Neutral Citation Number: [2011] EWHC 2677 (QB)

Case No: HQ09X04347

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/11/2011

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

- -

Between :

ANDREW JAMES MILLER	**Claimant**
- and -	
ASSOCIATED NEWSPAPERS LIMITED	**Defendant**

- -
- -

Hugh Tomlinson QC and **Sara Mansoori** (instructed by **Simons Muirhead & Burton**) for the **Claimant**
Mark Warby QC and **Adam Speker** (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**
Hearing dates: 13 October 2011

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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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THE HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. This is a libel action, and this judgment is given on the trial of the issue between the parties as to the meaning of the words complained of. I must decide whether the words complained of bear any, and if so what, meaning or meanings defamatory of the Claimant ("Mr Miller"). On 18 March 2010 Eady J gave a decision on the related, but logically prior, issue of whether the words complained of were capable of bearing any meaning defamatory of Mr Miller. He held that they were ([2010] EWHC 700 (QB)), and it is in that way that the issue that I have to decide has arisen.

2. Although the issue decided by Eady J is different from the one that I have to decide, some of the facts and matters that he set out are relevant to this judgment. Any reader of this judgment may refer back to his.

3. The words complained of are as follows:

> "Questions over ANOTHER Yard contract
> **Met Boss in new 'Cash for a Friend' storm**
> **Exclusive**
> Crime Editor
>
> [1] Sir Ian Blair used public money to pay a close friend a five-figure sum to sharpen his image, it emerged last night.
>
> [2] The beleaguered Scotland Yard chief employed Andy Miller to advise him on how to 'make the transition' when he took over as Britain's top officer three years ago.
>
> [3] Mr Miller's company briefed Sir Ian, then Deputy Metropolitan Police Commissioner, on his communications strategy, leadership style and the key messages he should hammer home. But incredibly, no other company was invited to bid for the so-called 'vanity contract', understood to be worth more than £15,000.
>
> [4] Details of the image makeover deal surfaced during an inquiry into a series of contracts awarded by the Met to Mr Miller's company, Impact Plus, during Sir Ian's time in office.
>
> [5] In all, Impact Plus has received more than £3million of police work from Scotland Yard over a six year period. The awarding of contracts to Mr Miller, a skiing partner and close friend of Sir Ian for 30 years, is being examined by a team of officers led by HM Chief Inspector of Constabulary, Sir Ronnie Flanagan.
>
> [6] Sources said that Mr Miller's colleague in Impact Plus, Martin Samphire, acted as Sir Ian's 'image consultant' under the terms of the contract.

[7] It is understood that Sir Ian's predecessor, Sir John Stevens, who stepped down in January 2005, was unaware of the arrangement. Details of the payment to Impact Plus were disclosed to key members of the Metropolitan Police Authority yesterday By Sir Ronnie.

[8] The meeting was called at short notice after the Daily Mail submitted a series of questions about the contract.

[9] Last night the Metropolitan Police Authority was under mounting pressure to suspend Sir Ian. Never before in modern times has the head of the Met suffered the indignity of being forcibly removed from office.

[10] Last month Sir Ian effectively suspended the country's top Asian policeman, Assistant Commissioner Tarique Ghaffur, for holding a press conference to outline his racial discrimination claims against the Met.

[11] The allegations that Sir Ian faces are potentially far more serious, yet so far he has not been suspended from his post.

[12] Insiders said nervousness around the contracts issue reflected the desire to keep Sir Ian in post until the end of the year to take the fall-out from the Stockwell shooting inquest.

[13] A number of influential police figures would prefer Sir Ian to quit at the end of the inquest rather than face disciplinary proceedings over his links to Miller.

[14] Home Office sources say senior investigators believe the Met chief has displayed 'very poor judgment'. The Flanagan inquiry team is checking whether internal procurement rules – or 'good practice' – were broken.

[15] Legal experts say that given Sir Ian's personal relationship with Mr Miller, there should have been at least three bidders for the 'vanity contract'. One said: 'Despite this being a relatively small contract, Sir Ian should have gone the extra mile to ensure that procurement procedures were fully transparent'.

[16] Investigators are also said to be baffled as to why Sir Ian sought the advice of Mr Miller's firm.

[17] Scotland Yard has a highly regarded public affairs department, yet he called in Impact Plus, an IT consultancy with no specialist knowledge of public relations and communications strategies.

> [18] One source said: 'There was a great deal of surprise when this contract came to light. It was basically to advise Sir Ian on the messages he should put out and what he should do in his first few weeks in power.
>
> [19] 'You could say it was about advising him on how to enhance his image. Given what has happened since, you can't help thinking it was a complete waste of money'."

4. The paragraph numbering is added. The first five and half paragraphs are on page 1 of the Daily Mail of 2 October 2008, and the remaining paragraphs are on page 4. Also on page 4 are a further nine paragraphs which are not complained of, but which are, of course, part of the relevant context. In the middle of para [14] there is an insert which reads "'Sir Ian will face inquiry into award of contracts to his friend' *From the Mail, July 28*". In the middle of para [16] are the words in bold and underlined: "A complete waste of money'".

5. Eady J struck out as unreasonable two meanings that Mr Miller had pleaded (paras [16] and [17] of his judgment). But he did not strike out the whole action because he held at para [14] that a reasonable reader might (but not that he would) infer from the words complained of that Mr Miller would know his back was being scratched and that he was a willing beneficiary of "cronyism". Cronyism is not defined in that judgment, but it is a word that is defined in one of the cases cited by Eady J (*Evans v John Fairfax Group Pty Ltd* [1993] ACTSC 7 at para [125]) as: "a practice of appointing close friends … regardless of their merits or experience". Both counsel confirmed that makes the meaning clear, although Mr Tomlinson would adapt the definition to suit the facts of the present case. He submitted that what is means is that a benefit is being conferred on a friend in disregard of the procedures for awarding contracts in the public sector. It is the purpose of rules of tendering to ensure that contracts are awarded on merit.

6. By amendment to his case made following the judgment of Eady J, the meaning which Mr Miller now complains these words bear is as follows:

> "that by accepting a five figure sum from public funds at the instigation of his close friend Sir Ian Blair in circumstances where the rules on tendering had not been complied with, the Claimant was the willing beneficiary of improper conduct and cronyism by a public official".

7. For the Defendant ("ANL") it is submitted (1) that the words complained of do not bear any defamatory meaning, but (2) if they do, then the meaning is no more than that:

> "there were (at the date of publication) reasonable grounds to suspect that the Claimant was a willing beneficiary of cronyism because of his friendship with Sir Ian Blair, who had been involved formally and informally in the process to award a number of Metropolitan Police Service contracts to the

> Claimant's company worth millions of pounds of public money".

8. The differences between the two pleaded meanings are to be noted.

9. There are two categories of contract mentioned in the words complained of, and I shall refer to them as 'the vanity contract' and 'the other contracts'.

10. The title, paras [1] to [3], paras [5] to [8] and paras [15] to [19] all relate to the so-called 'vanity contract' (it is so called in para [3]). This is the contract for which Mr Miller's company was paid the 'five figure sum' mentioned in paras [1] and [3] ('£15,000'). Mr Miller complains only about references in the words complained of to the vanity contract.

11. Para [4] introduces the other contracts as "a series of contracts … awarded to Mr Miller's company". The other contracts are mentioned in paras [13] and [14] and paras [22] to [27] (those are six paragraphs of the article which are not complained of). The other contracts are mentioned as being the subject of an inquiry by Sir Ronnie Flanagan assisted by Richard Latham QC.

12. Mr Tomlinson stated that he did not object to ANL's meaning being wider than Mr Miller's (in that ANL's meaning embraces the other contracts as well as the vanity contract). He also accepted (or so I understood until after this judgment was circulated in draft) that in relation to the other contracts the meaning of the words complained of is that there were reasonable grounds to suspect guilt, but not an imputation of actual guilt. That is to say the imputation is that there were reasonable grounds to suspect that Mr Miller was guilty of being a willing beneficiary of impropriety or cronyism. However, in relation to the vanity contract he submits that the allegation is of actual guilt. These levels of meaning are what are commonly referred to as *Chase* Level 1 (actual guilt) and *Chase* Level 2 (reasonable grounds to suspect guilt). These are references to *Chase v Newsgroup Newspapers Ltd* [2003] EMLR 218, [2003] EMLR 11, [2002] EWCA Civ 1772 para [45]:

> "The sting of a libel may be capable of meaning that a claimant has in fact committed some serious act, such as murder. Alternatively it may be suggested that the words mean that there are reasonable grounds to suspect that he/she has committed such an act. A third possibility is that they may mean that there are grounds for investigating whether he/she has been responsible for such an act."

13. As to the vanity contract, the words complained of state that this is 'another' or a 'new' matter which emerged 'last night' or 'yesterday' (paras [1] and [7]), whereas the other contracts had already been the subject of the article in the Mail on 28 July quoted in the insert in the middle of para [14].

14. Further, there are different criticisms made in the article of the different contracts. As to the vanity contract it is said that 'no other company was invited to bid': para [3]. As to the other contracts it is said that there had been 'a selection process' (para [26]) but that 'a rival bid [was] three times less' (para [22]).

THE RELEVANT LEGAL PRINCIPLES

15. The relevant legal principles are not in dispute. The task of the court was described by Lord Phillips MR who said in *Gillick v Brook Advisory Centres* [2001] EWCA Civ 1263 para [7] where he adopted part of the judgment of Eady J:

> "the court should give the article the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the article once. Hypothetical reasonable readers should not be treated as either naive or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. The court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts. Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader. The court should certainly not take a too literal approach to its task."

SUBMISSIONS OF THE PARTIES

16. Mr Tomlinson submits, as is clearly the case, that a number of matters relating to the vanity contract are mentioned as matters of fact, not suspicion. These include that Mr Miller is 'a skiing partner and close friend of Sir Ian' (para [5]), that 'Sir Ian used public money to pay [Mr Miller] a five figure sum to sharpen his image' (para [1]), that Mr Miller's company 'briefed Sir Ian on his communications strategy, leadership and the key messages that he should hammer home' (para [3]) and that 'no other company was invited to bid' (para [3]).

17. Mr Tomlinson submits that the words complained of imply, or invite readers to infer, that the vanity contract was awarded as a favour to a friend and not on merit. First, he submits that it is to be inferred, from the fact of friendship between them, that Mr Miller must have known about the proper tendering procedure and that it was not followed. Second, other words used to refer to the vanity contract (including the reference to it as a vanity contract) imply that it was not awarded on merit. Such words include the opinions of legal experts 'that there should have been at least three bidders' (para [15]), and the contrast made between the 'highly regarded public affairs department' of Scotland Yard and Mr Miller's company which is said to have 'no specialist knowledge of public relations and communications strategies' (para [17]). Further there is the reference to the vanity contract being 'a complete waste of money' (para [19]) and the insert in para [16].

18. Mr Warby submits that there is no material distinction to be drawn between what is said about the vanity contract and what is said about the other contracts (where it is conceded the allegation is at *Chase* Level 2). He points to the strapline 'Questions over ANOTHER Yard contract'. Questions are not allegations of fact, he submits. The whole article is about the inquiry previously reported on in the Mail on 28 July. The

article makes clear that the information about the vanity contract surfaced during the course of that inquiry (para [4]). It concludes in para [28] with a reference to the 'ongoing inquiry'.

19. Further, Mr Warby submits that the subject of the article is Sir Ian, not Mr Miller, so that the most serious imputation against Mr Miller cannot be more serious than the most serious imputation made against Sir Ian. It clear that Sir Ian is the subject of an inquiry, and so not said to be guilty. Sir Ian is the person said to be bound by (and suspected of being in breach of) the rules on tendering, and there is no suggestion that Mr Miller is bound by them. There is nothing to suggest to the ordinary reasonable reader that (or that there are reasonable grounds to suspect that) Mr Miller knew that the benefit was conferred on his company through cronyism or impropriety.

DISCUSSION

20. There is nothing wrong with business being conducted between friends. Nor is there anything wrong with people becoming friends with people whom they meet through business. This is so, not only in cases where the friends are each dealing as principals on their own behalf, but also in cases where one or both of the friends is acting on behalf of a principal, including where the principal is a public authority such as the Metropolitan Police Service ("MPS"). In my judgment, no reasonable reader would think otherwise.

21. So the allegation (made in the words complained of) of friendship, together with a business relationship, between Sir Ian and Mr Miller cannot by itself reasonably be understood as an allegation of actual guilt of impropriety or cronyism. Nor, in my judgment, do the unfavourable words used of and in respect of the vanity contract (such as paras [17 and [19]) materially advance Mr Miller's case further than it is already advanced by the allegation of friendship. I do not accept the submission that the reasonable reader would infer that Mr Miller must have known about the proper tendering process, and that it was not followed.

22. However, friendship creates conflicts, between the interests of the friends in helping one another, and the duties of the friends to act in the best interests of their principals. So an allegation of friendship in a business context, such as the one here in question, does in my judgment raise a suspicion that a reasonable person would entertain. A reasonable reader would be concerned that contracts should be awarded by a public authority only in accordance with the proper procedures.

23. In my judgment the words complained of do mean that there were (at the date of publication) reasonable grounds to suspect that, in respect of the vanity contract, Mr Miller was a beneficiary of improper conduct and cronyism on the part of Sir Ian because of his friendship with Sir Ian.

24. That still leaves the question whether the words complained of bear the meaning that there were reasonable grounds to suspect that he was a willing beneficiary of improper conduct and cronyism. In my judgment they do bear that meaning.

25. There are degrees of friendship. It is not every allegation of two persons in a business relationship being also on friendly terms that would lead the reasonable reader to infer

that the one whose company was awarded a contract should be suspected of knowing that the award had been made in breach of procedures which ought to have been followed by the body making the award. But, in the words complained of in the present case, what is alleged is a close friendship for 30 years, which includes the two men going skiing together. That implies, or a reasonable reader would infer, that there were reasonable grounds to suspect that the two men talked about the business they could and could not to do together, or that Mr Miller made his own enquiries as to what business he could properly expect to do with the MPS, so that, one way or another, he knew that his company was benefiting from a contract which was not awarded in accordance with proper procedures.

26. In making my decision on what the words complained of mean, I am not bound by the meanings contended for by either party to the action. As can be seen, the meaning I have found differs from each of the meanings advanced by the parties. I have found a meaning at *Chase* Level 2, as contended for by Mr Warby. But I have found that it includes impropriety, as well as cronyism, as contended for by Mr Tomlinson.

27. I am not, of course, finding that Sir Ian was guilty of impropriety. I am simply finding what a reasonable reader would understand the words complained of to mean.

WERE THE WORDS COMPLAINED OF DEFAMATORY?

28. Mr Warby has a further point. He submits that it is not defamatory of Mr Miller to say that he has caused his company to enter into a contract with the MPS in the knowledge that that body has not complied with its own tendering rules, whether that be an allegation of cronyism or of impropriety.

29. Mr Warby submits, as is not in dispute, that the tendering rules of the MPS were binding on Sir Ian, but not on Mr Miller, and the words complained of do not suggest that those rules were binding on Mr Miller.

30. Mr Warby submits that, while it may be the case that some members of the public would think the worse of Mr Miller if he willingly took the benefit of a contract awarded by MPS in breach of its tendering rules, that would not be the view of all right thinking members of society. It is of course fundamental to defamation that a meaning is only defamatory if it would lower a claimant in the estimation of right thinking members of society generally, as opposed to just a section of society, as recently re-affirmed in *Modi v Clarke* [2011] EWCA Civ 937.

31. Eady J did not have to decide the question I have to decide. But he referred to Mr Warby's submission that I am now addressing. Eady J dealt with it as follows in his judgment at para [15]:

> "It is not, of course, for me at this stage to decide what the words mean, but only whether they are capable of bearing one or more defamatory meanings. … But I am not prepared to rule that the words are incapable of reflecting adversely upon the Claimant, merely because he is only portrayed as the recipient or beneficiary of favours – rather than an active instigator on his own behalf. Also, it will be for a jury to

> decide, if such a meaning is upheld, whether that is in the modern context defamatory or not. Some jurors may agree with Mr Warby's submission, to the effect that no one would think the worse of a businessman for taking advantage of such a situation. Others might disagree. That will all be for the future."

32. But by agreement between the parties, it is not a jury, but myself to whom it has fallen to decide this question.

33. It is, of course, one thing for a businessman to instigate or induce a breach by a public official of rules of tendering, and another thing for a businessman willingly to take the benefit of such a breach which he has not induced, but which he knows has occurred. The former is likely to be unlawful, whereas the latter may not be. But that distinction is not in my judgment the relevant one for the purposes of the law of defamation. In the present context an imputation is defamatory if it would lower Mr Miller in the eyes of right-thinking members of society. An imputation does not have to amount to one of impropriety before it can qualify as defamatory. There are many things that a person may do which are not improper (in the sense of being a breach of some rule) but which will discredit him in the estimation of right-thinking members of society. In particular, right-thinking members of society think the worse of a person who behaves unfairly or with trickery, even if that behaviour is not in breach of any rules or laws.

34. In this context Mr Warby cites the Australian case of *Evans* already mentioned above. Mr Evans was a very distinguished public servant in Australia. He complained of an article published under the title "Cosy in the corridors of power". He complained that the article meant that his attainment of high office in the public service had been due to the patronage of the Prime Minister rather than his own abilities (para [45]). At para [98] the court held that the words complained of would not convey to a reasonable reader that the patronage of the Prime Minister enjoyed by Mr Evans was the only reason for his attainment of high office. If the court had held that that was the imputation, it would have been an imputation of incompetence, and thus defamatory. The court held that the words complained of in that case depicted Mr Evans as a favoured recipient of preferment, but not that he had improperly sought preferment (para [119]). The imputation was not that Mr Evans lacked merit or sufficient skill and capacity but rather that his appointment was made on grounds other than merit (para [121]). The court added that it may be defamatory of a person to say that favouritism played a part in their advancement, but noted that that was not the basis on which Mr Evans had made his complaint (para [121]). On the narrow basis on which Mr Evans had advanced his case, the court held that it failed: the imputation he chose to complain of was not a defamatory imputation. The court did not accept that any reasonable reader would infer that Mr Evans had accepted any post which he believed, even wrongly, to have been offered to him as a result of 'cronyism' (para [127]).

35. It follows that I do not find *Evans* to be helpful to ANL, given the meaning which I have found the reasonable reader would attribute to the words complained of in the present case. Unlike the court in *Evans*, I have found that the imputation here is that Mr Miller had accepted a benefit from Sir Ian in circumstances where there are

reasonable grounds to suspect that he believed it had been offered to him as a result of his friendship, and not as a result of the rules of tendering which ought to have been, but were not, followed. In my judgment that is a defamatory meaning.

EVENTS AFTER THE CIRCULATION OF THIS JUDGMENT IN DRAFT

36. After reading this judgment in draft junior counsel sought to draw up a form of order. They were unable to agree as to what it should contain. Referring to paras 12 and 18 of the draft, Mr Speker for ANL submitted that it should include a provision that the meaning of the words complained of included:

> "That there were (at the date of publication) reasonable grounds to suspect that the Claimant was guilty of being a willing beneficiary of impropriety or cronyism in respect of the other contracts".

37. Miss Mansoori for Mr Miller contended that para 12 of the draft referred to the article as a whole, and not to the words complained of, and that no concession had been made that the words complained of bore the meaning contended for by Mr Speker. On the contrary, she contended that the other parts of the draft made clear that the meaning that I had found related only to the vanity contract.

38. Miss Mansoori was referring to para 12 in the form in which it then stood. Instead of the two opening sentences of the paragraph there was then one sentence which read:

> "Mr Tomlinson accepts that in relation to the other contracts the meaning of the article is that there were reasonable grounds to suspect guilt, but not an imputation of actual guilt." (emphasis added)

39. At that time the Conclusion of the judgment was para 36 and it read:

> "For the reasons stated above, I find that the words complained of meant that there were (at the date of publication) reasonable grounds to suspect that Mr Miller was a willing beneficiary of improper conduct and cronyism because of his friendship with Sir Ian Blair in respect of the vanity contract, and that that is a meaning defamatory of Mr Miller." (emphasis added)

40. I responded to these submissions stating that I proposed to alter the draft as follows:

> "Para 12:
>
> "Mr Tomlinson stated that he did not object to ANL's meaning being wider than Mr Miller's (in that ANL's meaning embraces the other contracts as well as the vanity contract). He also accepts that in relation to the other contracts the meaning of the article is that there were reasonable grounds to suspect guilt, but not an imputation of actual guilt.

Para 36

> "For the reasons stated above, I find that the words complained of meant that there were (at the date of publication) reasonable grounds to suspect that Mr Miller was a willing beneficiary of improper conduct and cronyism because of his friendship with Sir Ian Blair in respect of ~~the vanity contract~~ the award of a number of Metropolitan Police Service contracts to Mr Miller's company worth millions of pounds of public money, and that that is a meaning defamatory of Mr Miller."

41. Mr Tomlinson then wrote to the court stating that he had intended to make the concession set out in the draft para 12 in relation to the article (as stated in the draft), but not in relation to the words complained.

42. Mr Tomlinson then asked me not to hand down the judgment until he had had an opportunity to make further submissions. I heard these further submissions on 11 November. Mr Tomlinson advanced the point he had made in correspondence.

43. The parties had by then obtained a transcript. Mr Warby submitted that the concession that Mr Tomlinson made was that "in relation to the other contracts the meaning of the words complained of is that there were reasonable grounds to suspect guilt, but not an imputation of actual guilt". Mr Warby submitted that the transcript at pages 12 and 13 does record Mr Tomlinson making this concession in the course of two separate interchanges with the bench.

44. My use in para 12 of the draft of the word 'article' was a slip. I had meant to use the phrase 'words complained of'. It was also an accidental omission on my part not to refer in the conclusion to the meaning which I had understood to have been conceded, as set out in para 12. It is these two slips that explain how Miss Mansoori came to understand the draft judgment in the way she did. But, as Mr Speker understood, her understanding is not what I had intended.

45. I too read the transcript as recording the concession as I had recorded it in my note. So, subject to one point, I abide by my decision to amend paras12 and the Conclusion in the form set out in para 40 above. The one further amendment I have made is to delete the words 'article' and substitute 'words complained of'.

46. I regret the misunderstanding that has arisen. However, I would not wish Mr Miller to think that I would have reached a different conclusion but for the concession that Mr Tomlinson made. I would not. I entertained no doubt that the concession was correctly made. The other contracts are introduced into the words complained of at para [4] (as noted in para 11 above). The fact that they are also mentioned in six paragraphs of the article which are not complained of does not detract from this. Since para [4] of the words complained of refers in terms to the other contracts being subject an inquiry (an inquiry more fully described in para [5]) it appeared to me to be beyond argument both that the words complained of bore a defamatory meaning (contrary to Mr Warby's submission) and that that meaning was a Chase Level 2 meaning. I regarded Mr Tomlinson's concession as no more than a recognition of the inevitable.

CONCLUSION

47. For the reasons stated above, I find that the words complained of meant that there were (at the date of publication) reasonable grounds to suspect that Mr Miller was a willing beneficiary of improper conduct and cronyism because of his friendship with Sir Ian Blair in respect of the award of a number of Metropolitan Police Service contracts to Mr Miller's company worth millions of pounds of public money, and that that is a meaning defamatory of Mr Miller.