Reporting defamatory allegations without imputing guilt

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IP & IT analysis: What are the risks when reporting on potentially defamatory allegations? David Bowden, freelance independent consultant, considers the decision in Hiranandani-Vandrevala v Times Newspapers Ltd and talks to Adam Wolanski, a media law barrister at 5RB, and Jill Bainbridge, a partner in the media law department in Blake Morgan LLP, about the repetition rule and what lessons can be learned from this case.

Original news

Hiranandani-Vandrevala v Times Newspapers Ltd [2016] EWHC 250 (QB), [2016] All ER (D) 140 (Feb)

The Queen's Bench Division in a claim for libel by the claimant against the defendant newspaper, considered the 'repetition rule' and made a preliminary ruling on the issue of the meaning of the words in an article published in the paper and online version of the newspaper.

What is the background to this dispute?

David Bowden (DB): This is an action for libel, malicious falsehood and breach of the Data Protection Act 1998 brought by Ms Hiranandani-Vandrevala in relation to articles published in the print and online editions of the *Sunday Times* for 23 August 2015. The headline was 'Hunt on for AIM firm's missing £350m: alleged fraud by the former chief of Hirco has raised more concern about the junior stock market'. Master Eastman directed a trial of a preliminary issue to determine the meaning of the articles for the purpose of the libel claims.

The claimant alleged that the article meant that '£350 million is missing from Hirco's accounts because it has been misappropriated and/or fraudulently obtained by the claimant and other members of her family'. The defendant said it bore a lesser meaning of 'reasonable grounds to suspect fraud'.

What is the repetition rule and what was said to be its relevance here?

Adam Wolanski (AW): The repetition rule provides that a statement prefaced by words such as 'it is alleged that…' will be taken to mean the substance of what is alleged. So, for instance, the publication of the libel, 'X is alleged to be a fraudster', will be treated as meaning that X is a fraudster. A defendant cannot prove that such a statement is true merely by calling evidence that the allegation was made.

In this case, the claimant contended that the inclusion within the article of extensive citations from assertions made by Hirco within an arbitration document engaged the repetition rule, and precluded the court from finding the articles to bear a lesser meaning than guilt of fraud.

What did the court decide?

AW: The court rejected the claimant's approach to meaning, describing it as 'artificial'. It distinguished the case of *Stern v Piper* [1997] QB 123, [1996] 3 All ER 385 since in that case the article under consideration only contained defamatory extracts from an affirmation made in court proceedings. By contrast, here the articles also contained denials by the claimant, as well as other statements which demonstrated that the allegations made by Hirco continued to be strongly contested.

The court said that, instead of approaching meaning in two stages as contended for by the claimant, it should simply construe the article as a whole. This was consistent with the Court of Appeal decision in *Shah v*

Standard Chartered Bank [1999] QB 241, [1998] 4 All ER 155 as well as with the principles on meaning explained in *Jeynes v New Magazines Ltd* [2008] EWCA Civ 130, [2008] All ER (D) 285 (Jan). Any 'bane' and 'antidote' within the article should be taken into account when deciding whether the article bore a meaning of 'guilt' or some lesser meaning.

The judge also rejected the claimant's argument that this conclusion would have the effect of rendering substantial parts of the law of qualified privilege meaningless. If a court concludes that an article bears a meaning lower than guilt, and a defendant relies on a defence of truth, that defendant will still have to show that there were objectively reasonable grounds to suspect that a claimant was guilty.

Here, the judge ruled that the articles bore a meaning of 'cogent grounds to suspect' fraud, rather than guilt, having regard to:

- the denials on the part of the Vanrevalas in the articles
- the frequent use of words such as 'alleged', and
- the fact the defendant did not adopt the allegations as its own

In coming to this conclusion the judge considered an earlier decision in *Charman v Orion Publishing Group Ltd* [2005] EWHC 2187 (QB), [2005] All ER (D) 152 (Oct).

What can defamation practitioners learn from this ruling?

AW: The case demonstrates the significance of denials and other balancing materials within articles which contain defamatory allegations. Had the court accepted the claimant's arguments on the principles to be adopted in assessing meaning, this would have made it difficult for the media to report defamatory allegations made by third parties without imputing guilt, thereby rendering the articles more difficult to defend as true.

Interestingly, the court also ordered that costs management should take place before a defence was served. It had regard to the very substantial costs already incurred by the claimant in connection with the meaning trial, and held that the next step in the litigation should be an exchange of costs budgets. It rejected the claimant's argument that budgets could not be prepared without first seeing how the defendant would plead its defence. This demonstrates the increasingly proactive approach to costs management taken by the courts in defamation cases.

Jill Bainbridge (JB): It is clear from this case that it is important to look at the article as a whole which includes the fact that in this case the report referred to denials from the claimant as well as the report of defamatory allegations. The repetition rule here had only a very limited role to play and when looking at the article as a whole the level of meaning was reduced to one of effectively 'reasonable grounds to suspect'.

How does all this fit in with other developments in this area?

JB: This case demonstrates the increasing willingness of the court to tackle fundamental questions as preliminary issues and claimants must be prepared for this particularly when considering cost estimates.

Do you have any predictions for future developments?

JB: Preliminary issue hearings on meaning are likely to become more common. Over time it is likely that this case will be distinguished on its facts.

Interviewed by David Bowden.

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