IN THE HIGH COURT OF JUSTICE **QB-2019-001964**
QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

B E T W E E N

RACHEL RILEY

Claimant

and

LAURA MURRAY

Defendant

CLAIMANT'S SKELETON
7 April 2020

References in bold and square brackets are to the hearing bundle thus: **[Tab/page number]**.

Paragraph references within documents are denoted by the symbol **§** and within cited cases and textbooks by square brackets **[ ]**.

The parties' rival meanings are set out on a separate page at the back of this skeleton.

Pre-reading (30 minutes, not incl. skeletons)

- Tweet complained of **[12/35]**.
- PoC **[3/7]**
- D's case on the preliminary trial issues ("the D's case") **[4/11]**

1 Further to the order of Master Yoxall of 11 October 2019 **[1/1 - 4]**, this is the trial of the following preliminary issues in this libel claim:

(I) Meaning

(II) Whether the WCO constitute fact or opinion

(III) Whether the WCO defame the C at common law.

2 The tweet complained of ("**TCO**") was published by the D on 3 March 2019 (**[12/35]**). It is reproduced here with the numbering **(1) - (3**) added:

(1) Today Jeremy Corbyn went to his local mosque for Visit My Mosque Day, and was attacked by a Brexiteer.

(2) Rachel Riley tweets that Corbyn deserves to be violently attacked because he is a Nazi.

(3) This woman is as dangerous as she is stupid. Nobody should engage with her. Ever.

3 C's meaning is set out at §4 of her PoC **[3/8]**, D's meaning is at §4 of its case **[4/12]**.

(I) MEANING

Law

4 The relevant principles are set out in *Koutsogiannis v The Random House Group Limited* [2019] EWHC 48 (QB) at [10] - [15].

5 The way in which a reader might read a tweet is dealt with in *Stocker v Stocker* [2019] 2 WLR 1033 at [38] - [46], in particular:

> The judge tasked with deciding how a Facebook post or a tweet on Twitter would be interpreted by a social media user must keep in mind the way in which such postings and tweets are made and read." He made a number of observations about context as a means of evaluating how a reader would read something published on social media - see e.g. [44] citing Nicklin J in *Monir v Wood* [2018] EWHC 3525 (QB) in respect of the determination of the meaning of tweets:
>
> [90] "It is very important when assessing the meaning of a Tweet not to be over-analytical … Largely, the meaning that an ordinary reasonable reader will receive from a Tweet is likely to be more impressionistic than, say, from a newspaper article which, simply in terms of the amount of time that it takes to

read, allows for at least some element of reflection and consideration. The essential message that is being conveyed by a Tweet is likely to be absorbed quickly by the reader."

6 On the instant facts, the reasonable reader would have read the TCO in one go (before moving further down his or her timeline) and absorbed its very simple message. The TCO is self-contained. Nothing in it suggests that the reader needs to bear in mind other information in order to discern/amplify/qualify its meaning. The D made a simple accusation in a straightforward and unambiguous manner.

Context and extrinsic facts

7 The C's case is that meaning should be determined from the TCO, taking into account the context of being published on Twitter to the D's followers, but nothing else.

8 At §§2(a) - (e) of the D's case (**[4/11-12]**), she relies upon external facts in support of her case on the natural and ordinary meaning of the TCO. She refers to these facts as providing "context".

9 In determining meaning, external facts may be relied upon where there is a pleaded legal innuendo. In such a case, the party relying upon the innuendo must prove as a matter of fact that a particular group of readers read the WCO with knowledge of the pleaded facts. If the relevant party proves that a group of readers held that knowledge, the court will then divine an innuendo meaning based upon how the reasonable person would read the WCO with knowledge of the external facts. The D has not pleaded a reverse innuendo and does not appear to wish to prove that all or a section of the readership actually knew the pleaded external facts. If her intention is to advance such a case at trial, it must therefore fail.

10 In *Monroe v Hopkins* [2017] 4 WLR 68 at [35] and [37] - [38] three categories of external facts/publications are identified which the reasonable reader might be assumed to be aware of when reading a tweet. Such facts/information are referred to as context:

10.1 Facts which are so well-known that everybody knows them and therefore the reasonable reader is assumed to have known them at the time of reading the WCO. In *Monroe* the fact of a general election which took place less

than two weeks prior to publication was deemed to be such a fact. This was part of the *ratio*. Those parts of the judgment regarding the other two categories were *obiter*; neither side advanced a case which related to them (although later authorities have arrived at a similar *ratio* on the issue of when and how to take account of hyperlinks).

10.2 Whilst not relevant on the instant facts, a category of context concerned facts which the reader is invited to read via the medium of a hyperlink embedded in the WCO or something similar (for instance, it is submitted, an exhortation to read other readily available information as part of the WCO). It is submitted that in order for the court to consider such extrinsic information, it must be satisfied that the WCO themselves made it clear that the reasonable reader was meant to follow the hyperlink/obey the exhortation and that the reasonable reader would have followed it and read the extrinsic material[1], thereby satisfying the test in *Dee v Telegraph Media Group Ltd* [2010] EWHC 924 (QB); [2010] EMLR 501 at para 29 (Sharp J), that the different publications be read as one publication (see below). Such physically extraneous material would have to be of such a kind as to form "part of the tweet as a whole" (*Monroe* [37]). It is submitted that for this to be the case, the reader would be expected to read the extraneous material almost immediately after the WCO, as if the relevant material formed part of the WCO.

10.3 Facts which are "on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader's view, or in their mind, at the time they read the words complained of." (*Monroe* [37]). Assuming that this is a question of fact rather than law, it is submitted that "likely" must mean "more likely than not". This category is considered in further detail below.

11 The passages from Warby J's judgment in *Monroe v Hopkins* from which the above three categories are derived are set out below (in the *Stocker* judgment only [35] was quoted in those passages which considered context):

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[1] Factors beyond the WCO themselves will include e.g. the number of hyperlinks in the WCO (the more links, the less a reader can be expected to follow them) and the length of the material which has been hyperlinked (the longer it is, the less a reader can be expected to read it).

35. . . . this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter.

. . .

37. There has been some debate about another issue: what are the limits of categories (a) and (b) at para 35 above? How much should be regarded as known to a reader via Twitter, or as general knowledge held by such a reader? I am not sure that the answers matter a great deal for the resolution of the question that I am now addressing, or for the outcome of this case overall. But in principle the main dividing lines seem reasonably clear. A matter can be treated as known to the reader if the court accepts that it was so well known that, for practical purposes, everybody knew it. An example would be the fact that the Conservatives formed a government after the 2015 general election. A matter can be treated as known to the ordinary reader of a tweet if it is clearly part of the statement made by the offending tweet itself, such as an item to which a hyperlink is provided. The external material forms part of the tweet as a whole, which the hypothetical reader is assumed to read. This much seems to be common ground in this case. Ordinary readers of the tweets complained of had information that a war memorial had been sprayed with offensive graffiti.

38. The third point concerns material on Twitter that is external to the tweet itself. This is perhaps less straightforward. I would conclude that a matter can be treated as part of the context in which an offending tweet if it is on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader's view, or in their mind, at the time they read the words complained of. This test is not the same as but is influenced by the test for whether two publications are to be treated as one for the purposes of defamation: *Dee v Telegraph Media Group Ltd* [2010] EWHC 924 (QB); [2010] EMLR 501 at para 29 (Sharp J).

12 The test formulated by Sharp J in *Dee* was that an article other than that

complained of would be read as if part of the WCO if both "*were sufficiently closely connected as to be regarded as a single publication*" [29]. The classic example being a cross-referenced or related series of articles in a single newspaper.

13 The category concerning information which was so well known that everybody knew it is straightforward.

14 The C makes the following submissions in regard to the third category, other information on Twitter (which appears to be what the D seeks to rely on at §§2(b) - (e) of her case).

14.1 The rule in *Dee*, or, as it was put in *Monroe*, the influence of that rule, cannot be side-stepped.

14.2 A meaning can only be derived from two discrete tweets if it is reasonable to expect the reader to read the WCO having already read the other tweet. A defendant will need to present a compelling case before such an assumption could be made. A D cannot reasonably expect the sting of her WCO to be drawn by an antidote in a tweet found elsewhere (or for the defamatory sting to be altered by reason of knowledge of the other tweet). This is particularly so in regard to contextual information published by third parties because the reader will be less likely to qualify what the D has said because of what other people have said on earlier occasions.

14.3 There will need to be some sort of real and obvious link between the TCO and the extraneous tweets/information beyond mere shared subject matter.

14.4 It is difficult to envisage circumstances in which the third category of context would apply, save, for instance, where it is part of the same thread published by the defendant (in which case the situation becomes analogous to the *Dee* scenario where there are related articles in one newspaper, in which case the second category is more apt).

14.5 The D cannot rely upon information which the reasonable reader might discover after reading the TCO.

14.6 A real and meaningful nexus between the WCO and the particular pieces of extraneous information must be established. Shared subject matter is not enough.

14.7 A serious problem is likely to arise where one party seeks to rely on particular pieces of information published elsewhere on Twitter. Why should the court assume that a reader had read tweet A, pleaded by a defendant, but not tweet B, C, D and so on, not pleaded by a defendant? On the D's reasoning, the court could not properly evaluate the proper context in which the TCO was read without reading everything published on the issue on Twitter at the time the reasonable reader read the TCO. One cannot assume that the reasonable reader read all of the related information on Twitter and therefore it cannot be assumed that the reader only read the selected pieces of information relied upon by the D.

D's case on "context"

15 Further to §2(a) of the D's case, it does not matter whether or not the attack on Mr Corbyn was known to the reasonable reader by reason of extraneous information because:

15.1 The facts concerning the attack are set out in paragraph (1) of the TCO.

15.2 The relevant part of the TCO is not about the attack on Mr Corbyn, the relevant part reports the C's purported tweet following the attack; this is what the TCO is about and is the basis for the defamatory sting.

16 Further to §2(b) of the D's case, she advances no case as to why the reasonable reader should be assumed to have read C's "Good advice" tweet at **[7/26]**. In any event, even if the reasonable reader were assumed to have read the "Good advice" tweet prior to reading the WCO, he or she would not have realised that it was supposedly the same tweet which said: (2) "Corbyn deserves to be violently attacked because he is a Nazi." The reader would have simply assumed that on some other occasion the C had tweeted: "Corbyn deserves to be violently attacked because he is a Nazi." The D's stated subjective intention supposedly to comment on the "Good advice" tweet is irrelevant.

17 The D gives no reasons as to why the facts set out by the D at §2(c) - (e) of her case (**[4/11-12]**) were likely to or ought to have been in the reasonable reader's mind at the time he or she read the TCO. If the D wants to rely on such context, it is her burden to establish some sort of case as to why the pleaded facts ought to have been known to the reasonable reader at the time

of reading the TCO. Thus far, no such case has been advanced.

18 The D cannot assert that the reasonable reader would have sought out material published on Twitter by the C immediately after reading the TCO because the D instructed readers not to do so "Ever".

19 The TCO was self-contained and included at its core a report of what the C had done: the D had tweeted that "Corbyn deserves to be violently attacked because he is a Nazi." Even if the other contextual information was known, there was no reason to take account of it and no reason why it would have influenced the reader's perception of the TCO. This was especially so given that the TCO was posted by the D on her own timeline; it was not a reply to a tweet made by the C (D WS §§27 - 30 **[5/22]**). It was directed at the D's followers/supporters/fellow-travellers. They were listening to and being guided by the D, not the person condemned by her.

The rival meanings

20 Given the brevity and unambiguous language of the TCO, it largely speaks for itself but the following points are made:

20.1 In regard to the D's meaning pleaded at §4 of her case **[4/12]**, the words "meant that" in §4(a) cannot apply. The TCO reports what the C has actually written: (2) The C has tweeted that: "Corbyn deserves to be violently attacked because he is a Nazi."

20.2 The accusation that the C is dangerous at (3) is linked to violence, it is not a general accusation (e.g. her views are dangerous). She is literally dangerous because she incites/encourages violence.

20.3 At (3) the D exhorts the reasonable reader to boycott/shun the C altogether, not to have anything to do with her ever. This is the obvious reaction to a dangerous person who incites/encourages violent acts; she is beyond the pale.

The C's innuendo meaning

21 The C has pleaded an innuendo meaning in the alternative (PoC §§4 - 5 **[3/8]**). This focuses on the use of the word engage in (3) " . . . Nobody should engage with her. Ever." If the court does not give this word the contended

natural and ordinary meaning contended for by the D ("boycott her and her tweets"), the same meaning is achieved by reference to the way the word "engage" is used on Twitter.

22 The C's evidence regarding the way "engage" is understood by Twitter users is at **[29/67] - [33/91]**. Engage means to engage with a tweet by retweeting it, liking it, replying to it etc. It connotes some sort of interaction beyond merely reading it. See in particular the definition of engagements at **[27/70]**. The PoC state at §5 (**[3/8]**) that engagement means reading a tweet. This is not wholly correct. Whilst an engagement is evidence that someone has read a tweet, it is possible to read a tweet without engaging by not interacting with the tweet by enlarging it, liking it etc.

(II) FACT OR OPINION OR BOTH

Law

23 The relevant law as to what is recognisable as opinion is set out in *Gatley* [12.7] - [12.14].

Analysis

24 The court must look to the TCO as a whole but it is useful for the purpose of analysis to refer to the three numbered parts.

(1) is a statement of fact.

(2) is a defamatory statement of fact. It is reported as a matter of fact that the C has sent a tweet "that Corbyn deserves to be violently attacked because he is a Nazi." This is the fulcrum/core of the TCO. The WCO are not offering an interpretation of what the C has tweeted, they are reporting what she actually said.

(3) is a general statement of defamatory fact linked to (1) and (2): the C is dangerous and stupid because she incites/encourages violence by tweeting that "that Corbyn deserves to be violently attacked because he is a Nazi." Alternatively, if this is a statement of opinion, it is tethered to the rest of the TCO; it cannot be read/interpreted without reference to the context provided by the rest of the TCO. It is a warning which arises from the behaviour set out at (2). If it is opinion, it would therefore have to be

something like: "Because the sent a tweet inciting/encouraging violence she is dangerous."

"Context"

25 The D's case deals with opinion at §§6 - 7 **[4/13]**. §7 refers to the basis of the opinion but this trial is not concerned with whether the TCO set out the basis of the opinion.

26 To the extent that the D contends that the TCO is interpreted as an opinion by reason of the contextual facts, the C makes the same submissions as set out above.

27 It cannot be assumed that the reasonable reader was aware of the pleaded context and, even if he or she was, it makes no difference. The core/fulcrum of the TCO is the defamatory allegation regarding something that the C actually did, that the C physically tweeted "that Corbyn deserves to be violently attacked because he is a Nazi." The TCO is self-contained. In the very unlikely event that the reasonable reader (who will by definition be one of the D's followers/fellow travellers) knew what the C's "Good advice" tweet said, he or she would not conclude that this was the tweet that the D was reporting/paraphrasing in the TCO because it is so different. If the TCO is a statement of fact, knowledge of the extraneous material could not convert it into a statement of opinion.

(III) Defamatory at common law

Law

28 The law as to what is defamatory at common law is summarised in the 12th edition of *Gatley on Libel & Slander* at [2.1] - [2.5].

Analysis

29 Whether the court accepts either the C's or the D's meaning, both defame the C at common law.

The D's evidence

30 The D's WS is irrelevant to the issues arising. In particular, it offends the following principle set out at [12(ii)] of *Koutsogiannis*: “The intention of the publisher is irrelevant.”

31 6 April 2020 **William Bennett QC**

John Stables

Rival Meanings

C's meaning (§4 of PoC **[3/8]**)

The Claimant has publicly supported a violent attack upon Jeremy Corbyn at a mosque by saying he deserved it. She has shown herself to be a dangerous person who incites unlawful violence and thuggery and is therefore so beyond the pale that people should boycott her and her tweets.

D's meaning (§4 of the Defendant's Case **[4/12]**)

(a) Following an attack on Jeremy Corbyn by a Brexiteer, the Claimant has posted a tweet which meant that Jeremy Corbyn deserves to be violently attacked because he is a Nazi.

(b) It was dangerous and stupid of the Claimant to post such a tweet.

(c) As a result, the Defendant's followers should not reply or respond to the Claimant's tweets on such matters.

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1 The D's 1st skeleton makes no or no sufficient case in regard to nexus i.e. that the various tweets by the D and others were: (a) sufficiently connected to the TCO for them to be collectively read as a single publication; and/or (b) were in the reader's mind at the time the TCO was read and that the reader made the connection between the extraneous facts and the TCO. Even hyperlinked material is not assumed to form part of the publication in issue unless a defendant is able to make out a case that the reasonable reader would have followed the hyperlink and read the extraneous material. The same would apply in the *Dee* scenario; it is not assumed that because two articles are in the same newspaper that the reasonable reader read both. The court must be satisfied that in the circumstances the reasonable reader would have found the article not complained of, read it and connected it with the article complained of.

2 There is no reason on the instant facts to assume that the reasonable reader knew about the "Good advice" tweet before reading the TCO. One cannot expect a reader to have fortuitously/coincidentally researched the subject matter of the TCO prior to reading the TCO.

3 In the very unlikely event that the reasonable reader had read the "Good advice" tweet, no convincing reason is advanced in the D's skeleton as to why he or she would have realised that the TCO was referring to the "Good advice" tweet. At most the reader would have been confused and uncertain, unable to conclude that the TCO concerned something other than the C's tweet that "Corbyn deserves to be violently attacked because he is a Nazi".

4 The reasonable reader cannot be assumed to know that the C had only tweeted the "Good advice" tweet about the attack. A rational explanation in the mind of the reasonable reader for paragraph (2) of the TCO would be that there was, or probably was, another tweet of the type referred to at paragraph (2) of the TCO. At least, there would be such confusion that the reader would not actually conclude that the TCO referred to the "Good advice" tweet.

6 April 2020

William Bennett QC

John Stables