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Case No: A2/2010/2180 and 2259

COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
The Hon Mr Justice Eady
Case No HQ09D04851

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/03/2011

Before:

MASTER OF THE ROLLS
LORD JUSTICE SEDLEY
and
LORD JUSTICE HOOPER

- -

Between:

ELENA BATURINA	**Appellant**
- and -	
TIMES NEWSPAPERS LTD	**Respondent**

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- -

Romie Tager QC, and **Justin Rushbrooke** (instructed by **Lass Salt Garvin**) for the **Appellant**
Andrew Caldecott QC and **Manuel Barca** (instructed by **TNL Legal**) for the **Respondent**

Hearing dates: 1st and 2nd March 2011

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Approved Judgment

The Master of the Rolls:

1. This is an appeal brought by Mrs Elena Baturina ("Mrs Baturina"), whose husband was until very recently the long-serving Mayor of Moscow, and a cross-appeal brought by Times Newspapers Limited ("TNL"), in relation to preliminary rulings made by Eady J, in connection with a libel action brought by Mrs Baturina against TNL. The alleged libel was contained in an article ("the article") which appeared on page 3 of the 27 September 2009 edition of the Sunday Times newspaper ("the newspaper"), which is published by TNL, and which also appeared on the "Times Online" website ("the website"), where it remained for two days.

The factual background

2. The article, which was trailed in a much shorter piece on page 1 of the newspaper, was captioned "Bunker billionairess digs deep" and subtitled "Russia's wealthiest woman is spending up to £100m to give her one of the biggest family homes in Britain". Above the caption were two photographs, side by side and, between them, occupying about a third of the page. The first showed the impressive exterior of a very large mansion with a superimposed photograph of Mrs Baturina with her husband apparently in front; the second photograph included an aerial view of the mansion, with a superimposed photograph of a model of what were implied to be proposed substantial underground extensions, together with a small location plan.

3. It is unnecessary to set out the whole contents of the article, or of the trailer. The essential point is that they both stated that Mrs Baturina, "Russia's richest woman", was "believed to be" the owner, of a house called "Witanhurst" ("the House") in Northwest London, which was described as London's largest residence after Buckingham Palace. The article suggested that Mrs Baturina had purchased the House through "a front company called Safran Holdings, based in the British Virgin Islands" for £50m, and that she intended to live there. The article contained more background, comment, and speculation, some of which was referred to by Mr Tager QC, who appears for Mrs Baturina, but such material takes matters no further, at least at this stage of the proceedings.

4. Within about three days of the article's publication, a representative of Mrs Baturina, a Ms Kolyuchaya, informed TNL that the article was inaccurate, and that it damaged Mrs Baturina's reputation, for reasons to which I will turn. To cut a relatively long story short, on page 24 of the 4 October 2009 edition of the newspaper, TNL published a brief statement headed "Clarification". After referring to the article by title and the fact that it reported that Mrs Baturina had bought the House, the statement ended: "We are told that this is not correct." This brief statement was also published on the website, where it remains.

5. There is nothing inherently defamatory in publishing a story that a claimant has purchased a house when she has not in fact done so. Accordingly, although her original statement of case seems to have proceeded partly on that basis, Mrs Baturina's claim is not based on the ordinary and natural meaning of the article. The sole reason Mrs Baturina now contends that the article was defamatory is founded on an alleged innuendo.

6. The alleged innuendo arises from a decree promulgated by the President of the Russian Federation on 18 May 2009, Decree Nr 561 ("the Decree"). Article 2 of the Decree required all officials and civil servants of the Federation to "post on the official web-sites", and provide to "all-Russian mass media", certain information about their assets and income. Article 2(a) extended to a "list of real estate belonging to the person …, his/her spouse and minor children by title or used by them, specifying the type, area and country of location of each object"; article 2(b) extended to a "list of transport vehicles …", and article 2(c) to "the declared annual income of the person …., his/her spouse and minor children."

7. Although it may ultimately turn out to be wrong, the only evidence in this case so far as to the effect of the Decree is from Ms Kolyuchaya, who is a Russian lawyer. That evidence is that, although it may not appear obvious to an English lawyer, the Decree would have been understood by Russians to require Mrs Baturina, as the spouse of an official, namely the Mayor of Moscow, herself to comply with article 2 of the Decree. As the Judge said, in the absence of any clear and cogent evidence to the contrary, it would be wrong not to proceed at this interlocutory stage on the basis that this evidence is correct.

8. In any event, it appears that Mrs Baturina did indeed apparently list the properties and the vehicles which she owned, and declare her income, in the manner stipulated by article 2 of the Decree. The list of properties in the declaration ("the declaration"), purportedly provided and published pursuant to the Decree, did not include the House.

9. Mrs Baturina's declaration appears to have received significant publicity in Russia, particularly in relation to her declared income. The evidence shows that it was commented on in a number of Russian websites, mostly on blogs, which concentrated both on the substantial size of her income and on the large amount by which it exceeded her husband's income.

10. Mrs Baturina's case is based solely on publication in this country and in Russia. Her pleaded contention was that the inference which would be drawn from the article was that she had "used nominees as the shareholders and officers of [Safran Holdings] to hide her interest as the beneficial owner" of the House, and that she "had failed to declare her ownership of and interest in Safran [Holdings] and/or [the House], pursuant to Russian law".

11. TNL issued an application to strike out Mrs Baturina's claim, or else for the grant of summary judgment in its favour. This resulted in her statement of case being fairly radically amended, and, although permission to amend had not been granted by the time the application came on before Eady J, the hearing before him proceeded on the basis of Mrs Baturina's proposed amended statement of case.

A summary of the relevant evidence

12. The evidence before the Judge (as supplemented before us without objection) included the following.

13. So far as publication in this country is concerned, the circulation of the newspaper was obviously extensive, apparently over 1 million copies. However, when considering Russian readership, it is very relevant that there are, it appears, around

400,000 Russians who reside (on a short- or long-term basis) in this country. The circulation of the newspaper was very small indeed - some five copies, including one via a "print on demand" service.

14. As for the website, it appears that there were around 30,000 hits on the electronic version of the trailer on page 1. Of those hits, just over half were from the United Kingdom, and just under 1,000 from Russia. As for the electronic version of the article on page 3, there were nearly 2,800 hits, of which nearly 1200 were from the UK and 400 from Russia. These hits do not necessarily equiparate to readers as some readers may return to the story or trailer – and, although much less than with the newspaper, some hits may represent more than one reader.

15. Mrs Baturina's statement of case referred to a large number of website "blogs" which were alleged to have referred to the contents of the article. All of those blogs appear to have originated from Russia, a substantial number of them do not refer to the article or its contents at all, and, of those that do, only one makes any link between the contents of the article and the declaration, and that link is in something of a throw-away line at the end of the blog.

The issues

16. TNL's arguments before Eady J, in so far as those arguments are maintained before us, are as follows:

- Mrs Baturina's case should be dismissed as TNL could not reasonably have foreseen why the article could be defamatory on the grounds now alleged;

- In any event, in all the circumstances, it is not just and reasonable to permit Mrs Baturina to pursue her claim in whole or, alternatively in part;

- In so far as Mrs Baturina can pursue her claim, she should be required to plead specific instances of individuals who understood the article to carry the innuendo she alleges.

17. The Judge decided that the claim should be permitted to proceed against two of the four classes of alleged readers of the article, but dismissed the claim in so far as it related to two other classes of reader. Essentially, therefore, he rejected TNL's case on the first issue, but upheld it in part in relation to the second issue. He also identified defects in Mrs Baturina's proposed amended statement of case, and indicated that it should be amended.

18. Mrs Baturina appeals against the decision, with a view to reinstating her claim in relation to the two classes of reader in respect of whom her claim stands dismissed under the second issue. TNL cross-appeals against the decision in relation to the first and second issue, and alternatively seeks an order reflected by the third issue.

19. Our task is more limited than that of Eady J, as a number of issues raised before him, which he rightly rejected, have not been raised before us. Further, a number of points were touched on before us, such as the care taken by the journalists who wrote the

article, the terms of Mrs Baturina's challenge to the story, and the nature of TNL's reaction to her challenge, which are irrelevant for present purposes. As it is, I propose to consider the issues in the order indicated in para 16 above.

The first issue: foreseeability on the part of a defendant in a claim based on innuendo

20. On behalf of TNL, Mr Caldecott QC advanced an attractive case to support the proposition that a defendant cannot be liable in defamation, if rather than being on the ordinary and natural meaning of the words in his statement, the claim is based on an innuendo, which he did not, and could not reasonably have been expected to, appreciate at the time he made the statement.

21. As he accepted, the argument appears to be inconsistent with a number of decisions of authority, including *Hulton v Jones* [1910] AC 20, *Cassidy v Daily Mirror Newspapers Limited* [1929] 2 KB 331, *Hough v London Express Newspaper Limited* [1940] 2 KB 507, and *Fullam v Newcastle Chronicle* [1977] 1 WLR 651.

22. However, Mr Caldecott advanced two reasons (which are not entirely separate) as to why we should not follow those decisions in this case. The first is they are, at least in the main, concerned with what he called reference innuendos, whereas the present case is concerned with a meaning innuendo. The second reason advanced by Mr Caldecott is that, following the coming into force of the Human Rights Act 1998, those decisions should no longer be treated as good law, at least in so far as they apply to meaning innuendos.

23. So far as the first point is concerned, a reference innuendo arises where the statement is, on its face, defamatory, but where knowledge of extrinsic facts is needed to link them to the claimant; whereas a meaning innuendo arises where the statement does not appear to be defamatory on its face, and is only rendered defamatory by knowledge of extrinsic facts. I would accept that all but one of the innuendo decisions referred to above involved alleged reference innuendos, but the last of those case, *Fullam* [1977] 1 WLR 651, seems to me to have involved an alleged meaning innuendo.

24. The reasoning in the earlier cases appears to me to apply equally to both forms of innuendo. Thus, in *Cassidy* [1929] 2 KB 331, 340, Scrutton LJ said that *Hulton* [1910] AC 20 established that it was not correct to suggest "the evidence which made apparently innocent statements defamatory" had to be "known … to the person who wrote the document", a point with which Russell LJ agreed in a passage in his judgment at [1929] KB 331, 343-354, in which he made the point that "[l]iability for libel does not depend on the intention of the defamer; but on the fact of defamation." In *Hough* [1940] 2 KB 507, the Court of Appeal followed *Cassidy* [1929] 2 KB 331, albeit (on an aspect not relevant for present purposes) reluctantly – see per Goddard LJ at [1940] 2 KB 507, 516.

25. In *Fullam* [1977] 1 WLR 651, 655, Lord Denning MR, with whom Orr and Scarman LJJ agreed, not merely treated *Cassidy* [1929] 2 KB 331 and *Hough* [1940] 2 KB 507 as rightly decided or binding, but applied the reasoning to a case which seems to me to be one of an alleged meaning innuendo. That is made out by the fact that the article referred to the plaintiff by name, and Lord Denning's statement that the alleged libel

"need[ed] someone with very special knowledge … to draw any such imputation form the article" – see [1977] 1 WLR 651, 654.

26. Before turning to Mr Caldecott's second point, it is right to mention that Greer LJ took a different view of the effect of *Hulton* [1910] 2 KB 20 in a forceful judgment in *Cassidy* [1929] 2 KB 331, 346-9, and that, in *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239, 1243-4, Lord Reid said that "[s]ome people may think that the law has gone too far" in holding a publisher liable for a reference innuendo, if the statement concerned "applies to someone the publisher has never heard of.". However, Greer LJ was dissenting in *Cassidy* [1929] 2 KB 331, and Lord Reid's statement clearly assumes that, at least at this level, *Cassidy* [1929] 2 KB 331 and *Hough* [1940] KB 507 represent the law: indeed, at [1971] 1 WLR 1239, 1244, he said that he saw "nothing wrong with [those] decisions".

27. As to Mr Caldecott's second point, I do not consider that Article 10 compels or even justifies the court changing the law as to innuendos. After the 1998 Act had been enacted but before it came into force, the House of Lords decided *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127. In that case it was held that there was a defence of "responsible journalism" to what would otherwise be a libel. In *Bonnick v Morris* [2003] 1 AC 300, 309, Lord Nicholls of Birkenhead said that "[r]esponsible journalism is the point at which a fair balance is held between freedom of expression on matters of public interest and the reputation of individuals". And in *Jameel v Wall Street Journal Europe Sprl* [2006] UKHL 44, [2007] 1 AC 359, para 54, Lord Bingham of Cornhill explained that "the defence is available to anyone who publishes material of public interest in any medium."

28. At least on the basis of the arguments we have heard and the cases we have been taken to, that development of the law seems to me, save perhaps in exceptional circumstances, to be sufficient acknowledgment by the courts of the need for protection of the press over and above the previous defence of fair comment, now honest comment – see *Joseph v Spiller* [2010] UKSC 53, [2010] 3 WLR 1791, para 117. In the present case, a *Reynolds* defence would have been available to TNL if publication of the article was in the public interest, and the journalists involved in researching, writing and publishing the article had taken reasonable steps to ensure its accuracy. If the law should afford further protection to journalists and others in a case such as this, that would be a matter for the legislature – see *Joseph* [2010] 3 WLR 1791, paras 110-117.

29. We were referred to *O'Shea v MGN Ltd* [2001] EMLR 943, where Morland J did purport to extend the circumstances in which a defendant could defeat a claim for defamation, relying on Article 10(2) of the Convention, notwithstanding the decisions referred to above – see at [2001] EMLR 40, paras 38-48. In that case, a defamation claim failed where a newspaper published a lawful advertisement for an adult internet service featuring, with her agreement, a photograph of a young woman, who very closely resembled the claimant. The Judge said that it would "place an impossible burden on a publisher if he were required to check if [every] true picture of someone [he published] resembled someone else who because of the context of the picture was defamed". It may well be that the reasoning can be justified on the basis that, on analysis, it represents a small extension of the *Reynolds* defence.

30. On any view, even on the assumption that *O'Shea* [2001] EMLR 40 was rightly decided (as I am currently inclined to think it was), I can see no warrant for extending it to a case where a newspaper publishes an untrue story, and the publisher is unable to raise a *Reynolds* defence.

31. It should be added that, although I suspect that TNL would be able to show that it neither knew nor reasonably could have known, of the fact that the article could imply to a reasonable reader that Mrs Baturina had failed to declare the House in her declaration, I would not have been prepared so to hold at this interlocutory stage. TNL presumably has reporters or other employees or agents, including stringers, who are either in Moscow or keep in close touch with Russian affairs. It would not, I think, in those circumstances, be right to conclude at this stage that TNL did not know or have reason to know of the meaning innuendo alleged to have been carried by the article.

The second issue: is it just and reasonable that Mrs Baturina's claim proceeds?

32. In *Jameel v Dow Jones & Co Inc* [2005] QB 946, para 40, the Court of Appeal accepted that there could be "rare case[s]" where "a claimant brings an action for defamation in circumstances where his reputation has suffered no or minimal damage", and where, the action "constitute[s] an interference with freedom of expression that is not necessary for the protection of the claimant's reputation". Such an action is, as the court explained, an abuse of process. Eady J suggested that this point was another way of raising the question of "whether or not the claimant can demonstrate a 'real and substantial tort'" – see at [2010] EWHC 696 (QB), para 22, and I would accept that that is the issue in the present case.

33. The Judge identified four categories of reader to whom the publication was alleged, namely readers of (i) the newspaper circulated in England and Wales, (ii) the newspaper circulated in Russia by TNL, (iii) the article or trailer as published on the website, and (iv) foreseeable republications in Russia of the contents of the article or trailer.

34. The Judge allowed the claim to continue in relation to readers in categories (ii) and (iv), but not in relation to those in categories (i) and (iii). His reasoning in relation to categories (ii) and (iv) readers was that, while the claim may well fail, it was impossible, on the basis of Mrs Baturina's pleaded case and the agreed or assumed evidence, to say that it could not be established that some people in Russia would have read the article in the newspaper as carrying the alleged innuendo. I can see no fault with that reasoning.

35. However, when it comes to readers in categories (i) and (iii), despite the Judge's full and careful reasoning, and his considerable experience in this field, I consider that he was wrong not to reach the same conclusion. It is only fair to mention that this conclusion is based, in part, on evidence which was only provided after the appeal was brought, and that the argument we heard from Mr Tager QC, on behalf of Mrs Baturina, appears to have been considerably more focussed than it was below.

36. The Judge accepted that, despite the very small circulation of the newspaper in Russia, there was, albeit subject to it being properly pleaded, a case to go to trial on publication in hard copy in Russia. The article was undoubtedly published in hard copy in Russia, and, if there was anything in the alleged innuendo, it is in Russia that

it is most likely to be appreciated. So, whatever reservations one might have about its likely success, the claim relating to category (ii) readers was allowed to proceed.

37. I must confess to finding it hard to understand why it does not follow that the claim in relation to category (i) readers should be allowed to proceed as well. The hard copy circulation in England and Wales was very substantial. Once one appreciates that there are 400,000 Russians in this country, some of whom may well be in close touch with what is going on in Russia, and some of whom may well read the Sunday Times, it seems to me that one cannot say that the claim is bound to fail, or that there could be some sort of abuse of process, so far as they are concerned.

38. It is right to mention that the Judge indicated that he might have reached a different conclusion on the question of permitting the claim to proceed in relation to category (i) readers if Mrs Baturina's statement of case had identified any readers of the article in the newspaper in England and Wales who had the necessary relevant knowledge to appreciate the alleged innuendo. He did not give her the opportunity to amend her statement of case to plead this because he thought that, if she had been able to identify such persons she would have done so – see at [2010] EWHC 696 (QB), paras 30-2. In my view, it is probable that it did not occur to Mrs Baturina's advisers to plead such an aspect, and, if it is appropriate to require them to do so, they should be given that opportunity, especially as they already wish to amend her statement of case, and the Judge has indicated that further amendments need be made.

39. For similar reasons, Mrs Baturina's appeal should succeed in relation to her claim based on category (iii) readers. In so far as the hits on the website were from Russia, they suggest, at least on the face of it, that very many more Russians in Russia would have read the story and the trailer on the website than in the newspaper. It may be that reading a newspaper may not be directly comparable to browsing a website for present purposes, but that cannot possibly justify a decision to stop the claim so far as it is based on website publication. In so far as the claim relies on the fact that the website publication was read in England and Wales, it also appears to me impossible to contend that it could not succeed.

40. In support of TNL's case on this issue, Mr Caldecott did not really rely on the Judge's reasoning, but suggested that his decision did not go far enough. TNL's case was that this is one of those exceptional cases where the whole claim should be dismissed for being an abuse.

41. TNL's case relies upon a number of factors. In summary form, they are:

- There must be real doubt whether anyone in the UK had the necessary information to appreciate the alleged innuendo;
- The number of people in Russia who read the article, at least in hard copy, appears to have been exiguous;
- There was a three month gap between the declaration and its attendant publicity and the publication of the article;
- The article does not say whether Mrs Baturina owned the House or Safran Holdings when she made the declaration;

- The publicity received by the declaration concentrated on Mrs Baturina's income rather than on her assets;

- There is nothing in the UK, and a solitary line in one Russian blog, to suggest that the article implied that Mrs Baturina's declaration was incomplete;

- It is unclear from her case whether Mrs Baturina is relying on her alleged ownership of the House or Safran Holdings;

- By the time the article was published, the story in the article had already appeared in other newspapers circulating in London without apparent objection from Mrs Baturina;

- In the correspondence following the article, it was not suggested on behalf of Mrs Baturina that anyone had communicated their understanding of the innuendo to her;

- Mrs Baturina's pleaded case has changed substantially since the case started;

- Mrs Baturina's pleaded case relied on a large number of blogs which, on analysis, do not support her claim.

42. In my view, each of these points has, to a greater or lesser extent, some force, in terms of casting doubt on the strength of Mrs Baturina's case, and her consequent prospects of success. However, once one concludes, as I have done, that, subject to any pleading issues, her case raises an issue fit to be tried, it seems to me that her claim must be permitted to proceed. While it is quite possible that her libel claim will fail, it seems to me, as it did to Eady J, that it could succeed, and, if it does, it is by no means improbable that the damages would be more than nominal. Once one accepts that there is a case in principle based on innuendo, and that it is not bound to fail on the grounds considered so far in this judgment, I am unpersuaded that there are any special facts which could justify the claim being characterised as an abuse of process.

43. Accordingly, the points summarised in para 41 above really fall away at this stage. However, they do have some relevance to the final point to which I now turn.

The third issue: particulars of the allegation

44. As mentioned in para 38 above, the Judge thought that, if the claim based on the category (i) readers, that is the readers of the article in the newspaper in England and Wales was to proceed, Mrs Baturina should have identified in her statement of case particular examples of readers who had the requisite knowledge. This third issue is whether that view was right, and whether it should also extend to the other three categories of reader, i.e. readers (ii) of the newspaper circulated in Russia, (iii) of the article or trailer on the website, and (iv) of foreseeable republications in Russia.

45. In *Fullam* [1977] 1 WLR 651, 656, Lord Denning MR said that, on the unusual facts of that case, the claim would fail unless a witness who knew the relevant facts and appreciated the alleged innuendo was called, because "such a person would be so rare

and exceptional". Accordingly, he reasoned, as "the identity of such a person … is a most material fact in the cause of action", "he should be identified in the pleading or in particulars under it." Scarman LJ took the same view at [1977] 1 WLR 651, 659, emphasising that "[j]ustice requires" such a course, "so that the defendants can understand the nature of the case they have to meet, … so that they may decide whether to defend or settle, whether to pay into court and, if so, how much ...".

46. The point was considered a few years later in *Grappelli v Derek Block (Holdings) Ltd* [1981] 1 WLR 822. Lord Denning MR at [1981] 1 WLR 822, 826, seems to have held that there was a "general principle of pleading" that, where what he called a "legal innuendo" (which I think is the same for present purposes as a meaning innuendo – see para 23 above) is alleged, the claimant "ought to specify the persons who have the particular knowledge from which they drew the defamatory meaning". Dunn LJ at [1981] 1 WLR 821, 830, agreed that this was "the general rule". He also said that the general rule was subject to exceptions, such as "where the publication is in a national newspaper with a very wide circulation, and the only reasonable inference is that some of the readers of that newspaper must have knowledge of the [relevant] facts."

47. In my opinion, "the general rule" should apply in this case. In relation to category (i) readers, although the newspaper is "a national newspaper with a very wide circulation", there is no evidence to show that its circulation is wide among Russian inhabitants of England and Wales. The various points summarised in para 41 above, particularly when taken together, satisfy me that this is a case where the claimant should identify specific readers who appreciated the innuendo when they read the article (or the trailer). This is not a case where the court would find for the claimant without such credible witnesses being called. Further, it would be unfair on TNL not to require Mrs Baturina to identify in her statement of case readers in category (i) who appreciated the innuendo when they read the article.

48. I consider that the same conclusion applies to readers in categories (ii), (iii) and (iv). The number of readers in category (ii) could be tiny, even literally zero, and the points in para 41 above apply, as do the reasons which I have set out in the previous paragraph. Further, as a Russian with considerable contacts in, and knowledge of, her country Mrs Baturina is in a particularly strong position to identify individual readers in Russia who read the article in hard copy (provided that TNL identifies the recipients of the newspaper in Russia).

49. With a little more hesitation, I would also order individual readers in categories (iii) and (iv) who appreciated the innuendo to be identified in Mrs Baturina's statement of case. The points in para 41 apply to them, and, while there may be a significant number of Russians who read the article, or quotes from the article, I am particularly struck by the almost complete absence of any reference to the declaration in the various blogs we have seen which discuss the article.

50. In all the circumstances, I do not consider that the court would find the innuendo meaning made out in relation to any category (iii) or (iv) reader made out, unless readers in those categories were produced at trial, and were credible witnesses. The points made in para 41, combined with Mrs Baturina's Russian connections, and the relatively small number of Russian hits on the website, also persuade me that it would simply be unfair on TNL not to require such particulars to be set out in Mrs Baturina's statement of case.

Conclusion

51. For these reasons, I would allow Mrs Baturina's appeal and permit her to proceed with her claim, at least in principle, in respect of all the four categories of reader discussed above. However, I would also allow TNL's cross-appeal to the extent of requiring her to identify readers in the various categories, who, on reading the article or the trailer, inferred the innuendo meaning which she alleges that they had.

52. I hope counsel will be able to agree a form of order, including a fair and realistic timetable for service of an amended statement of case on behalf of Mrs Baturina.

Lord Justice Sedley:

53. I agree with the judgment of Lord Neuberger MR, although with certain misgivings. The misgivings arise not from his judgment, which I respectfully consider entirely compelling, but from what flows from it.

54. At the heart of the triable issues is what, if anything, an informed but not unduly suspicious Russian reader will have made of the Sunday Times story. If all they made of it was that Mrs Baturina had purchased a London mansion through an offshore company it would, it seems, have been untrue but in no way damaging. If, however, Mrs Baturina had been required by law to disclose her assets such a reader might well have inferred an allegation of illegal conduct on her part; but she was not. She had, it appears, volunteered a public list of assets which (naturally) did not include Witanhurst. It was her husband on whom the legal obligation lay to disclose her assets as well as his own; but, although also named in the article, he has not sued.

55. A critical question therefore will be whether a sensible reader of the article, knowing what Mrs Baturina had chosen to list, would have formed the view that in not including Witanhurst she had acted dishonestly rather than simply selectively. Mr Caldecott has restricted his case before us to pointing out the materiality of this issue should there be a trial. I therefore say no more than that it is in my present view an issue which could prove decisive of the entire claim.

56. My other chief misgiving, though possibly a misplaced one, arises from what appeared from time to time to be an assumption that it will be open to Mrs Baturina to call witnesses to testify to how they reacted to the Sunday Times story in the light of their extrinsic knowledge. It will of course be for the trial judge to decide what evidence is admissible, but in principle it is the jury or, absent a jury, the judge whose task is to decide what a reasonable reader will have made of a publication. Where an innuendo is relied on, their judgment will of course be informed by evidence of what the reasonable reader will additionally have known. But it is not the case that a claimant is entitled without more to put into the witness box a series of witnesses to say on oath what they made of the publication. It may be otherwise where, for example, a special and limited class of reader is relied on, or where it is necessary to prove damage of a particular kind. But in principle the meaning and effect of the published words, either by themselves or when married with proven extraneous facts, is what the court itself is there to decide.

Lord Justice Hooper:

57. I agree with both judgments.