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Case No: HQ15D04225

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/02/2016

Before :

MR JUSTICE NICOL

- -

Between :

Priya Hiranandani-Vandrevala	**Claimant**
- and -	
Times Newspapers Ltd	**Defendant**

- -
- -

James Price QC and Adam Speker (instructed by **Schillings**) for the **Claimant**
Adam Wolanski (instructed by **Times Newspapers Ltd**) for the **Defendant**

Hearing dates: 20th January 2016

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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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MR JUSTICE NICOL

Mr Justice Nicol :

1. This is an action for libel and malicious falsehood and breach of statutory duty under the Data Protection Act 1998 brought by Ms Hiranandani-Vandrevala in relation to articles published by Times Newspapers Ltd in the print edition of the *Sunday Times* for 23rd August 2015 and in its on-line edition of the same date under the headline 'Hunt on for AIM firm's missing £350m: alleged fraud by the former chief of Hirco has raised more concern about the junior stock market'. The claim is also made in respect of the on-line article which appeared in place of the original from 25th August 2015 under the headline 'AIM firm sued over £350m investment; alleged fraud by the former directors of Hirco has raised more concern about the junior stock market'.

2. In accordance with a consent order made by Master Eastman on 2nd December 2015 I heard the trial of a preliminary issue to determine the meaning of the articles for the purpose only of the libel claims.

3. The print and original on-line versions of the article were in the following terms. Only the words of the article which I have italicised are relied upon by the Claimant. Paragraph numbers have been added for convenience.

> '[1] Prince Charles spent his 65th birthday travelling from India to Sri Lanka on official business. A week later he more than made up for it. About 400 guests, including the chancellor George Osborne and the steel billionaire Lakshmi Mittal, gathered at Buckingham Palace on November 21, 2013 for a champagne reception and a performance of Wagner works by the Philharmonic Orchestra.
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> [2] The lavish event cost £500,000. It was paid for by Cyrus Vandrevala, an Indian private equity investor, and his wife, Priya Hiranandani-Vandrevala. She sat next to Prince Charles; her husband was beside the Duchess of Cornwall.
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> [3] Clarence House insisted the evening was a gala to celebrate Prince Charles's patronage of the orchestra, but Vandrevala and his wife were keen to present it as a more personal occasion. "We are lucky that His Royal Highness has chosen to celebrate his birthday with us," the invitation said. Prince Charles was perhaps unaware of the allegations made against his hosts.
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> *[4] Earlier that year the remnants of a property company once run by 38-year-old socialite Hiranandani-Vandrevala and her father Niranjan had launched a legal claim against them, accusing them of fraudulently breaching their duties as directors. Hirco, which was set up in 2006 to invest in township developments in India, alleged that the pair had persuaded it to buy plots of land from them at "grossly overstated" values.*
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> [5] *Hirco said its backers had lost more than £350m in projects the Hiranandis knew to be "unrealistic and unachievable" while more than £300m had gone into an offshore trust owned by Hiranandani-Vandrevala, her husband Cyrus and her brother, Darshan. The claim was filed in the Isle of Man, where Hirco is registered. Neither father nor daughter has filed a defence, although both deny the allegations.*

[6] Hirco's shares were delisted last year because it was unable to give the City an accurate account of its finances. The Isle of Man case stewed as Niranjan Hiranandani, 65, a well-known figure in Indian property circles, tried to have the court battle moved to his home country.

[7] John Chapman, a hard-nosed American lawyer who is leading Hirco's campaign, accused him of using "frivolous procedural wrangling" to slow down the proceedings in the hope that Hirco would run out of money and go bust.

[8] Less than two weeks ago the company hit on some rare luck. For months, Hirco has been embroiled in a secret parallel arbitration with Niranjan Hiranandani and his wife, Kamal, in Singapore (Priya Hiranandani-Vandrevala, 38, is not a party to the case although she is named in the papers). The arbitration brought up reams of evidence that Hirco was unable to publish because the process was confidential.

[9] This month, it won the right to release its opening statement against the couple. *The 160-page document – whose contents they contest – alleges what would be one of the most blatant frauds the London stock market has ever seen.*

[10] It could cast fresh doubt over the integrity of the Alternative Investment Market (AIM), which has been smeared by the slow-motion unravelling of Quindell, an insurance claims processor, and the collapse of a cash shell called Langbar International, where £365m mysteriously went missing. Such scandals – and a high rate of run-of-the-mill company failures – have led American officials to describe AIM as "a casino". In an interview before he stepped down this summer, Chris Gibson-Smith, former chairman of the London Stock Exchange, defended the junior stock market to The Sunday Times. "If one or two are going wrong at one moment out of 3,000 companies, that's a pretty strict track record," he said.

[11] Hirco raised £383m from blue-chip investors such as Lazard Asset Management and Standard Life in 2006, making it the biggest AIM fundraising of the year.

[12] The deal generated £15m of fees for the investment banks involved: Bear Stearns, which was taken over by JP Morgan in the financial crisis, and HSBC, which became Hirco's nominated advisor after the float. HSBC's efforts were led by a banker called Russell Julius.

[13] Hirco was then chaired by Niranjan Hiranandani and run by his daughter as chief executive. She had worked as an accountant at Arthur Andersen before joining the family business. The board featured four non-executives, including Sir Rob Young, the former British high commissioner to India.

[14] Hirco's purpose was to invest in township developments sourced and overseen by the Hiranandanis. David Burton, one of the non-executives, acknowledged in retrospect the corporate governance problem of buying assets from the company's management.

[15] "I'm sure if you were floating Hirco today, you wouldn't have as your chairman and chief executive the people you were contracting the deals from," he said. "But there was at the time a gold rush and the Indian economy was booming."

[16] *According to Hirco's Singapore filing, overseen by the law firm Allen & Overy, the arrangement turned out to be a "get enormously rich quick" scheme for the immediate Hiranandani family and Vandrevala. Hirco paid Niranjan Hiranandani £350.8m for two plots – one near Channai in the southeast and one in a barren area called Panvel near Mumbai in the west.*

[17] *Hiranandani said he had assembled the sites over time and obtained the necessary planning permissions.*

[18] *In fact, Hirco alleges, he bought them on the cheap and flipped them at a mark-up of more than 1,000% without securing the consents needed to start building.*

[19] *In the case of Panvel, Hirco claims the land it received was different to that described by Hiranandani. It alleges that he "manipulated maps" to suggest that it was one plot when it was actually "a scattered collection of irregular parcels".*

[20] *The statement says the five to eight-year development times and 25% returns that Hiranandani promised Hirco would have "required an unprecedented rate of development that has never been achieved in India before or since".*

[21] *It quotes a note from his brother, Surendra, asking: "How in the family interest are you going to give the returns you have promised your investors?"*

[22] *According to Hirco, £303m went as profit to the Hiranandani family via a company called Burke Consolidated Ltd in the tax haven of the British Virgin Islands. It is "common ground" that Hiranandani-Vandrevala, her husband and her brother at one point owned the trusts that control Burke Consolidated, the document says. Hiranandani has denied he was an owner.*

[23] *"He is not telling the truth about this," the document continues, at least in part because "he wishes to distance himself from the £303m profit".*

[24] *Despite the "ludicrously ambitious" plans, only 15 homes were completed at Chennai, and none at Panvel. The projects went under and were bought out of receivership by Hiranandani.*

[25] *Hirco says that the Hiranandanis concealed their fraud from the non-executives, including Young and Burton. Young is quoted as saying, with hindsight, Hirco "should have investigated and established whether our chairman and CEO were at best negligent and at worst lying to us".*

[26] Hiranandani Group said: "Niranjan Hiranandani continues to categorically deny the allegations by Hirco. The dispute is currently being dealt with in confidential arbitration proceedings, and so it would be inappropriate for Mr Hiranandani to comment."

> [27] It added that Hirco's publication of the Singapore submission was "in keeping with its long-running efforts to pressure Mr Hiranandani into a commercial settlement so that its hedge fund investors can extract a premium from the shares they bought at a distressed price following the global financial crisis".
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> [28] As well as Standard Life, Hirco's big investors include American hedge funds such as Weiss Asset Management and Alpine Woods, and Lars Bader, a trader who is understood to have bought shares.
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> [29] Hiranandani Group said: "For the avoidance of doubt, Mr Hiranandani will continue to aggressively defend himself against these scurrilous allegations – but unlike Hirco will do so only in the proper forum."'

4. Each of the articles was accompanied by a photograph showing three figures and the caption 'Well-placed friends: Priya Hiranandani-Vandrevala and her husband Cyrus with actress Goldie Hawn, attend a charity event with royal connections'. Later in the article is another photograph of a man with the caption, 'Suspect deals: Niranjan Hiranandani.'

5. The later on-line version of the article had, as I have said, a different headline and subheading. Beneath the first photograph and its caption the following was also added, 'This article is the subject of a legal complaint from Priya Hiranandani-Vandrevala.' Paragraph [5] of the later on-line article had a slightly different first sentence. The print and earlier on-line version said, 'Hirco said its backers had lost more than £350m…' The later version said, 'Hirco said its backers had invested more than £350m.' The articles were otherwise identical.

6. In support of the libel claims, the Claimant alleges that print version and earlier on-line article meant that,

> '£350 million is missing from Hirco's accounts because it has been misappropriated and/or fraudulently obtained by the Claimant and other members of her family.'

7. The meaning of the later on-line version is alleged by the Claimant to be that,

> 'the Claimant, together with other members of her family, has misappropriated and/or fraudulently obtained over £300 million from Hirco.'

8. In accordance with the consent order, the time for serving a defence has been extended until after determination of the preliminary issue of meaning. In his skeleton argument for the present hearing, however, Mr Wolanski, on the Defendant's behalf, concedes that the articles were defamatory of the Claimant. As to the print and all on-line versions of the articles, he contends that their meaning was,

> 'there are reasonable grounds to suspect that the Claimant and other members of her family had fraudulently obtained more than £300m by persuading Hirco to buy plots of land from them at values they knew to be grossly overstated'.

9. The major difference between the parties, therefore, is whether the articles meant that the Claimant was *guilty* of fraudulent conduct or whether there were only *reasonable grounds to suspect* her of such fraudulent conduct, or, in the terminology frequently used in libel litigation, whether this was a '*Chase* level 1' or '*Chase* level 2'meaning – see *Chase v Newsgroup Newspapers Ltd.* [2002] EWCA Civ 1772, [2003] EMLR 11 at [45]. I will postpone consideration of the other differences between the meanings espoused by each party.

The approach which the Court should adopt to deciding meaning

10. In *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 Sir Anthony Clarke M.R. summarised the proper principles at [14]. He said,

> '(1) the governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation" (see Eady J. in *Gillick v Brook Advisory Centres* approved by this court [2001] EWCA Civ 1263 at [7] and Gatley on Libel and Slander (10th edition paragraph 30.6). (8) It follows that "it is not enough to say by some person or another the words *might* be understood in a defamatory sense". *Neville v Fine Arts Company* [1897] AC 68 per Lord Halsbury LC at 73.'

11. Sub-paragraph (8) is an allusion to what is sometimes called the 'single meaning' rule. As a matter of common experience, the same words may be understood in one sense by one group of readers but in a different sense by another group of readers. However, for most purposes, the law of defamation requires a single meaning to be attributed to the words that were published. As Lord Bridge said in *Charleston v News Group Newspapers* [1995] 2 AC 65, 71,

> 'although a combination of words may in fact convey different meanings to the minds of different readers, the jury in a libel action, applying the criterion which the first principle dictates, is required to determine the single meaning which the publication conveyed to the notional reasonable reader and to base its verdict and any award of damages on the assumption that this was the one sense in which all readers would have understood it.'

12. Prior to its amendment by the Defamation Act 2013, the Senior Courts Act 1981 s.69(1) meant that it was not uncommon to have a jury in a libel action. Subsequent to the amendment of the 1981 Act by s.11 of the Defamation Act, that will no longer be so. One consequence is that it will now be usual for meaning to be determined by a judge rather than a jury. Neither party to the hearing before me suggested that this had

altered the 'single meaning' rule or, indeed, any of the other principles regarding the proper approach to the exercise of determining meaning which were set out in *Jeynes.*

13. When it was the task of the jury to decide what words meant, the Judge's role was limited to deciding what meanings the words were *capable of* bearing. In considering the earlier authorities, it is necessary, therefore, to be alert to what precisely the court had to decide.

The repetition rule

14. Mr James Price QC for the Claimant submitted that the plain ordinary meaning of the articles was that she was guilty of fraud. However, if I was in any doubt about that, he submitted, I was obliged to apply the repetition rule. In short, this provides that a statement prefaced by words such as 'it is alleged that…' will be taken to mean the substance of what is alleged. So, for instance, the publication of the libel, 'X *is alleged to be* a fraudster', will be treated as meaning that X *is* a fraudster. This, in turn, has two consequences. First, if the claim is successful, it will mean that damages are assessed on the basis that X has been wrongly accused of being guilty of fraud. Secondly, it will mean that the Defendant cannot prove justification (or, now, the statutory defence of truth) by showing that it was correct that someone had indeed *alleged* that X was a fraudster: the Defendant must instead prove that X was guilty of fraud.

15. The term 'the repetition rule' was coined by Hirst LJ in *Stern v Piper* [1997] QB 123 CA, but, as he explained in that case, it was a principle with a much lengthier pedigree. In that case, the newspaper defendant, *The Mail on Sunday*, had published an article about the plaintiff which had quoted from an affirmation by a Mr Gorman which had been filed in court proceedings against the plaintiff for debt. The defendant pleaded that it was true that the things which it had published had indeed been set out in the affirmation. The plaintiff applied to have the defence of justification struck out. The Court of Appeal held that it should be struck out. Hirst LJ at p.132 referred to the argument of Mr Price (who had appeared for the Plaintiff and who is the same counsel who appeared for the Claimant in the present action),

> 'At the forefront of Mr Price's argument was the submission that the case falls squarely within the repetition rule, which he submitted applies precisely to the report of the contents of Mr Gorman's affirmation, which is a hearsay report of what Mr Gorman affirmed; from this it follows, in the words of Lord Devlin [in *Lewis v Daily Telegraph Ltd* [1964] AC 234], that it is the same as a direct statement, and that is all there is to it.'

At p. 134 Hirst LJ agreed with the submission because the report of statements in an affirmation 'palpably falls directly within the rule, since it is essentially hearsay.' This was not a situation where the defendant could rely on privilege for reporting court proceedings, since the affirmation had not been deployed in any public hearing. Hirst LJ added at p. 135,

> 'It is indeed the one-sidedness of the present publication which to my mind vindicates the justice of applying the repetition rule to the present case, avoiding the unfairness similar to that identified by Lord Denning in *'Truth' (N.Z). Ltd v*

> *Holloway* [1960] 1 WLR 997 of a private court document emanating from one side being disseminated on a very wide scale to the public at large.'

16. Simon Brown LJ at p. 135 said,

> 'The repetition rule (I gratefully adopt Hirst LJ's term for it, as well as his exposition of the facts, authorities and arguments) is a rule of law specifically designed to prevent a jury from deciding that a particular class of publication – a publication which conveys rumour, hearsay, allegation, repetition, call it what one will – is true or alternatively bears a lesser meaning than would attach to the original allegation itself. By definition, but for the rule, those findings would otherwise be open to the jury on the facts, why else the need for a rule of law in the first place?'

17. I add at this point that Mr Wolanski did not suggest that the substitution of a judge for a jury as the fact finder made any significant difference. The judge, no less than the jury, would be bound by the same rule of law.

18. Simon Brown LJ also referred to *Lewis v Daily Telegraph Ltd.* He said at p. 138,

> 'As, however, Hirst LJ has shown in the passages he cites from the various speeches (including Lord Devlin's) so far from *Lewis*'s case undermining the repetition rule, it in fact reiterates it. And, as I began by pointing out, the repetition rule is indeed a rule which, where it applies, dictates the meaning to be given to words used. Had Mr Gorman's affirmation alleged, not that the appellant is guilty of dishonesty and perjury, but only that he is suspected of such misconduct, then *Lewis's* case would be in point: the defendant on repeating such lesser allegation would then have had to prove merely grounds for suspicion and not actual guilt. As it is, however, *Lewis's* case affords Mr Eady [counsel for the defendant] no support whatever.'

19. Mr Price in the present case submits that the Defendant's articles were exactly on a par with the publication in *Stern v Piper*. The *Mail on Sunday* had published Mr Gorman's affirmation with its allegations of dishonesty and perjury. The repetition rule had the consequence that the article was to be treated as meaning that Mr Stern was guilty of that misconduct and a defence would be ineffective if it sought to justify any lesser meaning. So, too, in the present case, the *Sunday Times* had effectively summarised the opening statement of Hirco in the private arbitration. The opening statement had accused the Claimant and her family of fraud. As a result, the repetition rule precluded the Defendant from advancing any lesser meaning than guilt of fraud. As Lord Denning had said in *'Truth' (N.Z.) Ltd. v Holloway* [1960] 1 WLR 997, by repeating the rumour, the newspaper broadcasts it to a much wider audience and will be taken as adding its own endorsement to the worth of the rumour.

20. Mr Wolanski submits that this is to ignore an important feature of *Stern v Piper*, namely that the *Mail on Sunday* had done no more than quote from the Gorman affirmation. There had been no attempt to put the other side. By contrast, the *Sunday Times* had set out the denials of wrongdoing by the Claimant and her family. The Defendant did not suggest that this completely removed all defamatory sting from the article, but it did require an assessment of its overall meaning which was not dictated by the repetition rule.

21. In conducting that task, Mr Wolanski submitted, it was relevant that the newspaper had not adopted the Hirco allegations as its own. It had been careful to make clear that they were only allegations and, by including the denials of the Hiranandanis, had conveyed to the reader that there was another side to this dispute. He relies on *Shah v Standard Chartered Bank* [1999] QB 241 CA where the Court had to consider whether the slanders and libels on which the plaintiffs sued were capable of meaning (a) guilt and / or (b) reasonable grounds to suspect various types of misconduct. In the event, the Court held that the words were capable of either meaning. Mr Wolanski relies on what Hirst LJ said at p.257,

> 'Coming now to Mr Rampton [counsel for the defendant]'s meanings of no more than reasonable suspicion, his argument rests principally on the context in each of the publications, and, in particular the omitted words with their frequent use of qualifying words such as "alleged", "suggested", "apparently", "said to be" and the like, coupled with reservations sometimes expressed such as the statement in the last paragraph of the report that inquiries have so far failed to substantiate that Suresh Shah is the frontman for Dalal. I do not propose to go through these in detail; suffice it to say that I have come to the conclusion that in the case of each of the publications these miscellaneous qualifying words and reservations do render each set of the words complained of capable of bearing a meaning of no more than reasonable suspicion.'

22. Mr Price argues that Mr Wolanski's submission turns the repetition rule on its head. The rule says that the publication of a hearsay statement such as 'it is alleged that X is a fraudster' must be taken as meaning 'X is a fraudster' and will admit no lesser meaning. Mr Wolanski, on the other hand, is seeking to rely on their hearsay character in support of just such a lesser meaning. That is impermissible.

23. In my judgment, Mr Wolanski is right to draw attention to the context in which *Stern v Piper* was decided. The publication was nothing more than a summary of Mr Gorman's affirmation. The straightforward issue was whether, in those circumstances, the words were capable of meaning 'Mr Gorman alleged that Mr Stern was dishonest.' The Court decided that this lesser meaning was shut out by the repetition rule and the words simply meant that Mr Stern was dishonest. *'Truth' (N.Z.) Ltd v Holloway* was another example of a simple report of a third party's allegation. There was nothing in the publication to counter or rebut the allegation.

24. However, it is quite clear that when a judge (or, in the past, a jury) has to make a decision as to the meaning of a publication, what matters is the publication taken as a whole. Sir Anthony Clarke M.R. made this point in sub-paragraph (5) of his summary of the principles to be adopted in *Jeynes*. As he said there, it is the reason why any antidote in the publication must be considered along with the bane. At least in theory, the antidote may be so powerful that it cancels out the bane and the publication has no defamatory meaning at all. But that is only an extreme illustration of the more general proposition that the publication complained of must be considered as a whole. As Simon Brown LJ said in *Mark v Associated Newspapers Ltd* [2002] EMLR 839 at [37],

> '[T]he correct approach is not in doubt. If the defamatory sting of an article is wholly removed by surrounding words then, to use Baron Alderson's famous phrase in *Chalmers v Payne* (1835) 2 CM &R 156 at 159, "The bane and the

> antidote must be taken together." Nor could it be doubted that the principle applies to repetition cases – see again, *Stern v Piper*. As Huntley JA observed in *Sergi v Australian Broadcasting Commission* [1983] 2 NSWLR 669 at 670: "the bane and antidote theory …is merely a vivid way of stating that the whole publication must be considered not a segment of it". One asks, therefore, in this as in any other case where the principle is invoked, whether, considered as a whole, the publication is damaging to the claimant's reputation. That, at least, is the question ultimately to be asked. At present, of course, the court is concerned with whether the defamatory meaning sought to be alleged - here the lying meaning - could be conveyed to the ordinary reasonable reader, the supposed antidote notwithstanding.'

25. It is clear from this passage that the issue immediately before the Court in *Mark* was different to the one which faces me in two important respects. Firstly, the defendant there was saying that the defamatory meaning contended for by the claimant (that Ms Mark had lied) was entirely nullified by the other parts of the article. Here, the defendant accepts that the articles were defamatory of the Claimant. The dispute is whether the defamatory meaning was of guilt or of reasonable suspicion. The second difference is that in *Mark* the Court was ruling on what the published words were capable of meaning. I have to decide what the words actually meant. Nonetheless, the principle, that the Court must judge the publication as a whole remains applicable.

26. That principle was reaffirmed in *Charleston v News Group Newspapers Ltd.* [1995] 2 AC 65. In that case the *News of the World* published photographs which, at first sight, appeared to be of the plaintiffs in pornographic poses. The text of the article made clear that the photographs had been doctored and the heads of the claimants had been superimposed onto pictures taken of other actors. Read as a whole, the plaintiffs acknowledged, the publication was not defamatory of them, but, they submitted, some readers would only notice the pictures and the headlines (which referred to their TV characters). Their claim failed. Lord Bridge said at p.70,

> 'The first formidable obstacle which Mr Craig's argument encounters is a long and unbroken line of authority the effect of which is accurately summarised in *Duncan & O'Neill on Defamation,* 2nd ed. (1983), p. 13, para 4.11 as follows:
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> > "In order to determine the natural and ordinary meaning of the words of which the plaintiff complains it is necessary to take into account the context in which the words were used and the mode of publication. Thus a plaintiff cannot select an isolated passage in an article and complain of that alone if other parts of the article throw a different light on that passage."'

27. In *Charman v Orion Publishing Group Ltd.* [2005] EWHC 2187 (QB) at [51] Gray J. said this,

> 'But as the authorities emphasise, account must be taken of the context; the publication must be considered as a whole. What Mr Tomlinson [counsel for the claimant] described as a "Socratic dialogue" should take place with one reader saying to another such words as "Be fair…" (per Lord Reid in *Lewis* at 259) or "Steady on…" (per Hirst LJ in *Mapp* at 529H). The question which I have to decide is whether, taking proper account of the context, the passages on which Miss Page [counsel for the defendant] relies as antidote have the effect of

> displacing or modifying the impression created by the passages selected for complaint and so lowering the overall impression conveyed to the ordinary reasonable reader to a level of meaning lesser than guilt of corruption.'

28. In *Lewis v Daily Telegraph Ltd.* Lord Devlin also spoke of the 'broad impression conveyed by the libel', although he also cautioned about a too ready attribution of a lesser meaning. He said at p. 285,

> 'It is not, therefore, correct to say as a matter of law that a statement of suspicion imputes guilt. It can be said as a matter of practice that it very often does so, because although suspicion of guilt is something different from proof of guilt, it is the broad impression conveyed by the libel that has to be considered and not the meaning of each word under analysis. A man who wants to talk at large about smoke may have to pick his words very carefully if he does not want to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that. They can convey a meaning of suspicion short of guilt; but loose talk about suspicion can very easily convey the impression that it is a suspicion that is well founded.'

29. Mr Price submitted that the repetition rule obliged me to start from the position that any of the Hirco allegations included in the article were to be treated as the statements of the *Sunday Times* itself and with no lesser meaning than guilt of fraud. Those statements were then to be weighed against the denials (such as they were) to decide whether the article as a whole conveyed no more than a reasonable suspicion that the Claimant had behaved fraudulently. He submitted that if I adopted this approach, the answer was clear and the articles did have the meaning that the Claimant was guilty of that behaviour.

30. It seems to me, though, that this is an artificial approach. Rather than take a part of the article, decide on its meaning and then look to see if that is altered by the remainder of the article, in my view it is preferable and in accordance with the authorities I have cited, simply to consider the meaning of the article as a whole.

31. I do not accept Mr Price's argument that Mr Wolanski's approach confuses meaning and credibility. It is right that in *Shah v Standard Chartered Bank* Hirst LJ said at p. 263 that, 'One most salutary advantage of holding fast to the repetition rule is that it avoids lengthy investigation of the reliability of the makers of hearsay statements which might otherwise be admissible.' However, this comment was made in the context of a dispute as to whether, in support of a meaning of reasonable suspicion of discreditable conduct, the defendant could lead evidence that 'he suspected X was guilty because Y who is reliable told him so, [and] he could prove what Y told him without calling Y or otherwise proving first-hand the truth of what he had been told.' (see p. 262). Hirst LJ understandably rejected the argument. It would have been contrary to the 'conduct rule' which Hirst LJ himself expounded in the same case. As May LJ said at p.266, 'To justify [a publication with the meaning of reasonable grounds to suspect guilt] you have to establish that there are objectively reasonable grounds for suspicion.'

32. Nor do I agree with Mr Price that the alternative of simply considering the meaning of the article as a whole has the danger of subverting the structure of the law of

defamation. He argues that substantial parts of the law of qualified privilege would be rendered otiose if the course advocated by Mr Wolanski was followed. A defence of qualified privilege for reporting certain types of court proceedings and the qualified privilege for the neutral reportage of disputes would become unnecessary if the defendant could successfully circumvent the repetition rule and challenge the claimant's attribution of a meaning of guilt. But I do not accept that these consequences would follow. I recall that in this case, the Defendant accepts that the articles do have a defamatory meaning. If Mr Wolanski is successful at this stage and, if I were to hold that the articles meant that there were reasonable grounds to suspect that the Claimant had committed fraud, the Defendant would still need to establish a defence. If the Defendant relies on the defence of truth, it will still have to show that there were, objectively, reasonable grounds to suspect that the Claimant had committed fraud – see *Shah v Standard Chartered Bank* per May LJ at p. 266.

33. In conducting that exercise, I bear in mind Lord Devlin's warning against too readily accepting the lesser meaning of reasonable suspicion. On the other hand, Mr Wolanski is entitled to say that if the newspaper reports both sides of a dispute and does not ally itself with either, that may be a pointer to a lesser meaning. *Shah v Standard Chartered Bank* involved a complicated set of facts where the plaintiffs brought a number of claims in both slander and libel. The slanders were evidenced by memoranda prepared by the Bank of England. I appreciate the comments of Mr Price that in some cases the Bank of England used the expression 'alleged' to refer to allegations which Standard Chartered Bank itself was making. Those were straightforward accusations and, so far as they were concerned, the repetition rule had no role. However, Mr Wolanski is right to say that this was not universally the case. At other times in their meeting with the Bank of England, SCB was relaying information which it had received from third parties. If Mr Price's approach was the right one, then the Court should have started from the premise that those statements were to be attributed to SCB. Not only was this not the Court's approach, but Hirst LJ placed some emphasis, as I have shown, on the use of expressions such as 'allegedly' to support his conclusion that the words were capable of meaning that there was only reasonable grounds to suspect the plaintiffs of wrongdoing.

34. In deciding on the meaning of the articles, I am not confined to the meanings advanced by the parties. In particular, I recognise that the *Chase* level 2 meanings are capable of finely tuned gradation, especially when the meaning is determined by a judge rather than a jury – see *Charman v Orion Publishing* at [17] – [18].

35. On this principal issue, I find that each of the articles meant that there were cogent grounds to suspect the Claimant of wrongdoing (I return below to consider precisely the nature of the wrongdoing). These are therefore *Chase* level 2 meanings, but refined in the same way that Gray J. did in *Charman v Orion Publishing* at [58]. My reasons are as follows:

    i) I have followed the principles in *Jeynes*, which it is unnecessary to repeat.

    ii) The article includes the allegations made by Hirco, but it also includes the denials by the Claimant and her father (Mr Price was minded to accept that his response would be understood by the reader to extend to the Claimant as well). These are not just bare denials, but include a counter-allegation that Hirco was trying to pressurise Mr Hiranandani into a settlement so that shares, which the

current holders bought at a knock down price, could yield a substantial profit (see paragraph 27). Hirco's allegations are described as 'scurrilous' and they were to be 'vigorously defended.'

iii) More space is given to Hirco's allegations than to the Hiranandani response, but it would be apparent to the reader that Mr Hiranandani took the position that the proper forum for a detailed refutation of the charges was the private arbitration taking place in Singapore (see paragraphs 26 and 29).

iv) Mr Wolanski relied on paragraph 6 ('Hirco's shares were delisted last year because it was unable to give the City an accurate account of its finances') to argue that the reader would take this as meaning that Hirco's credibility was suspect and that itself would weaken the weight to be given to its allegations. I considered this to be a more neutral factor. The article elsewhere said that Hirco had lost £350m as a result of the transactions with the Hiranandani family. It is not made clear to the reader whether this was the cause of its inability to give an accurate account of its finances or whether there was some independent reason for this.

v) The headline of the print version ('Hunt on for AIM firm's missing £350m') suggests that there is an issue as to what has happened to the missing money, rather than stating definitively that it has been lost through fraud. The headline of the later on-line version ('AIM firm sued over £350m investment') is neutral as to whether the suit is or is not well-founded.

vi) The sub-heading refers to an *alleged* fraud and elsewhere in the article it is made clear that the allegations of wrongdoing by the Hiranandanis are just one side of the dispute. In the context of an article which does a good deal more than simply repeat one person's allegations (and which the repetition rule would treat as a statement of guilt and no lesser meaning), this is a feature on which the defendant can rely in support of a *Chase* level 2 meaning, just as the Defendant was able to do in *Shah v Standard Chartered Bank.* This is not an article which purports to be an independent investigation or judgment by the *Sunday Times*. In *Charman* at [16] Gray J. said,

> 'The first to which Miss Page rightly draws attention, is that a report of a police investigation into alleged criminality is likely to bear a lower level meaning than a report of a newspaper's own investigation.'

vii) In his skeleton argument Mr Wolanski submitted '*No* reasonable reader would conclude from this article that the allegations made by Hirco must be well-founded' [my emphasis]. This may be a forensic flourish, but it is worth emphasising that my task is to decide what meaning a reasonable reader *would* attribute to the article. It is not to eliminate meanings which a reasonable reader could *not* give to the article. Nonetheless, I agree with the substance of Mr Wolanski's submission, that the meaning which the article had was a *Chase* level 2 rather than a *Chase* level 1. I have said that the meaning was that there were *cogent* rather than just *reasonable* grounds to suspect wrongdoing because of the degree of detail with which Hirco's case is set out.

viii) In my judgment the later on-line version of the article had the same meaning. Mr Wolanksi argued that the case was clearer still in this case because of the different headline and because the reader was told that the article had been the subject of a legal complaint from Priya Hiranandani-Vandrevala. In my view the change in the headline was of marginal significance. The addition of the notification of the legal complaint had no effect on the meaning of the article as a whole.

Other issues as to the meaning of the articles

36. The other issues concerned the nature of the wrongdoing which the articles alleged.

37. Mr Wolanski argued that the words 'missing from Hirco's accounts' were vague. It was unclear whether it was being said that the missing sums had been stolen or that there was an accounting discrepancy. From the text of the articles, it was clear that the allegation was that Hirco had lost over £350 million as a result of fraudulent misrepresentations by the Hiranandanis and that some £300 million had gone into offshore trusts owned by the Claimant, her husband and her brother. The term 'misappropriated' added nothing to 'fraudulently obtained', but was also not an expression which was used in the article. Mr Wolanski also argued that the meaning should include the nature of the fraud alleged, i.e. that the Hiranandanis had persuaded Hirco to buy plots of land from them at values which they knew to be grossly overstated.

38. Mr Price had little to say on these matters, concentrating, understandably, on the principal issue of the appropriate *Chase* level of meaning.

39. It is sufficient to say that I agree with Mr Wolanski that 'missing from Hirco's accounts' adds nothing. In my view the wrongdoing alleged in each article was that the Claimant and her father had fraudulently breached their duties as directors which had caused Hirco a loss of £350m and had led to £300m going into an offshore trust owned by the Claimant, her husband and her brother, Darshan. The article referred both to the loss to Hirco and the gain to the Claimant and her family. I also agree with Mr Wolanski that the articles had said that the Claimant and her father had persuaded Hirco to buy plots of land from them at grossly over-stated values.

Conclusion

40. Putting this together, in my judgment the print version, the original on-line version and the latter on-line version all meant that:

> There were cogent grounds to suspect that the Claimant (and her father) had fraudulently breached their duties as directors by persuading Hirco to buy plots of land from them at grossly over-stated values. This had caused a loss to Hirco of £350 million and had led to £300m going into an offshore trust owned by the Claimant, her husband and her brother, Darshan.