Neutral Citation Number : [2012] EWHC 976 (QB)

Claim No: 0CF90750

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CARDIFF DISTRICT REGISTRY

Date: Friday, 20th April 2012

B e f o r e :
HIS HONOUR JUDGE CHAMBERS QC
(sitting as a Judge of the High Court)

Between:
ROBIN CAMMISH

Claimant

- and -

CLIVE HUGHES

Defendant

Timothy Atkinson (instructed by **Morgan LaRoche**) for the Claimant
Godwin Busuttil (instructed by **PSB Law LLP**) for the Defendant

Hearing dates: 30th and 31st January 2012

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

HHJ Chambers QC :

Introduction

1. This judgment is concerned with various aspects of a libel action. In essence it is concerned with whether this case can go forward or whether it should end now. The central elements of the exercise in question will be the ascertainment of the meaning of the words complained of and whether, even if the words are defamatory, the application of the test of whether 'the game is worth the candle' should result in the claim being struck out.

2. The argument before me has been conducted in a most helpful and knowledgeable way by counsel with great expertise in libel. It goes without saying that the law of defamation is of a complex and nuanced nature but I hope that I will be forgiven for a sense of depression that a matter of the present sort should, as a matter of course, come weighted with such a freight of learning as that which has been placed before me. It seems to me that one danger of such an approach is not so much that one will fail to see the wood for the trees (real as the danger is) but that those markers that are essential to the finding of one's way can be obscured by much 'signage' of less significance.

3. In order to set the background I need go no further than the Particulars of Claim of which relevant parts read as follows:

> "1. The Claimant resides at Llandryi House, Kidwelly, SA17 4EL, and is the owner and director of QP Group and a number of related companies which provide management consulting and contract services to global blue chip clients. He is also the Chairman and a Director of Coedbach Action Team Ltd ("CAT"), a group of residents who oppose and at the material time opposed the building of proposed biomass stations in Swansea and Coedbach, Kidwelly. CAT was at the material time … a party to two local inquiries in respect of the proposed power stations pursuant to Rules 6 and 11 of the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003.
>
> 2. The Defendant, through companies that he owns or is a director of, is the director of the proposed biomass stations at King's Dock, Swansea, and Coedbach Washeries, Kidwelly.
>
> 3. The Defendant between 1 and 30 April 2010 published or caused to be published in an anonymous document ("the document") … to [a number of individuals]
>
> 4. The following typed and handwritten defamatory words of the Claimant*:
>
> [* What follows is my setting out and description of what appears in the annexure to the Particulars of Claim.]

"[in typescript]

DEAR ALL.

PLEASE SEE COMPANIES HOUSE ON YOUR MR CAMMISH COED BACH ACTION TEAM LTD – BETWEEN HIM AND IS GIRLFRIEND THEY HAVE DISSOLVED OVER 20 COMPANIES NOT ABLE TO SELL ANYONE OF THEM AND COMING TO SWANSEA TO TELL YOU HOW TO DO IT

MARITIME ASSOCIATION.
SA1 RESIDENTS,
MP'S,
AM'S
PRESS.
ETC ETC.
INSPECTORS --- Mr Emyr Jones
Mr John Woolcock.

** COEDBACH ACTION TEAM LTD

SEE STATEMENT THAT ON 31st MARCH PUBLIC INQUIRY CANCELLED ANDTO HAVE THE APPEAL DISMISSED. WHEN MR HUGHES WAS ASKED – HE KNOWS NOTHING ABOUT IT. SEE MR CAMMISH DISSOLVED 15 COMPANIES = NOT ABLE TO RUN THEM

SUPPORTER OF THE POWER PLANTS @ FOR JOBS IN AREA"

[**written in manuscript on a new page at the top of several pages of photocopies of three emails sent by the Claimant to a variety of people of whom a number appear to be opponents of the planning applications. The email of 7 April 2010 incorrectly states that Coedbach public inquiry has been cancelled whereas that of 14 April 2010 accurately states that it has been postponed.

There follow photocopies of six pages copied from the "**Individual Director Report**" relating to the Claimant that list 15 directorships of dissolved companies as well as giving net worths of £1,242,000 for QP Group Limited, £935,000 for Quality and Performance in Development Limited and £6,521,000 for Hacer Consulting Limited. Of the 15 dissolved companies net deficits are shown of £51,000 for Quality and Performance in Management Ltd, £158,000 for QPEC Limited and £9,000 for QP Group (France) Limited]

The statement of case continues:

"5. a) The words were stated to be written by a supporter of power plants for jobs in the area.

b) There was explicit reference to the Defendant in … the document …

c) The handwritten words were in the Defendant's handwriting.

d) The Defendant, as developer, had an obvious motive to discredit the Claimant, who was at the material time and is a prominent opponent of the proposed development.

6. In the premises … it is to be inferred that the Defendant published … the words complained of above.

7. The words complained of in their natural and ordinary meaning bore and were understood to bear the following meaning, namely, that the Claimant, a businessman, lacked any competence whatsoever in running his companies.

8. By reason of the publication of the words complained of, the Claimant has been seriously injured in his reputation and caused grave upset to his feelings.

9. In relation to damages, including aggravated damages, the Claimant will rely upon (i) the Defendant's refusal to admit his authorship and publication of the words complained of; (ii) his refusal to retract and apologise for the defamatory imputation; and/or (iii) his malice in publishing or causing to be published the words complained of, evidenced by the gratuitous and spiteful nature of the words, which, it is to be inferred, were prompted by the sole and improper purpose of discrediting the Claimant as a prominent opponent of the proposed development by libelling the Claimant to the recipients of the document.

10. Unless restrained by this Honourable Court, the Defendant will further publish or cause to be published the same or similar defamatory matter of the Claimant."

4. At this stage a number of things may be noted.

5. First, regardless of who actually received the document, it evidenced an intention to give it a wide dissemination.

6. Second, it was clearly aimed at those involved in the Swansea inquiry as evidenced by the words "coming to Swansea and telling you how to do it".

7. Third, as at the date of the Particulars of Claim the author was maintaining his anonymity.

8. Fourth, the contents of the search were at odds with the annotations whatever their meaning.

9. Fifth, although the defamatory nature of the words is said to be set out in paragraph 7 of the Particulars of Claim, the purpose of the alleged defamation is set out in paragraph 9 as *'discrediting the Claimant as a prominent opponent of the proposed development by libelling the Claimant to the recipients of the document'.* What I think to be implicit in the two allegations was that the allegations were aimed at the Claimant's fitness to take a prominent part in the Swansea protest.

10. The Defence started by taking general issue with the claim on the basis of *Thornton v Telegraph Media Group Limited* [2010] EWHC 1414 (QB); [2011] 1 WLR 1985 and *Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75; [2005] QB 946.

11. At paragraph 2.4 the Defendant pleaded that it was admitted and averred that:

> "At all material times the Claimant was and held himself out to be the leader of and main spokesman for the Coedbach Action Team and directed this group's activities. In this capacity and context, the Claimant professed himself to be and made play of the fact that he was a very successful businessman, with an excellent business track record and very extensive business experience including in the power industry."

12. The Defence went on correctly to state that by the date that it was settled the attempt to gain planning permission for respectively King's Dock, Swansea and Coedbach had been unsuccessful. The developer in respect of the former project was Dingle Holdings Limited and in respect of the latter was Bio E plc, the Defendant being and having been a director and owner of each company.

13. At paragraph 4.3 the Defendant admitted for the first time that he was the author of the document which he said that he had sent to (a) Mrs Jan Lewis of the Maritime Quarter Residents' Association; (b) the SA1 Residents' Association; and (c) the Planning Inspectorate (for the attention of Mr John Woolcock and/or Mr Emyr Jones). The Defendant said that he was unable to recall whether copies of the 'Documents' were sent to anyone else but that he sent out no more than six sets in all.

14. It was denied that 'the words' were defamatory and bore the meaning set out at paragraph 7 of the Particulars of Claim.

15. Paragraph 6 of the Defence reads:

> "6. Further or alternatively, in so far as the said words conveyed the following comments or opinions:
>
> > "6.1 that the Claimant, in dissolving or causing or permitting to be dissolved fifteen companies of which he was

a director, had shown that he was not able to run those companies; and/or

6.2 that it was questionable whether the Claimant, as someone who (a) had dissolved or caused or permitted to be dissolved fifteen companies of which he was director and (b) had no direct interest in the result of the pending appeal in relation to the King's Dock development (being a resident of Kidwelly, not Swansea), was an appropriate person to be taking or seeking to take a leading role in the ongoing debate concerning the King's Dock development and/or to be seeking to influence the result of the pending appeal in relation to the King's Dock development, particularly on the basis of his business experience

They were honest comments on a matter of public interest, namely, the fitness or otherwise of the Claimant to take a leading role in the ongoing debate concerning the King's Dock development and/or to seek to influence the result of the pending appeal in relation to the King's Dock development."

16. Although set out at a certain (justifiable) length, the particulars of fact and privileged material on which the comment was said to have been based may be summarised as being (a) the role which the Claimant enjoyed or sought to enjoy in relation to the King's Dock appeal as evidenced by the emails to which I have referred (b) the dissolving of the seventeen companies referred to in the Report and (c) fact that the photocopy of the Report was an accurate record taken from the Register of Companies.

17. The claim for damages was denied at paragraph 9 under the following particulars:

9.1 It is admitted that prior to the issue of these proceedings the Defendant did not admit his authorship or publication of the words complained of.

9.2 It is admitted that the Defendant has not retracted or apologised for making the remarks referred to in paragraph 4 of the Particulars of Claim. Having regard to the facts and matters set out above he was and is under no obligation to do so.

9.3 It is denied that the Defendant published the said remarks maliciously. It is denied that the said remarks were gratuitous. Without prejudice to the burden of proof, which is on the Claimant on this issue, the Defendant genuinely held the views he expressed and, being matters of comment, the Defendant's alleged purpose or motive in expressing these views is irrelevant to the issue of malice.

…"

18. Paragraph 10 of the Defence is concerned with mitigation which is not relevant to the matters before me.

19. There was no plea of justification.

20. I have set out the statements of case in detail because they give as good indication both of the history of this matter and how things have stood between the parties down to the writing of this judgment.

21. Save to mention that the Claimant says that the use of companies was a means of protecting intellectual property, at this stage I do not propose to go further into the history of this matter because my first task is to consider the meaning of the words complained of.

The meaning of the words complained of

22. In performing this task I am in effect a member of a jury adopting the approach directed of me by the judge. That approach is simple. It is set out at paragraph 18 of the judgment of Tugendhat J in *Thornton* which in turn sets out the words of Sir Anthony Clarke MR in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at paragraph 14.

23. In sum I must act as a reasonable person. I must not go 'over the top' but equally I must be realistic. I must adopt a 'Goldilocks' approach.

24. The words *"the intention of the publisher is irrelevant"* in the summary at paragraph 14 should be read in the context set out in the third edition of *Duncan and Neill on Defamation* at paragraph 5.22. By this I mean that where the intention of the publisher is manifest from the publication itself and its surrounding circumstances this will constitute the environment in which the reasonable reader is to be taken as gaining his understanding of the words in question.

25. I am therefore someone who knows of the clash between the parties involved in the King's Dock appeal. I know (despite a rather equivocal attitude by him towards these matters) that the Claimant has put himself forward as someone specially equipped to help and lead protestors, regardless of formal grouping, because of his overall business experience and particular experience in matters relevant to the proposed development. I am a protestor and I am the chosen recipient of the package of documents.

26. What is the first thing that I learn from the package?

27. It must be that its sender is not well disposed towards the Claimant. Not only is the tone of the annotation clearly to that effect but the package has been sent anonymously. It is the common experience of the world that people who want to say nice things about other people are normally happy to identify

themselves when doing so and that when people do not identify themselves in matters of the sort with which we are presently concerned it is because the recipient is meant to think ill of the subject of the communication.

28. Thus when I read the words "PLEASE SEE COMPANIES HOUSE ON YOUR MR CAMMISH COED BACH ACTION TEAM LTD – BETWEEN HIM AND IS GIRLFRIEND THEY HAVE DISSOLVED OVER 20 COMPANIES NOT ABLE TO SELL ANYONE OF THEM AND COMING TO SWANSEA TO TELL YOU HOW TO DO IT COEDBACH ACTION TEAM LTD SEE STATEMENT THAT ON 31st MARCH PUBLIC INQUIRY CANCELLED ANDTO HAVE THE APPEAL DISMISSED. WHEN MR HUGHES WAS ASKED – HE KNOWS NOTHING ABOUT IT. SEE MR CAMMISH DISSOLVED 15 COMPANIES = NOT ABLE TO RUN THEM" I do not hasten to carry out a detailed analysis of the extract from the Register to decide just what these dissolutions mean. I know what they are meant to mean. The author of the words has told me. They are meant to mean that the Claimant has dissolved 15 companies because he was not able to run them. That is the meaning of the 'equals' sign. An inability to run 15 companies can only be taken as a statement that the person in question was incompetent in running those companies.

29. But the next question is what the author wants me to get from what he has just told me.

30. At this point I should say that I find wholly incredible the suggestion that the meaning of the communication should be confined to *"that the Claimant, in dissolving or causing or permitting to be dissolved fifteen companies of which he was a director, had shown that he was not able to run those companies"*. Why make the statement if that is all that it is intended to convey?

31. Self-evidently the author wishes me to draw an inference from what has been said and, to that extent, one can identify with the suggestion that the words meant that *"it was questionable whether the Claimant, as someone who (a) had dissolved or caused or permitted to be dissolved fifteen companies of which he was director and (b) had no direct interest in the result of the pending appeal in relation to the King's Dock development (being a resident of Kidwelly, not Swansea), was an appropriate person to be taking or seeking to take a leading role in the ongoing debate concerning the King's Dock development and/or to be seeking to influence the result of the pending appeal in relation to the King's Dock development, particularly on the basis of his business experience".*

32. However the problem with the suggested meaning is its limitation. Why if, as must have been the case, the author was intending to call into question the Claimant's suitability for his role in connection with the King's Dock protest

should the reader suppose that the author is confining the overall message to the 15 instances of dissolution?

33. The communication is an exercise in mudslinging. The author is making a general point on the basis of what he fancies to be damning evidence and that point must be that because of his history with a number of companies which obviously he wanted to sell but had for the most part to dissolve, the Claimant manifested deficiencies that cast doubt on his role as a protest leader. There is simply no scope for confining the statement as to the 20/15 companies because to do so would mean that they would lack all meaning in the context of their use.

34. For the reasonable reader of the communication the words can carry only one meaning and that is, *"because he was unable to run them your Mr Cammish has had to dissolve 15 companies which he wanted to sell. This shows that he is a seriously incompetent businessman who is far from being the man to come to Swansea to tell you how to run your protest".* This finding appears in slightly more formal form at the conclusion of the judgment.

The *Jameel* application

35. Despite its potential for general application, the decision of the Court of Appeal in *Jameel* was made on facts far remote from this case and which were strongly coloured by the international nature of the proceedings.

36. Before I go to the court's treatment of abuse of process, it is relevant to note its confirmation that actual damage is not a requirement of the tort of libel.

37. The principles governing abuse of process in relation to libel cases were taken relatively briskly between paragraphs 55 and 58 of the judgment of the court. At paragraph 55 appears the passage:

> " ... Section 6 [of the Human Rights Act 1998] 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."

38. At paragraph 57 the court referred with approval to the observation by Eady J in *Schellenberg v British Broadcasting Corpn* [2000] EMLR 296 that *"the overriding objective's requirement for proportionality meant that he was bound to ask whether "the game is worth the candle"* and went on *"He concluded, at p 319*:

> "I am afraid that I cannot accept that there is any realistic prospect of a trial yielding any tangible or legitimate advantage such as to outweigh the disadvantages for the parties in terms of expense, and the wider public in terms of court resources."

39. This latter aspect of the case was considered further by the court under the heading "Vindication" but this was done in the rather remote context (from these proceedings) of international forum shopping.

40. It seems to me that the attitude of the Court of Appeal poses a conundrum.

41. If the court is saying that a libel action can only be brought if the claimant can show that his reputation has been actually damaged this is in flat contradiction of the view earlier expressed by it after careful analysis that no such requirement exists in establishing the tort. It would be surprising if a judgment of the court was taking away with one hand what it had given with the other only a few paragraphs earlier. Particularly is this the case when one is dealing with something so intangible as reputation.

42. It seems to me that all that the court is saying in a somewhat different way from that later set out by Tugendhat J in *Thornton* is that the publication must pass the threshold test of seriousness before it can qualify as being libellous. Thus in *Ecclestone v Telegraph Media Group* [2009] EWHC 2779 Sharp J was not applying a *Jameel* test, she was simply saying that these days the words complained of could not qualify as a libel because they were not serious enough to do so.

43. If the words fail to meet the threshold of seriousness, self-evidently that action is doomed but, if the test is met, the question remains as to whether the proceedings constitute an abuse of process: is the game worth the candle?

44. I must therefore first address the question of the extent to which, if at all, the tort is made out.

45. At the outset I should re-state a truism.

46. It is not the function of the court on a summary application of this sort to become involved in a mini trial of fact. An issue of fact will only be decided against a party if his evidence is fanciful.

47. I shall decide this issue and the *Jameel* application on the Particulars of Claim as they stand.

48. I start with the comment that there is no defence of justification.

49. What is the nature of the libel complained of?

50. At least for present purposes it seems to me that the alleged libel is to be treated as a *business or professional libel.*

51. Paragraph 19(ii) of the judgment of Tugendhat J in *Thornton* reads:

> "*The business or professional libel*: while a professional person may be defamed by an allegation that does not impute moral blame, nevertheless, a business or professional libel is to be distinguished from a malicious falsehood. In the words of the editors of Gatley 11th ed para 2.26:
>
> > "To be actionable [in defamation], words must impute to the claimant some quality which is detrimental, or the absence of some quality which is essential, to the successful carrying on of his office, profession or trade. The mere fact that words tend to injure the claimant in the way of his office, profession or trade is insufficient. If they do not involve any reflection upon the personal character, *or* the official, professional or trading reputation of the claimant, they are not defamatory". (emphasis original)

52. In effect the words now in question engaged two public activities of the Claimant. The first was the activity of the Claimant as a businessman. The second was the activity of the Claimant as a leader of a protest group. The words were calculated to impugn the Claimant in both capacities and the basis for the attack was the false suggestion that the Claimant was a serial dissolver of companies because he could not sell them.

53. Whatever the situation under the *Jameel* jurisdiction, it seems to me that the Defendant cannot isolate a defamatory comment in respect of the Claimant's business activities from its appearance in the environment of his activities as a protester – not least because the communication was intended to use the one in respect of the other.

54. As to the connotation borne by the words in question, it seems to me that, at the least, to say of a person that such is his incompetence that he has been forced to dissolve a number of companies raises serious questions as to that person's creditworthiness.

55. It seems to me that the words complained of fall well within the criteria set out above and the lengthy further consideration of such matters set out in *Thornton*.

56. Do words pass the threshold of seriousness?

57. It seems to me that everything that is said by Tugendhat J in his careful analysis in *Thornton* carries with it the implication of the potential as well as actual consequence of the words used. The references are "calculated to", "tend to", "tends to", "likely to". Thus in keeping with the lack of a requirement to prove actual damage occasioned by the words complained of, the focus is upon the words and their potential effect. Thus the seriousness in

question is that of the words to have a particular effect rather than there actually having had such an effect.

58. Given that approach, it seems to me that there can be little argument that the words in question pass the test.

59. It is not clear how many people read the words. There is no good reason to take the word of the Defendant as to whom the documents were sent. They were certainly sent to and the words were read by Elaine Thomas a member of SA1 Residents' Association, Corinne McGill another member of SA1's Residents' Association who *"shared her set of documents with other members of the Residents' Association to get their views on what was written"* and Janice Lewis the Secretary of the Maritime Quarter Residents Association.

60. Whatever the position in respect of abuse of process to which I shall come next, I think it clear that there was a publication of words that met the threshold criteria in respect both of those to whom it was addressed and those to whom it was foreseeable that its contents would be revealed including the steps taken by the Claimant to explain his position.

Is the game worth the candle?

61. The expression is derived from a French saying which is much to the same effect except that it may be a little more precise. Thus, *jeu* meaning a play rather than a game, the question was whether the presentation of the play was worth the (often considerable) expense of its illumination. Libel cases immediately come to mind as candidates for such a test.

62. Carrying matters further in this case the suggestion is that the game is not worth the candle because it is all a storm in a tea cup. The Defendant failed in his applications. The cost of continuing the case will be considerable. The Defendant is a sick man. No one pays any attention to anonymous scrawls. The Claimant was perfectly content to give as good as he got by being nasty about the Defendant's medical problems and financial circumstances and the Claimant was able to sooth the concerned recipients of the documents so that the damages will on any view be no more than a few thousand pounds.

63. To a large extent I agree with the above comments but by no means entirely.

64. I see no reason why it should become almost automatically the case that libels which attract relatively small sums of money should no longer be pursued. It all depends on the circumstances. The Defendant deliberately threw mud and mud has a habit of sticking. It does not disappear just because the circumstances leading to its being thrown no longer exist. South Wales is a small place and the Claimant appears to be well known.

65. It also seems to me that the relevant costs are not those which have been spent but those which are liable to be spent if the case proceeds. If the case does proceed I think that two days will be ample to deal with it. I see no reason why the costs should be considerable. Costs in Cardiff are kept under tight control.

66. However it seems to me that there is an overwhelming reason why this case should not be struck out.

67. Paragraph 7 of the statement of Janice Lewis dated 3 November 2011 states:

> "7. It came as a great shock ... to receive through the post sometime in April 2010 (I cannot recall the actual date), a large envelope addressed to myself for MQRA containing disparaging and discriminating remarks from an anonymous source about both Robin Cammish and Pauline Bowers. The letter seemed to call into question Mr Cammish's business acumen and record, his relationship with Pauline Bowers and his fitness to be involved in our campaign. It seemed to be suggesting that Mr Cammish had a number of failed and unsuccessful businesses behind him. I have never received an anonymous letter before and this came at a very stressful time for me just a few weeks away from the start of a hugely important inquiry which had taken months of hard work and commitment and one in which the input of the Coedbach Team led by Mr Cammish had been paramount in the case I was making on behalf of MQRA."

68. By a letter dated 20 May 2010 Morgan LaRoche, solicitors acting for the Claimant, wrote to Mr A Stephen of Benson Watkins, a firm of solicitors, referring to the documents and saying:

> "... The documents appended to the typed notes bear manuscript comments which may lead to the discovery of the author. A handwriting forensic analysis will be undertaken to identify the author of these documents and action will in all likelihood be taken in due course when that investigation is complete.
>
> The purpose of this letter is to ask you whether you or your clients have any information concerning who may have prepared the material and/or circulated it. "

69. After some to and froing Benson Watkins wrote a letter dated 9 July 2010 of which material portions read:

> "We can confirm that our client was neither the author of the document on the first page nor the handwritten document on the second page.
>
> At the moment we find it hard to believe what you understand to be [libellous]. For the most part these documents appear to be either emails written by your client or documents of public record. The

> only statement contained appears to be a comment on the number of companies which your client has been involved in and which have subsequently been dissolved. In these circumstances we fail to see the exact basis of your client's complaint."

70. The first paragraph can only have been written upon the Defendant's express instructions. It was a lie that went to the heart of the case. From then until service of the Defence that lie was persisted in. When the Claimant obtained handwriting evidence to the effect that the Defendant was the author of the document Benson Watkins pursued a whole series of questions and criticisms that were clearly based upon the assertion that the Defendant was not the author of the words in question.

71. A remarkable aspect of the case is that on 14 April 2011 Benson Watkins wrote a letter with which was served the Defence admitting for the first time that the Defendant was the author of the document but nowhere in the letter is there a reference to this despite a considerable volume of comment upon the Claimant's duties in respect of the defence of honest comment.

72. Not once in this case has there been any attempt on behalf of the Defendant to address his lie as to the authorship of the documents. In his second statement dated 22 September 2011 (therefore five months at the latest after which he must have come to know of the lie) Mr Stephens devotes over twelve pages to his case on the *Jameel* application. At paragraph 18.9 under the heading "**Vexatious proceedings"** he says:

> "... Every time the Defendant is asked to turn his attention to these proceedings or to the Claimant, he becomes extremely annoyed and upset. His GP, Dr Carey Edmunds has repeatedly advised him not to involve himself in any way in these proceedings on health grounds (although, for as long as these proceedings continue, this is, of course, impossible). ..."

73. My exchanges with counsel for the Defendant in the course of the hearing have led me to the conclusion that the failure to engage with this aspect of the case is deliberate. There will be no apology and no explanation. If that is so I do not see how the *Jameel* application can succeed.

74. The jurisdiction is conferred as a matter of public policy to help deal with situations in which a claimant has a claim that he or she is otherwise entitled to take to trial but on any practical view should not proceed.

75. It has been said that a case should only go to trial where there is a need for vindication and there is no need for vindication in this case.

76. Helpful observations upon vindication appear in the judgment of Tugendhat J in *Cairns v Modi* [2010] EWHC 2859 (QB) at paragraph 43 where he says:

> " ... A claimant's primary concern in a libel action is vindication, not damages for what has been suffered in the past. So the damage that has occurred before the action is brought may not give an indication of the importance of the claim. Vindication includes a retraction, or a verdict for the claimant, or a judgment to the effect that the allegation complained of is false. ..."

77. In this case there has been no move of any sort by the Defendant towards the Claimant; no suggestion that there should be some recompense for the costs undoubtedly wasted by the need to get a handwriting report and to address the criticisms that were made of it. The Defendant's position has been one of total obduracy.

78. If I make the order asked for, the Defendant will be left holding the field free to make all the comment that such an order would allow. If this case goes to trial and the Claimant succeeds he can fairly say that the field is his. That will be vindication.

79. If I make the order, all possibility of compromise and settlement will go. If I do not, the Defendant will be entirely free to arrange matters as he feels fit including the engagement of Part 36.

80. The application is dismissed.

Application to amend

81. By an application dated 9 December 2011 the Claimant seeks permission to amend the Particulars of Claim by the addition of the following:

> "6A Further, the Defendant on a date in April 2011 further published or caused to be published the document complained of to (a) Owain Davies and (b) Linden Jenkins.
>
> ...
>
> 9 ... (iv) by way of alternative to the part of paragraph 6A above in relation to Linden Jenkins, the republication of the document complained of by Owain Davies to an employee of his company Linden Jenkins in April 2011, for which the Defendant is liable, since a reasonable person in the position of the Defendant ought to have appreciated that there was a significant risk that the document and/or its defamatory sting would be repeated by Mr Davies and/or the same was reasonably foreseeable."

82. At paragraph 7.9 of his statement dated 2 November 2011 the Claimant says:

> "To my knowledge and much more recently and disturbingly discovered, I understand that [the Defendant] circulated or caused to be circulated the document to prominent members of the local community, including a businessman (Owain Davies) and a neighbour of mine in Llandyri. I discovered in mid-May 2011 that

> my neighbour, Linden Jenkins in April 2011, received an email about me from his employer Owain Davies (MD of Spencer Davies Engineering Limited and Amcanu). Attached to the mail was a document that he was asked to comment on. Owain Davies is the son of Spencer Davies who for many years has run the Spencer Engineering Group of Companies and who is a prominent local businessman and who I understand is a longstanding friend of [the Defendant] with whom he went to school. Linden told me he had received a pack which showed I had a "chequered and colourful history". In conversation with me, Linden said that he was embarrassed about this because the email had put him in a difficult position – I was his neighbour after all ..."

83. Very late, but nevertheless in time for the hearing, a statement by Mr Owain Davies dated 23 January 2012 was produced on behalf of the Defendant. It gives a detailed account of what is suggested as having given rise to the Claimant's complaint. Its gist is that on a television programme in March 2010 the Claimant levelled some criticisms at the owner of an airport with which his family was connected. Later that year Mr Jenkins told him that the Claimant had invited him to a party in the village and this prompted him to do a search which produced a 'Directors Report' from a service called Credit Safe UK.

84. Paragraph 5 of the statement continues:

> " ... I immediately noted from this print out, that the Mr Cammish had been a director of many companies which had subsequently been dissolved. I cannot remember exactly what I said to Mr Jenkins, but I do remember remarking how it looked like, on the basis of the report, that Mr Cammish had a bit of a chequered business background. I do not retain in my possession a copy of the documents I printed out."

85. Mr Davies went on to say that he had caused a copy of the printout to be emailed to Mr Jenkins. An up to date version of the document in question was exhibited to his statement. He denied the Defendant had ever sent him any of the documentary material to which this case relates.

86. In a statement dated 23 January 2012 Mr Spencer Davies, father of Mr Owain Davies, denied both that he had been at school with the Defendant and that he was a long standing friend although they had some acquaintance that went back over many years.

87. In a statement dated 23 January 2012 the Defendant denied sending the documents to Mr Owain Davies.

88. In a statement dated 27 January 2012 the Claimant takes issue with his having given a party as alleged but it seems to me that he must face two facts. First, paragraph 7.9 of his statement makes no mention of anything that might have

been written by the Defendant. He relies on inference. Second, I have no statement from Mr Jenkins.

89. By contrast I have a clear statement from Mr Owain Davies which is both consistent with and explanatory of what the Claimant has said. If Mr Davies really did receive the documents from the Defendant, his statement must be a tissue of lies. On the evidence before me I do not see even the beginning of a case to that effect. The allegations are hopeless and the application fails.

Conclusion

90. I hold that the natural and ordinary meaning of the words complained of is, *"because he was unable to run them the Claimant has had to dissolve 15 companies which he wanted to sell. This shows that he is a seriously incompetent businessman who is far from being the man to come to Swansea to tell the protesters how to run their protest".*

91. The *Jameel* application is dismissed.

92. By consent there is permission to amend paragraphs 3(a) and 3(b) of the Particulars of Claim. The remainder of the application is dismissed.

93. If the Claimant still wishes to serve a Reply out of time I shall hear argument in due course.

94. Any other outstanding matter will be the subject of further submission in due course.

95. No one need attend the handing down of this judgment and all consequential matters will be dealt with at a hearing which shall be an adjourned hearing of that at which this judgment is handed down. Any relevant time limit is extended over that hearing.