

High Court grants applications disputing jurisdiction in libel claims against Italian publishers (Napag Trading v GEDI Gruppo Editoriale)

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TMT analysis: The court held that it had no jurisdiction to try libel claims brought by an English-domiciled company, Napag Trading Ltd (Napag), its CEO and sole director, and its Italian-domiciled subsidiary, Napag Italia Srl (Napag Italia), against the defendant Italian publishers, GEDI Gruppo Editoriale SpA (GEDI) and Società Editoriale Il Fatto S.p.A (Società Editoriale). The claimants had issued proceedings over six articles published between October 2019 and January 2020. However, because none of them could show, to the necessary standard, all of the elements of a claim for libel under the law of England and Wales, Mr Justice Jay granted the applications sought by the defendants under CPR 11. Besides finding that none of Società Editoriale's articles had seriously defamed Napag, and that only one of them had seriously defamed the CEO, Jay J held that none of the claimants had established a good arguable case on serious harm for the purposes of section 1 of the Defamation Act 2013 (DA 2013). Written by Luke Browne, barrister at 5RB.

Napag Trading Ltd and others v GEDI Gruppo Editoriale SpA and another [\[2020\] EWHC 3034 \(QB\)](#)

What are the practical implications of this case?

This judgment involves consideration of several issues of interest to defamation practitioners—not least the application of [DA 2013, s 1\(2\)](#). This provides that, for the purposes of [DA 2013, s 1\(1\)](#)'s 'serious harm' threshold, harm to the reputation of a body that trades for profit is not serious harm 'unless it has caused or is likely to cause the body serious financial loss'. Given what Jay J described as a 'paucity of authority' in this area, the judge's consideration of the relevant case law, and his general approach to the evidence provided in this case, is likely to be particularly interesting to those advising potential corporate claimants. Here, neither Napag, nor the CEO, nor Napag Italia could satisfy the [DA 2013, s 1](#) threshold to the requisite standard, with Jay J holding that the third claimant did not have a trading reputation in the jurisdiction at the time of the articles' publication.

In addition, Jay J's judgment includes commentary on the interaction between the principle in *Associated Newspapers Ltd v Dingle* [\[1964\] AC 371](#) (that a defendant cannot rely in mitigation of damages on the fact that others have published similar defamatory statements about the same claimant) and enquiries into the causation of losses incurred by claimants.

The judgment also provides a useful example of how the courts deal with complicated questions in libel of both reference and publication, as well as media defendants' disclosure obligations in respect of their subscribers, here, Jay J refused to draw an inference adverse to Società Editoriale over its failure to disclose a list of subscribers, on the basis that its explanation (to do so would breach data protection legislation) was a credible one.

What was the background?

There were three claimants. The first claimant, Napag, was an English-domiciled company trading in petroleum-based products. The second claimant was an Italian resident in Dubai, and the CEO and sole director of Napag, as well as a 95% shareholder in the company. The third claimant,

Napag Italia, was a subsidiary of Napag, domiciled in Italy; it had also traded in petroleum-based products.

There were two defendants. The first defendant, GEDI, was the publisher of *L'Espresso*, a weekly Italian-language political and cultural magazine available online and in print in England and Wales. The second defendant was Società Editoriale, which published *Il Fatto*, a daily Italian-language newspaper available in England and Wales online.

The claimants issued proceedings in libel over six articles published by the defendants—two by the first defendant, published in *L'Espresso* on 11 and 25 October 2019, and four by the second defendant, published in *Il Fatto* on 1 and 9 November 2019 and 23 and 24 January 2020. The articles concerned an investigation by the Milanese public prosecutor into past or planned corrupt payments to a man convicted of bribing Italian judges, and the trading of oil in breach of international sanctions (or, at least, the US embargo) on Iran; Napag, the CEO and Napag Italia contended that the articles imputed their involvement.

The defendants made applications under [CPR 11](#), putting in issue the court's jurisdiction to determine all or part of the claimants' claims. Essentially, Jay J had to determine whether each of the three claimants could show, to the necessary standard, all of the elements of a libel claim under the law of England and Wales, and whether Napag's 'centre of interests' was in England and Wales.

What did the court decide?

Jay J granted the applications sought by GEDI and Società Editoriale—the court had no jurisdiction to try any of the claims against them.

Determining whether the claimants could show the elements of a libel claim in this jurisdiction entailed assessing:

- first, the gravity of the imputations in each of the articles, and to whom each article referred
- second, whether Società Editoriale's articles had been published in England and Wales (GEDI having accepted that their articles had been), and
- third, whether each claimant had suffered, or was likely to suffer, 'serious harm' in England and Wales for the purposes of [DA 2013, s 1](#)

The burden of proof was on the claimants, who had to establish a 'good arguable case' in respect of each matter.

All three claimants satisfied Jay J that GEDI's articles were seriously defamatory of them, or that they at least had a good arguable case to that effect. However, though the judge held that the claimants also had a good arguable case that there had been publication of Società Editoriale's articles in England and Wales (albeit very limited), and that all four of its articles were seriously defamatory of Napag Italia, he found that only the 9 November 2019 piece seriously defamed the CEO, and that none of the articles referred to Napag.

Turning to the serious harm question, the judge held that Napag had a trading reputation in this jurisdiction. However, various factors (not least the fact that publication of GEDI's articles had been quite limited, and Società Editoriale's articles had not referred to the company) led him to conclude that it had failed to establish a good arguable case on serious harm. Jay J was also not convinced by Napag's evidence on 'serious financial loss'.

Because Napag had failed on the serious harm issue, the question of where its centre of interests lay was subordinate, and did not strictly speaking arise. However, the judge considered it, and on balance accepted Napag's submission that its centre of interests was in England and Wales.

The judge was similarly satisfied that the CEO had a reputation in England and Wales. But again, the limited publication of GEDI's articles, and of the single Società Editoriale article in which he had featured, meant that the CEO had not demonstrated a good arguable case on serious harm.

Finally, Jay J held that Napag Italia, having ceased trading in May 2019, did not have a trading reputation in the jurisdiction at the time of the articles' publication. The judge held that even if this were otherwise, Napag Italia had fallen short of establishing that it had suffered serious harm to its reputation in England and Wales, never mind serious financial loss such as to satisfy [DA 2013, s 1\(2\)](#).

Case details:

- Court: High Court of Justice, Queen's Bench Division (Media & Communications List)
- Judge: Jay J
- Date of judgment: 13 November 2020

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