

BETWEEN:-

SIR STELIOS HAJI-IOANNOU

Claimant

- and -

**(1) TELEGRAPH MEDIA GROUP LIMITED
(2) BEN MARLOW**

Defendants

PARTICULARS OF CLAIM

THE PARTIES

1. The Claimant is a well-known entrepreneur, and philanthropist and the founder, owner and sole director of easyGroup Limited (www.easy.com). Through easyGroup the Claimant is the creator and owner of the “easy” family of brands including the easyJet brand which he licences to easyJet PLC (“**easyJet**”). the company which operates the well-known airline. In addition to his interest in the easyJet brand he also controls with his family 33% of the shares in easyJet (before an equity raise which increased the number of shares announced on 24 June 2020 by easyJet).
2. The First Defendant is the publisher of the Daily Telegraph, a national daily broadsheet newspaper with an extremely large circulation. The First Defendant is also the publisher and operator of the website www.telegraph.co.uk (“**the Website**”) which is the online edition of the Daily Telegraph and publishes articles in electronic form. Articles published on the Website are accessible both in this jurisdiction and abroad via different platforms including personal computers, tablets, mobiles, Facebook and Twitter.
3. The Second Defendant is a senior journalist and the Chief City Commentator at the Daily Telegraph.

THE ARTICLE

4. On 7 May 2020, the Defendants published or caused to be published to a very large but unknown number of readers both within and outside the jurisdiction an article (“**the Article**”) on the Website entitled “*Has sun gone to SHI’s head?*” which contained the following words defamatory of the Claimant:

“Surely there are better things to do on St Barts? How about a bite to eat at Le Select, the restaurant that supposedly inspired Jimmy Buffett’s smash hit Cheeseburger in Paradise?”

Not if you’re Sir Stelios Haji-Ioannou, who has decamped to the Caribbean paradise to concentrate on an entire series of increasingly wild conspiracy theories, it seems.

His latest offering is a peach fit for his new sunny surrounds: apparently a trio of shareholders that have publicly backed easyJet in its looming showdown with SHI, as he is now fondly referred to by the airline, aren’t what they seem.

The tycoon has somehow convinced himself that the three are Airbus “strawmen”, sent to stop his campaign to force easyJet to cancel a £4.5bn order of planes. Still, at least he has some strong evidence to back up this wild allegation against a group of major shareholders accounting for 14pc of the shares: “They sound like the Airbus chief marketing officer.”

Not only that, but two of them – “Phoenix something” and “Ninety something” – are “newcomers out of nowhere”.

That would be Phoenix Asset Management and Ninety One, the South African investment giant formerly known as Investec, that have been investors since 2016 and 2017 respectively. The only thing that is made out of straw is his bizarre vendetta.”

5. On 8 May 2020, the Defendants published or caused to be published the Article in the print edition of the Daily Telegraph.

MEANING

6. In their natural and ordinary meaning, the words complained of meant and was understood to mean that the Claimant has made false and malicious claims that a group of major shareholders in easyJet have conspired with Airbus to prevent the cancellation of easyJet's £4.5 billion order of planes.

SERIOUS HARM

7. The publication by the Defendants of the words complained of has caused and is likely to cause serious harm to the reputation of the Claimant. In support of this contention the Claimant will rely, amongst other things, on the following:
 - 7.1 The allegations against the Claimant contained in the words complained of are self-evidently serious and directly impugn his professional competence, judgement, intelligence and integrity.
 - 7.2 The allegations in the words complained of suggest that the Claimant has knowingly propagated false conspiracy theories about fellow shareholders and the directors of easyJet, a listed company of which he is a one-third owner and Airbus as a supplier to easyJet. Such allegations directly impact upon the Claimant's professional reputation and business activities.
 - 7.3 The allegations were published in a national broadsheet newspaper with a very large daily circulation and online readership. The Article was written by the Daily Telegraph's "*Chief City Commentator*" and was published in a prominent position on page 2 of the "*Business*" section. Its contents were therefore likely to be read and taken seriously by business people and professionals, including a large number of individuals in the aviation and financial sectors who have ongoing professional relationships with the Claimant.
 - 7.4 The Article concerned the ongoing dispute between the Claimant and the current directors of easyJet. That dispute has received widespread public attention and media coverage, including in the print editions of the Daily Telegraph and on the Website. Accordingly, the Article and the allegations about the Claimant which it contained were particularly likely to be read, discussed and

republished by persons interested in that dispute (including, in particular, other shareholders of easyJet). In support of this, the Claimant will rely amongst other things on the content of the Defendant's response dated 28 May 2020 to the letter before action, which refers to the Claimant's "*current, widely reported, dispute with easyJet PLC about its long term contract with Airbus Industries*" (which it states has received "*significant attention in the media in recent weeks*") and which explains that, "*Mr Marlow's column is addressed to and will be read by those who for one reason or another are interested in the financial markets and who will be familiar with your client's dispute with easyJet's board*".

7.5 Two weeks after the Article was published, on 22 May 2020 easyJet held a General Meeting ("**GM**") which was convened for the purpose of enabling easyJet's shareholders to vote on resolutions proposed and advocated by the Claimant, which sought the removal of four members of easyJet's board of directors in order to compel the cancellation of the Airbus-easyJet contract which the Claimant believes if retained will be financially ruinous for the shareholders of easyJet. Under UK company law, the only means by which a shareholder of a company can procure the cancellation of a contract whose cancellation is opposed by the company's board of directors is to propose a resolution to remove the directors. Accordingly, since easyJet's board of directors was opposed to cancelling the Airbus-easyJet contract, the only means by which the Claimant could procure the cancellation of that contract was by successfully proposing a shareholder resolution to remove the directors. Despite the clear and compelling business case in favour of cancelling the easyJet order with Airbus in middle of the worse financial crisis in the history of commercial aviation, the resolutions proposed and advocated by the Claimant were rejected by a narrow majority (57% against 43%) of voting shareholders at the GM. It is to be inferred that the outcome of the shareholders' vote at the GM was materially affected by the recent publication of the seriously defamatory allegations about the Claimant in the Article, which will inevitably have been read and

taken seriously by a substantial number of shareholders who participated in that vote, and which had a direct bearing upon the Claimant's credibility and the soundness of his reasons and motives for proposing and advocating the resolutions.

CONTRAVENTIONS OF THE GENERAL DATA PROTECTION REGULATION

8. The First Defendant is a data controller within the meaning set out in the General Data Protection Regulation ("**GDPR**") in respect of personal data processed by the printing and distribution of print edition of the Daily Telegraph and the creation and publication of the Website.
9. The Claimant is a data subject within the meaning of article 4(1) of the GDPR.
10. The First Defendant is required to comply with the principles for processing personal data set out in Article 5(1) of the GDPR ("**the GDPR Data Processing Principles**"). The GDPR Data Processing Principles include the requirements that personal data shall be:
 - (1) processed lawfully, fairly and in a transparent manner in relation to the data subject (Article 5(1)(a)). This requirement is not satisfied unless the data processing complies with one or more of the requirements for lawful processing contained in Article 6 of the GDPR; and
 - (2) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (Article 5(1)(d)).
11. The following information contained in the Article constituted the Claimant's personal data:
 - (1) The statement that the Claimant had travelled to St Barts in order to concentrate on a series of increasingly wild conspiracy theories.
 - (2) The statement that the Claimant had made a false and malicious allegation that three major shareholders (the "**Fund Managers**") in easyJet had conspired with Airbus to prevent the cancellation of easyJet's £4.5 billion order of planes.

(3) The statement that the Claimant was pursuing a bizarre vendetta. (“the Personal Data”)

12. The obtaining, editing, storing and publishing of the Article constituted the processing of the Personal Data by the First Defendant in breach of the GDPR.

PARTICULARS OF BREACH

(1) In breach of Article 5(1)(a) of the GDPR, the First Defendant’s processing of the Personal Data was unlawful in that:

(a) It did not meet any of the conditions in Article 6 of the GDPR and was also unfair.

(b) The processing took place without the consent of the Claimant.

(c) The processing was not necessary for the purpose of any legitimate interests pursued by the First Defendant.

(d) To the extent that the First Defendant seeks to rely on Article 6(1)(f) of the GDPR as a basis for processing the Personal Data, any legitimate interests pursued by it are overridden by the interests and/or fundamental rights and freedoms of the Claimant as a data subject. Pending confirmation and details of the First Defendant’s position, the Claimant relies on the following matters:

(i) No attempt was made to contact the Claimant or his advisers prior to publication of the Article to ascertain his position in respect of the Personal Data, as it should have been. The Claimant was therefore unable to make it clear that his allegations concerning the relationship between the Fund Managers and Airbus were based on cogent evidence obtained during investigations he had undertaken, which had established a reasonable basis for believing that the Fund Managers were controlled and/or under the influence of Airbus. The Claimant was also unfairly denied the opportunity of making it clear that his expression of public concern about the relationship between Airbus and the three major

shareholders was not an attempt to propagate false or outlandish conspiracy theories, nor to pursue a malicious vendetta, but rather to raise serious and legitimate concerns regarding the nature of that relationship in the context of a forthcoming shareholder vote which would determine whether easyJet would proceed with a financially ruinous contract to pay £4.5 billion to Airbus for 107 new aircraft which the airline neither requires nor is able to afford.

- (ii) There is no public interest in the publication of false information.
- (2) In breach of Article 5(1)(d) of the GDPR, the Personal Data was inaccurate:
- (a) The Claimant had not travelled to St Barts in order to concentrate on wild conspiracies.
 - (b) The Claimant's allegation concerning the relationship between the Fund Managers and Airbus was not a false conspiracy theory. Rather, the allegation was based on cogent evidence that the Claimant had obtained during investigations he had undertaken into the nature of the relationship between the Fund Managers and Airbus, which established reasonable grounds for suspecting that the Fund Managers were controlled by and/or under the influence of Airbus, and therefore should be prevented by related party transaction regulations from voting at the GM. The Fund Managers collectively held 14% of the total shares in easyJet at the time of the GM. Had those shares been excluded from voting at the GM (as the Claimant reasonably believed they should have been under the related party transaction regulations) then the resolutions proposed by the Claimant would have been passed and the Airbus-easyJet contract would have been cancelled.
 - (c) The Claimant was not pursuing a malicious vendetta. Rather, he was raising legitimate and reasonable concerns about the possibility that Airbus – which has recently admitted to

engaging in serious corrupt and criminal activities (including the payment of bribes) in multiple jurisdictions – was exerting improper influence over major shareholders and defying related party transaction regulations for listed companies in an attempt to prevent easyJet from cancelling a contract worth £4.5 billion to Airbus. The Claimant's honest and reasonably-held concerns were a matter of obvious importance to easyJet's shareholders and it was entirely proper for the Claimant to raise them as he did.

- (3) If and insofar the First Defendant seeks to rely on the exemption in Schedule 2, paragraph 26 of the Data Protection Act 2018, the Claimant will contend that paragraph 26(3) does not apply because the First Defendant did not or could not reasonably believe that the publication of the Personal Data was in the public interest and, in any event, the First Defendant cannot reasonably have believed that it would be incompatible with any journalistic purpose to ensure that the Personal Data contained in the Article were accurate and processed fairly.

REMEDIES

13. The publication by the Defendants of the words complained of has seriously injured the reputation of the Claimant and has caused him serious damage and distress.
14. The First Defendant is in breach of its statutory duty under the GDPR and is therefore liable to pay the Claimant compensation under Article 82 of the GDPR and section 168(1) of the Data Protection Act 2018. In support of his claim for general damages and/or aggravated damages for libel and/or for compensation under the GDPR, the Claimant will rely on the following facts and matters:
 - (1) Despite the seriousness of the allegations about the Claimant and the clear likelihood that their publication would cause serious damage to the Claimant's reputation and business interests, the Defendants made no attempt to contact the Claimant prior to the publication of the Article. As a result, the Claimant was deprived of

the opportunity to explain why (contrary to the false allegations in the Article) his serious concerns regarding the conduct of easyJet's directors in respect of the contract with Airbus, and regarding the actions, intentions, and motives of Airbus and the three fund managers are rational, well-founded and based on cogent evidence.

- (2) In the circumstances, the Claimant reasonably believed (and continues reasonably to believe) that the Defendants published the Article with the intention of traducing the Claimant's reputation and with actual knowledge of the falsity of the allegations about the Claimant or with wilful indifference to the true facts. The reasonableness of that belief is supported amongst other things by the following matters:
 - (a) Although the Defendants failed to contact the Claimant prior to the publication of the Article they contacted easyJet and obtained information from them in relation to the Claimant's allegation and in relation to the Fund Managers.
 - (b) Despite such contact, the Article did not contain any denial of the Claimant's allegation from easyJet, Airbus or any of the Fund Managers. Had such denials been provided to the Defendants then they would inevitably have been included in the Article. It is therefore apparent that the Defendants were not informed that the Claimant's allegation was false (as would have been the case had that allegation been false).
 - (c) Further, despite the obvious significance of the fact that the Claimant's allegation had not been denied, the Article deliberately made no reference to the absence of any such denials. The Claimant reasonably believes that the lack of any reference in the Article to the (significant) absence of any such denials was a deliberate attempt to avoid undermining the false statements about the Claimant in the Article.
- (3) Prior to the GM on 22 May 2020, on 14 May 2020 the Claimant's solicitors wrote to the Defendants urgently seeking the publication

of a prominent retraction and apology of the seriously defamatory allegations about the Claimant in the Article by no later than 21 May 2020 (the day before the GM). The letter from the Claimant's solicitors expressly drew attention to the fact that the publication of those defamatory allegations was likely to have a material and entirely foreseeable impact on the outcome of that crucial vote at the GM. Despite this, the Defendants failed to make any retraction, correction or apology. The resolutions were subsequently rejected by a narrow majority of shareholders at the GM.

- (4) It is to be inferred that the publication of the words complained of had a direct and material impact on the outcome of that shareholder vote. As explained in the letter from the Claimant's solicitors dated 14 May 2020, the outcome of that vote is likely to have existential implications for easyJet, since the rejection of the resolutions proposed and advocated by the Claimant means that easyJet's board of directors is able to proceed with a financially ruinous £4.5 billion contract with Airbus for 107 additional aircraft that is likely to destroy any shareholder value in easyJet. Between 30 March 2020 and 15 June 2020 (during which period the Article was published and the GM took place) easyJet's fleet of aircraft was grounded it therefore earned no revenue.

15. Unless restrained by injunction the Defendants will further publish or cause to be published the same or similar words defamatory of the Claimant.
16. Further, the Claimant is entitled to rectification and/or erasure of the inaccurate Personal Data by the First Defendant pursuant to Articles 16 and 17 of the GDPR and to an order pursuant to Article 19 of the GDPR requiring the First Defendant to notify the recipients of the Personal Data of such rectification/erasure pursuant.

AND the Claimant claims

As against the First and Second Defendants

- (1) Damages, including aggravated damages, for libel;

- (2) An injunction restraining the First Defendant, whether by its directors, officers, employees, agents or otherwise howsoever, and the Second Defendant, whether by himself, his agents or otherwise howsoever, from publishing or causing to be published the same or similar words defamatory of the Claimant.
- (3) Further or other relief.

As against the First Defendant

- (4) Compensation for damage and/or distress, pursuant to Article 82.1 of the GDPR and section 168 Data Protection Act 2018, for breach of statutory duty to process the Claimant's personal data in accordance with Article 5 of the GDPR.
- (5) An order under section 167 of the Data Protection Act 2018 that the First Defendant rectify and cease processing unlawful, unfair and/or inaccurate personal data pertaining to the Claimant pursuant to Articles 16 and 17 of the GDPR and notify this to third parties pursuant to Article 19 of the GDPR.
- (6) An order pursuant to section 12 of the Defamation Act 2013 that the First Defendant publish a summary of the judgment in these proceedings.

HUGH TOMLINSON QC
EDWARD CRAVEN

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Particulars of Claim are true. I understand 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.

Signed: 

Rory Lynch of Vardags Limited, solicitor for Claimant

Dated: 26 June 2020

Served this 26 day of June 2020