Case No: HQ13D 02542

Neutral Citation Number: [2014] EWHC 3823 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 November 2014

Before :

SIR MICHAEL TUGENDHAT

- -

Between :

(1) HRH PRINCE ALWALEED BIN TALAL BIN ABDULAZIZ AL SAUD (2) KINGDOM HOLDING COMPANY	**Claimants**
- and -	
(1) FORBES LLC (2) FORBES MEDIA LLC (3) KERRY DOLAN (4) FRANCINE MCKENNA	**Defendants**

- -
- -

Jonathan Caplan QC Jalil Asif QC and Adam Wolanski (instructed by **Kobre & Kim (UK) LLP**) for the **Claimants**
Andrew Caldecott QC and Catrin Evans (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendants**

Hearing dates: 4 November 2014

- -

Judgment

Sir Michael Tugendhat:

1. This is the trial of a preliminary issue in a libel action. The issue is the meaning of the words complained of. There are four publications complained of, although the first and fourth are so similar that no separate issue arises in respect of them.

The First Claimant

2. The First Claimant is a member of the Royal Family of the Kingdom of Saudi Arabia and unquestionably one of the richest men in the world. Much of his wealth is in the form of shares in the Second Claimant. That is a company incorporated under the laws of the Kingdom of Saudi Arabia and is publicly listed on the Tadawul (the Saudi Arabian stock exchange) but not within this jurisdiction. The First Claimant owns 95% of the issued shares in the Second Claimant.

The Second Claimant

3. The Second Claimant owns, amongst other assets, the shares in a number of companies listed on the New York and other stock exchanges. The most valuable of these was, from the date of the Second Claimant's initial public offering in 2007, a holding worth some $9.2 billion in Citigroup. The Second Defendant does not publish a list of its assets, and is under no obligation to do so. Other shareholdings specifically identified in the first and third articles include shares in American companies. No British companies are referred to.

The Defendants

4. The First Defendant publishes the hard copy version of Forbes magazine, a fortnightly magazine covering business and financial topics. The Second Defendant publishes on the Forbes website and through a digital application for use on portable devices. The Third Defendant is the author of the first, third and fourth publications complained of. She covers the world's wealthiest people and edits Forbes' Billionaire List ('the List'). That List is published each year in the spring. It gives the names and a figure for the net worth of each of a number of billionaires from all around the world, with special prominence being given to the top twenty by net worth. The Fourth Defendant is the author of the second publication complained of. She covers the accounting industry and accounting issues for investors. Readers of the Defendants' publications are individuals who are familiar with business matters. For the purposes of this litigation the only readers who are relevant are those within England and Wales.

The words complained of

5. The articles containing the words complained of were published as follows:

    i) Online dated 5 March 2013 under the heading 'Prince Alwaleed And the Curious Case of Kingdom Holding Stock', containing 38 paragraphs;

ii) Online from 5 March 2013 under the heading 'Even a Big Four Audit Can't Nail Down Kingdom Holding Numbers', containing 13 paragraphs;

iii) Online from 13 March 2013 under the heading 'The Incredible, Amazing Jumbo Jet That Prince Alwaleed Never Really Bought', containing 11 paragraphs;

iv) In hard copy and on the Forbes app from 25 March 2013 under the heading 'PRINCE OF INSECURITY Prince Alwaleed says he's one of the ten richest people in the world. FORBES doesn't buy it', containing 38 paragraphs.

6. Copies of the articles are annexed to this judgment with paragraph numbering added for the purposes of this hearing.

The issues on meaning

7. The background to this dispute is, as the title of the fourth article makes clear, a difference between the parties as to the net worth of the First Claimant. The gist of the issue is stated in the first article, at paras 5 and 8, to be: '… the Prince, while indeed one of the richest men in the world, systematically exaggerates his net worth by several billion dollars… In 2006 … FORBES estimated that the prince was actually worth $7 billion less than he said he was'. According to the first and fourth articles, he claimed his net worth as at 14 February 2013 to be $29.6 billion whereas the Defendants estimated it to be $20 billion.

8. The meanings attributed by the First Claimant to the first and fourth articles and said to be defamatory of him are set out in the Particulars of Claim para 13 as follows:

i) The First Claimant has over several years deliberately and systematically sought to mislead the public by dishonestly exaggerating the value of the Second Claimant, and hence his personal wealth, by billions of dollars;

ii) In 2010, 2011 and 2012 the First Claimant and the Second Claimant engaged in systematic share price manipulation so as falsely to inflate the price of the Second Claimant's shares, and hence the resulting value of the First Claimant's shareholding in the Second Claimant; and

iii) The Claimants sacked Ernst & Young as the Second Claimant's auditors because they had identified legitimate concerns in their 2009 and 2010 audits of the Second Claimant which the Claimants wished to conceal, namely (a) the difference between the price of the Second Claimant's shares and the value of the underlying assets owned by the Second Claimant, and (b) the fact that the First Claimant had transferred $600 million worth of Citigroup shares he personally owned to the Second Claimant for no consideration, causing him a personal loss of several million dollars.

9. The meaning attributed by the First Claimant to the second article and said to be defamatory of him is set out in the Particulars of Claim para 15 as follows:

> That the Claimants sacked Ernst & Young as the Second Claimant's auditors because in 2009 and 2010 Ernst & Young insisted upon placing fair valuations on

the Second Claimant and its assets instead of the exaggerated valuations the Claimants wanted Ernst & Young to use.

10. The meaning attributed by the First Claimant to the third article and said to be defamatory of him are set out in the Particulars of Claim para 17 as follows:

> The First Claimant deliberately breached his contractual obligations to Airbus and was in default in respect of payments due for the A380 aircraft; and he did so for a capricious reason, namely that he no longer wanted the aircraft; and thereby proved himself to be "an unreliable and untrustworthy debtor".

11. There is no dispute that the words complained of are defamatory of the First Claimant, but the Defendants deny that they bore any of the meanings attributed to them by the First Claimant. In accordance with the Civil Procedure Rules the Defendants plead a number of so called *Lucas-Box* meanings which, if the court finds these to be the meanings, the Defendants intend to prove true. The particulars of justification are extensive, but there is as yet no Reply, so it is not clear to what extent these particulars are disputed. A determination of the meaning of the words complained of will enable the parties, and if need be the court, to identify what parts of the particulars of justification remain relevant, and other appropriate case management directions.

12. In relation to the First Claimant, and the first second and fourth articles, the principal issue between the parties on the issue of meaning is the level of certainty of what is alleged against him.

13. The Second Claimant claims in respect of the first, second and fourth articles, but not in respect of the third article. The Defendants deny that the words complained of are defamatory of the Second Claimant. The principle issue in relation to the Second Claimant is whether what has been published in the articles of which it complains defames it in the opinion of the English readers who read the words complained of. This action is not concerned with the effect of the publications outside England and Wales.

Applicable legal principles

14. The principles to be applied by the court determining meaning in a libel action are not in dispute. So far as material to the issues before me, I take them to be as follows.

15. In the words of Sir Anthony Clarke MR in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at [14]:

> (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) … the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation…"

16. At common law words are not defamatory unless the extent to which the meaning is to the discredit of the claimant passes a certain level of seriousness: *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985 [2010] EWHC 1414 (QB). In that case I adopted (at para [95]) a definition of what is defamatory, which I shall also adopt in the present case:

> the publication of which a claimant complains may be defamatory of him because it substantially affects in an adverse manner the attitude of other people towards him, *or has a tendency so to do*.

17. In cases to which the Defamation Act 2013 applies the threshold of seriousness is now provided for by s.1. The Defamation Act 2013 does not apply to the publications of the articles complained of in this action for the period before that Act came into force.

18. Where an article contains separate defamatory allegations against a claimant he is entitled to select one or more of the separate defamatory meanings within the words complained of for complaint and leave others out of contention, even though the defendant might be willing and able to prove those other meanings to be true: *Polly Peck (Holdings) PLC v Trelford* [1986] QB 1000, 1020-21.

19. A defamatory allegation may be more or less serious. And the seriousness of an allegation may in part depend upon the degree of certainty attributed to it. For example, an allegation attributing fraud to a claimant is in principle more serious than an allegation of negligence. But an allegation of fraud may be more or less serious, depending on the degree of certainty with which it is made. It may vary from, at the highest, an allegation that the claimant is guilty of fraud, through the less serious allegation that there are reasonable grounds to suspect that he is guilty of fraud, to a lesser allegation that there are grounds to investigate whether or not he is guilty of fraud. These levels of certainty are often referred to as *Chase* levels 1, 2 and 3 (see *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772 [2003] EMLR 11). But they are only examples. The levels of certainty attributed to allegations are on a continuous scale: *Charman v Orion Publishing Group Ltd* [2005] EWHC 2187 (QB) at [17].

20. There may also be an issue between parties as to whether the words complained of impute a specific wrongdoing, eg that he stole the defendant's watch, or general wrongdoing, eg that he is a thief. If it is the former, any defence of truth has to be confined to the specific allegation, whereas if it is the latter, the defendant may be able to succeed by proving a theft of another person's property, even if he cannot prove the truth of the specific allegation.

A summary of the first and fourth articles

21. The First Claimant complains of passages selected from paras 5, 19 to 24, 27 and 32 of these articles. But the words complained of must be read in their context. The context of the words complained of in the first and fourth articles can be summarised as follows.

22. Paras 1 to 4 (of which the First Claimant does not complain) allege that 'image is everything' for the First Claimant, and that his position in the List is how he wants the world to judge his success or stature. Counsel have referred to this as the vanity allegation.

23. In para 5 the articles set out the question the writer proposes to address. Former executives of the prince are said to have told the writer that, while indeed one of the richest men in the world, the First Claimant systematically exaggerates his wealth by several billion dollars. This has led the writer to make 'a deeper examination' of his wealth and to 'a stark conclusion' that 'the value that [he] puts on his holdings at times feels like an alternate reality, including his publicly traded company [the Second Claimant] which rises and falls based on factors that, coincidentally, seem more tied to the FORBES billionaires list than fundamentals'.

24. Para 6 states that the First Claimant did not co-operate with the Defendants' examination, and that the Chief Financial Officer of the Second Claimant, Mr Sanbar, called the exercise 'dirt-digging and rumor-filled stories'. Paras 7 to 16 recount that the First Claimant has for 25 years been 'lobbying, cajoling and threatening' the Defendants on the subject of his place in the List. His background and public displays of wealth are recounted. In para 17 the articles express puzzlement as to the reason why he made an initial public offering of the Second Claimant in circumstances where he floated only 5% of the shares, he had no co-owners to satisfy, no liquidity issues and no desire to raise major capital and, as is added: 'The shares, listed on the Saudi stock exchange, are thinly traded. No analysts actively follow it'. The writer attributes the float to 'vanity'.

25. The article then turns to suggest explanations for the difference in the valuations of the First Claimant's net worth as given by himself and as estimated by the Defendants. Next to paras 18 to 21 is a chart showing the fluctuations in the share price of the Second Claimant in the years 2007 to 2013. The chart, and the commentary in paras 19 to 21, suggest that in each of the five years 2009 to 2013 the share price rose in the weeks immediately before the publication of the List, and that it did so by percentages many times in excess of the increases in the shares of Citigroup and of the few other companies in which, so far as known to the Defendants, the Second Claimant held shares. In para 22 there is reported the allegation attributed to 'several former executives close to [the First Claimant]' what is said to be 'the consistent story: [the First Claimant] was using [the Second Claimant] to inflate his net worth'. It is said that these allegations 'were based on [the executives] closely watching the stock, versus direct evidence' and one of them being unable to 'figure out any other explanation for why the shares went up dramatically at the same time as the key asset, the large Citi stake, tanked'.

26. Paragraph 23 describes how it is said that Saudis trade on the Saudi stock exchange, and why, in those conditions, it is easy to manipulate a shareholding, particularly where the listed shares represent only a small proportion of the total share capital. Para 24 starts with the words 'whatever the driver … in 2012 [the Second Claimant]'s net income grew by just 10.5% to $188 million, the Saudi index rose 6% and the S&P went up 13%, yet [the Second Claimant]'s shares jumped 136%.' There is then given Mr Sanbar's explanation, namely 'market confidence in the company's sustained ability to deliver and realise substantial value to its shareholders'.

27. I interpose to state that in my judgment readers of the Defendants' publications would know something about the factors which affect the value of the shares of a company whose assets consist largely of the shares in listed companies. There are many investment trusts well known to readers in Britain. Readers would know that the value of such shares is not determined solely by the value of the shares in the listed companies which form the assets of such companies. On the contrary, the value of shares in such companies may well be traded at a discount or premium to the value of the underlying assets. Fluctuations of the price may indeed, as suggested by Mr Sanbar, reflect confidence in the market as to the prospect of profitable investment decisions to be made by the management of the company in the future.

28. That share values may reflect the market's view of the future prospects of a company is in substance what I take to be conveyed in para 25, in which the writer notes that even in trading companies such as Amazon the total market value of the shares may be over two hundred times its pre-tax income. However, in para 26 the writer goes on to suggest that there is a 'problem' with reconciling the Second Claimant's share price with the value of the underlying assets, so far as known, in particular because it is 'near impossible to know exactly what the company owns'.

29. In para 27 (which is also cited in the second article) the writer goes on to consider what has been stated by the auditors of the Second Claimant. They were Ernst & Young for the years up to 2011. The writer states that in 2009 and 2010 the auditors 'signed off on the company's books but noted in both years a large difference between the market and holding value of the stock', and that in 2011 Ernst & Young were replaced as auditors by another big four firm, PricewaterhouseCoopers. In paras 28 and 29 the writer recounts that Forbes do not know what shares were sold by the Second Claimant. She cites Mr Sanbar's response that the Second Claimant is 'not a mutual fund and there is no requirement whatsoever that we disclose to anyone the share make-up of our portfolio'.

30. In paras 30 to the end of the articles the writer describes how she has reached her own estimate of the net worth of the First Claimant, by reference to the values of the underlying assets of which she was aware, and how she was given no further information by the First Claimant, or any representative of his or of the Second Claimant, but on the contrary, they wrote letters attacking the reporters and the methodology of those engaged in attempting to reach an estimate. In para 32 she wrote: 'Even crediting the [First Claimant] with most of the $9.7 billion assets he claims outside of [the Second Claimant]… FORBES cannot justify an estimate of more than $20 billion. Still the richest man in the Arab world. Still $ 2 billion over last year. But $9.6 billion less than what the [First Claimant] insists'.

Decision on the meaning of the words complained of in the first and fourth articles

31. I accept the First Claimant's contention that the first and fourth articles do contain an allegation of dishonesty on the part of the First Claimant. That allegation is that he knowingly caused the share price of the Second Claimant to increase in the early part of the four years up to 2013 with the intention of increasing the value of his own net worth, and deceiving the Defendants and others interested in the net worth of himself and in the value of the Second Claimant. What remains for determination is the degree of certainty which is attributed to that allegation.

32. I reject the First Claimant's contention that the first and fourth articles mean that it is certain that that is what the First Claimant has done. The meaning I find is that there are strong grounds for suspecting that that is what he has done. My reasons are as follows.

33. It is true that the articles include a number of repetitions of allegations by informants identified as anonymous executives or former executives of the Second Claimant. But these repetitions are not, as is often the case in libel, repetitions which must be treated as statements by the writer (under the so called repetition rule). The allegations are repeated in the articles for the purpose of raising a question which the following passages in the article purport to examine. And in my judgment the examination is to be understood to be a genuine one with a view to arriving at the truth, and not an extended repetition of the allegations of the informants.

34. It is also true that much of the article is, as Mr Caplan submits, mocking and sarcastic in tone. But I do not accept that all the responses from the First Claimant and Mr Sanbar are dismissed without consideration. On the contrary, the Claimants' side of the story is interposed at each stage of the article, and, in paras 24 and 25, the writer treats Mr Sanbar's point as a plausible one. The writer makes clear that the lack of information from and about the Second Claimant and its 'opacity' make the exercise of estimating what would be a fair value of its shares, and, to that extent, of the First Claimant's own net worth, a difficult exercise in which no firm conclusion can be reached. But nevertheless there are strong grounds for suspecting that the First Claimant's estimation is exaggerated by several billion dollars.

35. Mr Caplan submits that the allegation of vanity made against the First Claimant, most notably in paras 1 to 4, 7 to 12 and 17, is a separate allegation from the allegation of dishonesty, that the First Claimant is entitled not to sue on that allegation, and that the Defendant is therefore not entitled to plead truth in respect of it. Accordingly, so the submission goes, vanity cannot form part of the meaning which the words complained of bear, with the result that the Defendants are not entitled to seek to justify the allegation of vanity.

36. I reject the submission that the allegation of vanity is a separate allegation as Mr Caplan submits. And in my judgment the words complained do not allege that it is certain that the First Claimant has acted dishonestly. Rather, the meaning is on a lower level of certainty (and thus of seriousness), namely that, on the limited material available to the Defendants, there are strong grounds to suspect that he has been dishonest.

37. I would accordingly formulate the meaning of the words complained of in the first and fourth articles as follows:

    i) There are strong grounds to suspect that the First Claimant has, over several years, intentionally sought to mislead the Defendants and readers of the List by using dishonest means to cause the value of the shares in the Second Claimant, and thereby the value of his own net worth, to increase by billions of dollars.

    ii) Grounds to suspect that this is the case are (a) the unwillingness or inability of the First Claimant, or any representative of his or of the Second Claimant, to explain a demonstrable correlation between the annual rises in the share price

of the Second Claimant and the period immediately preceding publication of the List, together with the lack of any apparent correlation between those rises in the share price of the Second Claimant and any corresponding rise in the share price of such major underlying assets of the Second Claimant as are publicly known (including the share price of Citigroup), (b) the opportunity that the listing of a mere 5% of the shares on the Saudi stock exchange presents for manipulation of share prices, (c) the motive of the First Claimant, namely his vanity and insecurity in seeking, by lobbying, cajoling and threatening Forbes over a period of 25 years, to persuade the Defendants to adopt his own valuations of his net worth, so that his name should rank high in the List, (d) the replacement by the Claimants of Ernst & Young as auditors after they had twice noted a large difference between the market and holding value of the shares in the Second Claimant, which itself gave rise to reasonable grounds to suspect that the Claimants dismissed Ernst & Young because they had so acted and (e) the First Claimant had, for no consideration, injected into the Second Claimant $600 million worth of his own Citigroup shares.

The words complained of in the second article

38. The words complained of in the second article are in the last part of para 8, paras 9 and 10, and paras 12 and 13. Para 11 of the second article is a repetition of para 27 of the first and fourth articles set out in quotation marks.

39. The context of the words complained of is as follows. In the first two paragraphs the Fourth Defendant wrote that she was contacted by the Third Defendant asking for assistance when she was writing the first and fourth articles. Paras 3 and 4 of the second article are repetitions within quotation marks of para 7 and part of para 8 of the first and fourth articles. In para 5 the Fourth Defendant wrote that 'unfortunately for the [First Claimant], much of his wealth comes from his sand dune size holding of Citigroup stock…' She quoted again from the first and fourth articles in which it is said that the First Claimant has 'severed ties' with the Defendants and criticised the Third Defendants' methods. In para 6 the Fourth Defendant wrote that the Saudi firms which have audited the Second Claimant could have been, but had not been, inspected by or registered with the US audit regulator, PCOAB. She then wrote: 'So in spite of a Big Four audit firm imprimatur, that makes it even more difficult to judge the quality of the audit of [the Second Claimant] performed by either Ernst & Young or PricewaterhouseCoopers in Saudi Arabia'.

40. There then follow the words complained of:

'From the [First Claimant]'s perspective, since he owns 95% of the company, a good audit probably means one that makes no exceptions or qualifications and produces the result he requests. Kind of like what the [First Claimant] seems to expect from FORBES journalists. When Ernst & Young pushed back on the valuation of assets held by [the Second Claimant] in 2009, the firm initially got away with it. But when the firm did it again in 2010, it seem the [First Claimant] got ticked… [it is at this point in the second article that there is reproduced para 27 of the first and fourth

articles, and hyperlink to the first article, but this is omitted from the words complained of]… The [First Claimant] didn't wait until the annual meeting in March of 2011 to signal to Ernst & Young their days were numbered. PricewaterhouseCoopers' global chairman Dennis Nally, and entourage of his own, visited the [First Claimant] two months earlier, in January. Maybe PwC agreed to give the man what he wants'.

41. The meaning attributed by the First Claimant to these words is that the Claimants sacked Ernst & Young as the Second Claimant's auditors because in 2009 and 2010 Ernst & Young insisted upon placing fair valuations on the Second Claimant and its assets instead of the exaggerated valuations the Claimants wanted Ernst & Young to use.

42. Mr Caldecott submits, and I accept, that the First Claimant's meaning is impossible because the words omitted from the citation make clear that Ernst & Young did not insist upon placing fair valuations on the Second Claimant, but in fact 'signed off on the company's books'. However, the real issue between the parties is again the level of certainty of the allegation that is made.

43. The meaning for which Mr Caldecott contends is that there were reasonable grounds to suspect that the First Claimant terminated the services of Ernst & Young as auditor of the Second Claimant because (a) they had more than once expressed legitimate concerns about the large difference between the market and holding value of the Second Claimant, in particular that it was so large that the First Claimant had for no consideration injected $600 million worth of his own Citigroup shares, at a personal loss and (b) the First Claimant was annoyed by their actions and did not want further scrutiny of the implication that he was having to prop up the Second Claimant's stock because it was not faring as well as he wanted people to think.

44. In my judgment the meaning contended for by the Defendants for the words complained of in the second article (see the preceding paragraph) is the meaning that those words bear. It is made clear in the second article that, by reason of the absence of an inspection by PCAOB of the audit firms in Saudi Arabia 'it is difficult to judge the quality of the audit'. That is the substantial new point made in the second article that was not made in the first and fourth articles. That there is uncertainty about the numbers is the meaning conveyed by the title. The article does not mean that it is certain that the Claimants' numbers were in fact exaggerated.

The words complained of in the third article

45. The third article is very different from the other three. But it does contain a hyperlink to the first article. The words complained of are a single sentence in para 7: 'By that time, [the First Claimant] had defaulted on several payments to Airbus, according to two sources, not so much because he didn't have the money, but because he didn't want the plane'.

46. The context of that sentence is as follows. Paras 1 to 4 record that in October 2007 the First Claimant ordered an Airbus A380 through a corporate vehicle. There is recounted the success that the First Claimant had in negotiating down the price. In paras 5 to 7 it is said that his core asset, the Citigroup shares, began to fall in value late that same year and that he sought to find a buyer for the plane. Immediately

before and after the words complained of there are the following two sentences: 'In May 2010, a contract was drawn up to sell the plane to King Abdullah for $150 million' (a profit of $20 million). 'At one point sources say [the First Claimant] had to pay Airbus an additional $10 million to get a 6 month delay on the delivery of the A380'.

47. Paras 8 to 11 recount the subsequent history of the First Claimant's dealings with the plane. Mr Caldecott notes that in para 9 there is an explicit allegation that, ahead of the publication of the List in 2012, inconsistent information was being given about the First Claimant's continued ownership of the plane: Mr Sanbar claiming to Forbes that it was an asset of the First Claimant whereas there was evidence that he had already entered into a contract of novation by which the Saudi Ministry of Finance had been substituted for him as the buyer. However, the First Claimant does not complain of this allegation that he had exaggerated his assets.

48. The meaning of the words complained of in the third article contended for by the First Claimant is set out in para 10 above.

49. The main issue between the parties by the time the matter came before me is as to how specific, or how general, the defamatory allegation is. Both sides accepted that there is a general element in the meaning, namely, in the First Claimant's words, 'and thereby proved himself to be an unreliable and untrustworthy debtor'. The Defendants accept that the third article does suggest that the First Claimant caused the purchasing company (controlled by him) to default. But they submit that a meaning which is tied to the alleged default on a debt is too narrow, and that the meaning must extend more widely to the whole of the First Claimant's business dealings.

50. There is no doubt in my mind that the passages in the third article of which the First Claimant does not complain do convey a meaning such as the *Lucas-Box* meaning pleaded by the Defendants: 'The First Claimant's dealings in connection with the A-380 Airbus, including his representations to Forbes about it, showed how capricious, unreliable and untrustworthy he was in his business affairs.'

51. The issue is thus as to how selective the First Claimant can be in choosing the words he complains of. In my judgment the allegation of default on a debt due to Airbus is separate and distinct from an allegation about the First Claimant's other dealings in connection with the Airbus, and both are distinct from an allegation of untrustworthiness in representations made by or on behalf of the First Claimant to Forbes about the value of his assets.

52. I conclude that the First Claimant is entitled to complain only of the words which he has in fact chosen to complain of, and that on that basis the meaning of the words in question is the meaning which he attributes to them, as set out in para 10 above. This is a meaning which, in my judgment, is sufficiently serious to be defamatory of the First Claimant.

Conclusions as to the Second Claimant

53. The issues of meaning are for the most part the same in so far as the words complained of refer to the First and Second Claimants in the first, second and fourth

articles. But there is a difference in that the First Claimant is an individual whereas the Second Claimant is a corporation.

54. All that is said about the Second Claimant in relation to this jurisdiction in the Particulars of Claim is in paras 2 and 18:

> 'The Second Claimant has sought significant amounts of financing on London's capital markets… the Second Claimant has been injured in its reputation within the jurisdiction'.

55. Mr Caldecott submits that, unlike an individual, a company can only suffer financially, and that there is nothing pleaded that could lead to a finding that the Second Claimant had suffered or was likely to suffer serious harm as a result of the publication to the readers in England and Wales.

56. I accept Mr Caldecott's submission. The Second Claimant does not surmount the common law threshold of seriousness, and there is thus no need for me to consider the statutory threshold in relation to any publications which may have occurred after the 2013 Act came into force.

Conclusion

57. For the reasons given above, in my judgment the meanings which the words complained of bear are the following.

58. The words complained of in the first and fourth articles bear the meaning set out in para 37

59. The words complained of in the second article bear the meaning set out in para 43.

60. The words complained of in the third article bear the meaning set out in para 10 above.

61. These meanings that I have found are all defamatory of the First Claimant. The meanings of the words complained of by the Second Claimant are insufficiently serious to amount to defamatory allegations of the Second Claimant.