Case No: HQ13D05592

Neutral Citation Number: [2014] EWHC 130 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 February 2014

THE HONOURABLE MR JUSTICE TUGENDHAT

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Between :

RBOS SHAREHOLDERS ACTION GROUP LTD	**Claimant**
- and -	
(1) NEWS GROUP NEWSPAPERS LTD & (2) CHRISTOPHER MUSSON	**Defendants**

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Justin Rushbrooke QC (instructed by **Hamlins LLP**) for the **Claimant**
Desmond Browne QC and Clare Kissin (instructed by **RPC**) for the **Defendants**

Hearing dates: 23 January 2014

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Judgment

Mr Justice Tugendhat :

1. The Claimant in this libel action applies to the court for an order that the issue of meaning be tried by the court as a preliminary issue.

2. The Claimant describes itself as a company founded in order to pursue a legal claim on behalf of those Royal Bank of Scotland ("RBoS") shareholders who subscribed for shares in the rights issue which took place from April 2008 until 6 June 2008. That claim is against RBoS and its directors, who, it is alleged, provided misleading information to such shareholders.

3. The claim in this action against the First Defendant is as publisher of *The Scottish Sun* newspaper. The claim is in respect of both the hard copy version and the online version (which is still accessible online). The Second Defendant, Mr Musson, is the Scottish Home Affairs Editor. The claim is in respect only of publications in England and Wales.

4. In the issue of *The Scottish Sun* dated 12 May 2013 there were circulated the words complained of. Following an immediate complaint by letter, and other correspondence, on 21 November 2013 the claim form was issued. It was served on 25 November, with Particulars of Claim dated 4 December 2013. The application now before the court was issued on 15 January.

5. At the start of the hearing there was a dispute as to whether I could grant this application before the time had elapsed within which each party to a libel action has the right to ask for trial by jury (CPR r26.11 provided that this was 28 days of service of the defence, but that has recently been amended, and I did not have to decider which version of the rule applies). No Defence has yet been served. Where a party exercises, or may still apply to exercise, the right to a trial with a jury, the court cannot make a ruling on the actual meaning of any words complained of. That would be an issue for the jury to decide.

6. However, the real procedural issue between the parties was that the Defendants wanted this application to be adjourned, to be heard at a later date together with an application which they propose to issue for an order striking out the claim as an abuse of the process of the court, alternatively for summary judgment. However, during the course of submissions Mr Browne received instructions that the Defendants would not be applying for trial by jury. Once that had been made clear (although Mr Browne did not consent to my doing this) I decided, for reasons set out below, that justice required that in this case I decide the issue of meaning on the Claimant's application, and that I decide it at this hearing.

THE LAW

7. The principles governing a meaning application are as summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [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) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation …' …. (8) It follows that 'it is not enough to say that by some person or another the words *might* be understood in a defamatory sense.'"

8. In the case of a corporation, trade union, or charitable organisation what counts as defamatory was explained in *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534 at 547 (cited in *Jameel (Mohammed) v Wall Street Journal Europe Sprl* [2006] UKHL 44; [2007] 1 AC 359 [16]-[17]). Lord Keith said:

> "The authorities cited above clearly establish that a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business. Examples are those that go to credit such as might deter banks from lending to it, or to the conditions experienced by its employees, which might impede the recruitment of the best qualified workers, or make people reluctant to deal with it. The *South Hetton Coal Co* case [1894] 1 QB 133 [*South Hetton Coal Company Limited v North-Eastern News Association Limited*] would appear to be an instance of the latter kind, The trade union cases are understandable upon the view that defamatory matter may adversely affect the union's ability to keep its members or attract new ones or to maintain a convincing attitude towards employers. Likewise in the case of a charitable organisation the effect may be to discourage subscribers or otherwise impair its ability to carry on its charitable objects".

9. Lord Keith did not mention corporations such as the Claimant. But their position must at least be analogous to that of trade unions or charitable organisations, neither of which trade for profit.

10. To be actionable as a defamation the meaning of words complained of must surmount a threshold of seriousness: *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414; [2010] EMLR 25, [2011] 1 WLR 1985 paras [89]-[90]; *Cammish v Hughes* [2012] EWCA Civ 1655; [2013] EMLR 13 at para [38]. And in the application which the Defendants have said they would make, but have not yet made, they will rely on *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 ("*Jameel v Dow Jones*").

11. In that case the Court recognised that it was appropriate to have regard to Art 10 of the Convention in deciding whether a claim should be allowed to proceed at all, and

that consideration of freedom of expression could not be left to be addressed only at the stage when a defendant was serving a defence. The court said:

> "40. We accept that in the rare case where a claimant brings an action for defamation in circumstances where his reputation has suffered no or minimal actual damage, this may constitute an interference with freedom of expression that is not necessary for the protection of the claimant's reputation… 55. There have been two recent developments which have rendered the court more ready to entertain a submission that pursuit of a libel action is an abuse of process. The first is the introduction of the new Civil Procedure Rules. Pursuit of the overriding objective requires an approach by the court to litigation that is both more flexible and more proactive. The second is the coming into effect of the Human Rights Act 1998. Section 6 requires the court, as a public authority, to administer the law in a manner which is compatible with Convention rights, in so far as it is possible to do so. Keeping a proper balance between the article 10 right of freedom of expression and the protection of individual reputation must, so it seems to us, require the court to bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the claimant's reputation, which includes compensating the claimant only if that reputation has been unlawfully damaged".

12. It is trite law that, as stated in *John v MGN Ltd* [1997] QB 586 at p607:

> "In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place."

13. The courts now commonly refer to various (usually three) different levels of possible defamatory meaning as explained in *Chase v News Group Newspapers Ltd* [2003] EMLR 218, [2002] EWCA Civ 1772 at 45:

> "The sting of a libel may be capable of meaning that a claimant has in fact committed some serious act, such as murder. Alternatively it may be suggested that the words mean that there are reasonable grounds to suspect that he/she has

> committed such an act. A third possibility is that they may mean that there are grounds for investigating whether he/she has been responsible for such an act."

14. The court is not bound to choose between the contentions of the parties as to what the words complained of mean. Judges must make up their own minds.

15. In addition to the meaning of the words the court should normally also decide at the same time whether the words are fact or opinion: *Cammish v Hughes* [2012] EWCA Civ 1655; [2013] EMLR 13 at [38].

16. Mr Browne submits that the issue of seriousness (as that term is used in *Thornton*) is what the editors of Gatley on Libel and Slander (12th ed) refer to, at para 2.4, as

> "a multi-factorial question that must be viewed in the light of the rights in art 8 and art 10, and that will require the court to consider matters such as the nature and inherent gravity of the allegation, whether the publication was oral or written, the status and number of publishees and whether the allegations were believed, the status of the publisher and whether this makes it more likely that the allegation will be believed, and the transience of the publication".

17. Mr Rushbrooke does not dispute that in considering whether a claim is an abuse of the process of the court (*Jameel v Dow Jones*) all of these factors may be relevant, just as they are at a trial. But he submits that what is referred to in that passage (and in *John v MGN Ltd*) as "the inherent gravity of the allegation" is a question normally to be answered on a determination of meaning by looking only at the words complained of in their pleaded context, which includes the identity of the claimant.

18. Applications for a preliminary issue to determine the actual meaning of words complained of have been granted with increasing frequency in recent years, pursuant to the overriding objective to try a case justly and at proportionate cost (CPR r1.1 and *Hamaizia v Commissioner of Police for the Metropolis* [2013] EWHC 848 (QB) at para [54]). If the inherent gravity of an allegation has to be determined only as part of the larger investigation and a balancing of rights under Art 10 and (where applicable) Art 8, then much of the benefit of an early determination of meaning (in terms of speed and costs) will be lost. There have been numerous reported cases in recent years where the court has determined meaning by reference to the pleadings, without consideration of the many other factors which are relevant to the seriousness of a libel when assessing damages or when determining whether the claim is an abuse of the process of the court. Such matters commonly include a volume of evidence, such as the Defendants say they are in the course of assembling in this case.

19. Further, Mr Browne submits that, if the action is not struck out at this stage, the Defendants may wish to plead a *Reynolds* public interest defence. In such a case meaning may not need to be determined. However, the parties have agreed that time for service of the defence be extended, and it has not yet expired. So it is not yet known whether a public interest defence will be pleaded or not. Nor do the Defendants expect to serve a Defence before the hearing of the application to strike out which they propose to make.

20. Mr Browne also states that the grounds on which the Defendant are proposing to apply to strike the action out include a submission that, as a non-trading company, which is claiming no special (or monetary) damage, the Claimant has no right to sue at all. In my judgment that is a separate point from the issue of meaning. That the Defendants propose to raise that point is not a reason why I should adjourn the present application.

21. In my judgment, in the circumstances of this case (and perhaps most cases) the court is required to determine the meaning of the words complained for the purpose (amongst others) of establishing the level of gravity, whether on the three tiers identified in *Chase* or somewhere in between, and to do this without evidence. There is a distinction to be drawn between the level of seriousness or gravity of a meaning (which is largely dependent on the words complained of and the identity of the claimant) and the seriousness of a libel (which embraces additional factors, such as the extent of the publication and the identity of the publishee(s) or their relationship to the claimant). This is illustrated by *Jameel v Dow Jones* where the meaning complained of was of the utmost gravity (funding terrorism) but the libel within the jurisdiction was not, because the allegation was published to only five publishees, three of whom were "in the claimant's camp", and two of whom had never heard of the Claimant (*Jameel v Dow Jones* at paras [18] and [68]).

22. The order in which the court should decide a preliminary issue on meaning, and other issues raised by the parties, is a case management decision which will depend on the circumstances of each case: CPR r3.1(2)(j).

23. It is common ground that in the course of hearing the Defendants' applications (assuming they are made) the court would at least have to take a view as to the seriousness of the meaning of the words complained of. For reasons of case management, the court would, if possible, be likely to determine the actual meaning, that is to say, the issue raised by the Claimant on the present application. It may be that, in some cases, the determination of meaning will be carried out as one factor amongst others in the course of an application to strike the case out as an abuse of process (as the Defendants submitted should be done in this case). But the mere fact that a defendant intimates that it is proposing to apply to strike a claim out, should not of itself preclude the court from determining the level of gravity of the allegation as it would appear to the hypothetical reasonable reader knowing only what is written and what is common knowledge.

24. It is for these reasons that I decided to proceed to determine the actual meaning of the words complained of. This determination does not preclude an application at a later date by the Defendants to strike out the action as an abuse of process. But, in the event that the Defendants do make such an application, the finding I make will clearly be one factor that will have been established, and will not need to be revisited. And if I were to decide today that the meaning of the words complained of was at a certain level of gravity (whether high or low), then the Defendants might wish to reconsider whether an application to strike out on *Jameel* (or other) grounds was appropriate.

THE WORDS COMPLAINED OF

25. The hypothetical reasonable readers of the words complained of are publishees in England and Wales of a newspaper circulated mainly in Scotland. Although the

circulation in England and Wales may be a relatively small proportion of the whole, the newspaper is aimed at a mass market readership.

26. The words complained of are as follows:

"**Murky past exposed of man behind fight for RBS investors**

(1) **THOUSANDS of investors suing Royal Bank of Scotland forked out £5million to a firm founded by a man branded a FRAUDSTER.**

(2) An investigation by The Scottish Sun can reveal shady businessman Gerard Walsh is behind a high-profile £4billion legal action against Fred 'The Shred' Goodwin and his former RBS bosses.

(3) But Walsh's track record will horrify the 12,000-plus people who paid at least £350 each to join the RBoS Shareholders Action Group in a bid to claw back savings lost in the 2008 banking crash.

(4) The Irish tycoon, who allegedly bragged of links to terrorists, formed the group and still works behind the scenes. But our probe found:

(5) A JUDGE once ruled he was "guilty of fraudulent misrepresentation" by posing as a Lamborghini dealer — to rake in cash for supercars that were NEVER delivered.

(6) HIS assets were frozen and he's being chased for £15MILLION in an ongoing fraud case in England.

(7) A TANGLED business empire linked to him went into administration owing £85.5MILLION.

(8) HE promised to donate £2.5million to Cardiff University but it never arrived, a probe claimed.

(9) AN investment firm linked to him was blamed for plunging a football club into administration.

(10) WALSH was made BANKRUPT while setting up the RBS scheme but still worked behind the scenes.

(11) HE goes by different dates of birth and middle names on public records, switching between 'Joseph' and an Irish version, 'Sheosamh'.

(12) Last night a source said: "The RBoS legal action could be successful. On the other hand, it could end up nothing more than a pay-day for lawyers."

Lavish ... Walsh's plush apartment in London's Belgravia

(13) Walsh, who gives his address as a luxury apartment in London's posh Belgravia, set up RBoS Shareholders Action Group Ltd in 2009.

(14)*Internet records show the scheme's official website is registered in his name, and his daughter Rachel Marie Walsh, 28, was also a director for a period.*

(15)The group has persuaded thousands of RBS shareholders, including pensioners — who lost an average of £4,500 each in the 2008 crisis — to pay into a fund to chase the joint action.

(16)In March 2012, the scheme delivered letters threatening legal action to the bank's former CEO Goodwin and his cronies.

(17)And subscriber's numbers shot up from 7,500 to more than 12,000.

(18)Papers were finally lodged at the High Court in London last month.

(19)They claim the bank and its execs — including Goodwin, ex-chairman Sir Tom McKillop and former finance director Guy Whittaker — misled investors into buying more shares in April 2008 months before RBS was bailed out with £45billion of public money.

(20)But senior bank sources argue the £4billion legal claim is throwing good money after bad, and two similar actions in the US FAILED.

(21)On paper, Walsh quit as director of the firm in September 2011 on the same day he was made bankrupt at the High Court in London over unknown debts.

(22)The move prevents people from being company directors or run firms without the court's permission.

(23)But our investigators taped Walsh speaking on behalf of the scheme during his bankruptcy, which ended in September 2012. In another recording, on April 30, 2013, he told us: "We will be in court next month. It's basically going to set out the timescale for the case right through to trial."

(24)Walsh also said he was screening his calls for withheld numbers, adding: "RBS is a huge machine. You never know what they'll attempt."

Bogus ... judge rapped tycoon over Lamborghini leadership

(25)When pressed on what his exact role was, he said: "I'm a volunteer working in the group. There's about 20 volunteers . . we do everything from just filing, to, er, odds and sods. With nearly 13,000 claimants . . it's a massive exercise."

(26)Over the years, he's built up a web of business interests. But on some documents he WRONGLY signs off his birthday — actually September 28, 1957 — as September 27.

(27)Walsh, 55, also uses the middle name from his birth certificate, Joseph, on the RBoS scheme's documents — but the Irish version Sheosamh on other papers.

(28) And on the ‘new incorporation’ form for the RBoS scheme — in a space for his ‘other directorships’ — he gives the old title of a firm whose name change he had personally signed off two years earlier.

(29) In a 1997 case at the High Court in Ireland, Walsh was ordered to pay damages for ‘deceit’ to a London businesswoman.

(30) The judgment said Walsh pretended to own a car dealership in Cork, and took £677,000 as a deposit for nine 202mph Lamborghini Diablos. The victim claimed that, when the deal turned sour, Walsh claimed that he knew people in the IRA and made threats to KILL her kids.

(31) A separate ongoing £15million fraud case against Walsh at London’s Royal Courts of Justice involves an Irish haulage dynasty who claim Walsh acted as their investment adviser — only for their cash to disappear into a web of offshore companies.

(32) Assets of Walsh and a firm called Arkaga Healthcare & Technology Holdings Ltd were frozen as part of the legal action.

(33) Walsh was a director of Arkaga until 2007 and still a shareholder when it crashed in 2008, owing Bank of Scotland £85.5million, according to administrators PwC.

(34) It is the focus of an ongoing probe by the accountancy giants.

(35) The administrators mapped out a complex network of companies in a bid to track down Arkaga’s assets — and concluded a “Gerrard Walsh” was the “ultimate beneficiary” at the top of the tree.

(36) Walsh caused a storm at Cardiff Uni in 2008 when he was awarded “honorary fellowship” after vowing to donate £2.5million to the uni, according to an internal probe.

(37) But the first instalment never arrived and his title was stripped, the investigation found. A report said uni chiefs had thought Walsh was an “individual of considerable wealth who was both well-connected and had a history of philanthropic donations”.

(38) It also found his firm did not pay a bill for hiring uni premises for his 50th birthday party, so bosses set debt collectors on him.

(39) The same year, Irish League footie club Cork City were plunged into financial crisis while owned by the Arkaga empire. And Walsh was said to have been personally involved in recruiting a new manager weeks earlier. Former action group director Roger Lawson said Walsh helped set up the scheme with a business associate — and was a major force in getting the case off the ground.

(40) When we confronted Walsh about his role and if he was a suitable person to be working with the company, he said: “I don’t work for the action group.

(41)"Well, I did photocopying and that sort of thing. Nothing more than that."

(42)He insisted he'd a separate "day job" and was ill, adding "I simply am not in a position to help them in the way I should be."

(43)Walsh branded the claims about IRA links and threats to the woman's kids as "bunkum". He claimed the woman had since admitted the allegations were false.

(44)On the uni scandal, or records with different dates of birth and middle names, he said: "I have no idea what you are talking about.

(45)*"This is a witch hunt. Is it the bank who've put you up to this?"*

(46)Asked about the ongoing fraud claim involving him and Arkaga, he appeared to deny the firm was his, saying: "I had no executive role, I had no running of it."

(47)Last night an action group spokesman said: "Gerard's role is he's a member, but it goes no further."

CASH GIANT BAILED OUT & BATTERED

(48)CRISIS-hit RBS was bailed out with £45billion of public money in 2008 after suffering massive losses.

(49)Months before the crash. bank bosses had raised £12billion by going begging to shareholders.

(50)But it wasn't enough, and the share price had plummeted at the time of the bail-out — hitting those who had been persuaded to plough in more cash.

(51)Bosses including Fred Goodwin were forced to quit, while former Abbey National chief Stephen Hester was brought in as chief executive.

(52)In 2009, the now-scrapped regulator the Financial Services Authority launched a probe into the bank rescue — as RBS axed thousands of staff.

(53)Goodwin and other bosses escaped punishment, but the FSA's report blasted them for "poor management decisions" and "gambling" £50billion on the takeover of Dutch bank ABN Amro.

(54)In January 2012, shamed Goodwin was stripped of his knighthood.

(55)Months later, the RBoS Shareholders Action Group delivered legal letters to the bank and former execs, warning they could be sued.

(56)Hester ran into another storm last year over the fixing the Libor inter-bank lending rate. The scandal led to RBS being fined £390million in the UK and US.

(57) And in July 2012, it emerged the Crown Office's Serious and Organised Crime Division had been investigating the bank over whether a prosecution could be brought on the collapse. The probe is ongoing.

(58) Last month, the overall class action lodged papers at the High Court in London claiming £12billion.

12,000 JOIN LEGAL FIGHT

(59) MORE than 12,000 people have paid into the RBoS Shareholders Action Group scheme to sue the bank and Fred Goodwin for around £4billion.

(60) Contributors must chip in between £350 and £500,000 — depending on how many shares they have.

(61) The scheme website claims a 'wide spectrum' of investors are signed up, including pensioners and 100 firms. But the exact amount raked in is a mystery because the group has not yet published their latest accounts.

(62) But it would exceed £5MILLION — even if all of those paying in were the bottom end of the scale.

(63) Bosses insist fees are "used entirely to pursue our case against the bank and its directors". It's not known if any has gone to Gerard Walsh. But Bryan Johnston, of Edinburgh stockbrokers Brewin Dolphin, said shareholders faced an uphill task to prove RBS chiefs duped them because "incompetence" was not a crime." He added " Other class actions, particularly in America, have one down this road and made a great deal of money for lawyers and others – but not for the shareholders.

(64) He added "Other class actions, particularly in America, have gone down this road and made a great deal of money for lawyers and others – but not for the shareholders.""

SUBMISSIONS OF THE PARTIES

27. The meaning which the Claimant attributes to the words complained of is:

> "In their natural and ordinary meaning, and in the context in which they appeared, the words complained of meant and were understood to mean that it is highly likely, or at least strongly to be suspected, that the Claimant company is being controlled and used by Gerard Walsh as a conduit for the fraudulent misappropriation of funds contributed by its members for his own personal benefit".

28. In support of its submission the Claimant stresses the words of the titles to the articles. The online version is entitled "Murky past exposed of man behind fight for RBS investors". Amongst the words in the body of the article which it stresses are:

i) The words in bold type in the first paragraph referring to it as "a firm founded by a man branded as a FRAUDSTER".

ii) The words in the third paragraph "But Walsh's record will horrify the 12,000 plus people who paid at least £350 each to join the RBoS Shareholders Action Group…"

iii) The various references to fraud in the description of Mr Walsh's history and association with other companies.

iv) The words that "WALSH was made BANKRUPT while setting up the RBS scheme but still worked behind the scenes" (para 10).

v) The picture of a house over the caption "Lavish … Walsh's plus apartment in London's Belgravia", and of a Lamborghini car over the caption "Bogus … judge rapped him over Lamborghini dealership".

vi) The contents of paras 22 to 25 which allege that Mr Walsh had been recorded speaking for the Claimant or the shareholders and admitting that he did work for the Claimant in the capacity, as he claimed, of one of twenty volunteers.

29. Mr Browne submits that the words complained of contain nothing defamatory which refers to the Claimant as opposed to Mr Walsh (who does not sue). In so far as there is a defamatory allegation, he submits that the Claimant is referred to as no more than the victim, or potential victim, of Mr Walsh. Secondly, Mr Browne submits that any meaning which may be defamatory of the Claimant is not sufficiently serious to meet the threshold of seriousness.

30. Mr Browne submits that the highest potentially defamatory meaning that can be attributed to the words complained of is that the Claimant had raised funds from shareholders in RBoS without telling them that behind the company was Mr Walsh, with a record of actual and suspected fraud in commercial dealings.

31. The passages stressed by Mr Browne are:

i) In the first paragraph it is said that the Claimant was "founded" by Mr Walsh, thus referring to the past.

ii) The paragraphs that refer to Mr Walsh in the more recent past, or in the present tense, are para 21 (he resigned as a director in September 2011), paras 25 and 41 (where Mr Walsh is reported as saying that he was one of a number of volunteers who did administrative tasks only) and para 49 where a spokesman for the Claimant is reported as saying that Mr Walsh's role is "as a member, it goes no further than that".

iii) The passage at para 63 in which "the bosses" of the Claimant are quoted as saying that fees are "used entirely to pursue our case against the bank and its directors" and in which the text records that "it's not known if any has gone to Gerard Walsh".

32. Mr Browne submits that the words complained of cannot bear the two most serious meanings contended for by the Claimant, namely that it is highly likely, or strongly to

be suspected, that Mr Walsh is controlling or using the Claimant. Even if the reasonable reader understood that there was an allegation that money had gone from the Claimant to Mr Walsh, it would be unduly suspicious to infer from that that money had been fraudulently misappropriated, rather than paid as proper remuneration for services rendered.

DISCUSSION

33. In my judgment in their natural and ordinary meaning, and in the context in which they appeared, the words complained of meant and were understood to mean that:

> "it is strongly to be suspected that the Claimant company is being controlled and used by Gerard Walsh as a conduit for the fraudulent misappropriation of funds contributed by its members for his own personal benefit."

34. I do not accept that the meaning includes that it is highly likely that this is the position. There is nothing in the words complained of to suggest a high degree of likelihood that he is succeeding in his purpose.

35. While that meaning portrays the Claimant as a victim, that does not, in my judgement, preclude my finding, as I do, that that allegation is defamatory of the Claimant. Such a meaning has a tendency to deter third parties from dealing with, or being associated with the Claimant. In my judgment the hypothetical reasonable reader of the newspaper in question would not be being avid for scandal in understanding that this was the meaning. On the contrary, such a reader would be being over analytical in taking the view that, as a victim, the Claimant's reputation was not damaged. The exculpatory or explanatory remarks attributed to the Claimant and Mr Walsh do not provide what is commonly called an antidote to the bane: they do not allay the grounds for suspicion which the bulk of the words complained of set out. If there is remains an issue as to whether this meaning is fact or opinion, I will hear further argument upon that.

CONCLUSION

36. For these reasons I find that the natural and ordinary meaning of the words complained of is that it is strongly to be suspected that the Claimant company is being controlled and used by Gerard Walsh as a conduit for the fraudulent misappropriation of funds contributed by its members for his own personal benefit. I do not accept that the meaning includes that it is highly likely that this is the position.