

IN THE SUPREME COURT OF GIBRALTAR

Claim No. 2013-E-42

TERENCE PATRICK EWING

Claimant

-and-

TIMES NEWSPAPERS LTD

Defendant

19th November 2014

Before the Honourable Mr Justice Jack

JUDGMENT

Mr Robert Vasquez QC for the claimant

Mr Robert Fischel QC, amicus curiae instructed by the Attorney-
General

JACK, J:

1. On Monday 17th November 2014 I heard the defendant newspaper's application to strike out Mr Ewing's claim. I decided that Mr Ewing was guilty of a serious abuse of process in commencing proceedings in this jurisdiction after previously litigating about exactly the same matters in England, Scotland and Northern Ireland. For reasons which I explained in the judgment I handed down on that date it seemed to me that serious abuse of process can be a contempt of court and that there was a prima facie case that Mr Ewing was guilty of it.

2. Because the Practice Direction dealing with contempt of court (and indeed natural justice) required me to do so, I adjourned matters until today so that Mr Ewing could be represented. He appeared today with Robert Vasquez QC.
3. In my judgment on Monday, I said that a litigant pursuing vexatious litigation by bringing vexatious proceedings and then by advocacy in court is committing a form of criminal contempt in the face of the court. That remains my view.
4. It is essential that the Court be able to prevent its processes being abused. This is a small jurisdiction. It requires only a few vexatious litigants to cripple the administration of justice in this City. If it became known that men and women who had been declared vexatious litigants in the High Court of England and Wales could come here and issue proceedings (normally with complete remission of fees, because of their impecuniosity or alleged impecuniosity), then I have no doubt many would do so. Airfares to Gibraltar are often cheaper than train travel between major cities in the United Kingdom.
5. I have set out the facts of the current case in my earlier judgment. In my recital of the cases in which Mr Ewing appeared after he was declared a vexatious litigant, I overlooked his involvement in *Mephistopheles Debt Collection Agency (A Firm) v Lotay* [1994] 1 WLR 1056. Mr Ewing was a partner in the plaintiff firm, whose motto was

“It’s no use dying to avoid us - we pursue debtors to the gates of Hell if necessary in order to recover our clients’ money!”

After his status as a vexatious litigant was discovered, he attempted to avoid an automatic stay on the debt collection action against Mrs Lotay by assigning his share in the partnership to another partner, Mr Gleaves. Mr Gleaves had, however, also been

declared a vexatious litigant and the Court of Appeal stayed the claim.

6. I also overlooked Mr Ewing's appearance on behalf of a charity and its subsidiary. He had made himself a director of both. In *R (POW Trust) v Chief Executive and Registrar of Companies* [2002] EWHC 2783 (Admin) Mr Ewing presented an unsuccessful claim for judicial review of Company House's imposition of £100 fines for failure to file accounts timeously. Lightman J criticised the application as "disproportionately expensive and (at best) speculative litigation": para [20].
7. I have reconsidered whether Mr Ewing's behaviour in the current case is so serious that it amounts to a contempt of court. In my judgment it is. This is a very bad case indeed. He has been told by no fewer than nine judges before me in three separate jurisdictions that he has no reasonable prospect of success. Instead he brings another set of proceedings before a tenth judge – me – in a fourth jurisdiction – Gibraltar – and makes precisely the same arguments which have been rejected by the previous nine judges.
8. The costs incurred by the defendant in Gibraltar alone are of the order of £30,000. These will in practice be wholly irrecoverable. As I pointed out in my earlier judgment, I have to protect the *Sunday Times'* constitutional right to freedom of speech. The only practical means of protecting the defendant is by the use of the Court's power to commit for contempt.
9. Having found that there was a contempt of court, I now turn to consider penalty. Mr Ewing indicated that he was willing to offer an undertaking never to issue proceedings within this jurisdiction ever again. Mr Ewing also told me on Monday that he had to lodge papers with the Supreme Court of the United Kingdom next

week, otherwise his petition for leave to appeal to that court from the Court of Appeal of Northern Ireland might be liable to be dismissed. I would not wish to interfere with the process of another court and in any event it is highly desirable that Mr Ewing leave the City without further cost to the tax-payers of Gibraltar.

10. I have now made it clear what this Court's approach will be to any further attempts to abuse its processes. Mr Ewing has been in custody for two nights and will have seen what the consequences of vexatious litigation can be. In these circumstances I propose to accept the undertaking offered by Mr Ewing and make no order. The consequence is that Mr Ewing will be released.

Adrian Jack
Puisne Judge

19th November 2014