on 12 June 2020 ("the Tweet"). The Tweet comprised:

    a. The words "Black life matters and congrats to @NazShahBfd for her support for vandalism".

    b. An embedded video of 19 seconds. This video shows a person carrying out a violent attack on a retail kiosk on a UK high street. The perpetrator is shown smashing the unit's front window and, when challenged by the unit's owner, threatening him with a hammer before making off on a moped.

4. The claimant says that the video would have started to play automatically upon the reader scrolling down through his or her feed, although it is agreed that users can stop videos from autoplaying by adjusting their Twitter settings.

5. The claimant seeks general and aggravated damages up to £50,000, an injunction and an order under section 12 of the Defamation Act 2013 requiring the defendant to publish a summary of the court's judgment.

6. The Tweet was taken down around 8 July 2020. The claimant issued proceedings on 3 June 2021, shortly before the expiry of the limitation period. The Claim Form and the Particulars of Claim were served nearly four months later, on 29 September 2021.

7. On 19 November 2021, Master Eastman approved directions agreed by the parties. These provided for a preliminary trial to determine (i) the meaning of the Tweet, (ii) whether that meaning was defamatory at common law, (iii) whether it was a statement of fact or an expression of opinion; and (iv) insofar as it contained an expression of opinion, whether, in general or specific terms, the basis of the opinion was indicated. The defendant was directed to file and serve a document setting out his case on meaning, ("the Defendant's Case").

<u>Legal principles</u>

8. 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.

9. The principles to be applied when reaching a determination of meaning were re-stated by Nicklin J in ***Koutsogiannis v Random House Group Ltd*** **[2019] EWHC 48 (QB)** at [12].

10. One of these principles is that the hypothetical reader is taken to be representative of those who would read the publication in question, in this case Twitter. In ***Monroe v***

Hopkins **[2017] EWHC 433 (QB)**, Warby J (as he then was) at [35] said this about tweets on Twitter: "The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter."

11. There is a dispute between the parties about the scope of the material that this court should consider as "context" when assessing meaning. The relevant legal principles were summarised by Nicklin J in ***Riley v Murray*** **[2020] EWHC 977 (QB)** at [16]:

"[16] … the following material can be taken into account when assessing the natural and ordinary meaning of a publication:
i) **matters of common knowledge**: facts so well known that, for practical purposes, everybody knows them;
ii) **matters that are to be treated as part of the publication**: although not set out in the publication itself, material that the ordinary reasonable reader would have read (for example, a second article in a newspaper to which express reference is made in the first or hyperlinks); and
iii) **matters of directly available context to a publication**: this has a particular application where the statement complained of appears as part of a series of publications – e.g. postings on social media, which may appear alongside other postings, principally in the context of discussions.

[17] The fundamental principle is that it is impermissible to seek to rely on material, as "context", which could not reasonably be expected to be known (or read) by all the publishees. To do so is to "erode the rather important and principled distinction between natural and ordinary meanings and innuendos": Monroe -v- Hopkins [40]. When I considered this principle very recently, I explained that the distinction was between "material that would have been known (or read) by all readers and material that would have been known (or read) by only some of them. The former is legitimately admissible as context in determining the natural and ordinary meaning; the latter is relevant only to an innuendo meaning (if relied upon)" (emphasis in original): Hijazi -v- Yaxley-Lennon [2020] EWHC 934 (QB) [14]."

12. In ***Fox v Boulter*** **[2013] EWHC 1435 (QB)**, Bean J (as he then was) considered that common (or general) knowledge for these purposes should be taken to be referring to what Lord Mansfield CJ in R v Horne [1775 – 1802] All ER Rep 390 at 393E called "matters of universal notoriety", "that is to say, matters which any intelligent viewer or reader may be expected to know. Anything which requires assiduous reading and a good memory so as to recall the facts of a story dating back several weeks or months cannot fall within that definition".

13. The approach to be taken when deciding whether words are defamatory was considered by Sir Thomas Bingham, MR in ***Skuse v Granada Television Limited*** **[1996] EMLR 278** at 286 where he said: "A statement should be taken to be defamatory if it would

tend to lower the plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally".

14. The relevant legal principles when considering whether the words complained of are a statement of fact or an expression of opinion were summarised by Nicklin J in ***Koutsogiannis*** (supra) at [16].

The case advanced by each party

15. I have first read the Tweet (and viewed the video) to form a provisional view about meaning, before turning to the parties' pleaded cases and submissions, see ***Tinkler v Ferguson*** **[2020] EWCA Civ 819** at [9].

16. In respect of those pleaded cases:

    a. The claimant says that the Tweet was a statement of fact and its natural and ordinary meaning was that "the claimant supported criminal acts of violence to the person and damage to property".

    b. The defendant says that the Tweet was comment and its natural and ordinary meaning was that "the claimant had expressed her support for the Black Lives Matter ("BLM") movement which, given the vandalism that had accompanied the movement's protests, was unwise for her to do."

17. The claimant says:

    a. The impression conveyed by the Tweet would have been principally through the video. The reader would have watched the video in its entirety and would have been shocked by the juxtaposition between the normality of the scene and the brazen criminality of the assailant in what was an unprovoked attack.

    b. The literal meaning of the accompanying words is that the claimant supports vandalism, which is consistent with the video. The defendant's congratulations are sarcastic. The reader would readily glean that the defendant was seeking to show that the claimant supported the acts of criminality depicted in the video – both acts of violence against the person and damage to property - and condemn her for doing so.

    c. The statement "black life matters" would strike the reader as odd and not making sense, being incongruent with the impression conveyed by the rest of the Tweet. This would not have been taken to be a reference to BLM and the words would have been glossed over and dismissed by the reader.

    d. The Tweet clearly made a bald statement of fact that the claimant supports crime and it cannot be read otherwise.

18. The defendant says:

a. The video can only be understood in the context of the words. Without these, the video is meaningless, simply comprising footage of thuggery that has nothing to do with the parties.

b. The first three words would have been understood to be a reference to BLM. There is only one statement being made. The first and second parts of the Tweet are linked, joining the reference to BLM together with the reference to support for vandalism, which was a comment on the disorder around BLM protests.

c. The inclusion of the words "congrats to" makes clear that what is being said is not literal. No reasonable reader would interpret the statement as more than a comment that support for BLM must acknowledge the misconduct of some who travel with the movement.

d. The only reasonable and likely interpretation of the video in the context of the Tweet is that it shows a destructive act of a sort that the defendant is referring to by use of the word "vandalism".

e. The tweet is a criticism of the claimant as a supporter of BLM and can only be opinion.

19. In respect of "matters of common knowledge", the parties are agreed that at the time of publication the existence of a BLM movement would have been common knowledge to the hypothetical reasonable reader.

20. The parties do not agree about whether any characteristics of the BLM movement would also have been a matter of common knowledge, by which I mean something that was so well-known that, for practical purposes, everybody knew it.

21. The claimant says that BLM would have been readily associated with the murder of George Floyd and footballers taking the knee.

22. The defendant says that at the time of publication, the hypothetical reasonable reader would also have known that BLM protests in the UK had resulted in widely reported acts of violence just days before the Tweet was published – namely the pulling down of the statue of Edward Colston in Bristol on 7 June 2020, and the defacing of a statue of Winston Churchill on 8 June 2020. The defendant also says that it would have been common knowledge that the claimant supported BLM.

23. The claimant denies that it was common knowledge that vandalism had accompanied BLM protests, or that she supported BLM.

<u>Oral application to rely on additional evidence</u>

24. Shortly before the hearing, the defendant served a seven-page PDF comprising selected tweets from 12 June 2020 which he says are relevant background information when determining meaning. Attached to some of the tweets was a copy of a letter sent by the claimant on House of Commons notepaper, with the support of 31 named MPs, concluding with the sign-off #BlackLivesMatter. The tweets relied upon by the

defendant include criticism of the letter from prominent public figures including the Home Secretary, Sajid Javid MP and Lord Rami Ranger.

25. The defendant says that he does not need to rely on this information to make out his case, but nevertheless it comprises matters of directly available context. He says that the defendant's followers are likely to have seen the earlier tweets, and so would have understood the Tweet in context, namely that it was a comment on the claimant's support for BLM.

26. The claimant says that this additional material should not be considered because it does not form part of the defendant's pleaded case, and no explanation has been given for how the material was compiled, nor what was published in the five hours leading up to the publication of the Tweet. It seems to me that these objections are well made. I am not going to allow this additional information to be admitted on the question of meaning.

Discussion

27. I remind myself that this case relates to a tweet which the hypothetical reasonable reader would have considered fleetingly, without a forensic analysis of the words and images used.

28. I am satisfied that a reader of the Tweet would have understood the reference to "Black Life Matters" as being to the "Black Lives Matter" movement. Whether the reader flicking through his or her feed believed the language used to be a play on words, or a typo, does not really matter – either way, it would have been obvious to them that the Tweet was referring to BLM.

29. The parties do not agree about what the BLM movement would have meant to the hypothetical reasonable reader. I am satisfied that it would have been common knowledge amongst such readers that (i) BLM is an international movement focussed on highlighting discrimination against the black community; (ii) supporters of BLM have engaged in high-profile public protests and demonstrations; and (iii) some of those protests have resulted in instances of disorder or vandalism. I also accept that it would have been common knowledge that the "taking of the knee" in sport is a sign of support for the issues raised by the BLM movement. I do not accept that the hypothetical reasonable reader would necessarily have a detailed knowledge of specific protests or incidents or know of the claimant's views of BLM.

30. The use of the word "congrats" would have been taken by the hypothetical reasonable reader to have been sarcastic, and an indication that the defendant was passing comment on the claimant and being critical of her.

31. I do not consider that the hypothetical reasonable reader would seek to deconstruct the video in the way that the claimant has done, for example drawing out that it shows not only acts of criminal damage and vandalism, but also threats against the person. Given

the nature of Twitter, it seems more likely that the video would be seen simply as a generic example of vandalism, to help illustrate the point the author was making.

32. I consider the Tweet to be a comment that the claimant's support of Black Lives Matter means that she supports vandalism, as depicted in the video. The meaning is defamatory at common law. It is not a statement of fact. The words used by the defendant was clearly a criticism, remark or observation on the claimant. The basis of the opinion is sufficiently stated, namely the claimant's support for BLM and the disorder that accompanies some of its protests.