Neutral Citation Number: [2017] EWHC 1498

Case No: HQ16D01498

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/06/2017

Before :

MASTER THORNETT

- -

Between :

MS ROSA NARDA MALAGA-CANO
also known as MRS VAN DER MAST

Claimant

- and -

(1) MRS BEATRIZ BARCLAY
(2) MRS MONICA HAWKES
(3) MRS CECILIA VALDIVIESO
(4) MS PATRICIA MALAGA
(5) MS ANNE BANON
(6) MRS BLANCA CANE
(7) MS SILVANA CENTTY
(8) MS SOPHIA BELL
(9) MR JOHN HEMMING
(10) DR BILL SILLAR
(11) MR DAVID DREW
(12) MR HALLAM MURRAY

Defendants

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Mr Soto-Miranda (direct access Counsel) instructed by the Claimant
Mr Greg Callus (instructed by Carter Ruck) for the Defendants

Hearing dates: 11 May 2017 and 30 June 2017

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JUDGMENT

Master Thornett :

1. This is the reserved judgment following a hearing on 11 May 2017 of the Defendant's application dated 4 November 2016 seeking:

   (i) Strike-Out of the claim(s) under CPR r.3.4(2); and/or

   (ii) Summary Judgment on the claim(s) under CPR r.24.2.

2. The Claimant acts in person, although instructed Direct Access Counsel for the purposes of the hearing on 11 May. The Claimant issued her Claim Form on 28 April 2016 for unlimited damages and injunctive relief in respect of several causes of action. The fundamental or at least more identifiable causes of action comprise : slander, libel, assault and breach of contract, all arising from an incident on 29th April 2015.

The background to the claim and slanders relied upon

3. The Defendants are currently or past members of the Executive Committee of the Anglo-Peruvian Society ("The Society"), a registered charity and society of about 300 members that organises lectures and events. Neither its Trustees nor Members of the Executive Committee are remunerated. It is admitted that the Claimant was an active member of The Society from 1990 and had organised various charity events, in particular two Bridge tournaments at the House of Lords.

4. The First Defendant has since 29 April 2015 been the Chair of The Society and the Second to Eleventh Defendants were members of The Society Executive Committee as at 29 April 2015. The Twelfth Defendant is a former member of the Executive Committee.

5. The first part of this judgment will deal with three[1] slanders alleged by the Claimant to have been said by the First Defendant over a public-address microphone at an Annual General Meeting of The Society on 29 April 2015 in the presence of the other Defendants and other members present at the meeting. The Claimant says that the words used by the First Defendant were in response to the Claimant's observations from the floor about the desirability of The Society constitutionally separating the

[1] For the purposes of argument at the hearing, three slanders were identified although the Claimant's Statement of Case includes The Second and third under a heading of "Second Alleged Slander".

office of Trustees from members of the Executive Committee. More particularly, in response to general questions from the floor in response to the Claimant's proposition, the Claimant suggested she might be able to assist in finding separate Trustees ["I will look into that" : Para 14 of the Statement of Case].

6. Whilst I note that the Claimant's pleaded case has been subject to numerous amendments, it is not in issue that the three slanders in question are as follows.

7. "The First Slander" : *"No one wants to work with Mrs Van der Mast because she is an aggressive person, obstructive, a trouble maker*" [Paragraph 15 in the Particulars of Claim].

8. The Claimant alleges that the meaning of this was that she was "angry and violent and tried to stop the Executive Committee doing things and created problems for them". By way of innuendo, she alleges the words meant that Members of The Society should not associate themselves or work with or support "the Claimant in any of her Charity Events". She alleges that her reputation "seriously damaged and the Claimant has suffered considerable distress, embarrassment and total humiliation injury her dignity and pride as a person before her fell Members of The Society present at the Meeting".

9. "The Second Slander" : "*We have a file on Mrs van der Mast. If anyone wants to see it, they are welcome to ask for it"* [Paragraph 15].

10. Paragraphs 27 and 28 in the Particulars of Claim are somewhat opaque but the Claimant's allegation seems to be that the file contained correspondence featuring complaints from the Claimant, such that reference to the file had "given the attendees the idea that the Claimant was not good".

11. *"*The Third Slander" : *"She has made complaints against the Ambassador….showing her lack of respect and …the letter sent by Lima is a legal document and how dare she"* [Paragraph 29].

12. Paragraph 30 alleges that the natural and ordinary meaning of the words was that the Claimant had made a complaint against the Ambassador, the Claimant had been disrespectful in doing so and The Society had a letter from Lima confirming this. Further, by way of innuendo, the words meant that (a) Members of The Society

should not associate themselves or work with the Claimant because she had made disrespectful and unfounded complaints against the Ambassador of Peru and (b) the Claimant had done something unlawful and/or sinister and/or unjustified which she had no right to do.

13. In respect of the allegations of slander, the Defence in essence pleads that :

a. Whilst admitting that the Claimant was an active member and involved in organising events, following the two Bridge Tournaments in 2009/10, "relations between the Claimant and the Charity soured, with the Claimant making myriad complaints against Members of the Executive Committee of the Charity (past and present) and against the Charity's honorary President, the Peruvian Ambassador to the United Kingdom. Due to the Claimants' behaviour when and since organising her two events, the Executive Committee has felt unable to invite the Claimant to organise any further events for Charity".

b. The precise words of the First Slander are not admitted but it is admitted that the First Defendant had told the AGM that the Executive Committee did not wish to work with the Claimant because of her past behaviour towards the Committee.

c. If the words bore the meanings attributed by the Claimant, they were substantially true within the meaning of Section 2 of the Defamation Act 2013. Further, they were the honest opinion of the First Defendant within the meaning of section 3 of the Act.

d. The First Slander, if as alleged, would have been spoken by way of qualified privilege. The publishees, as attendees of the AGM, had a common interest in the response to the Claimant's proposal about the constitution of The Society and her additional suggestion that she would be able to assist in finding separate Trustees. Further, the words were a proportionate response to an attack on the First Defendant's management of the Charity.

e. Serious harm is denied. There were only 28 attendees at the AGM, of whom 7 the Defendants and one the Claimant herself. Therefore only 20 independent persons could have heard the words complained of;

f. The words would not be actionable *per se* as slanders and so, in the absence of the Claimant having pleaded any pecuniary loss as having been sustained, no action can arise from them.

g. In relation to the Second and Third Slanders, there had in fact been a history of complaints by the Claimant to the First Defendant, the Twelfth Defendant (the former Chairman) and the former Peruvian Ambassador. There was indeed a file of correspondence confirming this.

h. The words were not defamatory ; or, even if so, do not cross the threshold for them to be actionable.

i. Further, it was true that the Claimant had made a complaint against the Ambassador.

j. It was the honest opinion of the First Defendant that the Claimant had been disrespectful to the Ambassador.

k. The words were subject to qualified privilege, in that it was of common interest to the attendees that the Claimant had made complaints which had been rejected. Further, they were a proportionate response to an attack upon the First Defendant.

l. As with the First Slander, serious harm is denied.

m. In the absence of pecuniary loss having been pleaded in consequence to slanders that would not be actionable *per se*, they cannot be actionable in law.

14. The Claimant's Reply is a lengthy document that is very difficult to follow. Some 37 or so pages in a document that ranges from a form of pleading, a form of witness statement to something little more than a sequence of either general or irrelevant comment. That is then followed by 155 or so pages of exhibits.

15. I appreciate that the Claimant acts in person. Further, having heard an application presented by the Claimant on 13 April 2017 to vacate an earlier hearing listed for the Defendant's application, I appreciate that English is not her first language. That said, the provisions of CPR Part 16 and PD16 are clear in terms of the intended aims of Statements of Case and I see no distinction or exception applying in the case of a

Reply. Neither, beyond reasonable allowance, can a litigant in person expect to rely upon an entirely different style of court document as satisfying those requirements.

16. Doing the best I can, I note that the Reply alleges malice (indeed many times), although adds little if anything more than to use of the word by itself.

17. I note the Reply does not directly admit the Defendants' allegations of fact but equally does not assert a substantially different factual matrix. Instead, the very lengthy texts appear more in the way of qualification and collateral illustration of (in the Claimant's view) related points. In summary, at least as suffices in my view for the purposes of assessing this pleading in the context of the Defendant's application, I conclude that the Claimant generally seems to accept that she has a detailed and expansive history of making representations and at times complaints to The Society ; similarly, that she has engaged in the same in relation to the Ambassador.

18. Neither the Particulars of Claim nor the Reply pleads any specific pecuniary loss. The Reply instead seeks to allege that the slanders were of immediate consequence. For example, at VI Letter E "*her slanderous words impacted on the Attendees that they shunned, treated her with contempt, humiliated her"* although the same paragraph seems to obfuscate the Claimant's alleged response to the slanders with her response to the apparent failure of attendees to stop the assault the Claimant also relies upon.

19. Save to note the detail of the factual issues raised in the Reply, and indeed also in a witness statement dated 8 May 2017 from the Claimant, prepared very shortly before the hearing, I do not consider it necessary to go further and attempt to assess the extent to which the general factual background is or is not agreed between the parties. Neither counsel has suggested I should.

First and most importantly, it is not necessary having regard to the principles by which both the actionability of and defences to the slanders relied upon should be assessed. Secondly, it would breach established dicta from cases such as Swain v Hillman [2001] 1 All ER 91 that the court should not seek to conduct a mini-trial on a summary judgment application or otherwise seek to resolve extensive (if not actually complex) questions of fact.

20. That is not to say, however, that I am not entitled to rely upon certain facts or evidence if they enable relevant conclusions to be reached following consideration of legal principle.

Procedure

21. CPR r.3.4(2) provides three grounds bases for striking-out a Statement of Case, being that if it:

    a. *"discloses no reasonable grounds for bringing … the claim"*;

    b. *"is an abuse of the court's process or is otherwise likely to obstruct the just disposal of proceedings";* and/or

    c. *"fail*[s] *to comply with a rule, practice direction or court order"*.

22. The Defendants seek to rely upon two established meanings of abuse :

    a. "Jameel abuse" : from Jameel v Dow Jones [2005] QB 946, whereby – having had regard to the interference in the defendant's Article 10 rights that would be caused by the costs of a trial, and the degree of interference (if any) in the Article 8 rights of the claimant (of which their reputation may be a facet) – the court decides 'the game is not worth the candle';

    b. Collateral purpose abuse, whereby proceedings are brought or used for an improper purpose, such as to vex and distress the opponent. The Defendant points out this species of abuse is particularly relevant in defamation proceedings (both libel and slander) where it is well-established by authority that the only proper purpose of such proceedings is to vindicate one's reputation.

23. CPR r.24.2 allows the court to grant summary judgment to the Defendant's if:

    a. it considers that:

    i. that claimant has no reasonable prospect of succeeding on the claim …

    and

    b. there is no other compelling reason why the case … should be

disposed of at a trial."

24. "No reasonable prospect of success" has been interpreted in the case of Swain v Hillman [2001] 1 All ER 91, 92 to distinguish a 'realistic' prospect of succeeding as opposed to a 'fanciful' prospect of succeeding. The principles were distilled by Lewison J. (as he then was) in Easyair Ltd t/a Openair v Opal Telecom Ltd [2009] EWHC 339

The Defendants' application under CPR r.3.4(2)(a): No Reasonable Grounds

25. The Defendants submit that the claim, even in its Re-Amended form, is fatally flawed because an element of the cause of action is not pleaded. They argue that because the Claimant fails to plead any pecuniary losses (adding this is because she cannot do so), her claims in slander must fail unless she satisfies that her case would fall within one of the two remaining categories of slander that are actionable *per se*, that is without the need to prove pecuniary loss :

    a. Where the words impute a crime for which the claimant can be made to suffer physically by way of punishment (e.g. by imprisonment);
    b. Where the words are calculated to disparage the claimant in any office, profession, calling, trade or business held or carried on by him at the time of publication.

26. The second of these slanders is defined at Section 2 of the Defamation Act 1952 :

> **Slander affecting official, professional or business reputation.**
>
> In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

27. It has already been noted that the Claimant's Reply fails to address the Defendants' fundamental challenge [pleaded at Para 29 in the Defence] that the words complained of do not fall within any of the categories of slander actionable *per se*.

28. In his skeleton argument on behalf of the Claimant, Mr Soto-Miranda had not sought directly to answer this challenge. I note how at Para 17 he recites the wide scope of

the assessment of quantum in defamation claims and the court's procedural flexibility to recognise any losses evident [Para 20]. Para 17(2) refer to the damage to private, social and public reputation and Para 18(2)(c) to the socioeconomic attributes of the Claimant and her family and cultural environment but these observations remain in the context of the scope of damages and the question of serious harm within the meaning of s.1 of the Defamation Act 2013.

29. It was instead only in oral submissions that the Claimant, through counsel, sought to argue that the slanders are actionable *per se* because her active membership and activities within The Society constitutes both office and calling within the meaning of s.2. It was admitted that she was not a constitutional office holder of The Society itself but had held offices in a social sense within The Society : specifically, as an organiser of bridge tournaments. These were, it was said, enough to satisfy s.2.

30. Not least because of the body of material in this case (much as generated by the Claimant) and her acting in person at least through to the hearing, I permitted these submissions but asked that counsel lodge further written submissions on the point ; in particular, as addressed the evidence submitted. It was agreed that the Claimant should be permitted to reply to the Defendants' submission.

31. Before turning to the post-hearing submissions, it is important to note the limitations of what can constitute a slander in principle, regardless of whether it might fall within one of the excepted categories under question.

    a. As set out in *Gatley on Libel and Slander* (12th ed.) at Paragraph 5.2 : the mere loss of a claimant's "society" or social ostracism or disgrace is not enough even though its effect on the claimant may be very painful. So in Roberts v Roberts (1864) 5 B. & S. 384 the plaintiff's declaration alleging that she had been turned out of her religious congregation and had been unable to join another one was held bad.

    b. As Warby J commented recently in Monroe v Hopkins [2017] EWHC 433 (QB), in the context of serious harm under the 2013 Act : "As Dingemans J noted in Sobrinho v Impresa Publishing SA [2016] EWHC 66 (QB), [2016] EMLR 12 [46], unless

serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient".

32. It is likewise important to guard against applying the Claimant's subjective response to the words alleged and her personal association of that response with the high value she personally attributed to her membership of The Society, as evidence either that she occupied an office within The Society (or elsewhere) or as being sufficient to establish a "calling".

33. In both cases, what constitutes either "office" or "calling" should surely be assessed objectively, although I accept that the claimant's subjective account of her "office" or "calling" could inform.

The Claimant's "calling" and s.2

34. Mr Callus on behalf of the Defendants points to various early cases[2] following the common-law classification of slander *per se* as clearly connoting calling as an occupation or form of quasi-professional life. So too does various other legislation in its use of the word as a noun : for example, The Town Police Causes Act 1847 at s.68, The Bills of Sale Act 1878, The Small Landholders (Scotland) Act 1911, The Perjury Act 1911 at s.6(a) and the Criminal Law (Consolidation) (Scotland) Act 1995 and The "Anzac" (Restriction on Trade Use of Word) Act 1916 at s.1(1).

35. Mr Callus correctly points out that Parliament is assumed to legislate with knowledge of the common law. Whilst that observation is not necessarily a complete answer because, as the Claimant would point out, the common law can develop in response to society's ordinary uses and practices, Mr Callus provides further examples that post-date the 1952 Act and similarly establish that "calling" continues to be used in association with occupation or business rather than more abstract qualities such as altruism.

36. For example :

[2] Allen v Flood [1898] AC 1, Capel v Jones (1847) 136 ER 505 and Hopwood v Thorn (1849) 137 ER 522

a. The Occupier's Liability Act 1957, at s.2(3)(b) says "(b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so."

The leading cases on this subsection have considered:

- The 'calling of an ambulanceman' who tripped on a pile of books:

  Neame v Johnson [1993] PIQR P100 (CA); and

- The 'calling' of a self-employed joiner who was replacing widows which had no lintel: Eden v West & Co [2003] PIQR Q2 (CA).

b. The National Health Service (Amendment) Act 1995 at s.12(2) refers to "consultation with such organisations as The Secretary of State may recognise as representative of the profession or calling concerned."

c. The City of London (Ward Elections) Act 2002, at s.2 'Interpretation', provides that 'relevant purposes' means "the carrying on of any trade, business, profession or other occupation or calling, or the functions of any paid or unpaid office…"

37. On behalf of the Claimant, Mr Soto-Miranda argues that a calling within the meaning contemplated by the 1952 Act can connote pure altruism and should be sensitive to and dependent on the Claimant's social-position as perceived by others. He refers to the online Oxford English Dictionary definition of "calling" as:

"A strong urge towards a particular way of life or career; a vocation.
'those who have a special calling to minister to others' needs'"
(https://en.oxforddictionaries.com/definition/calling).

The Claimant submits that such limited precedent as exists on "calling" cited by the Defendants presents today an artificially historic view. Instead, in enacting the 1952 Act Parliament sought to ensure that those involved in public voluntary work or activities should also be afforded the protection of the exception at Section 2. Because the word has a natural and ordinary meaning, there is no need to try to resort to some other possible meaning : Pinner -v- Everett [1969] 1 WLR 1266 at 1273.

The Claimant had an absolute right to practice her altruistic calling as entirely accorded with the stated aims of The Society *"*[T]o *foster in the United Kingdom, knowledge of Peru and Peruvian culture and contribute to the mission of poverty alleviation among the people of Peru"*.

The Claimant argues that any failure by the court to recognise the altruistic application of "calling" as falling within the meaning of s.2 would be contrary to s.3(1) of the Human Rights Act ["HRA"] 1998 and discriminatory towards volunteer workers, contrary to Schedule 1 of Article 14 of HRA 1998. Analogous examples of the latter are cited as after-school sports clubs, Scouts and Girl-Guide leaders or catechism instructors. The fact such roles are unremunerated ought not to preclude them from inclusion within s.2 of the 1952 or as within the scope of "serious harm" under the 2013 Act : indeed, had Parliament wanted to then simple words of exclusion could easily have been incorporated.

The Claimant's "office" and s.2

38. Mr Callus has found limited authority since 1952 as to what constitutes an office. He relies on the following examples : preceptor of a Masonic Lodge [Robinson v Ward Diplock J, The Times, June 1958] ; director and trustee of two charities [Maccaba v Lichtenstein [2004] EWHC 1580 (QB)] ; Members of Parliament [Barron v Vines [2015] EWHC 1161 (QB)] ; Chairman of the Residents' Association of a substantial public housing estate [Bedi v Karim [2013] EWHC 4280 (QB)].

39. In Umeyor v Ibe [2016] EWHC 862 (QB), there were two 'offices' pleaded by the Claimant :

i. Honorary Chairman of the AMPC, Ahiazu Progressive Community Launching Committee; and

ii. Membership of the PDP [People's Democratic Party] and Chairman of its Nnarambia Ward in Ahiazu.

At [55] Warby J said that *"mere membership of a political party cannot be an "office" for these purposes* ; *and it is in my view impossible to regard an imputation of hiring prostitutes as "calculated to disparage" the claimant in his political office as a PDP Ward Chairman."*

From this it would seem that, as distinct from mere membership of an organisation, Chairmanship could be an office for the purposes of s.2 [albeit in that case that the words relied upon could not be relevant to that office].

The evidence in support of the propositions

40. As I understood them, the oral submissions on behalf of the Claimant at the hearing sought to rely upon propositions both that the Claimant had a calling and held office within the meaning of the 1952 Act, although it was less firmly suggested that she contemporaneously held any office as at the date of the slanders.

41. As I read the Claimant's post-hearing submissions, the proposition of office is now either abandoned or at least substantially subordinate to the proposition of calling. Further, and helpfully, Mr Soto-Miranda concedes that the 1952 Act requires that an activity such as a calling should be contemporaneous to the time of the offending words.

42. In case any doubt remains whether the Claimant still relies upon the proposition of her having office, I will consider both.

43. I have already referred to the volume of material generated by the Claimant and it was for that reason I requested the parties to identify such evidence they relied upon either in support or rebuttal of the propositions. I have also personally carefully considered the evidence submitted, with particular reference to materials that precede the April 2015 AGM.

44. In considering the evidence in the context of both parts of the Defendants' application, I reiterate that I am not conducting a "mini-trial" with a view to making findings of fact. Further, I bear in mind that particularly relevant questions under CPR Part 24 should consider the evidence that might be available by the time of trial and not simply that submitted for the purposes of the hearing : Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550. The criterion to apply under CPR Pt 24 is not one of probability; it is the absence of reality. A "realistic" case is one that carries some degree of conviction. This means a case that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8].

45. From the evidence[3], I note the following :

a) It is common ground that the Claimant has never been on the Executive Committee of The Society, or a trustee of The Society as a charity. There is nothing in the evidence to suggest otherwise.

b) The Re-Amended Particulars of Claim at Paragraph 2 describes the Claimant as a member of The Society since 1990 save for a period where she suffered from cancer, and that she twice organised Bridge tournaments at the House of Lords in 2009 and 2011. The Re-Amended Particulars of Claim say nothing of the Claimant holding any office, and she refers to herself as a 'Member' throughout.

c) The Bridge events (under the banner of the Latin American Bridge Cup Tournament or "LABCT") were organised by a separate body (the LABCT committee) which had representatives from several charities which are concerned with Latin America, including The Society.

This is clear from an e-mail from the Claimant to the 12th Defendant dated 31.07.11 in which, in referring to a Society (or "APS") member Terry Browne, the Claimant commented *"Terry was very helpful. I am grateful to you for telling me to speak to him. The LABCT has not changed the aim to support the APS but it was never exclusive to the APS. This was very clear since I created it in 2007, the reason why I called it the Latin BCT, was and is also to help other countries"*.

d) In a lengthy letter dated 5.5.15 to the 1st Defendant following the Claimant's initiation of pre-action correspondence, the Claimant clearly sought to provide a detailed review of her version of the events. I find no express mention in this letter of the Claimant having a calling or office. At Paragraph 14, the Claimant instead puts matters on a much broader basis :

"I repeat, Your Defamatory, malice remarks innuendos against me, were done by you To ruin my reputation, to discredit me, and my character and person, to give place for the members and guests present as the at AGM think the worse about me, doubt my sincerity and honorability as person and as APS

[3] [I reproduce documentary extracts as they appear]

member……You have publicly humiliated me, embarrassed me in front of all the members and guests persons present at the AGM inflicting on me a great emotional pain, extreme emotional distress and anxiety, stress along the physical pain…".

The letter concludes, in seeking the terms of an apology :

"Apologize for using your position as Chairman to carry such despicable actions towards a member like me who at all times have had the best interest for the APS as organization and have support the APS and given a hand to help out whenever was possible and help to organized events to benefit the needed In Peru".

This account does not preclude, of course, the Claimant as having sustained harm to any calling or office. However, it remains relevant in the exercise of assessing whether there is an arguable case for an office or calling existing in the first place.

e) Similarly, the subsequent correspondence from the Claimant refers to the slanders as having doubted her "*integrity, my sincerity and continue ruining my credibility and reputation"* : 17.06.15 and repeated in virtually identical terms in letters dated 17.07.15, 18.07.15 and 25.07.15.

f) The First Defendant's witness statement at Paragraph 3 says that she first met the Claimant in 2009 when she (the First Defendant) was asked to replace the Claimant on the tournament organising committee, because (on her evidence) the Claimant was causing tension on that committee. The First Defendant had been a member of the Society since 1984 and so, it would seem, knew nothing of the Claimant's asserted calling for the first 19 years of the Claimant's membership.

g) In a 6-page e-mail to various people either known, or as one can infer, to have been associated with The Society dated 11.04.09, and as commences "Dear Meriel", the Claimant complains about someone called Maria. The Claimant comments "*I imagine Maria called you to help her to protect her post as secretary as she knew i was to complain against her…since long ago she felt, I was after her the post of APS secretary…I told her as I told you years ago when*

you offer the post NO!...I am too busy to serve any committee even when she goes".

Later in the same e-mail :

"Meriel have you forgotten that years ago you asked and offered me the post to be secretary of APS and I declined as I told you then I did not like long term commitments and to be in a committee or be secretary it needed some commitment that I could not give……You see I have not change my mind over it I have been offer by another organization to join their committee but I have refuse but now, specially after what you wrote I will help them by doing a project, I work better doing special projects and raising funds, prizes etc..".

h) The First Defendant had written an e-mail to the Claimant on 22.05.12 complimenting her on the 2011 House of Lords Bridge Tournament. The e-mail also raises the need to close a bank account opened for the 2009 event and to hand over a cup as had been donated by The Society. In a 4-page reply dated 31.05.12, apparently written at 02.39, the Claimant refers to the First Defendant's *"actions are driven by your big ego that fills you with pure envy / jealousy as you were not part of the LABCT event 2011. Same as you did in 2009 when you could NOT control Carol Pinillos reason you created problems, behaving appalling towards her which reflected on me reason I stop talking to you, and promise myself never to work with the persons like you"*. At Paragraph 7, the Claimant refers to her organising the LABCT event which will continue "*on Behalf the APS or Not"*.

i) The Twelfth Defendant's witness statement at Paragraph 5 is that he *"first met the Claimant when she organised (as Chairman of another organisation) a charity Bridge event for The Society which was held at the House of Lords back in 2011"*. He states at Paragraph 2 how he has been a current and active member of The Society since he joined "*during the 1980's"*.

j) Azucena Pinter's witness statement on behalf of the Defendants says at Paragraph 3 "*I have been a member of the Anglo Peruvian Society since 1992. I first met the Claimant in 1992 … I have met the Claimant very briefly at social events for The Society."*

k) The Second Defendant's Witness Statement dated 13 April 2017 says at Paragraphs 2 and 5 that she has been a member of The Society since October 2008. She was elected to the Executive Committee in 2011 and acted as its Secretary between March 2012 and September 2013. She states that although she had been in written and telephone contact with the Claimant, she has never met or seen the Claimant in-person.

l) In her 8.05.17 witness statement, served shortly before the hearing, the Claimant at Paragraph 3 refers to helping charitable causes from an early age. She refers to setting up LABCT but how this came to be separated since 2011 in its social events from The Society, for reasons she blames upon the First Defendant.

Conclusion : Are the slanders actionable per se?

46. I can find no evidence in support of the Claimant ever having occupied an "office" for the purposes of s.2 of the 1952 Act and nothing in her submissions enables any such proposition. The proposition is accordingly fanciful and without foundation. I agree with the Defendants that having twice (but not since 2011) been either a member or chairman of an organising committee for a Bridge Tournament cannot even approach to constituting an office. Mere membership of The Society or the LABCT cannot have constituted office following Warby J in Umeyor v Ibe.

47. Significantly, even if there ever had been, any such "office" had ceased by April 2015 in any event and so would be irrelevant.

48. None of the slanders are actionable *per se* by reason of having imputed an office of the Claimant.

49. I am not persuaded by the Defendants that "calling" for the purposes of s.2 of the 1952 Act only connotes occupation, that is in the sense of a trade or business. There is a need for caution in referring to statutes that are more conducive to such an interpretation. Merely because an interpretation can be seen as consistent within certain statutes cited does not preclude a different meaning in the context of another statute, such as the Defamation Act 1952. The Defendants' approach would exclude, for example, unremunerated but undeniably religious callings.

50. Neither, however, am I persuaded that "calling" is satisfied by claiming to have been motivated by altruism. The examples of scout or girl guide leaders, after school sports club organisers or catechism instructors are all worthy activities and those engaged in them may well be motivated by altruism. However, there is often a social element to such activities and it is stretching the ordinary use of language to describe these as callings simply because (one assumes) there is an altruistic aspect to them. Further, merely because an activity is motivated by altruism would seem to enable the merely transient to fall within the definition. Could, for example, working for the homeless at Christmas once a year realistically constitute a calling? Is the weekly mowing of an elderly neighbour's lawn a calling because it is altruistically volunteered without expectation of reward?

51. In either case, the interpretations offered place too much emphasis upon the innate nature of the activity in order to satisfy the definition. In my judgment, the range of activities as could constitute "callings" could be wide but their crucial common requirement is that they have become sufficiently established by one means or another in an individual to present as an objectively recognisable trait, characteristic or feature of that individual. Synonyms for "calling" would be : craft, lifework, livelihood, mission, practice, vocation, duty, responsibility, métier, commission or commitment. None of these can be achieved by occasional or transient activity, whether remunerated or not and whether for altruistic or purely self-interested reasons.

52. It is clear from the evidence, both documentary as precedes April 2015 and as relied upon by the Claimant in the claim, that whilst the Claimant may well have been an active member of The Society at times, to describe her long-standing (but not unbroken) membership of this charitable society and having organised two Bridge tournaments as a "calling" in a vocational, even if not remunerated, sense is wholly unrealistic. The Claimant's pre-April 2015 correspondence alludes to no such self-impression or description. Neither is there support for such a description by anyone else involved in The Society. Indeed, on at least the Defendants' evidence, many key members were quite unaware of the Claimant for some years prior to the incident. I note there is no independent witness evidence proposed by the Claimant to rebut these accounts.

53. I do not accept that the generalised attempt to correlate the Claimant's ethnicity[4] and the objects of The Society can elevate her status to a calling. The objects of The Society are (according to the Twelfth Defendant's evidence, as seems uncontroverted by the Claimant) to foster knowledge in the UK of Peruvian culture and to raise money for charitable work in Peru. Entitled "The Anglo-Peruvian Society" it is clearly for the general interest of those who wish to participate in one or both aims. It is not an ex-pat association : I note that several of the Defendants are English not Peruvian. Neither is it a form of religious group or following, irrespective of having charitable aims or status.

54. I am entirely satisfied that there are no grounds for the Claimant to argue that she pursued a calling as at April 2015 within the meaning of the 1952 Act. It follows, the slander claims fail because they are not within the limited exception of slanders that are actionable without proof of pecuniary loss.

55. I therefore strike out all claims for slander under CPR 3.4(2)(a). I am similarly satisfied that the claims are an abuse within the meaning of CPR 3.4(2)(b) and so too should be struck out. I am satisfied that this part of the claim has no reasonable prospects of success and should be struck out under CPR 24.

56. I do, however, go on to consider the slanders further in the event a case remains that they are, or with amendment could be, actionable. At least in respect of the First and Second Slanders, the Claimant has treated these as also libels in in so far as they feature in the AGM minutes and pre-action correspondence.

Further, in response to the detailed arguments submitted by Counsel for both sides, as reflect both the history and regrettable impasse that has developed between the Claimant and her former Society members, I consider it important to deal with the other challenges to them.

[4] I have received no evidence from the Claimant about her ethnicity anyway but deal with it in response to the submissions

The Third Slander and the Peruvian Ambassador episode

57. Mr Soto-Miranda urged me to treat the Third Slander and the material that led to it in the context of the slander claims overall. This is despite the material in respect of the Third Slander presenting in unambiguous terms.

58. The Claimant had visited the then Peruvian Ambassador in August 2014. In her subsequent 14.08.14 letter to him, the Claimant refers to her concerns about the appropriate constitution and representation of The Society. In that context, she advocates that Baroness Henig would be a suitable person to be associated with The Society. The letter is polite and respectful.

59. In her letter to him dated 11.09.14, the Claimant's tone had clearly changed. The letter brusquely commences :

"I have not heard from you regarding the date when I can bring Baroness Henig to meet you and explained the reason of my visit to you the 7th August to your offices at the Embassy. You told me, you were to let me know and this have not happen".

The letter continues to develop a theme that appears on an extremely regular basis thereafter in numerous communications from the Claimant to various other people : that the Claimant believes a conspiracy had taken place to ensure that her suggested introduction of Baroness Henig to The Society would not go further. The subjects of the conspiracy theory are, in particular, the First and Twelfth Defendants.

Hence why the Claimant in the 11.09.14 letter wrote :

"I have received today only now en email of Baroness Henig out of the blue note attach below, it is sad that a lady like her was put in this position by the selfish a house wife who now plays to be interim chairman which has been in breached of the APS statutes and she alone Hallam Murray have abuse their position"

The Claimant continued :

"Note well that this does not mean i shall stop on my complains about them. it's time some one put stop on their abuse. the APS belong to members nor to one of 2 individuals there. The truth integrity and Honorably goes hand in hand and this should always be first".

60. In an undated letter addressed to the Office of Human Resources, Ministry of Legal Affairs in Lima, Peru and received by them on 9.12.14, the Claimant raised her "Complaint against the Peruvian Ambassador to the UK Julio Munoz and his advisor Daniel Roca for abuse of trust and position against the candidature of Baroness Henig to the position of Chairman of the Anglo Peruvian Society. And against that entity". The letter repeats the Claimant's dissatisfaction with the fact her suggestion that Baroness Henig be associated with The Society and clearly includes the Ambassador as part of the alleged conspiracy. In referring to an e-mail the 12th Defendant had sent the Claimant setting out why he believed Baroness Henig was not actually interested in the proposal, the Claimant wrote :

"This e-mail is evidence of the abuse by the Ambassador Munoz and Beatrice Barclay against i) the autonomy of the APS ii) going against the rules iii) against the function of the Executive Committee iv) against the candidature of Baroness Henig, actions of abuse and bad faith and a farse.

If Ambassador Munoz wanted to score a political point from the candidate because she was an active member of the House of Lords then this was not the right forum for this. And if he wanted to help Beatriz Gamarra (sic…means Barclay) to remain as Interim Chairman because he was friend of her brother this was also absue of psotion and trust and he it was a farse for him to have spoken to Hallam Murray and he should have respected the Rules of the APS".

The Claimant accuses the Ambassador : *"Baroness Henig did not deserve this mistreatment. By the Peruvian Ambassador Julio Munoz"* .

The Claimant further comments : *"Ambassador Munoz and his collegue Daniel Roca should never have taken part in this deceit by the Ex Chairman and the Ineterim Chairman against the candidature of Baroness Henig….decisions were made behind closed doors…and they have been vile and so has the Ambassador"*.

61. The Ministry clearly treated the Claimant's letter seriously. In her reply dated 10.03.15, Lissette Nalvarte de Isasi, Head of the General Office of Human Resources, refers to the Claimant's *"accusation against Ambassador Julio Munoz"* and set out an "*evaluation of the complaints contained in your communication"*. The Department

had concluded there was no evidence that either the Ambassador or his Second in Command at the Embassy in London, Daniel Roca, had acted improperly.

62. The Claimant was not persuaded by this response. In an e-mail 23.03.15 to Mr Tomas Jara in Lima (whom I infer was a more senior official), the Claimant wrote of Ms Nalvarte de Isasi :

"It is disgraceful that she should have written a letter as that considering her position at the Ministry (of Foreign Affairs Lima). People like her do not care about the integrity which Peruvian diplomats must show when conducting their work, people such as she and Ambassador Munoz demonstrate how mediocre they are, not respecting the honesty, integrity and respect which they should have in their professional standing as representatives of Peru as Ambassadors, and this is why Peru is and will continue to be a third world country where being mediocre is the most important thing".

63. The 12th Defendant in his witness statement at Paragraph 10 comments that as a result of the Claimant's contact with the Peruvian Embassy, *"the Ambassador became deeply concerned about her behaviour and what she might do next, and made it quite clear that she would no longer be welcome at the Embassy. We were therefore forced to find a new location for our AGM, specifically for the very next AGM in April 2015"*.

64. Putting aside as a question of fact whether The Society was obliged to find a new venue specifically because of the Claimant's contact with the Embassy, I am quite satisfied it is appropriate separately to consider the Third Slander as a potential cause of action in its own right.

65. In my judgment, it is factually undeniable that the Claimant had complained to the Ambassador and, in doing so, had expressed herself in trenchant terms that were disrespectful. As such, the alleged rhetorical utterance of the First Defendant "how dare she" would have been both justified and rational.

66. Assuming for the purposes of Part 3 that the Third Slander was said in those terms, I strike it out as an abuse or otherwise likely to obstruct the just disposal of the proceedings.

67. Alternatively, the defences of truth [s.2 of the Defamation Act 2013] and honest opinion [s.3 of the 2013 Act] to the Third Slander are entirely appropriate for summary judgment in the Defendants' favour. The Claimant stands no realistic prospect of success in pursuing this allegation.

The remaining claims

68. The Claimant's Statement of Case, even in finally amended form, is repetitious. Whilst it attempts to separate each cause of action relied upon, this is not always achieved.

69. Mr Soto-Miranda submits that legally recognisable claims are still identifiable and points out that the Claimant, as a litigant in person, has sufficiently pleaded the necessary facts. Drawing upon the list Mr Soto-Miranda provides, as cross-referenced to the Re-Amended Particulars of Claim, the causes of action are :

    i. The First and Second slanders

    ii. Libel

    iii. The removal of the Claimant's membership "in breach of contract and natural justice"

    iv. "Assault and Battery and Personal Injury" by the Twelfth Defendant.

70. It does not seem in issue that these are apparent from the Statement of Case and I regard this as the document against which the Defendants' challenges are mounted and the merits of the claims assessed in response. This observation may seem obvious but I note how in the immediate period preceding the hearing, the Claimant has also produced a very lengthy document entitled "Claimant's Case Summary on 11/05/17" that Mr Soto-Miranda annexes to his skeleton argument suggesting this additional document might "assist the Court in its endeavours to fully appreciate the nature and extent" of the Claimant's case. He confirmed to me during the hearing that he had either drafted or assisted in the drafting of this document.

71. The document is, as I held during the hearing, nothing like a Case Summary at all. It appears to be more a synthesis between an alternative pleading and a witness statement. I do not find such a document helpful or proper. It represents an unfair

attempt by the Claimant to amplify her case, as has already seen various amendments and over some many months leading through to this hearing.

Following a more orthodox approach, I consider it more appropriate to assess the parties' respective Statements of Case, the sworn witness statements in support of their submissions and Counsel's submissions. I decline, therefore, to consider the Claimant's attempt additionally to rely upon claims for "Interference with third party contracts" or breach of Human Rights arguments as go beyond a relevant response to the Defendants' application.

The remaining Slanders

72. **The accuracy of the First and Second slander allegations**

The Claimant bears the burden of proving that the words she relies upon were in fact spoken. Warby J in Bode v Mundell [2016] EWHC 2533 (QB) remarked upon the need for precision in the pleading and proof of the actual words used as being essential.

> 12. ….It is not enough to plead or prove the gist or substance of what was said. In libel this is rarely a problem. In slander, it often is. A recent example is Umeyor v Ibe [2016] EWHC 862 (QB), where the claimant failed to plead or prove a proper case on publication.
>
> 13. The pleading requirement is set out in CPR 53 PD 2.4, which provides that "In a claim for slander the precise words used and the names of the persons to whom they were spoken and when must, so far as possible, be set out in the particulars of claim if not already contained in the claim form."

73. There is no agreed version of the alleged slanders. There are instead variations. The following are the most relevant examples because of their origin and contemporaneity:

a. In the First Defendant's document she says was compiled very shortly afterwards as a record, the 1st Defendant admits to having stated that the Claimant's offers were not welcome "as no one from the Committee wanted to work with Mrs van der Mast because of her history of aggressive and insulting behaviour". She adds that to enable attendees "to understand more about Mrs

van der Mast's complaints and our dealings with her the opportunity to request the files which we hold about said correspondence";

b. The AGM Minutes reflect the First Defendant having said that it would not be possible that the Claimant could help find substitute Trustees "because the Committee does not want to work with her as she is such a difficult person". They record how it was the Claimant who accused the First Defendant of manipulating everyone and asked that all present would have access to the full file of correspondence with her as "they needed to know what was going on".

c. In her first of several pre-action letters, an e-mail sent at 4.55am on 30.04.15, the Claimant refers to herself being "attack verbally by the chairman as being obstructive and alleging no one wanted to work me as I was aggressive among to others names". She mentions how the First Defendant "began telling those present there [36] that I have made complains against the Ambassador of Peru, this was done in malicious manner, as SHE did not explaining the reasons of why I did it". There is no mention of the file being offered for perusal;

d. In her 5.5.17 letter describing itself as a pre-protocol letter, the Claimant elaborates that the First Defendant took to the floor stating "No one wants to work with Mrs van der Mast as she is an aggressive person, obstructive, a trouble maker";

74. In her witness statement, the First Defendant annexes numerous informal statements (typically e-mails) from those who attended the AGM, setting out their recollections. It is clear from such of them that mention anything relevant at all (and not all do) that the potential evidence as to what was allegedly said by the First Defendant amounts to no more than a very general gist of some of the above. For example :

- Robert Drury : "it seemed she had a history of confrontationilism that some members knew well enough and that nobody could work with her";

- M. Cecelia Valdivieso : "Mrs VdM then stated that she had evidence of how BB and HM had abuse their power, to this comment BB replied that the APS also had files for anyone to see and invited any member to check these if they wished to do so";

- Bill Sillar : “I do recall that there were complaints against Beatrize Barclay and that Beatrize Barclay pointed out she had a very large file of communications from Mrs van der Mast which constituted pestering and was distracting the society from its main work”;

- T M Browne : “”…Mrs Van der Mast being told that if she would ever seek to stand for the committee she would not be welcome as she would only case (sic) trouble”.

75. Th First Defendant’s statement that people do not want to work with someone who has “a history of aggressive and insulting behaviour” is not the same as (as the Claimant states) them not wanting to work with someone who is “obstructive” and “a trouble maker”. Arguably, there is a further distinction between aggressive behaviour (a transient condition) and being an aggressive person.

76. The additional words “obstructive” and “trouble maker” emanate from the Claimant alone and add significant elements.

77. The Claimant has produced no witness evidence in support of her allegations, neither has she submitted that such evidence would ever be forthcoming. Reading both the formal witness statements from some of the Defendants and the informal statements annexed to the First Defendant’s statement, I am satisfied for the purposes of the summary judgment application that the Claimant stands no reasonable prospect of proving that the First Defendant expressly described her as “obstructive” or a “trouble maker”.

78. In consequence, drawing from the Claimant’s pleaded case, any remaining arguable cause of action in slander can, at its highest, concern allegations that the First Defendant said of the Claimant that :

78.1 *No one wants to work with Mrs Van der Mast because she is an aggressive person*;

78.2 “*We have a file on Mrs van der Mast. If anyone wants to see it, they are welcome to ask for it”*

Conclusion on the remaining slander claims and the libel

79. The Defendants seek reverse Summary Judgment on the defamation claims in reliance of their pleaded defences as to :

a. Truth, per section 2(1) of the Defamation Act 2013;

b. Honest Opinion, per section 3 of the Defamation Act 2013; and

c. Qualified Privilege.

80. Section 2(1) of the Defamation Act 2013 provides that:

"It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true."

81. Section 3 of the Defamation Act 2013 provides that:

"(1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.

(2) The first condition is that the statement complained of was a statement of opinion.

(3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.

(4) The third condition is that an honest person could have held the opinion on the basis of—

(a) any fact which existed at the time the statement complained of was published;

(b) anything asserted to be a fact in a privileged statement published before the statement complained of.

(5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.

82. Common interest privilege is defined in *Gatley* at 14.45, "Where a communication is made by someone with an interest in the subject-matter to someone who has a corresponding interest in receiving the communication it is made on a privileged occasion. Such a situation is often referred to as one in which the parties have a common interest".

83. I find no basis for treating the Second Slander as anything but a statement of truth. There is abundance evidence that the Claimant had generated a large amount of correspondence with The Society as at the date of the AGM, much of which was of a querulous nature. Therefore the statement that there was a file associated with her would have been entirely true.

84. At its highest, the potential innuendo would be that the file contained material that did not portray the Claimant in a favourable light ; as the Claimant pleads "given the attendees the idea that the Claimant was not good".

85. To those who had heard the alleged First Slander, I accept the Second Slander is capable of implying that there was evidential support for the former. As such, to the limited extent the Second remains arguable, I am satisfied on both the pleaded case and submissions from the Claimant that it cannot add anything more, or exist independently, to the First Slander.

86. Having carefully considered the pre-AGM correspondence from the Claimant both to or about the Peruvian Embassy in London and in the context of her charitable activities, I am quite satisfied this constitutes entirely compelling evidence that the Claimant has tendency to write in aggressive terms. The tone of much of the Claimant's correspondence (both before and subsequent to the AGM) is inappropriate. Whilst obviously not directly abusive, it typically resorts to an extended harangue that any intelligent recipient could well find threatening and distressing. It is aggressive.

87. In consequence, I am first satisfied that the defence of truth that the Claimant is aggressive is bound to succeed and the Claimant has no realistic prospect of success. The Defendants are entitled to summary judgment on that part of the claim, even though they do not admit the words were said. Assuming as I should for the purposes of CPR 3.4(2) that the words were said, reliance upon an assertion of aggression discloses no reasonable grounds for bringing that part of the claim and is an abuse of the court's process.

88. Secondly, or in the alternative if I am wrong as to the defence of truth, the defence of honest opinion that the Claimant is aggressive is entirely made out. The Defendants are entitled to summary judgment on that part of the claim, even though they do not admit the words were said.

89. As to the alleged assertion that no-one wanted to work with the Claimant, the following documents were within the provenance of The Society as at the date of the AGM :

(a) An e-mail dated 2.8.11 to the Twelfth Defendant, whom I understand would then have been the Chairman, the First Defendant, whom I understand was then

Deputy Chairperson, and as generally addressed to The Society on its designated e-mail address, from Daniela Jones. She had written in consequence to an intimidating four-page e-mail the Claimant had sent touching upon Daniela Jones' request for the return of a prize cup believed to be the property of The Society. Ms Jones wrote "I am sure you are not surprised by this reaction from Narda……I am also sure that you and the committee will understand that we cannot work with someone like her";

(b) On 6.7.06, Anila Tanna sent an e-mail "For the Attention of The Chairman of the Society" introducing herself as one of the committee members of LABCT "(which I resigned after the bridge tournament due to a very unpleasant experience with the organiser)". The organiser of that tournament was, by her own admission and publicity, the Claimant.

90. I am satisfied there was evidence as at the date of the AGM from both members of The Society and third parties who had worked with The Society that there were those who did not want to work with the Claimant. The statutory defences are persuasive.

91. That leaves the Claimant seeking to prove that :

(a) The First Defendant said that "no-one" wants to work with the Claimant rather than the version that appears in the First Defendant's statement and the AGM minutes that "no-one on the Committee wants to work with the Claimant";

(b) The Second Slander was intended to endorse the Claimant's version.

92. I find this distinctly narrow and reduced remaining vestige of the claim has unrealistic prospects of success. First because of the far higher probability of the Defendants' factual version succeeding. Secondly, the probability of the statutory defence of honest opinion.

The libel

93. The Claimant relies upon the First Defendant's reproduction of her personal "Recollection" document about the AGM in a letter dated 18 May 2015, as copied in

to the 2nd to 11th Defendants, as a libel. That document was then reproduced in correspondence from The Society.

94. The Claimant further pleads that this document contravenes the Malicious Communications Act 1988. I heard no further argument on this point, which perhaps realistically reflects that the civil court would have no jurisdiction to do so anyway.

95. The reliance upon the document as a libel reasonably raises the question of what it adds and against whom. On any view, the Claimant cannot rely upon its publication to herself. Neither can she rely upon it against the First Defendant ; at best, only the publication to the Second to Eleventh Defendants.

96. The Second to Eleventh Defendants clearly had an interest in the response to the Claimant's complaint and intimation of legal proceedings against The Society. They would have had an interest in both the subject-matter and the communication itself.

97. I entirely accept the Defendants' submission that such a document would be subject to the defence common interest privilege and I see no realistic prospect of the Claimant succeeding against this defence.

98. The libel claim should be struck-out or otherwise be subject to summary judgment in the Defendants' favour because it entirely relies on the merits of the slanders. For the reasons I have already expressed, they fail.

99. **Serious harm**

In Bode v Mundell [2016] EWHC 2533 (QB), Warby J commented that :

> 17. ….Section 1(1) of the 2013 Act provides that "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant." It is common ground that the serious harm requirement is not satisfied just because the defendant has published an imputation which has a seriously defamatory tendency. A claimant must establish on the balance of probabilities that the publication has in fact caused his reputation to suffer serious harm, or is likely to do so in future: Lachaux v Independent Print Ltd [2015] EWHC 2242 (QB), [2016] QB 402. …
>
> 18. The word "serious" is to be applied in its ordinary and natural meaning. Whether reputational harm has been caused that is serious by that standard is a fact-sensitive question. It may not be apt for summary resolution; it may require a trial; but that will not invariably be so: Ames v The Spamhaus Project Ltd [2015] EWHC 127 (QB), [2015] 1 WLR 409 [50], [101] and Lachaux [66].

19. A number of further points about the approach to serious harm have been established, which were conveniently summarised by Dingemans J in Sobrinho v Impresa Publishing SA [2016] EWHC 66 (QB), [2016] EMLR 12 [46]-[50]. They include the following:

> "46. … It should be noted that unless serious harm to reputation can be established injury to feelings alone, however grave, is not sufficient to establish serious harm.
>
> 47. Secondly it is open to the claimant to call evidence in support of his case on serious harm and it is open to the defendant to call evidence to demonstrate that no serious harm has occurred or is likely to do so. However a court determining the issue of serious harm is, as in all cases, entitled to draw inferences based on the admitted evidence

100. The Claimant submits that "serious harm" is not purely a question of financial proportionality i.e. balancing possible quantum with the likely high cost of litigation. Moreover, it must be remembered that any quantum would be likely to reflect injury to feelings as well as damage to the Claimant's reputation. Thus, "serious harm" cannot be exclusively a question of financial losses.

101. These are well observed points in so far as they illuminate the potential scope of any damages once liability is established. But I do not follow how they define "serious harm" as a statutory condition precedent before liability can be established. In that regard, as set out in Bode, it remains for the Claimant to establish she has an arguable case in fact that she has sustained serious harm to her reputation, or is likely to do so.

102. As previously stated, mere defamatory tendencies are not enough, neither is injury to feelings alone. Neither, as noted above from *Gatley on Libel and Slander* (12th ed.) at Paragraph 5.2, is the loss of the Claimant's social activity, even if enjoyed by her over many years and, as described on her behalf, as having been her "mission".

103. On my analysis at Paragraph 78, the realistic scope of the arguable defamation is much more limited than pleaded. Hence the prospect of establishing serious harm is more limited.

104. However, whether on this limited basis or as pleaded, I am unable to accept the Claimant has any reasonable prospect of establishing she has sustained serious harm. The words were said to a limited number of people at a single meeting. There has been no further publication, save of course by way of the Claimant's choice to correspond extensively and litigate. As discussed in the context of her alleged calling,

there is an insufficiently arguable case that the Claimant has a reputation objectively recognisable in the context of the alleged defamation and which is capable of sustaining harm ; still less serious harm.

105. For the same reasons, I cannot follow how the Claimant might be likely to sustain serious harm in the future.

106. The Claimant has produced no independent evidence in support of the proposition. The Claimant has had more than ample time to try to evidence her case as to serious harm. The point was clearly pleaded in the Defence dated 26 October 2016. The Claimant obtained adjournments of hearings previously listed for the Defendants' application in December and April. Indeed, she had explained to me at her application on 13 April how the need (again) to adjourn reflected her difficult in securing legal representation.

107. There is therefore no basis on which to assume that there might be evidence of serious harm at trial, if permitted to proceed. The reasonable conclusion is that any harm or loss instead embraces only injury to feelings.

108. I am entirely unwilling to draw inferences to presume serious reputational harm. That would undermine the purpose of the requirement of serious harm under s.1 of the 2013 Act.

109. The defamation case fails to satisfy s.1 of the Defamation Act 2013 and so should be struck out.

110. **The contractual claim**

It is not in issue that The Society wrote to the Claimant on 6 October 2015 to require the Claimants' resignation, citing their reasons that her actions "For the last year, and in particular the last few months" had had a deleterious effect on the normal workings of The Society. It referred to her multiple written personal attacks on Members and having repeatedly questioned their integrity. The Claimant's membership fees of £20 were returned. The letter referred to and was said to rely upon Rule 10 of The Society which enables the Executive Committee to require the resignation of any members "whom it considers to have behaved in an unseemly manner or acted against the Society's aims and interests".

111. The Claimant pleads that this event was in breach of contract, both in terms of Rule 10 and in breach of implied term(s) ; further, it breached the "Rules of Natural Justice". From Paragraph 49 onwards in the Re-Amended Particulars of Claim are a series of largely rhetorical observations that, in effect, deny that there was any evidential basis for the letter obliging resignation.

112. The factual basis for The Society ultimately requiring the Claimant to resign is pleaded in the Defence and much has been touched on above. Whilst not expressly particularised in the 6 October 2015 letter, it would be wholly artificial to suggest there was any mystique as to what was in their contemplation. The plainly recorded history of events, much in correspondence emanating from the Claimant herself, concerned (a) the Claimant's accusations made to various members (particular the First and Twelfth) about their honesty and propriety (b) her conduct in relation to the Peruvian Ambassador and the London Embassy (c) the loss of the use of the Embassy as a venue (d) the tone and extent of the Claimant's correspondence following the AGM meeting (f) the allegation of assault against the Twelfth Defendant (e) her reporting the Twelfth Defendant to the Police for assault (f) her allegations that certain Members had deliberately misled the Police investigation (f) her then making a complaint about the Police officer investigating her complaints once she learned that the Police were not to take any action.

113. I do not think it is at all necessary to resort to considerations of implied terms or Rules of Natural Justice. It is admitted that the written rules of an unincorporated society function as a contract between its members. Quite simply, the question is whether the Claimant's actions could reasonably be construed as having acted against the aims and interests of The Society. Whether it is an adjunct of this question or a subtly different question to ask whether the Claimant's actions were unseemly is probably unnecessary to decide if the broad merits of the invitation to resign were made out.

114. The merits of the Claimant's cause of action, quite simply, can be assessed by gauging as to (a) where there was any factual basis within the contemplation of Rule 10 for such a request (b) whether the process reaching that decision was unfair such as to amount to a breach (c) even if a breach is made out, whether any realistic loss or damage was sustained.

115. I am entirely satisfied that there was more than sufficient factual justification for a relatively small society as this, a registered charity with unremunerated members and organisers aiming to raise money for and promote the interests of Peru, to conclude that the Claimant was acting against its aims and interests. Whether intentionally or not, and whether realised personally by her or not, I am unable to accept that the Claimant's actions over the period in question can be described in any other way than counter-productive. I reject the ostensibly benign submission by Mr Soto-Miranda that people are allowed to complain. They are, of course. But plainly within the context of reasonable, appropriate and relevant behaviour.

116. Examples before the AGM have already been cited above.

117. I am satisfied that the Claimant had been given ample prior warning and opportunity to reflect on her past conduct to avoid such an invitation. The Society had written to her on 20.02.15 clearly stating that, in view of particularly recent correspondence (as would also extend to the Peruvian Ambassador episode), the Claimant should "note the Committee will not tolerate harassment of any of its individual members which it now considers to be the case in this matter".

118. Despite this letter, the Defendants' formal Witness Statements and the various informal statements (as annexed to the First Defendant's statement) relied upon for the purposes of their application constitute very clear evidence that the Claimants' undesirable behaviour continued, as at the AGM. I reiterate here that the Claimant has produced no independent evidence, or even suggestion of independent evidence, to the contrary. I have also read and considered the tone, content and extent of the Claimant's so called Protocol correspondence following the AGM.

119. Following the AGM, despite the Claimant having threatened litigation and commenced pre-action correspondence, the tone of accusations continued to a marked degree. For example:

- In the Claimant's 19.08.15 e-mail and in response to seeing the informal statements, she wrote "Now, I know, those witness statement you are reluctant to give me but are willing to forward to a Judge or Solicitor, were written by …..containing not only false statements, misleading information but have Important omission as if they would have written the truth, they would had not been able to write their false statements to

deceit the police on their investigation [my emphasis] on the physical assaulted I suffered by Murray…..same is the 2 pages written by [the First Defendant] filled with convoluted web of lies, reason she avoid to write events as it took place the 29th April 2015 a on the Chronologic order as it happened, as if she did, she would had Not able to fit her false statements to deceit also the police investigation to exonerate Hallam Murray";

- In her 24.08.15 letter "I lost totally trust on the honesty of those who now managed the APS";

- In an e-mail dated 1.7.15 from PC Pete Thackray of the Metropolitan Police, he confirmed how he had explained to the Claimant that, following his investigations, the Police would not be taking any further action against the Twelfth Defendant : "I explained to Mrs Van Der Mast that a number of the accounts described her behaviour as appalling….Needless to say Mrs Van der Mast did not take this well and has since complained to my boss".

120. In their 21.07.15 letter to the Claimant, The Society asked that the Claimant "please refrain from contacting them on their private email addresses and numbers". The Society had designated e-mail addresses, as I note the Claimant had used on many previous occasions.

121. The Claimant pleads no specific contractual loss other than to blend the contractual claim with her overall claim for loss of reputation and associated distress. This failure is critical, in my view. No direct pecuniary loss can be claimed now the Claimant has had returned her membership fees. There is no special case pleaded for non-pecuniary damages within the well-known contractual exceptions : it can hardly be described as a purpose of the contract *inter se* members of The Society to secure protection against the Claimant's physical, mental and reputational well being.

122. The claim for re-instatement as a discretionary remedy is fancifully unrealistic, given not only the factual background but also general rarity of specific performance even within, to adopt the closest analogy, orthodox employment claims.

123. I strike out the contractual claim under CPR 3.4(2) as constituting an abuse of the court's process or otherwise likely to obstruct the just disposal of proceedings. This part of the claim is, in my judgment, a makeweight attempt to complicate already

complicated litigation and to serve the collateral purpose of vexing the Defendants. I find no reasonable grounds for bringing the claim either.

124. The proposed contractual claim has no reasonable prospect of success. It is fanciful, vexatious and ill considered. I award summary judgment to the Defendants on this part of the claim.

125. **The assault, battery and personal injury claim**

Although the Claimant's pleaded case seems to suggest actual injury was incurred, such as might constitute specifically a personal injury claim, the essence of the allegation is that the torts of assault and battery in their pure sense were incurred which the Claimant found significantly distressing and upsetting :

Para 20 : "The Twelfth Defendant his ha were hard pressing on her the right shoulder and left upper arm of the Claimant causing the Claimant pain as she describe and that she could not see the other side nor the attendees of the room…"

Para 21 : "The Twelfth Defendant then tried by sheer physical force to remove the Claimant from where she was standing with his hands hard on her right shoulder and left upper arm"

Para 22 : "…the Claimant felt threatened that the Twelfth Defendant would become more violent and cause the Claimant more pain.."

Para 23 : "The Twelfth Defendant then continue by pushing the Claimant down the aisle until she shouted "Take your hands off me!" crying, in pain and unable to breath"

Para 24 "The Claimant tried to leave the room but she stumbled as her legs and knees gave away….The Claimant states : suffered pain, bruises, aching, shock, shaking unable to breath by the extreme anxiety and distress".

126. The Defence on behalf of the Twelfth Defendant admits only to having put his hand on the Claimant's shoulder to guide her towards the door, following a perceived need to interpose himself between the Claimant and the First Defendant and a request to "cease her tirade". He alleges he removed his hand immediately upon the Claimant saying words to the effect of "Don't touch me". It is denied there was any further

physical contact, the Twelfth Defendant instead walking behind the Claimant to escort her out of the room. It is denied she sustained any physical injury.

127. Although not strictly speaking a document for further allegations, in her Reply the Claimant alleges a slightly stronger version of events. At Para 18.6 : "The fact is The Claimant did not leave a she could not walk her legs and knees gave away filled with anxiety trembling. Shaking crying dizzy with blurred vision, unable to breath, when she finally forces her to walk she used her left hand to help her walk touching the wall of the corridor, yes bruises were left on her right shoulder was painful. if someone grabs a person from the shoulder pressing hard on it produce pain and leaves mark he also held her from upper arm".

128. In her pre-action letter dated 5.5.15, the Claimant at Para 8 describes the Twelfth Defendant "his nose almost touching my face while with his arms physical attacking me using his left arm to hold me hard pushing my shoulder aggressively to move me away from where I was standing. This was an attack". Specifically in terms of any injury, however, Para 11 refers to her having been left "emotional devastated, shocked and shaking now suffering with extreme distress, anxiety and with physical pain as I have developed stomach pain by the Embarrassed humiliations..".

129. The AGM Minutes record how the Twelfth Defendant stood in front of the Claimant "and firmly asked her to leave, she refused and he gesticulated touching her right shoulder to usher her toward the door and she started shouting louder and becoming more agitated".

130. The First Defendant's "Recollection" document, as incorporated into her formal witness statement, states how the First Defendant was not in a position directly to see whether the Twelfth Defendant actually laid his hands on the Claimant.

131. In the copy e-mails annexed to the First Defendant's statement, which constitute documentary evidence and provide a clear indication of their likely witness testimony if called, there are variations :

- Susie Pinter : "we did not observe any physical contact between the two of them"

- Armando Varela : “Mr Hallam Murray then approached her, and touching her arm, asked her to leave the room. It was at this point that Mrs van der Mast uttered the word “Don’t touch me” whereupon she went to sit down”

- Rosi Gemmell : “When she was very excited and shouting a person at the meeting asked her politely to leave the meeting and more shouting continued until she left the room”

- Rosa Thirby : “I was a shocked the way Mrs Van der Mast was taken out of the room”

- T M Browne : “he appeared to try to persuade her to leave by pushing her towards the door. Surprised, as we all were by this intervention by Mr Murray, the Chairman Mrs Barclay took a little while to restore order and ask Mr Murray to sit down”

- Hazel Bakhtiar : “Mr Murray then tried to calm her down by very politely requesting that she sit down and not disrupt the meeting further or else leave the room. Her response was to shout angrily and leave the meeting”

- Andrea Burkin : “the lady then got up and went up to the head table and become very threatening and rude and Mr Murray then asked very nicely if she could nto sit down and be quiet she would have to leave….Mr Murray did not touch her but she acted as if he had and starting to shout and went out of the room”.

132. In this part of the claim, the court is faced with a clear range of factual accounts but with no independent medical evidence of any injury having been sustained having been produced by the Claimant. This is despite having had over two years now to do so. Although Mr Soto-Miranda alluded at the hearing to medical evidence being available, only correspondence from her GP and treating clinicians has been disclosed, all which are based upon her self-reporting in terms of their brief description of causation. No expert report within the Part 35 sense, and which might seek to consider both alleged injury (of whatever description) and causation against anything relevant in the Claimant’s medical records has, as far as I can tell, ever been prepared. In any event, none has been disclosed. The relevance and application of the Claimant’s references to having medical evidence are therefore substantially qualified.

This feature has to be noted against the considerable period of time that has elapsed during which probative evidence could have been expected and, further, the probability of any such evidence now being reliable even if prepared.

133. The only specific injury the Claimant alleges is bruising. If the Claimant proposes this was sustained instantaneously, as her Statement of Case could be taken to imply, then this would be clinically unknown. If instead she intends to allege it was developed subsequently, then she has the difficulty of proving this was probable against the weight of the evidence about the nature of the incident in principle.

134. On the Claimant's own material, any ostensible loss from this incident is irretrievably fused with her overall response to the events of the AGM in April 2015. The chances of now being able to establish a loss specifically from this incident seem very unlikely.

135. I am not satisfied it is arguable that a real and substantial tort has been occasioned on these facts. On that basis alone, it would be appropriate to strike out this part of the claim as disclosing no cause of action.

136. I consider there to be further aspects of abuse in relation to this head of loss.

137. Even if it ascends modestly above the margin below which no real or substantial tort has occurred, I am satisfied that the predominant purpose of this head of loss is not to achieve an award of damages but to seek to add weight to claim as a whole and to vex the Defendants.

138. Any reasonable litigant viewing the patent imbalance between (i) the modest if not nominal value of the claim (ii) the time and resources that would be expended to try it (iii) the time and resources already expended, would surely conclude that, to adopt by analogy the reasoning in Jameel, the game is not worth the candle.

139. This is an inescapable conclusion if one focuses further on the time and resources both as incurred and prospectively.

140. I remind myself of the provisions of CPR 1.1 that the court, in dealing with a case justly and at proportionate cost, must have regard to the financial position of each party, the need to ensure a case is dealt with expeditiously and fairly and to allot to it

an appropriate share of the court's resources, taking into account the need to allot resources to other cases.

141. Had this been a claim been brought entirely in its own right then, based on the above evidence, it would have seemed suitable for transfer to the County Court. It would more than probably there be allocated to the Small Claims Track to reflect the near certain probability that the Claimant would be unable to achieve General Damages in excess of £1,000. Indeed, there is a strong possibility that the Claimant's entitlement, if successful, would only be to nominal damages.

142. If permitted, the hearing time required on the above evidence would be at least half a day and possibly up to a day.

143. Critically, however, this claim has not just been issued and is not being considered either in isolation or at Allocation. Along with the other claims brought, the claim has already had the benefit of considerable court time and resources.

144. There have been interim applications from the Defendants concerning service. The First Defendant's application dated 6 September 2016 to set-aside the 31 August 2016 Order obtained by the Claimant without notice permitting her to serve by alternative means was live until the 13 April 2017 hearing when, in my view quite properly, the First Defendant conceded it was a better use of court time to hear only the strike out and summary judgment application.

145. On 6 December 2016, the Claimant had applied to vacate the hearing of the Defendants' application then listed for 20 December 2016. The Claimant said she needed time for legal representation. Master McCloud vacated the 20 December listing but ordered the matter be re-listed to the first available date after 16 January 2017. The Claimant then applied on 22.12.16 to extend the re-listing of the application until after 14 February 2017, again citing reasons touching upon representation and needing to further prepare her case. However, she failed provide details of time estimate on a Private Room Appointment form, as required in the Queen's Bench Division. Master McCloud therefore made an unless order on 18 January 2017 obliging the Claimant to provide a time estimate. The Defendants' application was then re-listed for 1-day on 27 April 2017 but on 7 April 2017 the Claimant applied for that date to be vacated as well.

I heard the Claimant's application on 13 April 2017. The Claimant described her continued difficulty in getting legal representation but how Mr Soto-Miranda had expressed his willingness to represent her. In his letter dated 3 April 2017 to the Defendants' solicitors, Mr Soto-Miranda described how he had that day been instructed by the Claimant but provided with more than 1,000 pages of documents that were in disorder. In the circumstances, whilst not expressly stating he was unavailable on 27 April 2017, he asked the Defendants to consider a brief adjournment. In order to facilitate the Claimant securing representation, I vacated the 27 April 2017 hearing and re-listed it for 11 May 2017.

146. Although this chronology concerns the entire claim, it is significant that throughout this particular head of loss has remained in an undeveloped and unsatisfactory state despite multiple opportunities to clarify and develop.

147. In Crawford Adjustors v Sagicor General Insurance [2014] AC 366 (a case referred to in Weston v Bates [2015] EWHC 980, as relied upon by the Defendants), Lord Wilson JSC held that if a claimant has a predominant improper purpose then that is sufficient for collateral abuse, even if there is also a subsidiary legitimate purpose. However in this particular case, I am less than satisfied there is even a subsidiary legitimate purpose. It is instead an abuse of process that should be struck out under CPR r.3.4(2)(b).

148. **The balance of the claim : CPR 3.4(2) and Jameel abuse**

I have set out in detail why the core elements of this claim have no realistic prospect of success or otherwise should be struck out. Perhaps unavoidably because the Claimant represents herself, her Statements of Case lack the consideration of an experienced lawyer and there remain various threads of allegation and potential causes of action beyond the core elements discussed.

Having carefully considered these I am satisfied that, in so far as these are legally intelligible, they add nothing and should be struck out. I do so under CPR 3.4(2)(a) and (b) and for the reasons set out in Jameel.

Costs

149. I will list the case for formal handing down and to consider any applications for costs.