**Neutral Citation Number: [2010] EWHC 700 (QB)**

Case No: HQ09X04347

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 March 2010

**Before** :

**THE HONOURABLE MR JUSTICE EADY**

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**Between :**

**ANDREW JAMES MILLER** **Claimant**

**- and -**

**ASSOCIATED NEWSPAPERS LIMITED** **Defendant**

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**Hugh Tomlinson QC** and **Lorna Skinner** (instructed by **Simons Muirhead & Burton**) for the **Claimant**
**Mark Warby QC** and **Adam Speker** (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing date: 18 March 2010

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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 EADY

## Mr Justice Eady :

1. This is an application for a ruling on meaning under CPR 53 PD 4.1 in a libel action arising from an article published in the issue of the *Daily Mail* for 2 October 2008 and online. The article began on the front page under the headline "Met Boss in new 'Cash for a Friend' storm" accompanied by a strapline "Questions over ANOTHER Yard contract" and continued on page 4 under the additional headline "Sir Ian in new cash storm". The reference to the "Met Boss" was to the former Commissioner of Metropolitan Police, Sir Ian Blair. The Claimant, Mr Andrew Miller, is the person referred to as the "friend". It is his case that the article bears two defamatory meanings, namely that:

> "(1) The Claimant corruptly exploited his friendship with Sir Ian Blair to obtain an improper payment of a five-figure sum from public funds;
>
> (2) The Claimant, on behalf of his company, agreed to act as Sir Ian Blair's image consultant under a 'vanity contract' knowing that his company had no relevant knowledge or experience, thus improperly obtaining payment for work that his company was not competent to carry out."

2. Those meanings are both under challenge. Indeed, Mr Warby QC for the Defendant submits that the words complained of are incapable of bearing any meaning defamatory of the Claimant. He argues that the article is simply about Sir Ian Blair rather than the Claimant (despite the fact that he is mentioned several times by name) and that the pleaded defamatory meanings, which Mr Warby describes as "inferential", are unsustainable. Accordingly he asks that the claim be struck out.

3. The relevant legal principles are not in dispute and are conveniently summarised in *Gatley on Libel and Slander* (11th edn) at paragraph 32.5. It is accepted that if a judge concludes that a pleaded meaning is outside the permissible range, it is the judge's duty to rule accordingly and bring the matter to a conclusion on a summary basis.

4. It has been said that the exercise is one of "pre-empting perversity": *Jameel v Wall Street Journal* [2004] EMLR 6. That is to say, a meaning should only be ruled out if a jury would be perverse to uphold it. Moreover, the exercise should be one of generosity rather than parsimony: *Berezovsky v Forbes* [2001] EMLR 45 at [16].

5. The words complained of are as follows:

> "Sir Ian Blair used public money to pay a close friend a five-figure sum to sharpen his image, it emerged last night.
>
> 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.
>
> 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.

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.

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.

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.

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.

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

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.

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.

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

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.

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.

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

6. As to the first pleaded meaning, Mr Warby's submissions are to the following effect. He argues that it involves attributing active steps to the Claimant; in the sense that *he* is alleged to have exploited his friendship and to have obtained an improper payment. Neither "exploited" nor "obtained" is to be found in the article. If, therefore, there is any suggestion that the Claimant took some action positively to exploit or obtain, then it can only emerge by inference from other words used in the article.

7. Although the article asserts that the Claimant was a friend of Sir Ian Blair, and that he or his company received contracts at Sir Ian's instigation, there is no basis for reading into the article a suggestion that this was initiated by the Claimant. There is nothing to suggest that the contracts were obtained by exploitation or that the Claimant "obtained" them.

8. Another important aspect of the Claimant's first pleaded meaning is the attribution to his conduct of the descriptive words "corrupt" and "improper". Neither of these words, however, appears in the article. Neither the pleading nor the article makes clear what form of corruption or impropriety is supposed to be alleged. Mr Warby invites the following conclusions. He suggests that the first pleaded meaning corresponds to "*Chase* level one": see *Chase v News Group Newspapers* [2003] EMLR 11. In other words, it amounts to an allegation that the Claimant was guilty of criminal behaviour and is thus very serious. To plead that the article imputes corruption is to put the matter too high. A jury would indeed be perverse to read the article as imputing that the Claimant was guilty of corruption.

9. Mr Warby argues that the pleader has succumbed to at least one of two fallacies. The first fallacy, he says, is to proceed on the basis that, if it is said that A has conferred on B a benefit which was (or is reasonably to be suspected of being) contrary to some rules governing A's behaviour, this imputes impropriety (or reasonable suspicion of it) to B. This is by no means necessarily the case. He drew my attention to an Australian decision in which it was held that it was not defamatory to say of a career civil servant that his career had been aided by patronage of senior politicians, since it did not impute any active or improper seeking of favours on the plaintiff's part: see *Evans v John Fairfax Group Pty Ltd* [1993] ACTSC 7 at [116]-[119] and [125]:

> "The question is, however, whether to say of a person that he has been the beneficiary of such a system, with the capacity to be used to favour the less well qualified candidates, defames the candidate.
>
> In *Renouf* [(1977) 17 ACTR 35] (*supra*), Blackburn CJ accepted that it was defamatory of a senior public servant,
>
> > (42) ' … to say that he publicly demonstrated his sympathy with a political party with a view to receiving a higher appointment from the Government formed by that party'.
>
> That imputation was accepted as defamatory by reason of the implication that the plaintiff had attempted to openly demonstrate his political acceptability to the Government. That allegation assumed, of course, that the Government in question made such appointments on the ground of political acceptability.
>
> In the present case, the article depicts the plaintiff as a favoured recipient of preferment. It is not suggested he improperly sought it, as was the defamatory allegation in *Fairbairn v John Fairfax & Sons Ltd* (1977) 21 ACTR 1.
>
> …
>
> The article did not over-state the role of the Prime Minister in the plaintiff's career advancement, but it did not impute any unfair or improper conduct to him nor suggest he did not merit such advancement. It did not convey the imputation pleaded. That would require the article to assert that the plaintiff's qualifications and experience were less important than the favour of the Prime Minister. It clearly does not do that."

10. Mr Warby submits that the position is analogous here. No active, let alone corrupt or improper, behaviour is imputed to the Claimant in the article in question.

11. This argument illustrates, in my judgment, how important it is to focus on the particular facts in the case. Whether a particular article imputes anything to the discredit of a person who receives favours will inevitably depend, not only on the

wording of the article in question, but also upon the status of the protagonists relative to one another and the nature of the relationship between them.

12. The second "fallacy" relied upon by Mr Warby is that the pleader is said to have based a meaning on a conjecture which the reader *might* arrive at, as opposed to an inference reasonably arising from the published words. If B is said to have benefited from favours conferred by A, it can be said, as a general proposition, that a *possible* explanation for this is that B encouraged A to confer such favours and/or bribed him to do it. There will, however, generally be other innocent possibilities available. A might have been acting unprompted. He might have acted honestly, in the belief that B deserved the favour, or from a spirit of generosity, or to earn B's regard or gratitude. Unless the guilty explanation is suggested in the statement complained of, such an explanation would be "mere conjecture" on the part of the reader and not, as such, a meaning to be attached to the statement (i.e. one which a reasonable reader could draw from it).

13. Mr Warby goes a stage further and argues that, even if the article did convey the meaning that the Claimant "exploited" his friendship with Sir Ian Blair to obtain business, and hence money, that would not be defamatory. He suggests that every day lawyers and others use contacts to try to obtain work for themselves. I will assume that Mr Warby is correct in this assessment for present purposes. He argues that where someone benefits from the principle that "it is not what you know, but who you know", that would not in the eyes of right thinking members of society be to his discredit.

14. These arguments are no doubt beguiling and were presented attractively. But it all depends on the facts. Here the Claimant and Sir Ian Blair are said to be old friends. Sometimes the flavour of an article may best be captured by the use of slang. As I indicated in the course of argument, the essence of the charge here appears to be one of "cronyism" (or reasonable grounds to suspect it) or "back-scratching". Because the two men are said to be close friends, have known each other for many years, and have done business together on other occasions, as the article makes clear, a reasonable reader might infer that the Claimant was aware that the contractual arrangements were not at arm's length and lacked transparency. He would also presumably know that there had been no open competition or tendering process (according to the allegations in the article). A reasonable reader might infer, therefore, that he would know his back was being scratched and that he was a willing beneficiary of "cronyism".

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. Nor is it for me to draft the meanings for the Claimant. 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.

16. I have come to the conclusion that the "*Chase* level one" meaning (i.e. guilt of corruption) puts the matter far too high. I would therefore strike out the first pleaded meaning.

17. The second pleaded meaning also seems to me to be one that the words are not capable of bearing. I see nothing in the article to convey the impression that the Claimant "knew" that his company had no relevant knowledge or experience; or that he consciously obtained payment for work that he knew his company was not competent to carry out. Some may hold the opinion that this was so, but it does not follow that the Claimant himself took such a view. He may, for example, have thought that the work was such that he and/or his company could undertake it competently, even though it was out of their general run of business. People are also entitled to form the view that the money was wasted, but it does not mean that the Claimant was dishonest. The second meaning, therefore, I would also strike out.

18. It will have become apparent, on the other hand, that I am not prepared to strike out the action as a whole. I do not think it would be perverse for a reasonable reader, having read the article, to come to the conclusion that it reflected adversely on the Claimant's character or integrity. A great deal has been said over the past year about members of Parliament to indicate that ordinary members of the public disapprove of their having had their "noses in the trough", even though the benefits obtained may have been strictly within the rules and they could not be said to be guilty of any unlawful conduct. Sometimes allegations of this kind can to be to a person's discredit even though he has kept within the letter of the law. This consideration tends to underline, in my judgment, why it is appropriate to leave the matter for a jury to assess, rather than for a judge to rule the matter out at a preliminary stage.