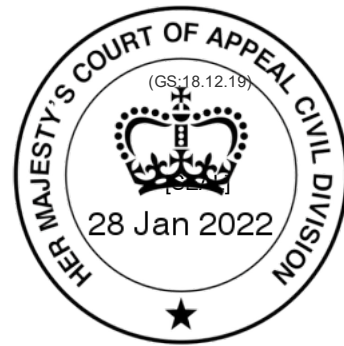




# IN THE COURT OF APPEAL, CIVIL DIVISION

REF: CA-2021-003251

Craig Wright –v– Peter McCormack



CA-2021-003251

## ORDER made by the Rt. Hon. Lord Justice Warby

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal (PTA) against parts of the order of Julian Knowles J dated 19 November 2021 and (in consequence of the lateness of the application for PTA) applications for relief from sanctions and an extension of time (EOT) for seeking PTA

### Decision:

**Applications refused**

### Reasons

1. The applications for relief from sanctions and an extension of time are refused on the grounds that (1) the failure to file appeal papers on time is a serious and significant breach for which (2) no good reason has been provided and (3) in all the circumstances it would be unjust to grant the relief and EOT sought.
2. Among the circumstances relevant to (3) above is the fact that I would have refused permission to appeal in any event, on the basis that (a) for the reasons outlined below the Grounds of Appeal have no real prospect of success on their merits; (b) there is no other compelling reason to hear an appeal; (c) on the contrary, there are compelling reasons for refusing permission to appeal as a matter of discretion, even if there were some arguable merit in some or all of the grounds of appeal.

### Merits

3. The decisions under challenge are case management decisions. True, they rest on determinations of law, but they are decisions to strike out pleaded allegations or to refuse permission to plead certain additional matters. The Judge did not arguably mis-state the relevant principles. The real contention is that he misapplied them to the specific pleadings, or draft pleadings that were before him. In doing so he reached evaluative decisions of a kind with which this Court would be slow to interfere. I cannot envisage a decision to interfere in this instance.
4. **Ground 1:** Reverse innuendo - paragraphs 7.3, 7.4 and 7.4A. The Judge was clearly correct. The claimant's innuendo facts are very limited, requiring proof of nothing more than the proposition that the relevant audience knew that Satoshi was the name for the inventor(s) of Bitcoin. That is not in dispute. The defendant's "innuendo facts" are quite different, and would introduce an entirely new enquiry. The only legitimate purpose for a defendant's plea of reverse innuendo is to make out a meaning that is less harmful than the one complained of. That may be for the purpose of putting up a substantive defence to that lesser meaning and/or for the purpose of reducing or mitigating damages. Here, the defendant has neither purpose. Indeed, the defendant in substance admits the claimant's meaning and does not (any longer) seek to defend it as true or as something published in the public interest. What he does seek to do is to set up a further and specific meaning that goes beyond the claimant's meaning, and then to mitigate on the basis that the claimant had a general bad reputation to that effect. This is objectionable on numerous grounds. As the Judge held, it is irrelevant and improper to plead a meaning that is more serious than those complained of; and the pleading is an abuse of process as its real objective is to provide a platform for the introduction of evidence about what others have said about the claimant. If that were permissible, it would not be legitimate to do it by pleading an innuendo meaning.
5. A further and related objection, not fully articulated before the Judge, is that on analysis the defendant's meaning is an impermissible form of innuendo. It seeks to attribute an additional meaning to the words complained of on the basis of third-party publications which are not (and not even said to be) included in or referred to or adopted by the words complained of. That is contrary to principle, because such third-party publications cannot be innuendo 'facts': see *Astaire v Campling* [1966] 1 WLR 34, 38H & 39F (Sellers LJ),

6. **Ground 2:** Rebuttal of serious harm – paragraphs 18.8, 18.9.1.1, 18.9.1.2, 18.10.1, 19.1, 19.3, 19.4 and 19.6. The Judge's legal analysis was comprehensive and clearly correct. He plainly recognised that *Dingle* does not always exclude consideration of rival causal factors; where a claimant identifies some specific item of harm as consequent on the alleged libel the defendant may in principle rely on specific alternative causes. There is no real prospect that the Court of Appeal would reverse or interfere with the Judge's application of the law to the specifics of what was pleaded or sought to be pleaded here. The Judge's view that the "old" pleading was in substance an attempt to use third-party publications to rebut a claim for general damage, based on an inference of harm to reputation was clearly right. He was entitled to take the view that the defendant had not sufficiently pleaded that the same material could serve as rebuttal of the claimant's case on causation in respect of the two specific matters relied on and that this would be an artificial and fanciful suggestion.
7. **Ground 3:** Mitigation - paragraph 39.1. There is no plea of *Burstein* mitigation. Nor is there any authority to suggest that a raft of other publications can count as "directly relevant background context" and thus be admitted as *Burstein* mitigation. So to hold would involve a serious incursion into the *Dingle* principle. The Judge was entitled to reject the novel argument that such other publications could be admitted under the principle that general bad reputation can be established by proof of a "single notorious event". This is an exception to the general rule that only general evidence of reputation is admissible. It is a narrow one, and the cases in which it has been held available are plainly distinguishable from the matters referred to here. They consist, to date, of criminal convictions (*Goody v Odhams Press* [1967] 1 QB 33) and, arguably, judicial strictures in civil proceedings (*Waters v Sunday Pictorial* [1967] 1 WLR 967; *Turner v News Group Newspapers Ltd* [2006] 1 WLR 3469 [47-48]). Third party defamations of the kind relied on here are clearly not within these categories nor are they analogous.
8. **Ground 4:** Rejection of this ground of appeal follows from what I have said above.

#### Discretion

9. I take into account the matters identified in PD52A para 4.6(a) and (b) (significance vs costs, and procedural consequences). Defamation cases should be dealt with promptly and efficiently. This litigation has already been protracted, and several trial dates have already been lost. The effect of granting PTA would be to lose the trial date once again. The remaining issues are relatively narrow, being meaning, serious harm and (if the claimant succeeds on these points) quantum. Many of the matters which the defendant has identified in rebuttal of serious harm and/or mitigation remain available to him.
10. These include s 12 of the Defamation Act 1952, which appears to be pleaded in paragraph 39.3 and the claimant has expressly accepted that this would be a legitimate matter in mitigation (see [217]).
11. As for the findings of Magistrate Judge Reinhart (Appellant's Skeleton Argument para 58), it seems to me entirely artificial to suggest that the Judge's order has the effect of excluding reliance on these in mitigation of damages when they are pleaded and conceded to be relevant to serious harm, permission to plead them in that context has been granted without opposition, and paragraph 37.1 has been permitted. I do not believe that to be a proper interpretation of the order, in the light of the judgment. If the order could arguably be read in that way it would only be because of the convoluted fashion in which the draft pleading has been formulated.

#### Information for or directions to the parties

**Mediation:** Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? Yes/No (delete as appropriate)

##### Pilot categories:

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• All cases involving a litigant in person (other than immigration and family appeals)</li><li>• Personal injury and clinical negligence cases;</li><li>• All other professional negligence cases;</li><li>• Small contract cases below £500,000 in judgment (or claim) value, but not</li></ul> | <ul style="list-style-type: none"><li>• Boundary disputes;</li><li>• Inheritance disputes.</li><li>• EAT Appeals</li><li>• Residential landlord and tenant appeals</li></ul> |
|--|--|

If yes, is there any reason not to refer to CAMS mediation under the pilot? If yes, please give reason: Not in scope <u>Non-pilot cases:</u> Do you wish to make a recommendation for mediation?	Yes/ (delete as appropriate)  No (no real prospect the issues could be resolved by agreement)
<b>Where permission has been granted, or the application adjourned</b> a) time estimate (excluding judgment) b) any expedition	

Signed:  
 Date: BY THE COURT  
 27 January 2022

**Notes**

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
  - a) the Court considers that the appeal would have a real prospect of success; or
  - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **CA-2021-003251**