Neutral Citation Number: [2013] EWHC 3011 (QB)

Case No: HQ11D03680

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/10/2013

Before :

THE HONOURABLE MR JUSTICE DINGEMANS

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Between :

Stanko Subotic	**Claimant**
- and -	
Ratko Knezevic	**Defendant**

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- -

Jacob Dean (instructed by **Carter-Ruck**) for the **Claimant**
David Price QC (of **David Price Solicitors & Advocates**) for the **Defendant**

Hearing dates: 1 and 2 October 2013

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Judgment

Mr Justice Dingemans

Introduction

1. These applications raise issues whether: (a) there should be an adjournment of 4 weeks to enable the Claimant's new legal representatives to have more time to advise the Claimant, to prepare for the hearing, and to consider further re-re-amendments to the Particulars of Claim; (b) the Claimant should be permitted to re-re-amend the Particulars of Claim in the form of the draft prepared by his former legal representatives, as further amended during the hearing; and (c) the claim should be dismissed as a *Jameel* abuse of process.

2. The Claimant is a Serbian national and the Defendant is a Montenegrin national. The Claimant currently lives in Geneva, Switzerland. The Defendant currently lives in Zagreb, Croatia. Both Claimant and Defendant consider that each other has been responsible for very serious criminal wrongdoing in the Balkans, and in the course of the hearing I was taken to documents by each side showing that both Claimant and Defendant have accused each other of very serious criminal wrongdoing. Both Claimant and Defendant deny any wrongdoing at all.

3. The Claimant has sued the Defendant for damages for libel in respect of publications in certain Balkan language newspapers said to have a hard copy circulation in

England and Wales, and in respect of internet publication of those and similar articles in England and Wales.

4. On the first day of the hearing, after hearing argument I refused the Claimant's application to adjourn for reasons shortly explained at the hearing, and which are more fully addressed in this judgment.

5. After the hearing both Mr Dean, on behalf of the Claimant, and Mr Price QC, on behalf of the Defendant, each put in a further short Note dealing with an issue of law which had been raised by the application to re-amend, whether a plea of justification was maintained, and a further amendment to the draft re-re-amendment. I am very grateful to both Mr Dean and Mr Price for their helpful submissions and Notes.

Some background

6. I have set out relevant background facts below which I have taken from the witness statements and from information set out in the pleadings and draft amended pleadings. I am not in a position to make, and am not making, findings of fact on these background matters, but it is necessary to set out the background matters so that the issues raised by the claim and applications can be put into the context of what the Claimant and Defendant each allege about relevant matters.

7. The Claimant, Mr Subotic, is apparently known to everyone as "Cane". Mr Subotic is a Serbian national who left Serbia to live in France when he was 21. He is fluent in Serbian and French. He returned to Serbia in the late 1980's where he became a successful businessman, and entered the cigarette trade in the Federal Republic of Yugoslavia, pursuant to Government authority. His cigarette business expanded and he became the largest tobacco distributor in the Balkans.

8. Mr Subotic became a friend and supporter of Zoran Djindjic, who was then an opposition leader in Serbia, at a time when Slobodan Milosevic was President. In 1997 Mr Subotic moved back to France, and then Switzerland because of his fears for his safety. Mr Subotic also became friends and a supporter of Milo Djukanovic, then Prime Minister of Montenegro.

9. After the removal of Mr Milosevic, Mr Djindjic was elected Prime Minister. Mr Subotic began investing in Serbia. Mr Djindjic was opposed in Serbia, and Mr Subotic claims that Mr Djindjic became the victim of a malicious press campaign by persons opposed to reforms supported by Mr Djindjic which would prevent corruption. Mr Subotic says that because he was associated with Mr Djindjic, Mr Subotic became the subject of a media campaign from 2001 which was highly negative and damaging to his professional and personal reputation. Mr Djindjic was assassinated on 12 March 2003.

10. Mr Subotic says that in the media campaign against him he was accused, among other matters, of murder, drug smuggling, witness intimidation, fraud, organised crime and concealing his identity by plastic surgery. Mr Subotic says that all of these allegations are false and have caused him financial and personal harm. Mr Subotic says that one of the prime movers of the campaign against him is the Defendant, Ratko Knezevic.

11. Mr Subotic says that in 2001 Mr Knezevic had contacted Mr Subotic and demanded payment of a substantial sum of money without any justification. Mr Subotic had refused to make the payment, and the media campaign against Mr Subotic had begun. Mr Subotic had complained to the Serbian authorities about Mr Knezevic's alleged blackmail, and an arrest warrant had been issued against Mr Knezevic. After the assassination of Mr Djindjic the criminal proceedings in Serbia had not been pursued and the claim had been closed after the expiry of the relevant limitation period. Mr Subotic said that another witness to the alleged blackmail had also been murdered, but that no one had been brought to justice for that complaint.

12. In 2007 an Interpol "Red Notice" for fraud was issued against Mr Subotic at the request of the Serbian Government. Mr Subotic says that the Serbian Government is pursuing a malicious campaign against him. The Red Notice was removed on 5 June 2012. However a second Interpol Red Notice was issued at the request of the Serbian Government. This originally referred to fraud, but has been amended to allege "continuing criminal offence of abuse of official authority". It is said that the European Parliament has called on Serbia to amend its Criminal Code to remove this offence. Mr Subotic says that France and Switzerland have made it plain that they will not respond to the Red Notices, but the Red Notices have caused him considerable inconvenience.

13. On 28 October 2011, following a trial at which he was represented but did not appear, Mr Subotic was convicted by the High Court of Belgrade of offences related to organised crime, including the smuggling of and illegal sale of cigarettes. Mr Subotic appealed against this conviction, and his appeal was successful, and a retrial was ordered. It appears from the submissions before me that the second Red Notice has now also been rescinded and a retrial is currently taking place.

14. It also appears that there were criminal proceedings against Mr Subotic in Italy in relation to the unlawful transportation of currency between Montenegro and Cyprus, but these proceedings terminated without any finding against Mr Subotic.

15. Mr Subotic claims that Mr Knezevic invited the Swiss authorities to prosecute Mr Subotic, but the Swiss authorities found no evidence of any criminal wrongdoing, and have declined to prosecute him. Mr Subotic claims, and Mr Knezevic also relies on the fact, that Mr Subotic's reputation has been ruined by an extended media campaign over the course of several years.

16. Mr Subotic started proceedings in Switzerland against Mr Knezevic on 19 March 2010 in relation to the damage to his reputation. The letter to the Principal State Prosecutor made it plain that Mr Subotic was seeking redress, and principally criminal redress, for the whole of the campaign which he says had been waged against him. He named a number of specific persons to be investigated including Mr Knezevic. I have been told that these proceedings are "pending", but that Mr Knezevic has not been served and has no information about their progress. Mr Subotic did not provide any further information.

17. Mr Knezevic was alleged by Mr Subotic to be domiciled and resident in England and Wales in London at the time of the commencement of these proceedings. Mr Knezevic had been Chief of a former Montenegrin trade mission to Washington DC. He accepted that he was the source of some of the information published in Nacional,

a Croatian weekly magazine. It appears that in 2006 Mr Knezevic completed a Masters at the London Business School, and in 2009 he had given his address as in London for the purposes of lobbying registration under the US Lobbying Disclosure Act of 1995.

18. In July 2011 Mr Knezevic had responded to a letter from Geneva attorneys sent to his London address to complain that attorneys acting for Mr Subotic had managed to find the private address of his wife and children in London. It is right to record that Mr Knezevic did say that he was looking forward to seeing Mr Subotic at the London Court, but Mr Price, on behalf of Mr Knezevic, has made the point that Mr Knezevic wrote that email at a time before he knew about the cost of libel proceedings in England and Wales, and before the procedural delays in dealing with this case had occurred.

19. It now appears to be common ground that Mr Knezevic is living in Zagreb, Croatia. A letter of instruction dated 21 December 2012 from the Claimant's former legal representatives to Paul Austin states that Mr Knezevic is "now believed to be domiciled in Croatia". Mr Knezevic denies that he is the prime mover behind defamatory allegations against Mr Subotic, noting that he had been required to give evidence in judicial proceedings in Croatia and Italy against Mr Subotic.

20. Mr Knezevic has also referred to articles in July 2013 published in Pobjeda, said to be a state-owned Montenegrin newspaper and the mouthpiece of Mr Djukanovic, a friend of Mr Subotic. These articles have attacked Mr Knezevic relying on previous Court orders from this case, making suggestions that Mr Knezevic is fleeing from the British judiciary. Mr Knezevic says that Mr Subotic must have been behind these articles.

The articles

21. As currently formulated, that part of the re-amended Particulars of Claim which concerns Mr Knezevic relates to the following hard copy and internet publications:

(a) an article in "Politika", a Serbian language daily newspaper produced in Serbia on 5 November 2010, summarising evidence given by Mr Knezevic in Court in Belgrade;

(b) a Serbian language blog known as "Angus Young" which publishes news articles available for viewing and which published words attributed to Mr Knezevic on 13 December 2010;

(c) a Serbian language blog known as Oriano Mattei with an Italian author which published the same words as those on the "Angus Young" blog, also on 13 December 2010;

(d) an article in "Kurir", a Serbian language daily newspaper produced in Serbia on 14 December 2010, reporting on an online conversation with Mr Knezevic; and

(e) an article in "Dan", a Montenegrin language newspaper produced in Montenegro on 31 December 2010, following an interview with Mr Knezevic.

The articles were all written in a foreign language and have been translated in the Particulars of Claim and in the materials before me.

22. The defamatory meanings of the articles, some of which were said to be defamatory by way of innuendo, have been set out in the Particulars of Claim and its amendments. The articles and publications are said to include meanings that: the Claimant was responsible for murders, or associated with persons responsible for murders; the Claimant was a tobacco smuggler; the Claimant shared offshore bank accounts with a former Prime Minister and President of Montenegro; the Claimant was involved in organised crime and money laundering; the Claimant had told prisoners not to disclose who had ordered a murder; the Claimant had had plastic surgery to conceal his identity; the Claimant was a major criminal in Europe and had earned a few billion euros by illegal means; the Claimant should give himself up to the Serbian police because of his criminal activities; the Claimant had defrauded the budgets of Serbia and Montenegro of millions of euros; the Claimant had consorted with a mafia boss; the Claimant had purchased a newspaper to suppress reports against him; and that the Claimant was going to be a protected witness in the trial of a named person.

23. The proposed re-re-amendments relate to further hard copy and internet publications. These are:

(f) an article in Monitor, a weekly news magazine published in Montenegro on 30 March 2012, based on an interview with Mr Knezevic;

(g) a further article on the Dan website, the Montenegrin language newspaper produced in Montenegro, dated 21 October 2012 containing a quotation from Mr Knezevic.

24. The defamatory meanings of these further articles are said to be that: the Claimant had killed persons in revenge for articles published in a newspaper; the Claimant had bought a newspaper to remove and conceal evidence about organised crime linked to the tobacco industry and to force an apology to the Claimant; the Claimant was hiding from authorities; and, by innuendo, the Claimant is in partnership with notorious criminals involved in drug trafficking and serious organised crime.

The proceedings

25. The Claim Form was issued on 4 October 2011. Particulars of Claim were attached. In the early stages of the proceedings, it appeared that there might be an issue about whether the English Courts had jurisdiction to hear the matter, but in the event no application to set aside service of the Claim Form was made. The Claimant invites me to infer that no application to set aside service was made because Mr Knezevic was resident and domiciled in London and realised that he would not succeed in any such application. The Defendant says that such an inference is not justified. This is because the Claimant had claimed in respect of publications and injury to reputation in this jurisdiction, meaning that any application to dispute the jurisdiction of the English Court would not have succeeded. It is not necessary to resolve this point, and it is common ground that this Court has jurisdiction to hear this claim.

26. It might be noted that the Particulars of Claim contained additional claims against the publishers of the articles complained of and other publications. These are not being pursued.

27. After the issue of proceedings there has been what the Defendant termed "an unfortunate procedural history". It is not necessary to go into the detail of that history, but I record that, among other steps: the Defendant made an unsuccessful attempt to strike out part of the Particulars of Claim on various bases including that some publications were the subject of absolute privilege; the Claimant brought an unsuccessful appeal against orders adjourning so that the whole claim could be reformulated and directing the Claimant pay indemnity costs; and there had at one stage been a trial date for this action.

28. There was also an order made that the parties lodge costs schedules but the best information at the hearing before me (and both Claimant and Defendant have changed legal representatives in the course of the proceedings) is that no one has done that. It is, however, apparent that very considerable costs have been incurred on both sides. Costs orders in favour of the Claimant have not been paid by the Defendant, and later costs orders in favour of the Defendant which have now exceeded the costs orders payable to the Claimant, have not been paid by the Claimant.

29. It should also be recorded that there have been correspondence and submissions made at earlier hearings about the extent of the publication of the relevant articles in the jurisdiction. On 14 November 2011 Mr Knezevic's former solicitors wrote to Mr Subotic's former solicitors stating that an application to strike out would be made because there was no averment that the internet publication had been read in this jurisdiction. In the course of a hearing on 25 May 2012 Tugendhat J. was told by Mr Subotic's former legal representatives that the Claimant was in a position to plead and prove actual internet publication, and permission was given for the Particulars of Claim to be amended so that this could be done. In paragraph 21 of the judgment dated 25 May 2012 Tugendhat J. noted a failure to plead details relating to internet publishees, but recorded that it might not be relevant given the alleged hard copy circulation. In fact when the Re-Re-Amended Particulars of Claim were served on 8 June 2012 they simply stated that the internet articles had been accessed and read by readers in the jurisdiction.

30. The Particulars of Claim were amended pursuant to the order of Tugendhat J. dated 25 May 2012, and re-amended pursuant to an order of Tugendhat J. dated 16 November 2012. I should record that there appears to be a minor dispute about the extent to which some of the re-amendments were in fact the subject of permission to re-amend.

31. In an interim judgment dated 8 November 2012 Tugendhat J. had noted, at paragraph 5, that some of the pleas then made were not arguably capable of being defamatory, and that a proposed plea of innuendo was defective because it did not identify particular persons having knowledge from which they drew the defamatory meanings.

32. The Defence, and draft amended Defence prepared in relation to earlier versions of the Re-re-amended Particulars of Claim, relied on various defences. There seems to be in issue: whether there has been any publication in the jurisdiction of England and Wales; whether the reports of matters said by Mr Knezevic had been accurately

summarised; whether there was absolute privilege; whether there was qualified privilege; justification; and whether there has been any loss and damage suffered in this jurisdiction.

The evidence about publication in England and Wales

33. In 2008 the Serbian Council of Great Britain estimated that there were over 70,000 ethnic Serbians living in the United Kingdom. I have not been given a breakdown about distribution between England and Wales and other legal jurisdictions in the United Kingdom, but I am prepared to infer that the overwhelming majority of that 70,000 are in England and Wales in the light of evidence that the main geographic concentration is in London. A co-editor of the English Serb magazine stated that this population use internet resources, and that some hard copy newspapers are brought at airports and brought into the United Kingdom.

34. The Particulars of Claim alleged that each of the newspapers had "a considerable circulation and readership throughout the jurisdiction of this Court".

35. It is common ground for this application, and relied on by the Defendant in support of the defence of qualified privilege, that the content of the articles engage matters of public interest such as large scale tobacco smuggling, organised crime, political corruption and related matters.

36. Information was provided as to website hits in relation to internet publication of the articles in the Particulars of Claim. Subsequent requests for details of publishees were answered on the basis that full details would be provided on exchange of witness statements. It was common ground that there is no rebuttable presumption of law that publication on the internet will be publication to a substantial but unquantifiable number of people within the jurisdiction, but evidence may justify an inference that there has been publication, see *Al Amoudi v Brisard* [2006] EWHC 1062 (QB); [2007] 1 WLR 113.

37. On 14 May 2013 the Claimant's former solicitors served witness statements and an expert's report for the purposes of the trial, which dealt with the issue of publication. On 17 May 2013 the Claimant's former solicitors were warned that in the light of this evidence, a *Jameel* application was now likely. On 23 May 2013 HHJ Moloney QC sitting as a High Court Judge, while dealing with an appeal against an order made by Master Leslie, stayed previous directions in the light of the proposed *Jameel* application.

38. When the Amended Particulars of Claim were served on 8 June 2012 they simply stated that the internet articles had been accessed and read by readers in the jurisdiction. This meant that answers to requests for further information about the extent of publication were not provided, even though Mr Subotic's previous legal representatives had said that they would be answered in full.

39. Witness statements served on behalf of the Claimant included statements from Vasilije Calasan and Neboisa Katic. Mr Calasan had known Mr Subotic since 2004 having been introduced by a family member. He said, at paragraph 7 of his witness statement dated 8 March 2013, that he had accessed all the relevant articles in the Re-Amended Particulars of Claim and read them in the United Kingdom (he was not in

fact specific about England and Wales but I have, for the purposes of this application, assumed that he read the articles within England and Wales – they remain accessible here). He did not give a date when he accessed the articles. Mr Calasan had been identified as an innuendo publishee in respect of the second Dan article in a draft Amended Particulars of Claim served on 8 February 2013.

40. Mr Katic worked as a business consultant with Mr Subotic from 1997 to 2000 and is a friend of Mr Subotic. He said, at paragraph 14 of his witness statement dated 1 February 2013, that he read the articles in Kurir and Politika and that he had accessed and read them in the United Kingdom. Again I have assumed that to be a reference to England and Wales, and again no date of publication is given.

41. The Claimant's expert report was from Mr Austin, a Director of Operations at Pelican Worldwide Limited ("Pelican"). Pelican had carried out investigations into the "readership and distribution" of the relevant publications within the jurisdiction. He had researched the issue of the extent of the hard copy and internet publication of the articles. There is an issue about whether Mr Austin's report is "expert evidence" properly so called, or factual evidence, but it is common ground that it represents material which it is appropriate to consider on the applications before me.

42. Mr Austin recorded that statistical information for some publications for the day when the article was published was not capable of being obtained. Mr Austin had also researched Serbian organisations based in London in an attempt to find a readership, including the UCL School of Slavonic and Eastern European Studies ("SSEES"). It also appears that on 15 January 2013 Pelican carried out an investigation into the distribution and readership of hard copies in the area of the densest population of the Serbian and Montenegrin diaspora in London which was Hammersmith, Shepherd's Bush and Acton. On that day Eastern European publications distributed from newsagents were found to be from Romania and Poland. The only Serbian/Montenegrin publication was one called "Vesti", which is not the subject of this claim.

43. Mr Austin's evidence relates to each publication. I will summarise it below:

(a) Politika is not officially distributed in England and Wales. Although supposedly available by subscription, copies are available only at the library at SSEES and then only to the university community. Mr Austin speculated that some migrants might have brought a copy of the article in with them. The website evidence suggested that between October and December 2012 there were about 6,250 hits per month from the United Kingdom. If it is assumed that all of those hits were from England and Wales, and that there were 25 editions per month, this would give about 300 hits per edition of the newspaper. There is no information on where the relevant article was placed on the website or the volume of other articles and materials on the website.

(b) Angus Young is published only online. However there were no figures available showing publication in the United Kingdom, let alone England and Wales. There is no information on where the relevant article was placed on the website or the volume of other articles and materials on the website.

(c) Oriano Mattei is published only online. However there were no figures available showing publication in the United Kingdom, let alone England and Wales. The author

said his main contacts were in Italy, followed by the Balkans, Switzerland and Germany. There is no information on where the relevant article was placed on the website or the volume of other articles and materials on the website.

(d) Kurir is officially unavailable in England and Wales. Mr Austin speculated that some migrants might have brought a copy of the article in with them. Between 1 and 31 December 2010 0.63 per cent of its online traffic was from the United Kingdom, which meant that there were 30,024 views from England (29,819 from England) and Wales (205 from Wales), with a combined bounce rate of about 21.5 per cent. Each visit was for about 6 pages per visit. If the figures are 30,000, and 6,450 are excluded for bounce rate, that gives a total of 23,350 over the month. If there are assumed to be 25 editions this would give 934 views per edition. There is no information on where the relevant article was placed on the website or the volume of other articles and materials on the website.

(e) Dan is not officially circulated in England and Wales. Mr Austin speculated that some migrants might have brought a copy of the article in with them. Between 1 December 2010 and 31 December 2010 1.09 per cent of the total visits were from the United Kingdom. This was 3,614 visits, and an average number of pages viewed of 4.36. There was a bounce rate of 30.4 per cent. Central London accounted for 2,498 views. If it is assumed that there were 25 editions in the month, this gives about 100 readers for each edition. There is no information on where the relevant article was placed on the website or the volume of other articles and materials on the website.

(f) Monitor is not officially available in England and Wales. Mr Austin speculated that some migrants might have brought a copy of the article in with them. The number of views in March 2012 was not available, but in April 2012 there were 35,390 views. Figures were given for views from April 2012 to December 2012. There is no information on where the relevant article was placed on the website or the volume of other articles and materials on the website.

(g) It might be noted that figures for the second Dan article (on 21 October 2012) suggest 0.78 per cent of visits were from the United Kingdom, with 3,568 visits and a bounce rate of 36.27 per cent. Figures were given for views after October 2012. There is no information on where the relevant article was placed on the website or the volume of other articles and materials on the website.

44. Having summarised the evidence for the website Mr Austin aggregated figures for website hits and said variously words to the effect that "it is not possible to state a more accurate estimate as to how many different users viewed the article", or "a proportion … could have read the article".

45. Mr Dean, on behalf of the Claimant, noted that it might be possible to obtain further evidence. He said surveys of the 70,000 Serbians in England and Wales might be carried out, and noted that greater specificity about the internet hits could be provided, showing for example whether any of the hits had related to the articles. However the report from Mr Austin exhibits, at appendix 1, the instructions given by the Claimant's former legal representatives to Mr Austin. This made it clear that Mr Austin was to assess whether the relevant articles were "published and read in the jurisdiction … both in … hard copy format and … electronic format". There was also an email sent to Mr Austin which made it clear that "litigation is now in an advanced

stage", see paragraph 2 of the report. It is also apparent that Mr Austin had carried out investigations by considering website statistics and, in some instances, Google Analytics.

46. I also note that the Claimant's former legal representatives, having been pressed on the issue of publication in correspondence and requests for further information, had promised to provide full details in the witness evidence. Since the issue of the *Jameel* application in June 2013, the Claimant has not adduced any further evidence relating to publication in England and Wales. In these circumstances although I accept that it might be possible to obtain more evidence showing, for example, the number of pages on each website publication at relevant dates, I do not accept that further evidence about publication and publishees will be forthcoming. The Claimant, having been represented by experienced counsel and solicitors, has had ample time to put in evidence about the extent of, and effect of, the publications in England and Wales.

47. In the light of the evidence about publication it seems to me that Mr Dean is entitled to say that there is a "good arguable case from which the Court can infer publication of the articles". However the extent of that publication is, on the evidence, minimal. There was a hard copy of Politika at the SSEES at UCL. The online publication has been so minimal that it has proved impossible to identify anyone, other than persons reasonably described as being members of the Claimant's camp (Mr Calasan and Mr Katic), who have seen the articles in England and Wales, even though the articles are still on the web. Even Mr Calasan and Mr Katic, whose evidence I accept for the purposes of this application, did not say that they saw the online articles contemporaneously, when they saw the articles, or how difficult it was to find the material online.

No adjournment

48. Mr Dean noted that Mr Subotic's former solicitors had come off the record shortly before the hearing of this application, that new solicitors had been instructed very shortly before the hearing, and that Mr Dean, who has made with skill every proper point that can be made on behalf of Mr Subotic, was instructed with even less notice. The reasons why Mr Subotic's former solicitors had come off the record were not provided to the Court.

49. Mr Dean relied on a letter from Mr Subotic's current solicitors indicating that Mr Subotic's former solicitors threatened to stop acting for him on 11 September 2013, which was the date Mr Subotic had left Geneva to go to the Belgrade Court to give evidence in the criminal proceedings against him. Mr Subotic had not returned until 22 September, and other legal advisers had in the interim not appreciated the urgency of the situation. In these circumstances Mr Dean submitted that an adjournment should be given.

50. Mr Price noted that the applications had originally been listed for 10 July 2013, but that they had been adjourned because of professional commitments of leading counsel then retained on behalf of Mr Subotic, and because of personal commitments of the partner of the firm of solicitors then acting on behalf of Mr Subotic. Mr Price said that it was wholly unsatisfactory to attempt to rely on such a change of legal representation as a reason for an adjournment without providing any evidence about the reasons for the change.

51. In further support of his application for an adjournment Mr Dean submitted that as Mr Knezevic had been resident and domiciled in London at the time when proceedings were issued in 2010, Mr Subotic would have been entitled to bring proceedings against Mr Knezevic for the publications in England and Wales, and for any other worldwide torts, delicts and quasi-delicts, including wrongful publications in Serbia, Croatia and Montenegro, pursuant to the provisions of Council Regulation (EC) No.44/2001 ("the Judgments Regulation"). The applicable law governing any such claim would be determined by the common law, because defamation was excluded from the provisions of the Private International Law (Miscellaneous Provisions) Act 1995 and, despite various proposals, such claims remain excluded from the provisions of Regulation 864/2007 of the European Parliament and of the Council on the law applicable ("Rome II"). Therefore in order to determine such a claim in respect of damage to reputation in Serbia, Croatia and Montenegro it would be necessary to have evidence of the law where the publication and loss had occurred. Mr Dean asked for an adjournment in order to get evidence of these laws, and in order to get further evidence relating to publication.

52. As noted above I refused to adjourn these applications. The *Jameel* application has been outstanding since June 2013. An earlier date had been adjourned at the Claimant's request to accommodate commitments of his then legal representatives. No reason has been given for the late change of legal representatives. The change of legal representatives is therefore a matter entirely for the Claimant but in the absence of an explanation, the Claimant cannot rely on such a change to put off a longstanding application. If the Claimant had wanted to rely on the change, he would have to have given some explanation about why it had occurred, and why it had occurred so late. The Claimant had that opportunity, and did not take it.

53. As to the point about pleading in this action the Balkan publications and losses, it is relevant to record that the Particulars of Claim, and its amendments and draft amendments to date, relate only to the publications made in England and Wales. It would not be right to adjourn matters so that investigations can be made about pleading claims for torts, delicts and quasi-delicts arising out of the publications in the Balkans, causing losses in the Balkans. This is because the claim has been ongoing for nearly 3 years, and such a claim has not been made to date. Pleading a claim about publications and losses in the Balkans may be, as the Defendant submits, what this claim is all about, but it is a completely new claim to make at a very late stage in the proceedings. It might also be noted that the Claimant was given an opportunity to reformulate the claim in February 2013, but refused to take such an opportunity, and there is not yet evidence about the laws of Serbia, Montenegro and Croatia.

54. As I have noted in paragraph 19 above, the Claimant's former legal representatives even suggested that Mr Knezevic is now probably domiciled in Croatia, whatever may have been Mr Knezevic's domicile at the time of issue of the proceedings. It would be wrong to allow a late amendment to bring a claim dependent on Mr Knezevic's domicile, if he is in fact now domiciled elsewhere. There is nothing to prevent Mr Subotic bringing proceedings against Mr Knezevic in Croatia. If in truth Mr Knezevic is domiciled in London, and (as Mr Subotic contends) there are continuing publications in the Balkans by Mr Knezevic about Mr Subotic, a claim in respect of publications made in Serbia, Croatia and Montenegro can be made, which the Courts in England and Wales may have to entertain pursuant to the Judgments

Regulation. However this is a completely different claim from the one made, and in my judgment it should not be added on to the existing action at this stage.

Applicable legal principles on *Jameel* application

55. It is established that in order to deal with cases justly, proportionately and to maintain a proper balance between the Convention right to freedom of expression and the protection of other rights, the Court is required to stop as an abuse of process defamation proceedings which serve no legitimate purpose, see *Jameel v Dow Jones* [2005] EWCA Civ 75; [2005] QB 946 at paragraph 55. The test proposed in that case and accepted by the Court was whether "*a real and substantial tort*" had been committed in the jurisdiction, see paragraph 50 of *Jameel*.

56. The test has been expressed in a number of different ways, namely whether "*the game is worth the candle*", see paragraph 69 of *Jameel*, or whether there is any 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"*, see *Schellenberg v BBC* [2000] EMLR 296.

57. A number of cases were cited to me in which this principle has been applied. In some of those cases the determinations that the action had become an abuse of process was against a background where rulings on meaning and comment had been given. In such cases it is sometimes easier to show that the proceedings would not achieve anything of practical utility for the Claimant, see *Cammish v Hughes* [2012] EWCA Civ 1655; [2013] EMLR 13 at paragraph 60 and *Euromoney Institutional Investor Plc v Aviation News Limited and another* [2013] EWHC 1505 (QB) at paragraphs 142-144.

58. Vindication is an important point of defamation proceedings, and vindication, and consequential injunctions, may eliminate or reduce the risk of republication, see *McLaughlin v London Borough of Lambeth* [2010] EWHC 2726 (QB); [2011] EMLR 8 at paragraph 112. This is particularly so if the Defendant is continuing to publish the allegations in this jurisdiction, see *Jameel* at paragraph 74 and *Mengi v Hermitage* [2012] EHWC 3445 (QB) at paragraph 52.

59. However, at least so far as in a case such as this, which relates only to publication in this jurisdiction, vindication must relate to the Claimant's reputation in this jurisdiction, and "*it is not legitimate for the Claimant to seek to justify the pursuit of these proceedings by praying in aid the effect that they may have in vindicating him in relation to the wider publication"*, see *Jameel* at paragraph 66.

60. It needs to be remembered that dismissing an action for an abuse of process is a draconian power vested in the Court which should only be exercised in an exceptional case, see *Haji-Ioannou v Dixon and others* [2009] EWHC 178 (QB) at paragraph 30. Applications of this type are not a "numbers game" so far as evidence about publication is concerned. This is because cases have shown that a slander published to only one person can cause immense damage, and everything will be specific to the relevant case.

61. The fact that costs are likely to be high does not mean that an action should be struck out as an abuse, *Haji-Ioannou* at paragraph 43. This is particularly so given the

increased power available to Courts to control the expenditure of disproportionate costs following the recent reforms to the Civil Procedure Rules.

62. I also accept the proposition that on this application it is not for me to determine disputed matters which are for trial. However that does not prevent the Court from looking at the evidence which is adduced for the purposes of this application, and taking proper account of what other evidence may become available, in order to determine whether the proceedings are an abuse of process.

63. Finally I should record that applications to dismiss proceedings as an abuse of process must not become a routine, expensive, procedural hurdle over which Claimants are forced to jump in an attempt to secure justice. On the other hand it is essential that the Court is able to control its process to ensure that actions which do not serve any legitimate purpose are not pursued and that there is not disproportionate and unnecessary interference with freedom of expression.

Abuse of process to continue this action and no re-re-amendment

64. For the purposes of considering whether the action is an abuse of process I have considered both the original publications in the re-amended Particulars of Claim, and the new publications for which permission to re-re-amend was sought.

65. The issue about whether Mr Subotic's reputation was in any way affected by any publications in England and Wales has been very much engaged in this action from the beginning. However it is plain that, when these proceedings were started, there was a common misunderstanding that there was an extensive circulation of hard copies of the relevant publications. This appeared from the Claimant's pleadings, and submissions that were made. The internet publications were therefore not the particular subject of forensic examination, but the Claimant was also saying that internet publishees in this jurisdiction could be located.

66. The evidence before me now establishes a completely different picture for both the claim as it is pleaded, and in respect of the proposed re-re-amendments. Apart from the purchase of Politika by SSEES, part of UCL, there appears to be no hard copy distribution of the relevant publications. Mr Austin speculated that persons travelling from Serbia to England and Wales might have brought relevant newspapers into the jurisdiction, but this is not a basis on which any action could be brought.

67. There has therefore been an understandable and intense focus on the extent of the internet publication. The only direct evidence of anyone reading the internet articles was from Mr Calasan and Mr Katic, who were reasonably described as being in the Claimant's camp, who do not give a date of publication, and who do not say how the articles were located. The evidence from Mr Austin shows that internet hits from England and Wales were minimal, being 1 per cent or less of online traffic, and there is simply no one who appears to have read the article contemporaneously.

68. Further Mr Subotic's own evidence is that, as early as 2001, the media campaign against him had affected his ability to do business in the UK, referring to articles published in the Observer and Private Eye. He made it clear in Further Information that he has carried out no business in the UK since 1 January 2010, which is a date before the publications referred to in the Particulars of Claim or Re-Re-Amended

Particulars of Claim. Mr Subotic has not provided further information of any attempts to carry out business in England and Wales, despite a statement that he would. The real point is that Mr Subotic has not been able to identify any loss in England and Wales from any hard copy or internet publications in England and Wales.

69. In this respect a number of witnesses have provided statements on behalf of the Claimant showing the effect of the media campaign against Mr Subotic on him and his business. However they disclose a picture of business losses suffered elsewhere, for example in Serbia (paragraphs 32 and 33 of the witness statement of Bodo Hombach), or Montenegro (paragraphs 9 and 10 of the witness statement of Robert Sprunt).

70. Even accepting, as I do, that there has been some minimal internet publication in England and Wales, and there has at least been publication of Politika in hard copy form to academics, in my judgment it is impossible to say that the extent of the publication, and the loss and effect on his reputation in England and Wales, is worth the candle of pursuing this litigation in England and Wales. The time, effort and cost involved in determining the issues engaged in this action, for the amount of damages that are in issue, is simply not justifiable.

71. Mr Subotic says that publications about him from Mr Knezevic are continuing, and points to his proposed re-re-amendments as a reason for continuing the action, but all the evidence shows that those are publications in the Balkans with no, or minimal, leakage into England and Wales.

72. Mr Subotic says that he wants to vindicate his reputation, and I accept Mr Dean's submission that I cannot ignore Mr Subotic's evidence about why he wants to bring this action (namely vindication). However that does not answer the point that "*it is not legitimate for the Claimant to seek to justify the pursuit of these proceedings by praying in aid the effect that they may have in vindicating him in relation to the wider publication"*. It is plain that it is wider vindication in the long-running media campaign against him that Mr Subotic wants, and this appears from his own witness statement, and the fact that he still seeks to pursue this action in England and Wales in the absence of anything more than minimal publication in England and Wales, and in the absence of any loss caused by the publications in England and Wales.

73. Mr Subotic says that he wants to obtain an injunction in the action in England and Wales, and register it in Croatia. However any injunction, if granted, would be limited to publications in England and Wales. Any such injunction would not serve the purpose which Mr Subotic wants, which is to prevent damage to his reputation in Croatia and the Balkans.

74. I should record that, in coming to this conclusion, I have not made any finding that Mr Subotic's purpose in bringing this action was to increase costs and expense for Mr Knezevic. It is right to record that the action has not been properly progressed on behalf of Mr Subotic, but that is as consistent with a dawning realisation on the part of Mr Subotic and his legal representatives that there was no sufficient publication and loss in England and Wales to justify the action, as it was with an attempt to open another front in another jurisdiction against Mr Knezevic to cause Mr Knezevic loss and expense.

75. Mr Price also submitted that Mr Subotic would not pay any costs orders, and that this was a further reason for finding a *Jameel* abuse. I reject that submission. In respect of costs the material before me suggests that neither party wants to pay costs to the other side (in common with almost all litigants), and will not pay costs if they can avoid it. This last inference is based on the fact that both parties have ignored adverse costs orders. The Defendant did this at the start, and the Claimant did this when his costs orders were overtaken by costs orders to the Defendant. No explanation was given for Mr Knezevic's original failure to make payment. In respect of Mr Subotic's subsequent failure it was said that the balance owed is not a great sum. This is true, but if Mr Subotic had wanted to comply with Court orders the fact that the sum was insignificant rather suggests that he should have paid that sum, and that he should not have treated compliance with costs orders as an optional extra in litigation. However there is no sufficient evidence to justify the finding that, if pursued for costs, Mr Subotic, who is resident in Switzerland, would continue to evade costs orders.

76. In my judgment the fact that this action really has nothing to do with Mr Subotic's reputation in England and Wales, and everything to do with his reputation in the Balkans, was part demonstrated by Mr Dean's original, but overly late, request for time to plead the publications and loss to reputation suffered in Serbia, Montenegro and Croatia against a person domiciled in this jurisdiction.

77. I accept that to prevent a Claimant from having a determination on the merits at a trial is always a step that should be taken only after careful consideration. However in this case when, properly analysed, what might be determined on the merits will not resolve anything of sufficient worth to justify pursuing the action, it is proper to refuse to permit such a trial to take place.

78. In all these circumstances I refuse permission to re-re-amend the Particulars of Claim to make amendments. The evidence shows that there was no substantial publication in England and Wales, and that there was no effect on the reputation of Mr Subotic in England and Wales. There is therefore no point in permitting the re-re-amendments to be made.

79. As noted in paragraph 23 above the re-re-amendments related to: (1) the internet publication of an article on 30 March 2012 in Monitor, a Montenegrin weekly magazine, which contained an interview with Mr Knezevic; and (2) a Dan article dated 21 October 2012 which included a quotation from Mr Knezevic. Although the position is not entirely clear to me, because I have not seen all the interim drafts of the re-re-amendments of the Particulars of Claim, it appears that they were originally relied on in aggravation of damages, see paragraph 20 of the witness statement of Korieh Duodu. However the pleading now before me, for which Mr Dean is not responsible and which he fairly accepted was not a model of clarity, does appear to rely on the publications as giving rise to new causes of action. The draft for which Mr Dean sought permission to amend was itself amended in paragraph 66 so that the continuing threat to publish could be more clearly established. As noted in paragraphs 71-73 above, any threat of further publications is in the Balkans.

80. There is an issue about whether I have power to permit an amendment to the claim in respect of the Monitor article because such a claim is now statute barred. The Court has jurisdiction, set out in CPR 17.4(2), to allow claims which are statute-barred to be added to existing proceedings if the new claim "*arises out of the same or substantially*

the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings". This power derives from section 35 of the Limitation Act 1980.

81. Reference was made in the Notes submitted by counsel after the hearing to *Goode v Martin* [2001] EWCA Civ 1899; [2002] 1 ELR 1828, *Komarek v Ramco Energy plc*, unreported, 21 November 2002, *Reuben v Time Inc* [2003] EWCA Civ 06, and *Wood v Chief Constable of West Midlands* [2004] EWCA Civ 1638; [2005] EMLR 20 on whether subsequent publications of identical, or similar, statements come within the terms of CPR 17.4(2). I do not determine this issue because: even if I had power to make the amendment I would not do so because any such claim would be a *Jameel* abuse; although I have formed a provisional view having read the cases there was not full argument on the point; and the authorities are not consistent with each other. I would prefer to leave this issue to be determined in a case where it is necessary to determine it.

Conclusion

82. For the reasons given above I have refused to adjourn the hearing of these applications, I refuse permission to re-re-amend the Particulars of Claim, and I dismiss the action as a *Jameel* abuse of process.