IN THE HIGH COURT OF JUSTICE **Claim no. KB-2023-002763**

KING'S BENCH DIVISION

MEDIA & COMMUNICATIONS LIST

B E T W E E N:

ANDREW MILNE

Claimant

- and -

SAINSBURY'S SUPERMARKETS LTD

Defendant

DEFENCE

Unless otherwise stated, references to paragraph numbers in this Defence are references to the paragraphs of the Particulars of Claim, issued on 23 June 2023.

1. Paragraphs 1 and 2 are admitted. The Defendant is a retail business operating a network of nationwide stores and online, being a company registered in England and Wales with company number 03261722 and a registered office at 33 Holborn, London, England, EC1N 2HT.

2. In relation to Paragraph 3:

    2.1. It is admitted that a transaction to the value of £24 was made at the Defendant's Birkenhead store at 14:26 on 24 June 2022 for four bottles of Oral Rinse mouthwash, each costing £6.

    2.2. The identity of 'the man' is not admitted because his identity is not sufficiently particularised and, if and until the Claimant provides further or better particulars

in respect of the same, the Defendant is therefore unable to admit or deny this individual, whether he was an employee or agent of the Defendant, or whether it is vicariously liable for his actions. To the extent that the Claimant refers to the security guard who was present at its Woodchurch Road store at the time of the incident and who was then-employed by a third-party security company, namely Mitie Group Plc (employee ID 2176429) ("**the Security Guard**") it is denied that he spoke the words complained of and he has no recollection of the same. Further, the Defendant avers that it is not vicariously liable for the alleged words spoken in any event:

2.2.1. If the words are alleged to have been spoken by the Security Guard, he was an employee of a third-party company, Mitie (a company with which the Defendant had entered into a contract on 18 November 2021 to supply security services, including in its Woodchurch Road store).The Security Guard therefore carried on the business of his employer, Mitie, and not that of the Defendant, and operated under an insurance policy taken out by Mitie. He was entrusted to uphold the public reputation of the Defendant whilst on duty but did not have a relationship akin to employment with the Defendant.

2.2.2. If the words are alleged to have been spoken by an employee of the Defendant, its '*Violence and Aggression Policy'* in force at the time of the alleged incident instructs all employees not to engage in the confrontation or detention of shoplifters or others involved in criminal activity. Accordingly, any such action, if taken by an employee, would amount to an act committed outside the course of their employment for which the Defendant would not be vicariously liable.

2.3. As the Claimant exited the store, the security alarms began to sound, indicating that he was in possession of goods that he had not paid for. The Security Guard approached the Claimant and asked the Claimant to accompany him back to the store. However, the Claimant refused and tried to walk away at which point the Security Guard asked the Claimant again to return to the store.

2.4. The words complained of and the circumstances of the alleged publication are not admitted and the Claimant is put to strict proof of the same. It is noted that:

2.4.1. The words complained of differ from those recorded in the letter of claim dated 18 November 2022 (though not received by the Defendant until served with the particulars of claim). Specifically, the allegation "*I am arresting you for shoplifting*" appears in a different position in the sequence of allegations and the letter of claim did not mention the words "*You are a thief. . . you are stealing my bag"*.

2.4.2. The words ". . . *you are stealing my bag*" are inherently unlikely to have been spoken by the 'security guard' in circumstances concerning the alleged theft of goods from a shop.

3. Paragraph 4 is not admitted and the Claimant is put to strict proof of the same.

4. Paragraph 5 is not admitted. The Defendant has no record of any formal complaint having been made.

5. Paragraph 6 is not admitted and paragraph 2.4 above is repeated. However, if, which is not admitted, the words complained of were in fact spoken as pleaded at paragraph 3, paragraph 6 is admitted.

6. Paragraph 7 is admitted insofar as the offence of theft under s.1 of the Theft Act 1968 is punishable by imprisonment. It is otherwise not admitted, and paragraph 2.4 above is repeated. Further, it is averred that the offence described amounts to shoplifting of an item under £200, which is a summary only offence under s.22A into the Magistrates' Courts Act 1980. This Defence is drafted on the assumption (though not pleaded) that the claim is brought as a slander imputing a criminal offence punishable by imprisonment, which is actionable without proof of special damage. Otherwise, the claim is denied for want of special damage.

7. Paragraph 8 is denied:

7.1. Paragraph 8.1 is not admitted and paragraphs 2.4 and the first three sentences of paragraph 6 above are repeated.

7.2. Paragraph 8.2 is not admitted and paragraph 3 above is repeated. In any event:

7.2.1. Slander gives rise to a separate cause of action in respect of each publication. It is denied that serious harm could be caused to the Claimant's reputation in the eyes of any publishees who (1) witnessed the Claimant purchasing the items, or (2) witnessed the Claimant filing any complaint about the allegation as pleaded at paragraph 8.4, as they would understand any charge of theft to be either a misunderstanding on the part of the accuser, hotly disputed, or otherwise untrue.

7.2.2. Further, it is averred that a majority of, if not all, publishees would be either preoccupied, out of earshot of the alleged exchange (which apparently took place in a busy car park), or otherwise uninterested in the exchange, given that they were merely passers-by.

7.3. Paragraph 8.3 is not understood and the Defendant cannot plead to the same:

7.3.1. the words "*an official security guard employed by Sainsburys*" are not understood, as the Defendant did not directly employ any security guards at its Woodchurch Road store at the time of the alleged incident;

7.3.2. The Claimant fails to set out with any particularity what made the accuser so "clearly" identifiable as a security guard employed by the Defendant.

7.3.3. The last sentence and sub-paragraphs of paragraph 2.2 above are repeated.

8. Paragraph 8.4 is not admitted.

9. Paragraphs 8.5 and 8.6 are outside the Defendant's knowledge and are not admitted save that:

9.1. Even if the Claimant was at one time the Head Server at the local parish church and the Head Boy of a local school (which are not admitted) it is denied that this would result in the Claimant being well known 'in the Prenton area' from 2022 onwards. They are historical, decades-old accolades achieved when the Claimant was a schoolchild, and he is therefore unlikely to be known or remembered by a

substantial number, or indeed any, of the alleged publishees on this basis.

9.2. The Claimant has failed to plead the names of any publishees or explain how they are known to him, contrary to CPR PD 53B paragraph 4.1(2), despite claiming to recognise 1/3 of them (approximately 17 people). In any event it is denied, as it is inherently implausible, that the Claimant recognised 17, or indeed any, of the publishees who happened to be at the supermarket at the same time as him and within earshot of the exchange on 24 June 2022.

10. Paragraphs 8.7 and 8.8 are denied. Paragraphs 7.2 (and sub-paragraphs), 9.1 and 9.2 above are repeated.

11. In the premises, paragraph 9 is denied.

12. Paragraph 10 is not admitted, and the Claimant is put to proof thereof. It is noted that the Claimant pleads no loss beyond mere embarrassment.

Qualified privilege at common law

13. The circumstances of publication are not admitted and paragraph 2.2 (and subparagraphs) above are repeated.

14. In the alternative, to the extent that an individual for whom the Defendant is vicariously liable spoke the words complained of as alleged, the statements were spoken on an occasion of qualified privilege. In the circumstances set out in paragraph 2.3 above, there was a social, legal and/or moral duty on the Security Guard to prevent theft, namely shoplifting. There was also a corresponding interest on (i) the part of members of the public in the immediate vicinity, in receiving information which could cause them to assist in the immediate apprehension of suspected shoplifters; and (ii) the Claimant himself, to ensure that he did not commit a criminal offence by leaving the premises without paying for the goods in his possession.

Mitigation of damages

15. The Claimant pleads at paragraph 8.4 that he did not "*publicly remonstrate with the accuser*". Thus, he apparently chose not to respond to the accusations in the same forum in which they were made, despite having the opportunity to do so, and instead claims that he chose to file a complaint out of earshot of the alleged publishees (albeit paragraph 4 above is repeated). The Claimant therefore unreasonably failed to mitigate his loss by choosing not to correct the record when he had the opportunity to do so.

16. Further, despite suffering the apparent embarrassment pleaded, the Claimant issued his claim on 23 June 2023, one day before the expiry of the one-year limitation period (under s.4A Limitation Act 1980). The Claimant has therefore failed to quickly mitigate any loss suffered by issuing a claim in a timely manner. It is further noted that the Claimant has not pleaded any real harm or damage beyond embarrassment incurred in the intervening year.

17. In the circumstances, the Claimant is not entitled to any of the damages, costs or relief claimed or any other relief.

Jameel abuse/Summary judgment

18. The claim is liable to be struck out as *Jameel* abusive and/or the Defendant is entitled to summary judgment under CPR Part 24.2 for reasons including (but not limited to) the following facts:

    18.1. To the extent that the Security Guard is alleged to have spoken the words of, he denies doing so (and paragraph 2.2 above is repeated);

    18.2. The claim fails for want of serious harm under s.1 Defamation Act 2013:

        17.2.1. Publication was minimal and, at its highest, took place to only 50 publishees – many of whom would not believe the charge or otherwise were not interested in the exchange – as to which paragraphs 3, 7.2 (and subparagraphs), 9.1 and 9.2 above are repeated; and

17.2.2. There is unlikely to be any continuing reputational harm (if there ever was): the words were allegedly spoken over 1 year ago to individuals who likely did not know the Claimant (as to which paragraphs 9.1 and 9.2 above are repeated), grapevine percolation is inherently improbable in these circumstances (and – in any event – is not pleaded), and the Claimant has not identified any real harm suffered beyond a bare plea of embarrassment.

19. Accordingly, the claim is bound to fail and/or is 'not worth the candle', in that the costs and court time required by this litigation are likely to be disproportionate to the minimal, if any, vindication obtained. However, the Defendant reserves its position in this respect pending responses to its Part 18 request served on the Claimant on 8 August 2023.

LILY WALKER-PARR

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STATEMENT OF TRUTH

The Defendant believes that the facts stated in the Defence are true. The Defendant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised by the Defendant to sign this statement.

Full name: Dafydd Pugh

Position or office held: Head of Dispute Resolution

Signed: 

Date: 22 August 2023