

Introduction

The recent Court of Appeal judgment in *Blake & ors v. Fox [2023] EWCA Civ 1000* highlights the importance of context when considering the meaning of a defamatory statement.

The case itself concerns an exchange on social media between a number of celebrities, but the judgment contains a number of reminders of issues that can and do arise in a wide range of scenarios, be that the importance of explaining why you have said something, that what you consider to be opinion may be interpreted by others as a statement of fact, or that the obvious meaning is not always the intended meaning.

Background

The case concerned an appeal by Laurence Fox against a decision as to the natural and ordinary meaning of social media tweets on Twitter (now known as X).

Mr. Fox had taken issue with a supermarket's decision to provide black colleagues with a safe space in response to the Black Lives Matter movement, claiming it promoted racial segregation and discrimination.

In response, Nicola Thorp, an actor who has appeared in *Coronation Street*, tweeted that Mr. Fox was "unequivocally, publicly and undeniably a racist".

The other claimants, Simon Blake (previously a Stonewall trustee) and Colin Seymour (an entertainer who has appeared in *Ru Paul's Drag Race*), then quote-tweeted Mr. Fox's original tweet and accused him of being a racist.

Mr. Fox then tweeted to accuse Mr. Blake and Mr. Seymour of being paedophiles and that Ms. Thorp was "unequivocally, publicly and undeniably a paedophile". Ms. Thorp, Mr. Blake and Mr. Seymour all sued for libel and Mr. Fox counterclaimed.

The claimants argued that their tweets were simply expressions of opinion of Mr. Fox's public statements that had shown him to be racist, whereas his tweets contained an allegation of fact that they were paedophiles. In response, Mr. Fox denied the tweets were at all defamatory, but rather were made in retaliation and that this is what the readers of his tweets would have understood was their meaning.

As is the norm in libel claims, a preliminary hearing was held to determine the "natural and ordinary" meaning of the words, irrespective of what the publisher intended.

The judge determined that the natural and ordinary meaning of each of the claimants' tweets was that he was a racist, and that to call someone a racist is an expression of opinion. But he then treated the claimants differently. He ruled that Mr. Blake and Mr. Seymour had satisfied the second condition of the Defamation Act 2013 for a defence of honest opinion, as they had quoted Mr. Fox's tweets and, therefore, indicated the basis of their opinion, but that Ms. Thorp could not rely on a defence of honest opinion, as her tweet did not quote-tweet Mr. Fox, so had not met this condition, as it had not indicated the basis of her opinion.

Therefore, while all three claimants said essentially the same thing, two can rely on a defence of honest opinion while the third must pursue a defence of truth, primarily because she did not set out why she had made the statement tweeted.

The judge also held that Mr. Fox's tweets were an allegation of fact and were defamatory at common law. Mr. Fox appealed.

The Appeal

The Court of Appeal considered four grounds of appeal. In respect of the claimants' tweets, the Court of Appeal ruled that:

- In its context, the term "racist" was an evaluative statement of Mr. Fox's behaviour and the judge had been correct to find that Mr. Blake's and Mr. Seymour's tweets were statements of opinion. Although Ms. Thorp's tweet could be analysed as a statement of fact or opinion, the judge had not erred in finding that a defence of honest opinion could not be pursued, as the basis of that opinion had not been indicated.
- The judge's decision not to define the term "racist" was correct; the fact that the parties had set out different views about the natural and ordinary meaning of the word "racist" did not impose a duty to resolve that aspect of the dispute at that stage.
- The judge had validly concluded that the claimants were not just saying that Mr. Fox's original tweet showed him to be a racist, but rather were also making the assertion that he was, in more general terms, a "racist".

In respect of Mr. Fox's tweets in response, his case was that the judge had been wrong to reject his argument that the ordinary, reasonable reader would have understood the tweets to be a rhetorical way of rebutting the charge of racism, as opposed to an allegation that the claimants in question were paedophiles.

Mr. Fox's responses to Mr. Blake and Mr. Seymour may have been intended as such, but the Court of Appeal found that his tweets were "short and pithy tweets of between three and six words" that gave the reader "very little else to work with." Mr. Fox could not protest being misunderstood.

However, Mr. Fox was successful in appealing the meaning of his response to Ms. Thorp, as he had adopted the precise wording of the tweet to which he was responding, and which he quoted, with the notable exception of substituting the word "paedophile" for "racist." The Court of Appeal concluded that no reasonable reader could have failed to see this or to discern that it was deliberate. Mr. Fox used the word rhetorically as a way of expressing his strong objection to being called a racist and, therefore, in that context, it was not defamatory.

Comment

This case is not one that radically alters the law, but it is unusual for a preliminary determination of meaning to be appealed.

If there is a general lesson for everyone to be taken from this case, it is to remember the importance of explaining why you have said something, because a fine line can exist between one interpretation of a statement and another, and that from a legal perspective the ramifications can be significant.

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