

Yousef Jameel v. Times Newspapers Limited

Meaning, truth and logic in an unusual defamation action

The recent English defamation case of *Jameel v. Times Newspapers*, which was the subject of a statement read in open court on 15 June 2005 before Gray J upon settlement of the action, raises interesting questions about levels of defamatory meaning which connote less than guilt, and about the relationship between meaning and truth in such cases.

Mr Yousef Jameel, a highly-respected Saudi Arabian businessman with close links to the UK, complained of an article published in the *Sunday Times* on 8 June 2003 and headed, “Car tycoon “linked” to Bin Laden”, which in his contention bore the “level (ii)” defamatory meaning that were, “serious and substantial grounds for suspecting, and/or which may prove” that he was associated with Osama bin Laden in connection with terrorism and/or helped to fund the training of the terrorists who carried out the attacks of 9/11 2001.

As the court was told in the statement of 15 June 2005, the *Sunday Times* accepted that Mr Jameel was not a supporter of either Osama bin Laden or al Qaeda and never sought to maintain that that he had financially supported Osama bin Laden in connection with terrorism or that he helped fund the training of the 9/11 terrorists. Its defences were (1) that, if the article was defamatory at all, it suggested no more than that there were reasonable grounds to inquire whether such was the case; (2) that if the article bore such a “level (iii)” defamatory meaning, it was in that limited sense true; and (3) that the article was in any case published on an occasion of qualified privilege.

In a judgment handed down on 7 November 2003¹[1] Gray J ruled that the article was not capable of bearing more than a level (iii) “reasonable grounds to inquire” meaning; but his ruling was reversed by a judgment dated 21 July 2004 of the Court of Appeal,²[2] which held that whether the words bore a level (ii) “reasonable grounds to suspect” meaning as contended by Mr Jameel was a matter for the jury to decide.

It is that decision of the CA in relation to meaning, together with a subsequent ruling (handed down on the same day as the statement was read) in which Gray J struck out the limited plea of justification,³[3] which give rise to the difficulties discussed in this article.

Mr Jameel is one of over two hundred defendants sued in American proceedings brought by the relatives of those who were killed or injured in the 9/11 attacks of 2001. He was added as a defendant along with a number of other additional defendants in March 2003; and, in accordance with a direction by the US judge, service was effected by publication of the order of joinder by advertisement in the *International Herald Tribune* and in the Arabic newspaper *al Qu’ds*. No grounds for the joinder of Mr Jameel or the other additional defendants have ever been pleaded in the US Particulars of Claim; but, according to the lawyers acting for the Plaintiffs in the US proceedings, he was joined because the name “Yousef Jameel” appears in a handwritten and unattributed draft list of names of persons who were to be invited to “Spend in God’s cause”, which was seized by the authorities in Bosnia-Herzegovina in 2002, and which was subsequently relied upon by the prosecution in criminal proceedings brought in the US against one Enaam Arnaout.

The evidential value of the list of names (which has become known as the ‘Golden Chain’) was found by Gray J in each of his judgments of 7 November 2003 and 15 June 2005 to fall “well short of establishing the existence of sufficient grounds for an inquiry or investigation”. A similar view has been expressed earlier by a Judge in the US proceedings, who dismissed them for that reason against some of the defendants and is shortly to hear a corresponding application on behalf of Mr Jameel. In striking out the plea of justification Gray J also pointed out that it was not and could not be asserted that the Claimant had actually made any donation to al Qaeda or to Osama Bin Laden, nor was there any evidence that targeting (if any) of the Claimant for any such donation occurred

after the founding of al Qaeda or in any circumstances in which he would have had reason to suppose that any such donation would go to fund terrorist activities. No claims to any such effect had however been made in the article.

The Sunday Times article and the contentions of the parties in relation to meaning and justification

The argument on behalf of the Sunday Times was that the article did no more than report accurately and entirely neutrally the joinder of Mr Jameel in the US proceedings, the reason for his joinder and his response through his solicitors (which was detailed and compelling); and that there was nothing in the article to suggest that Mr Jameel had done anything to bring suspicion on himself. Thus any defamatory meaning could be no more than a level (iii) “grounds to inquire” meaning. The Sunday Times further contended that all the underlying facts asserted in the article in relation to the joinder of the Claimant in the US proceedings and the reason for it were correctly reported; so that if the neutral recital of those underlying facts and the Claimant’s response to them did cause the reasonable reader to think that there were grounds to inquire further, that reasonable reader was bound also to conclude that that level (iii) defamatory meaning was true. If conversely the reasonable reader did not regard those underlying facts as amounting to grounds to inquire further, he or she could not reasonably find the article to bear a defamatory meaning at all.

The thrust of Mr Jameel’s case in relation to defamatory meaning was that the article taken as a whole bore a level (ii) “grounds to suspect” meaning. He relied particularly upon the headline of the article (“Car tycoon ‘linked’ to Bin Laden”) and the fact that it contained photographs not only of him but of the Twin Towers of the World Trade Centre in Flames. In relation to justification he did not dispute that he had been joined in the US proceedings, and he accepted for the purposes of the action that the so-called “Golden Chain list had indeed been seized in the offices of a charity in Bosnia in March 2002 and included the name “Yousef Jameel”. He contended however (and Gray J duly agreed with him) that any evidential value of the “Golden Chain” list fell far short of establishing even a level (iii) “grounds to inquire” meaning, having regard in particular to the fact that the list was an unattributed manuscript draft only which appeared to date back to 1988.

The CA’s reinstatement of the level (ii) “grounds to suspect” meaning

Whilst there was of course no evidence to suggest that Mr Jameel had done anything to bring suspicion on himself (so that any attempt to justify a “grounds to suspect” meaning would immediately have fallen foul of the conduct rule), the article did not (at least in the contention of the Sunday Times) contain any suggestion that he had so acted. The Court of Appeal’s ruling nonetheless left the way open for the jury to find that a reasonable reader could have understood the article to mean that there were reasonable and indeed “strong” grounds for suspecting Mr Jameel and “which might prove” his guilt.

It is submitted that, if the Sunday Times is correct in its contention that the article did not contain any suggestion that Mr Jameel had acted so as to bring suspicion on himself (and anyone who wishes can read the text of the article in the judgment of the CA and form his or her own view), the CA’s reinstatement of the level (ii) meaning effectively introduced a double standard into the action. The logical basis for the conduct rule in relation to level (ii) “reasonable grounds to suspect” pleas of justification can only be that what is sought to be justified is (save in exceptional circumstances) a meaning to the effect that the Claimant has brought suspicion on himself; and that approach should not and cannot logically be relaxed in relation to meaning itself. Defamatory meaning and what is required to justify such a meaning are two sides of the same coin. The court should be as astute to exclude the finding of “grounds to suspect” meanings where the words complained of have not impugned the conduct of a claimant as it (rightly) is to exclude level (ii) pleas of justification where no suspicious conduct on the part of the claimant is alleged by the defendant.

The judge's ruling in relation to the level (iii) plea of justification

The interconnection between a defamatory meaning and what is required to justify it reappears in different guise in relation to the striking out of the plea of justification. Whilst Gray J's criticism of the evidential value of the so-called "Golden Chain" list was expressed on reasonable grounds and was reinforced by the other considerations to which he drew attention, it is submitted that he was in the particular circumstances nonetheless wrong to take consideration of the plea of justification away from the jury who would be deciding the issue of meaning. In a case where there was at least a strong argument that the underlying facts had been both correctly and neutrally reported, so that the central dispute in relation not only to justification but also to and meaning was the interpretation which a reasonable man would place upon those facts themselves and the article's recital of them, it was correspondingly essential that both issues be resolved by the same reasonable man in the form of the jury. For the judge to resolve the issue of justification when the issue of meaning had to be left to the jury was to risk inconsistent decisions on two questions which were logically unseverable, and to deprive the defendant of the arguments that the article could not be defamatory in a level (iii) sense without also being true in such a meaning; and that if, conversely, it was not true in such a meaning, it could not be defamatory at all.

Had the action not settled when it did, there would have been a difficult and no doubt fiercely-contested argument as to what the jury, before being asked to decide the remaining issue of defamatory meaning, should be told in relation to Gray J's ruling as to justification and the reasons for it. If for example they had been left in ignorance of it and merely told that they were not concerned with whether any defamatory meaning was true or false, they might well have adopted a reasoning process to the effect that the underlying facts recited in the article would, if true, have amounted to reasonable grounds to inquire further, so that the article's recital of them was therefore correspondingly defamatory. Such a reasoning process would have been inconsistent with the conclusion reached by Gray J in his ruling; and it is submitted that the only way for the risk of such inconsistency to be avoided would have been for the jury to be informed not only that all the underlying information in the article was correctly reported (so that the presumption of falsity only operated in relation to any overall defamatory "sting"), but also that that Gray J had already ruled that the correct report of the discovery of the name Yousef Jameel on the so-called "Golden Chain" list could not amount to reasonable grounds for further inquiry. It would surely have been better for both issues to be left to the jury in the first place.

Stephen Suttle QC

This article appeared on the Media Lawyer website on 1/8/05

MEDIA LAWYER

1[1] [2003] EWHC 2609 (QB)

2[2] [2004] EWCA (Civ) 983

3[3] [2005] EWHC 1219 (QB)