

Case No: TLJ/10/0040

Neutral Citation Number: [2010] EWHC 2011 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2010

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

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| Islam Expo Ltd | <u>Claimant</u> |
| - and - | |
| (1) The Spectator (1828) Ltd (2) Stephen Pollard | <u>Defendants</u> |

Mr D Glen (instructed by **Reynolds Porter Chamberlain LLP**) for the **Applicant**
Ms Adrienne Page QC & Mr Richard Munden (instructed by **Farooq Bajwa & Co**) for the
Respondent

Hearing dates: 27 July 2010

Judgment

Mr Justice Tugendhat :

1. Following argument from the parties, I informed them of my decision that the words complained of in this libel action are capable of being understood to refer to the Claimant in the meaning pleaded in paragraph 4 of the Particulars of Claim. These are the reasons for that decision.
2. In its Particulars of Claim, the Claimant describes itself as a company which organises the bi-annual IslamExpo, and Islamic exhibition. The First Defendant is described as the publisher of the website www.spectator.co.uk. The Second Defendant is a journalist. Between 15 July 2008 and 23 February 2009 the Defendants published on that website the following words:-

“Demos and Genocide

I’ve always thought Demos was a wonderful joke, and assumed it was a Chris Morris style skit...

But it seems I was wrong about Demos. There’s nothing amusing at all about it. As Harry’s Place points out:-

Demos sponsored and participated in a debate at IslamExpo and a seminar on ‘Political Islam’. That’s right: a left of centre think tank worked with a clerical fascist party to organise a conference about its racist, genocidal, theocratic political programme.

Demos says this about itself on its site; ...

Quite how working with an organisation dedicated to genocide and theocracy fits with that outline, I have no idea.”

3. There are a few additional lines of text in the words complained of which are not relevant to the issue I have to decide.
4. The meaning is pleaded as follows:

“In their natural and ordinary meaning the words complained of meant and were understood to mean that the Claimant is a fascist party dedicated to genocide which organised IslamExpo, a conference with a racist and genocidal programme”.

5. Practice Direction 53 para 4.1 provides as follows:-

“At any time the court may decide.... –

(2) whether the statement [complained of] is capable of being defamatory of the Claimant;...”.

6. The issue in this case is whether the words complained of are capable of referring to the Claimant. But the principles to be applied are the same as those to be applied where the issue is whether the words complained of are capable of bearing a

defamatory meaning. They have most recently been set out by the Court of Appeal in *Jeynes v. News Magazines Limited* [2008] EWCA Civ 130 at para 14. It is the submission of Mr Glen for the Defendant that the words complained of are incapable of being understood to refer to the Claimant, and especially so when read in the proper context of the underlying hyperlinked documentation.

7. The words complained of include four hyperlinks. These are marked in the usual way on a website by being in a different coloured typeface. The links are as follows: (1) “Demos”, (2) “Harry’s Place points out”, (3) “Debate” and (4) “Seminar”.
8. It is a principle of law most recently defined in *Charleston v. Newsgroup Newspapers Limited* [1985] 2 AC 65, 70-71, that in order to determine the meaning of words complained of it is necessary to take into account the context in which the words were used and the mode of publication. Thus a claimant 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.
9. That principle has been established by a number of authorities all of which relate to printed publications. In a printed publication the text may be broken up and parts given more emphasis than others. Some parts may be on one page and a continuation of the same text may appear on a subsequent page.
10. Mr Glen submits that text on web pages, to which a reader of the words complained of will be directed if the reader clicks on the hyperlink, is to be treated as parts of the words complained of for the purposes of determining what the words complained of mean.
11. Miss Page for the Claimant submits that, at least in the context of the present case, the text to which a reader of the words complained of would be directed if she clicked on the hyperlink is not part of the context. The effect of hyperlinks in the context of a dispute about meaning or reference was briefly mentioned by Eady J in *Ali v Associated Newspapers Limited* [2010] EWHC 100 at para 28. It is a question that has also been considered in a number of authorities in British Columbia.
12. Miss Page also relies on the statement of principle by the editors of *Duncan & Neill on Defamation* third edition 2009 para 5.27 as follows:

“It may sometimes be difficult to determine what is fairly to be regarded as context... it is submitted that the correct question in such cases is whether having regard to all the circumstances it is to be inferred that the publishees of the words complained of will also have read or seen or heard the material which is relied on as context”.
13. In this case, as in many libel actions brought on internet publications, the extent of publication is very much in issue. A claimant must prove, not only that a prospective reader accessed the relevant website, but also that that reader read the words complained of. Miss Page submits that there are difficulties for an applicant in the position of these Defendants, who asks the court to make a ruling on reference without the court first having heard the evidence as to the extent of publication.

14. However, Miss Page submits that none of this matters in this case, because even if the court adopts the approach contended for by Mr Glen, the application on meaning nevertheless fails.
15. I have decided for the purposes of this application to approach the application on the basis contended for by Mr Glen. I do this without thereby intending to imply any ruling, one way or the other, as to whether that approach is right in law.
16. A reader who clicked on the hyperlink “Harry’s Place points out” would be directed to text several times longer than the words complained of in this case. That text is headed:

“Mohammed Sawalha: President of the BMI and Manager of the Political Committee of the Muslim Brotherhood in the United Kingdom”.

17. This is the page from which are derived those words complained of which start with the words “Demos sponsored...” and end with the words “theocratic political programme”. Immediately preceding the words which are cited in the words complained of is the following passage in the text at Harry’s Place. They read:

“Mr Sawalha went on to found the British Muslim Initiative and through it, established IslamExpo.

All these organisations are one and the same.

Government ministers pulled out of IslamExpo this weekend”.

18. Immediately following the text cited in the words complained of there appear the following:

“Now, I know that Demos started life as the tail end of the Communist Party of Great Britain. But they were fluffy Eurocommunists, weren’t they? I hope they’re not going to pick up ideas on “everyday democracy” from the Muslim Brotherhood: a party whose “Blueprint” was described as follows by an Egyptian commentator: ...”

19. A reader of the words complained of who passed over the hyperlink “debate”, but clicked on the hyperlink “seminar”, would be directed to a page (also considerably longer than the words complained of) headed “British Muslim Initiative”. This sets out the “Seminar Programme” for Saturday 12 July and Sunday 13th July 2008 at the venue “IslamExpo-Olympia Exhibition Centre London”. The only other reference to IslamExpo on that page is in the form of its logo, which appears on the right hand margin of the screen together with a number of other logos.
20. A reader who also clicked on the hyperlink “Debate” would be taken to a detailed programme of lectures, seminars and debates to be held on Friday 11 July through to Monday 14 July 2008. The page is headed “IslamExpo”. The event which is said to be supported by Demos is at 6.15 to 7.45 on Saturday 12 July 2008. It is entitled “Islamist Threat: Myth or Reality?” Miss Page draws attention to the fact that, while

IslamExpo is named in the heading of that page, there is no reference to the British Muslim Initiative, or to the Muslim Brotherhood.

21. I remind myself that amongst the principles listed in *Jeynes*, the governing principle is reasonableness, and over elaborate analysis is best avoided. The hypothetical reader in this case is the hypothetical person who has access to the words complained of.
22. I had little hesitation in reaching the conclusion that the words complained of were capable of referring to the Claimant. The words "IslamExpo" may well be the name both of the Claimant corporation, and of the events which the Claimant corporation organises from time to time. But the fact is that the words "IslamExpo" appear in the relatively short words complained of. A tribunal of fact which decided that those words referred to the Claimant corporation could not be characterised as perverse.
23. The argument advanced by Mr Glen to the contrary in my judgment involves over analysis of the words complained of and of other material. First he takes the word "party" in the expression "a clerical fascist party to organise a conference". He submits it is not clear how the Claimant, a company limited by guarantee, would have been recognised as the corporate vehicle through which the exhibition in 2008 was administered. The only entity fitting the word "party" is the British Muslim Initiative or the Muslim Brotherhood. It is to the Muslim Brotherhood that the word "party" is attributed in the hyperlink to "Harry's Place points out".
24. However, the reader of the words complained of is not assumed to know that the Claimant is a company limited by guarantee. That would be an extrinsic fact knowledge of which would have to be pleaded and proved. I have seen nothing to suggest that any reader would have known that fact.
25. Mr Glen accepts that, without reference to the documents the subject of the hyperlinks, the words complained of are capable of being understood as ambiguous. That seems to me to be a concession which is inevitable, but also fatal to his case. The ambiguity is in my judgment not plainly resolved by taking into account the contents of the documents the subject of the hyperlink, which he submits are to be treated as context. As Miss Page points out, the text at "Harry's Place points out" includes the words "all these organisations are one and the same" referring to the British Muslim Initiative and IslamExpo.
26. It is unnecessary for me to consider the other points advanced by Mr Glen. They are all over analytical and inconclusive.
27. Of course all that I have to decide, and all that I have decided, is that the words complained of are capable of referring to the Claimant. As to whether Mr Glen's submissions will be more successful (or not) at trial, when the question is what meaning the words complained of actually bear, nothing in this judgment is determinative of that.
28. It was for these reasons that I made the ruling that I did.