

Neutral Citation Number: [2021] EWHC 2178 (QB)

Case No: QB-2018-000981

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MEDIA & COMMUNICATIONS**

Royal Courts of Justice  
The Rolls Building  
7 Rolls Buildings  
London EC4A 1NL

Date: Monday, 5<sup>th</sup> July 2021

Start Time: 11.00 Finish Time: 5.15

**Before:**

**MR. JUSTICE SAINI**

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**Between:**

**QATAR AIRWAYS GROUP Q.C.S.C.**

**Claimant**

**- and -**

**(1) MIDDLE EASTERN NEWS FZ-LLC**

**(2) ~~MIDDLE EAST NEWS UK LIMITED~~**

**(3) MBC FZ-LLC**

**(4) AL ARABIYA NETWORK FZ-LLC**

**(formerly named AL ARABIYA NEWS CHANNEL FZ-LLC)**

**Defendants**

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**MR. THOMAS RAPHAEL, QC** (instructed by **Osborne Clarke LLP**) for the **Claimant**

**MR. GUY VASSALL-ADAMS, QC** (instructed by **Wiggin LLP**) for **Wiggin LLP**

**The Defendant did not appear and was not represented**

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**APPROVED JUDGMENT (No. 2)**  
**(via Microsoft Teams)**

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**MR. JUSTICE SAINI:**

The CPR 17.2 application

1. The first matter before me at the hearing today is the application on behalf of the defendants (who have not attended) under CPR Rule 17.2. By way of background to this application, I refer to my judgment of 6 November 2020, [2020] EWHC 2975 (QB). At [218]-[253], I addressed in some detail one of the objections that the defendants were then making to the claim against AAN FZ, the fourth defendant. In broad terms, the argument was that the claim made against this defendant was a nullity and was time barred. For the reasons which I will not repeat which were set out in that section of the judgment I essentially rejected the defendant's arguments but made clear, see paragraphs 239-241, that they retained the ability to make an application under CPR 17.2 to disallow the amendment. That application was in due course made pursuant to the further directions I gave and it is dated 22 February 2021.
2. The defendants have indicated for reasons which are not presently relevant that they are not pursuing that application. It must follow that the CPR 17.2 application will be dismissed. But matters do not rest there because the Claimant seeks further consequential orders arising out of the defendant's application.
3. Turning to the abandoned application in a little more detail, by the CPR 17.2 application the defendants sought (a) to disallow the amendment by which AAN FZ was added to the claim form on 27 November 2018 and (b) to set aside service of the claim form and particulars of claim on AAN FZ. This was

on the basis that the amendment of 27<sup>th</sup> November 2018 was after expiry of limitation and the claims against AAN FZ were time barred by reason of section 4A of the Limitation Act 1980 (with regard not only to the malicious falsehood cause of action but also the other causes of action).

4. In my judgment, dismissal of this application inherently involves dismissal of those propositions and an affirmation that the amendment was validly made and that AAN FZ is a proper party. It is, therefore, in my view, appropriate for my order to make clear that the amendment was validly made, that proceedings were validly commenced against AAN FZ, and AAN FZ is a proper party.
5. There is a separate issue which I will need to consider in due course as to the status of the amendments to add AAN FZ and the issue of “relation back” but for present purposes I am satisfied that paragraphs 1, 2 and 3 of the draft order before me should be made.

*(For further proceedings see separate transcript)*

#### The Section 32A Limitation Act 1980 application

6. The next issue before me is an application made on behalf of the claimants on 26<sup>th</sup> March 2021 seeking orders under section 32A of the Limitation Act 1980 and, as appropriate, CPR 17.4 and CPR 19.5. The CPR 19.5 application is not pursued at this stage and I will deal in due course with the CPR 17.4 application. For present purposes I will confine this ruling to the section 32A 1980 Act application.

7. These applications are not opposed but equally they are not consented to by the defendants. The fact that they are not opposed is a matter to which I will return in due course. In the correspondence before me it has been suggested by the defendants that the present application is otiose. I agree with leading counsel for the claimants that it is not otiose for two reasons. First, limitation is an issue for determination at this hearing. The CPR 17.2 application, which I addressed earlier, contended that all claims against AAN FZ were time barred. It is, in my judgment, appropriate to determine whether or not they are time barred. Second, the defence pleads, at paragraphs 25, 35, 42, and 45(1), that the one-year time bar defeats all of QAG's claims against AAN FZ. That seems to be an assertion that it defeats claims under all laws that may be applicable to parts of the claim, and that includes both the conspiracy and unlawful interference claims as well as malicious falsehood.
  
8. It is fair to say the case may be being made that there is no "relation back" and so even if the amendments of 27<sup>th</sup> November 2018 remain procedurally valid, they only "start" a claim as of that date which is therefore outside the one year period and therefore time barred. The resolution of the present application may well defeat this by disapplying section 4A and/or by permitting an amendment under CPR 17.4. Although not directly relevant to the proceedings before me, it is fair to say as argued by the claimants that granting the present application may well render ground 3 of the pending appeal before the Court of Appeal academic. But that is not a matter for me and it is not the basis upon which I have decided to deal with this application.

9. I turn, then, to the question of section 32A of the Limitation Act 1980, which provides as follows:

“32A Discretionary exclusion of time limit for actions for defamation or malicious falsehood.

(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which – (a) the operation of section 4A of this Act prejudices the plaintiff or any person whom he represents, and (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents, the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates.

(2) In acting under this section the court shall have regard to all the circumstances of the case and in particular to – (a) the length of, and the reasons for, the delay on the part of the plaintiff; (b) where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the end of the period mentioned in section 4A – (i) the date on which any such facts did become known to him, and (ii) the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action; and (c) the extent to which, having regard to the delay, relevant evidence is likely – (i) to be unavailable, or (ii) to be less cogent than if the action had been brought within the period mentioned in section 4A.

(3) In the case of an action for slander of title, slander of goods or other malicious falsehood brought by a personal representative – (a) the references in subsection (2) above to the plaintiff shall be construed as including the deceased person to whom the cause of action accrued and any previous personal representative of that person; and (b) nothing in section 28(3) of this Act shall be construed as affecting the court’s discretion under this section.

(4) In this section ‘the court’ means the court in which the action has been brought.”

10. The factual basis for QAG’s arguments in favour of it being equitable and appropriate to exercise discretion to grant the amendments by disallowing the limitation period under section 32A are set out in Mr. Bartlett’s fourth witness statement.

11. I referred at [247(i)] of the judgment on the jurisdiction application to the general principles concerning the court's discretion under section 32A and will not repeat them: [2020] EWHC 2975 (QB).
12. I turn, then, to the particular factors which go to the exercise of the discretion in this case. In my judgment, on the basis of the materials before me, which include both the evidence of the claimant and the defendants, the case for allowing the action to proceed is overwhelming.
13. My reasons are as follows. First, as will be clear from the jurisdiction judgment, in my view the malicious falsehood claim is plainly serious. It has overcome the merits test and raises a serious issue to be tried, and as I have already observed, publication was very extensive.
14. Second, the claim was issued in time against Al Arabiya and the addition of AAN FZ seems to me to be a technical point of corporate identity. The claims have all been proceeding against MEN FZ and MBC FZ (which all part of the same corporate group or part of the same interconnected groups) in any event. It seems to me that it would be most unattractive for the claim to succeed, for example, against MEN FZ but to fail against AAN FZ (or for the claim to fail completely) because the wrong entity was sued, particularly when all the persons who directly did work for MEN FZ were MEN FZ employees. Barring the claim against AAN FZ could lead to an unnecessary technical argument divorced from the real merits as to corporate identity.
15. Third, the claims are essentially the same against AAN FZ as against other defendants and no further or broader investigations seem to be required. As

the jurisdiction judgment makes clear, it appears the same persons were involved as between AAN FZ and MEN FZ.

16. Fourth, as to the prejudice to the claimants caused by applying section 4A, this is strong as it involves depriving the claimants, if Al Arabiya are right on who is responsible, of a good claim against Al Arabiya as a whole. In contrast, as to the prejudice of applying section 32A to AAN FZ, this is not substantial and real prejudice that deserves weight over and above that which is inherent and disapplication of any limitation period. Instead, it seems to me that leading counsel for the claimants is right to submit AAN FZ will be benefiting from a fortuitous windfall.
17. Fifth, on the evidence before me, the omission of AAN FZ was an error. QAG intended to sue the company operating the Al Arabiya News Channels. It made this clear at the time in their letter of 10<sup>th</sup> August 2018. Further, it seems to me that the error was understandable because of the obscurity of Al Arabiya's internal arrangements and the lack of publicly available information.
18. Sixth, QAG moved swiftly to correct the alleged error once it was pointed out on 12<sup>th</sup> October. There was no material delay between then and 27<sup>th</sup> November.
19. Seventh, AAN FZ and Al Arabiya generally were well aware of the essence of the complaint from soon after publication of the letter of 29<sup>th</sup> August 2017. The defendants' solicitors knew all this and it can be inferred informed AAN FZ. It was clear to them at all times that the intention was to sue the actual



operator of the channel. In any event, sufficient was done in August 2017 and in August 2018 to make AAN FZ aware.

20. Eighth, it cannot be said that the commencement against AAN FZ in November rather than August 2018 has caused any evidence to be unavailable or to be less cogent. I cannot identify any specific prejudice in the evidence which has been submitted on behalf of the defendants in this regard.
21. Ninth, between 10<sup>th</sup> August 2018 and 12<sup>th</sup> October 2018, QAG was seeking Al Arabiya's substantive response and holding back on service. On 27<sup>th</sup> November, proceedings were issued soon after the identification of AAN FZ on 12<sup>th</sup> October. It took eight months to be served on AAN FZ because the foreign defendants refused to accept service through lawyers, so AAN FZ would have been formally on notice at the same time even if it had been in the original claim form.
22. Tenth, in view of the above matters, the omission of AAN FZ as a defendant in the original claim had no real practical impact on AAN FZ at all. It does not seem to me that AAN FZ will have done anything materially different had it been known on 9<sup>th</sup> August 2018 as opposed to 27<sup>th</sup> November 2018.
23. Eleventh, the claimant's malicious falsehood claim against AAN FZ for publication and loss from 27<sup>th</sup> November 2018 will proceed in any event and this arises out of the same video and the same creation with the same intentions. I note that the defendants originally sought to strike out those claims and Miss Kean, solicitor on behalf of the defendants, argued that they are insubstantial. But the application to strike out has not been pursued.

24. Twelfth, it is significant that the defendants have chosen not to deny that it is equitable to disapply section 32A. When the issue is as live as it is, and the defendants are active participants in the litigation, this is a very strong factor in favour of equitability. I reject the submission were it to be made that they could not be expected to oppose the claimant's application because of the jurisdictional position.
25. For those reasons in my judgment it is equitable to disapply the limitation period.

*(For further proceedings see separate transcript)*

Paragraph 12 of draft order

26. The history of these proceedings is that the defendants, as it appears on the correspondence, used the excuse of an appeal who failed to progress the taking of basic procedural steps in this action which concerned matters which have no relevance to the appeal.
27. In those circumstances, the claimants seek a number of orders which are set out in paragraph 12 of the draft order before me, the main being the requirement that there be a further acknowledgement of service served by the defendants excluding the malicious falsehood claim which is the subject of the appeal. It is now clear that the only issue in the appeal is going to be the malicious falsehood claim and there are viable and proper causes of action in other respects which are being pursued.
28. In those circumstances, I consider it is justifiable for the order that is sought in paragraph 12 of the draft to be made. I should make it clear that the order that

I am going to make is not going to require the defendants to do anything which would amount to a submission to jurisdiction in relation to the malicious falsehood causes of action but they should be required to serve an acknowledgement of service which constitutes a submission as regards the remainder of the action.

29. Accordingly, I will make the order in paragraph 12.

*(For further proceedings see separate transcript)*