Neutral Citation Number: [2007] EWHC 997 (QB)

Case No: TLQJ/06/0677

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/05/2007

Before :

Mr JUSTICE TUGENDHAT

- -

Between :

Sheldon Gary Adelson **Las Vegas Sands Corp**	**Claimants**
- and -	
Associated Newspapers Limited	**Defendant**

- -
- -

Mr James Price QC, Mr Justin Rushbrooke, Mr Godwin Busuttil (instructed by **Schillings)** for the **Claimants**
Mr Mark Warby QC Mr William McCormick (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing date: April 25th 2007

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. At the start of the hearing on 25th April I made an order pursuant to Section 4 (2) of the Contempt of Court Act 1981. The terms of the order, and the matters to which it relates, are set out below at para **Error! Reference source not found.**. It relates only to that paragraph and the subsequent paragraphs to the end of this judgment.

2. The applications before me relate to an action for libel which is due to be heard before a judge and a jury for a period estimated to be four weeks commencing 25th June, that is about eight weeks from today. These applications are only part of a number of applications notice of which had been given. The others were listed for hearing by Eady J who is expected to be the trial judge. He heard and disposed of them last Friday and Monday. The present applications have been separately listed before me by agreement of the Defendant. The reason is that the parties wished to refer to matters which cannot be mentioned to the trial judge.

3. The Claimants' application, first made by notice dated 13th April 2007, is for permission to amend the Claim Form and the Particulars of Claim substantially in two respects. Firstly, they apply to add as Third and Fourth Claimants respectively the companies Las Vegas Sands, LLC (formerly "Las Vegas Sands Inc") and Las Vegas Sands (UK) Ltd. For convenience I shall refer to them as the Third and Fourth Claimants. This involves proposed amendments to paragraph 1 of the Particulars of Claim, and new paragraphs 1A to 1E. There is a consequential amendment to paragraph 4 to introduce a new sub paragraph (2A) to plead a meaning in relation to the Fourth Claimant. There is also a consequential amendment to the damages plea in paragraph 5.

4. The second respect in which the Claimants apply to amend the claim is to add to the existing plea in paragraph 6, in which the First Claimant ("Mr Adelson") claims aggravated damages. Two of these additions are not disputed one being additional words to the body of para 6 and the other being the proposed new para 6.2A(5). The remainder is opposed.

5. The words complained of were published in the issue of the Daily Mail dated 28th May 2005. Included in the title are the words which give the gist of the piece:

> "Revealed… the ruthless casino baron who rules Las Vegas and is helping United's new owner in a desperate bid to fund his debt".

6. "United" is of course Manchester United Football Club, whose new owner was a Mr Glazer. The "Casino Baron" is identified in the article as Mr Adelson. The article contains an account of Mr Adelson's business activities from when he was aged 12 until the present day. He is in his seventies. In the article he is referred to as "the owner of the Las Vegas Sands Gambling and Leisure Empire", but none of the companies controlled by him is identified by its name. The article refers to a proposal for a joint venture between Mr Glazer and Mr Adelson for a vast new casino to be opened in Manchester. This would, of course, require a licence under the Gambling Act 2005, which has been much discussed in the media and by the public for some time. The theme of the article is that such a venture would bring unwelcome changes to football in general and to Manchester United in particular.

7. The Claimants are represented before me by Mr Price QC, Mr Rushbrooke and Mr Busuttil. The Defendants are represented by Mr Warby QC and Mr McCormick.

8. Mr Warby QC opposes the amendments sought on a number of grounds. He opposes the amendments to add new Claimants on the grounds that: 1) there is no jurisdiction to grant the application; 2) that in respect of the Second Claimant and the Fourth Claimant the amendment would disclose no cause of action and 3) that as a matter of discretion such a late application to amend should be refused.

9. Linked to this is the Defendant's application to strike out the claim of the Second Claimant, on the ground that the admission that it did not trade means that it has no cause of action.

10. Mr Warby QC opposes the amendment to the plea of aggravated damages on the grounds that: 1) parts of the proposed amendments relate to matters in respect of which an offer of amends has been made and accepted under the Defamation Act 1996, and those matters should not be raised by amendment of the pleading; 2) parts of the proposed amendments are objectionable on specific grounds; 3) that as a matter of discretion the amendment should be refused because the application is too late and for other reasons.

11. Mr Warby QC does not submit that the amendments to add new claimants, if allowed, would affect the trial date, or that they would give rise to substantial disclosure, or that they would require substantial amendments to the Defence. He was careful not to concede that there would be no effect on the trial date for any of these reasons, but he made no positive case that they would. He does submit that the trial date might be affected if the amendments to the claim for aggravated damages are allowed.

PRINCIPLES GOVERNING APPLICATIONS TO AMEND

12. The governing principles are not in dispute. The court should give effect to the overriding objective. Amendments should normally be allowed, if what is proposed is arguable and important to the determination of the issues between the parties, and if the other side would not suffer undue prejudice. The more serious the allegation the more clearly satisfied the court should be that no prejudice is being caused. Late applications should normally be explained in evidence. These are the general principles. Special principles apply in respect of an amendment to add new parties after the expiry of the limitation period.

THE DEFENDANT'S APPLICATION

13. In addition to the Claimants' application, there is the application by the Defendant to strike out the Second Claimant from the proceedings on the grounds that the words complained of are incapable of referring to or defaming the Second Claimant, apart from certain admitted references to that company which are the subject of an offer of amends under the Defamation Act 1996 s.2. That offer has recently been accepted. The Second Claimant submits that it has to remain a party to the proceedings for the purpose of working out the uncompleted steps in the offer of amends procedure. The Second Claimant submits that the most that the Defendant could achieve would be a ruling that the Second Claimant can advance no claims at the trial which is forthcoming.

14. Apart from the matters in respect of which the offer of amends procedure is pending, there are issues in the action as to reference and meaning, and defences of justification and qualified privilege, and of course issues as to damages, both compensatory and aggravated.

THE DRAFT AMENDED PARTICULARS OF CLAIM

15. Omitting the lengthy words complained of, and the prayer for relief, the draft Amended Particulars of Claim read as follows:

"1. The First Claimant is the Chairman and Chief Executive Officer of the Second Claimant, which is a public company incorporated in Nevada, USA. The Second Claimant (through its operating subsidiaries) predominantly trades and operates in the gambling industry, developing and running-casino-based gambling, entertainment and leisure resorts and their associated hotel, restaurant and retail facilities. The Second Claimant was incorporated in August 2004 and since December 2004 its shares have been traded on the New York Stock Exchange.

1A. The Third Claimant is a wholly owned subsidiary of the Second Claimant. It operates the internationally-renowned Venetian Resort-Hotel-Casino in Las Vegas, Nevada, USA, which in 1999 was named by the Defendant in the *Mail on Sunday* as one of the ten grandest hotels in the world. The Third Claimant was known as Las Vegas Sands Inc. until July 2005, when it converted to a limited liability company, known as Las Vegas Sands, LLC. The First Claimant is also the Chairman and Chief Executive Officer of the Third Claimant.

1B. Since about 2003 the Claimants have embarked upon plans to expand into the UK gambling industry, specifically by establishing one or more casinos following the proposed liberalisation of the gambling laws. Pursuant to those plans:

1B.1 The Fourth Claimant was incorporated under the laws of England and Wales in July 2003 to act as the representative and holding company for the Second and Third Claimants' UK operations. It is a wholly owned subsidiary of the Second and Third Claimants (via various intermediate holding companies). In the event that the Claimants were to succeed in any bid to operate a casino in this country, the business would be operated by a special purpose subsidiary company, wholly owned by the Fourth Claimant. The licence to operate such a business would be applied for and held by such subsidiary, or possibly by the Fourth Claimant on its behalf.

1B.2 The Second, Third and Fourth Claimants have negotiated and entered into exclusivity agreements with a number of football clubs with a view to the possible establishment of a casino in their area, including with Middlesborough (executed by the Fourth Claimant on 27 April 2004), with Manchester United PLC (executed by the Third Claimant on 22 November 2004), and with Birmingham City Plc (executed by the Second Claimant on 26 May 2005).

1B.3 The Second and Third Claimants have incurred the costs of these activities in the UK. Their UK representative, Mr Rodney Brody, carries the title 'Head of Development UK and Europe, Las Vegas Sands (UK) Limited'. His fees are paid by the Second Claimant. The legal fees and expenses incurred by the Fourth Claimant and its subsidiaries have been paid by the Third Claimant.

1C. The Second and Third Claimants have an international reputation. References to 'Las Vegas Sands' are generally understood, both in the US, the UK and elsewhere as references to the Second and/or Third Claimants (usually without any distinction being made between the two companies) and/or as references to the entity which owns and operates The Venetian and other casino resorts such as the Sands Macau. Moreover, references to 'Las Vegas Sands' in the context of the Claimants' activities in the UK would also, or alternatively, be understood as references to the Fourth Claimant, in particular by persons interested in any bid made by the Fourth Claimant or its special purpose subsidiary for a casino licence.

1D. The Defendant in its Defence herein relies on the fact that the Second Claimant does not trade in its own right but through its subsidiaries. Further, the Defendant does not admit that the words complained of referred or were understood to refer to the Second Claimant except to the limited extent pleaded in paragraph 4 thereof.

1E. In the premises, the Claimants will aver that the words complained of were and would be understood to refer to the First, Second, Third and/or Fourth Claimants, and that the said words were likely to damage (i) the reputation and goodwill of the Second Claimant as a publicly traded corporation in the eyes of the financial and investment community, (ii) the trading reputation and goodwill of the Third Claimant, and (iii) the reputation and capacity to trade and/or establish trading subsidiaries and/or successfully bid for casino licences of the Fourth Claimant.

2. The Defendant is the publisher of the Daily Mail, a national newspaper with a circulation throughout the jurisdiction in excess of two million copies and a readership of several times that number.

3. In an article on pages 106 and 107 of the issue of the Daily Mail dated 28 May 2005 the Defendant published or caused to be published the following words defamatory of the Claimants and each of them:

"**GLAZER'S BIG GAMBLE**

SOLD TRAFFORD

Revealed … the ruthless casino baron who rules Las Vegas and is helping United's new owner in a desperate bid to fund his debt

EXCLUSIVE
By DAVID JONES

…….

4. In their natural and ordinary and inferential meaning the said words bore and were understood to bear the following meanings defamatory of the Claimants.

Of the First, ~~and~~ Second and Third Claimants

(1) That they had pursued the goal of shamelessly exploiting Manchester United Football Club by operating a gambling complex at Old Trafford, Manchester, by stealthy and underhand means, namely:

(a) by covertly colluding with Mr Malcolm Glazer in his bid to gain control of Manchester United football club, holding secret talks with him before his takeover coup, behind the backs of their partners in a joint venture to

establish that gambling complex, namely the club and its directors and shareholders, and the local Trafford council which was supporting that venture; and

(b) by attempting after Mr Glazer's takeover coup to conceal their involvement in the planned complex, particularly from the loyal supporters of Manchester United, by surreptitiously announcing those plans at a time when attention was diverted by the battle then going on between Mr Glazer and those supporters.

(2) That their cut-throat, ruthlessly aggressive and despicable business practices include:

(a) provoking and contesting or bringing inordinate and unreasonable numbers of court cases, to the extreme of:

(i) bringing a bizarre and irrational claim for damages against one of their own companies;

(ii) bringing an absurd claim for trespass against picketing union members by falsely claiming to own the pavement outside their Venetian casino;

(b) routinely attacking with disparaging newspaper and television advertisements any politician who sides with their enemies; and

(c) habitually buying political favour by making large payments to supportive politicians in the same corrupt way as the notorious Mafia crime bosses who once ran gambling in Las Vegas.

Of the Fourth Claimant

(2A) That by reason of its being owned and controlled by the First, Second and Third Claimants, it was unfit to own a casino business or hold a casino licence in this country.

Of the First Claimant

(3) That he has behaved in a similarly pitiless and despicable way in his private life:

(a) telling his first wife on the night before she underwent an operation for cancer that he wanted to divorce her, not even doing so himself but sending a friend to do it;

(b) after her death, chiselling her sons (his stepsons) out of tens of millions of dollars by buying their shares in Comdex at a tiny fraction of their true value.

5. By reason of the publication of the said words the Second, Third and/or Fourth Claimants have ~~has~~ been severely injured in ~~its~~ their business reputations (as to which see further paragraph 1.E above) and the First Claimant has been gravely

injured in his personal and professional reputations and has been caused serious distress and injury to feelings.

6. The Claimants will rely on the following facts and matters in support of their claims for damages including, in the case of the First Claimant, aggravated damages. For the avoidance of doubt, and in relation to paragraph 12(f) of the Defence (referring erroneously to 'the First *Defendant's* feelings'), the First Claimant does aver that the injury to his feelings has been increased by the matters alleged below.

6.1 Historically the gaming industry has been and has been perceived to be both susceptible and conducive to corruption and to exploitation by criminals. As a result:

6.1.1 it can only be pursued in this jurisdiction and around the world under government licence, obtained and retained as a matter of privilege and not as of right;

6.1.2 allegations of underhand, abusive, untrustworthy and corrupt dealings, such as those complained of under paragraphs 4 (1) and (2) above are calculated to be particularly and extremely damaging to persons, such as the Claimants, seeking to obtain and retain such licences.

6.2 Notwithstanding the damaging nature of the allegations at paragraphs 4 (1) and (2) above and the damaging and hurtful nature of both those allegations and the allegations against the First Claimant at paragraph 4 (3) above, the Defendant published them without making any prior check with the Claimants as to their veracity or offering the Claimants any opportunity to respond to them;

6.2A. The First Claimant will rely also on the following facts and matters as aggravating the distress and injury to his feelings caused by the publication complained of:

(1) The article was written and presented in a grossly unfair and unbalanced manner. Indeed, with its sensational language and almost wholly negative tone, it was nothing less than a character assassination of the First Claimant.

(2) The Court will be invited to draw the inference that the Defendant (both through its journalist, David Jones, and editorially) had no interest in publishing a fair or balanced piece. Rather, it preferred to paint a highly critical and damaging picture of a 'ruthless casino baron', with its gratuitous reference to the First Claimant's 'East European Jewish stock', because such a story made better copy, as well as serving the Defendant's populist agenda of (a) whipping up feeling about the prospect of Manchester United Football Club being 'shamelessly exploited' by American investors who had no interest in football, or in the club; and (b) furthering its (disgracefully hypocritical) campaign against the relaxation of UK gaming laws.

(3) In support of the foregoing allegations the First Claimant will rely on the following:

(a) It is apparent on the face of the article that the Defendant's principal sources for it were: (i) a pamphlet entitled 'Sheldon Adelson – a review of his business practices and history', prepared by the trade union UNITE HERE, which as the journalist stated was in a 'rancorous dispute' with him, and (ii) an interview with the First Claimant's own stepson Gary Adelson, from whom, on the journalist's own account, the First Claimant was estranged with no hope of reconciliation. Such sources were self-evidently likely to be biased against him. A fair-minded and balanced journalist would have made sure to look

beyond such sources in his researches, and to approach any information emanating from them with caution.

(b) Notwithstanding, the article contained the following inaccurate statements that were either statements which no fair-minded journalist would have published or, worse still, which the author simply cannot have believed to be true. Specifically:

(i) The First Claimant had not 'quietly announced his plans' for a super-casino, nor had he 'deliberately … chosen to pounce' whilst Manchester United fans were distracted, nor had he 'slipped in under the radar', nor had he made a 'stealthy entry into the fray'.

(ii) The First Claimant and Glazer had not 'reportedly sat down for secret talks shortly before the audacious United takeover coup'.

As to (i), the plans for a super-casino had been announced a fortnight previously (as the article correctly stated) by a Press Release first issued on 9 May 2005. That press release was very widely reported in the regional and national press. The Defendant's journalist must have known this (otherwise he would not have been in a position to report the announcement). There was thus no basis whatsoever for saying that the plans had been announced 'quietly', or that their announcement had been deliberately timed so as to attract little attention. For the avoidance of doubt, the Claimants do not admit, and require the Defendant to prove, the Defendant's claim (by solicitors' letter dated 7 June 2005) that their journalist had 'sources' who held any such view.

As to (ii), the First Claimant had never even met Mr Glazer, let alone 'sat down for secret talks' with him, let alone sat down for talks 'shortly before' the latter's 'coup'. The only basis that the Defendant had for stating as much, and thus for suggesting that the Claimant had been engaged in some kind of covert conspiracy with Mr Glazer, which allegation lay at the heart of the article complained of, was an article published in The Independent on 17 May 2005 under the headline 'Glazer in talks with casino mogul "to help pay for United"', but even that did not state that the talks had taken place *before* Mr Glazer's coup. The Claimants will invite the Court to infer that the journalist simply recycled the Independent story but with an added spin of his own. Had he taken the trouble to research the matter, he would have discovered that the Claimants had entered into an exclusivity agreement with the board of Manchester United in November 2004, long before Mr Glazer launched his 'coup'.

(iii) The First Claimant was not a 'ruthless casino baron' and the Defendant had no basis for describing him as such.

(iv) The First Claimant did not have 'scant love – and even less knowledge – of the so-called beautiful game [of football]', and the Defendant had no basis for stating that he did. The Court will be invited to infer that the author simply made this up, presumably on the basis that the First Claimant was an American.

(v) The First Claimant was not 'widely despised for his cut-throat business

practices in the United States' and the Defendant had no basis for stating that he was.

(vi) The article stated:

'His [The First Claimant's] marriage to Sandra had broken down, after which his stepson Gary recalls seeing him parade round Vegas with a series of glamorous younger women.'

However, this was completely untrue. Gary Adelson had recalled nothing of the sort, nor could he have done, since after separating from Sandra the First Claimant had continued to live in Boston with his son Mitchell, and had only moved to Las Vegas after meeting his present wife Miriam (in October 1989). Gary Adelson himself was also living in Boston, and not Las Vegas, at the time. After being informed of the publication of this allegation Gary Adelson was driven to write to the Defendant (by email dated 7 June 2005, not disclosed by the Defendant) to complain about the author putting words into his mouth, but the Defendant has done nothing to correct the record.

(vii) The article then stated:

'Bitterly, Gary claims his stepfather sent a friend to tell his wife he wanted a divorce – the night before she underwent a cancer operation.'

That allegation, which was self-evidently extremely damaging and personally offensive, was completely untrue. The Defendant has only acknowledged that it was untrue *after* publication. A fair-minded journalist would either not have published such an allegation in the first place, or would have given the First Claimant the opportunity to comment on it (and refute it) in advance of publication. He would not have proceeded to publish it simply because he had been told as much by a source whom he perceived as embittered and hostile (and, for the avoidance of doubt, the Claimants do not admit, and put the Defendant to strict proof of, the contention that Gary Adelson gave him the information that was published). For the further avoidance of doubt, the foregoing is relied on both (i) as increasing the compensation to be awarded to the First Claimant for publication of this allegation, and (ii) as cogent evidence of the Defendant's lack of real interest in the truth and its determination to depict the First Claimant in the worst possible light.

(viii) The article stated:

'Soon after [the First Claimant's first wife, Sandra's] death, Gary and Mitch unsuccessfully sued their stepfather for fraud …'

This allegation, and the allegation that the First Claimant is 'so ruthless that he has even been sued by members of his own family' obviously suggest that the First Claimant ruthlessly chiselled his own stepsons out of tens of millions of dollars.

However, as the Defendant could and should have found out, Sandra did not die until 1999, whereas the fraud claim was brought in 1997.

The Defendant cannot have been misled about this by Gary Adelson, because it was obviously untrue, and Gary would not have forgotten when his mother had died. Worse still, the suggestion that the First Claimant was so 'ruthless' that he had been sued by members of his own family, and the imputation complained of at paragraph 4(3)(b) above, were a grotesque distortion of the true position. The journalist would have been left in no doubt about this had he troubled to research the facts. Had he bothered to obtain the appeal court's judgment in the case he would have seen that the share values (£2m and £52m) stated in the article are wildly at variance with the figures apparent from that judgment. Yet the judgment was readily available and is in the Defendant's disclosure (item 31), having been downloaded after the event. The First Claimant will refer to the judgment at the trial to show that, in short, it evidences concern for and abundant generosity to his stepsons, the exact opposite of the selfish inhumanity and greed depicted in the article.

(ix) The statement that 'during the past decade he [ie the First Claimant] has been embroiled in no fewer than 150 cases in Clark County District Court' was grossly misleading: even if the number was accurate (which is not admitted) it was absurdly unfair to suggest that the First Claimant himself was personally involved in them. Even the journalist's source for this allegation, the union pamphlet referred to above, did not make such a claim, but referred to 'Mr Adelson and the companies he represents' being involved in such litigation. It is wholly obvious, and the journalist must have known, that for a very large business, involvement in an average of 15 lawsuits a year says nothing at all about litigiousness.

(x) The statement that '[b]izarrely, he [the First Claimant] has even sued himself', with the inevitable inference that this was an irrational claim on the part of the First and Second Claimants, was not just unwarranted in fact, but unwarranted even by reference to the Defendant's source for the allegation, which was the union pamphlet. The pamphlet did not state or suggest that it was a bizarre or irrational claim. Moreover, had the journalist troubled to read for himself the Las Vegas Sun article which was referenced in the footnote as the source for the relevant passage in the pamphlet, he would have seen that the need for the Second Claimant and its affiliate to bring a claim against Venetian Casino Resort LLC was a legal technicality arising out of the fact that it was the latter entity which had entered into the construction management contract with Bovis. For the avoidance of doubt, the foregoing is relied on (i) as increasing the compensation to be awarded to the First Claimant for publication of this allegation, and (ii) as cogent evidence of the Defendant's lack of real interest in the truth and its determination to depict the First Claimant in the worst possible light.

(4) As to the Defendant's hypocrisy (see paragraph 6.2A(2) above): the Defendant has waged a long-running and strident editorial campaign against the Government's relaxation of the gambling laws. Yet at the same time as it was promoting this line, and publishing derogatory references to the Claimants' attempt to bring the 'seedy world of blackjack and roulette' to Old Trafford, it was profiting handsomely from gambling itself. In 2004 it ran a link on its website to a gambling site, 'www.jackpotjoy.com' – no doubt for substantial reward. The link was then removed,

with the editorial director of Associated News Media announcing: 'Dailymail.co.uk supports the editorial position of the newspaper. We have no gambling advertising on the website and have no plan to do so.' Notwithstanding, and with breathtaking hypocrisy, the Defendant continues to this day to run a gambling operation on the website of its sister newspaper, the Evening Standard, at the URL 'http://casino.thisislondon.co.uk', where visitors could choose between table games such as 'blackjack, roulette, baccarat, three-card poker and many more' (none of them now described as 'seedy'), 'slots' and 'instant win'. All major credit and debit cards are accepted.

(5) The Defendant's plea of justification adds greatly to the First Claimant's distress, anger and embarrassment, and will continue to do so.

6.3 Responding to the Claimants' complaint by solicitor's letters dated 2 and 7 June 2005 concerning the allegations at paragraph 4 (1) above, the Defendant by letter dated 7 June 2005 refused to publish any correction or apology, despite not suggesting that there was any basis in fact for those allegations, and ignored the Claimants' suggestion of a meeting to resolve the matter;

6.4 Responding to the Claimants' further complaint concerning the allegations at paragraph 4 (1) above by solicitor's letter dated 8 June 2005, by letter dated 10 June 2005, while proposing a meeting for 16 June 2005 (18 days after the offending publication and 14 days after the Claimants' first complaint), the Defendant continued to offer no correction or apology, disingenuously claiming to be unclear as to the basis of the Claimants' complaint.

6.5 By solicitor's letter dated 20 September 2005 the Claimants notified the Defendant of their further complaint and the need for a retraction, apology and damages in respect of the allegations under paragraphs 4 (2 and (3) above. They reasonably requested an early response, allowing 14 days before taking further steps. The Defendant made no such response.

7. Unless restrained by this Honourable Court the Defendant will further publish or cause to be published the said or similar words defamatory of the Claimants and each of them".

AMENDMENTS AFTER EXPIRY OF THE LIMITATION PERIOD

16. The application for permission to amend is being made nearly one year after the expiry of the one year limitation period applied to libel actions. It follows that the Limitation Act 1980 s.35 applies. That provides that the addition or substitution of a new party is only permitted if certain conditions are satisfied. The condition relied on by the Claimants is in sub-section (5)(b) which reads as follows:

> "In the case of a claim involving a new party, if the addition or substitution is necessary for the determination of the original action".

17. Sub-section (6) then provides:

> "The addition or substitution of a new party shall not be regarded for the purposes of sub section (5)(b) above as

> necessary for the determination of the original action unless either:
>
> (a) the new party is substituted for a party whose name was given in any claim made in the original action in mistake for the new party's name….".

18. The applicable provisions of the CPR are in Part 19.5(2) and (3) which read as follows:

> "(2) The court may add or substitute a party only if – …
>
> (b) the addition or substitution is necessary.
>
> (3) The addition or substitution of a party is necessary only if the court is satisfied that –
>
> (a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party's; …"

19. In libel proceedings the period of limitation may be extended. See the Limitation Act 1980 ("the 1980 Act") s.32A (as amended). There is no application before me pursuant to s.32A of the 1980 Act.

THE APPLICATION TO AMEND

20. Mr Price QC submits that there has been a mistake which is a mistake within the statute and the rules. It is a matter of submission that it is so, because there is no evidence on that point. On 23rd April 2007 Mr Adelson made a witness statement in support of the application to amend the paragraph relating to aggravated damages, but the witness statement is silent on the application in relation to the addition of the two new claimants. Similarly Part C of the Application Notice, insofar as it relates to this part of the application, is silent.

21. It is not in dispute that there has been an error, what is in dispute is whether it is an error or a mistake within the meaning of the statute and the rules. The error appears clearly from the draft of the Amended Particulars of Claim at paragraph 1. As originally pleaded it states that:

> "The Second Claimant predominantly trades and operates in the gambling industry, developing and running casino based gambling, entertainment and leisure resorts and their associated hotel, restaurant and retail facilities".

22. That is not the case. The true position is that those activities are carried on by subsidiary companies. What is now said about the activities of the Second Claimant itself is that it has negotiated an exclusivity agreement with Birmingham City PLC executed by it on 26th May 2005, and that it has negotiated exclusivity agreements with Middlesbrough and Manchester United executed on 27 April 2004 and 22 November 2004 by the Fourth and Third Claimants respectively. It is also said that it

has incurred the costs of these activities in the UK. It is also said that the Second Claimant has paid the fees of Mr Rodney Brody, the UK representative of the Second and Third Claimants. It is common ground that the Second Claimant does not trade in its own right, but that its subsidiaries do.

23. When the Particulars of Claim were served dated 19th October 2005 the statement of truth was signed on behalf of both the First and Second Claimants by their solicitor. He is a partner in the firm of solicitors then acting for them, Salans.

24. The Practice Direction to CPR Part 22 relates to statements of truth. Para 3.8 includes the following:

> "Where a legal representative has signed a statement of truth, his signature will be taken by the court as his statement:
>
> (1) that the client on whose behalf he has signed had authorised him to do so,
>
> (2) that before signing he had explained to the client that in signing the statement of truth he would be confirming the clients belief that the facts stated in the document were true, and
>
> (3) before signing he had informed the client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts (see rule 32.14)."

25. Salans had written the first and subsequent letters before action (the first being dated 2nd June 2005) and they continued to represent the Claimants in these proceedings until after the service of the Reply on 15th May 2006. Schillings came on the record shortly after that point.

26. The only information before the court as to the nature of the mistake is what can be inferred from the statements of case and the letters before action. Mr Warby QC draws attention to the letters before action.

27. On 2 June 2005 Salans wrote:

> "We represent Las Vegas Sands Inc. [the Third Claimant] and Mr Sheldon Adelson the Chairman of that company…"

28. The letter complains of the inaccuracies of the article published a few days before, and asks for undertakings and other matters customary in such a letter. The letter does not describe the activities of the Third Claimant but does state:

> "… The Identity of Las Vegas Inc and Mr Adelson's position and role in the company has never been secret or, indeed, anything other than widely known".

29. Not having received a satisfactory response, on 7th June 2005 Salans wrote again. The letter was headed "Our clients: Mr Sheldon Adelson and Las Vegas Sands Inc" (that is the Third Claimant). The letter includes the following:

> "Both Mr Adelson personally and Las Vegas Sands Corporation [that is the Second Claimant] have achieved very considerable success in the gaming, entertainment and leisure business. Their establishments in Las Vegas and more recently Macau put them among the world leaders in this expanding industry. Their current market capitalisation is around $14 billion. As attitudes to the industry change around the world, new prospects are emerging. Currently the company has announced the pursuit of gaming opportunities not only in association with Manchester United at Old Trafford…"

30. That letter crossed with one of the same date from the Defendant. On 8th June 2005 Salans wrote again. The letter bears the same heading as that of the 7th June 2005 in the letter. Under the heading "Mr Adelson, Las Vegas Sands, Manchester United and Mr Glazer – the facts" Salans wrote:

> "The salient facts about our clients, … are as follows:
>
> By the beginning of May 2005 Mr Adelson and Las Vegas Sands Inc [the Third Claimant] had for months been involved in negotiating and planning the joint venture with Manchester United…
>
> Our clients and Manchester United football club announced their joint plans for the Manchester complex on 9 May. Those plans and the involvement of our clients immediately received widespread media coverage, …"

31. On 20th September, three months later, Salans wrote again. The heading is similar except that, in substitution for the word "Inc", designating the Third Claimant, is the word "Corp", designating the Second Claimant. The letter refers to the earlier correspondence in which "our clients" concern with the parts of the story relating to Manchester United had been complained of. This letter goes on to complain about, and to refute, other passages in the article, including some of those relating to Mr Adelson's private life.

32. On 19th October 2005 a Claim Form was issued naming the Claimants as Mr Adelson and "Las Vegas Sands Corp". Paragraph 1 of the Particulars of Claim is as already described.

33. Something must have happened which led Salans to understand that their corporate client was not the Third Claimant but the Second Claimant. I have no information as to how that came about.

34. According to the draft Amended Particulars of Claim para 1A, the Third Claimant was known as Las Vegas Sands Inc. until July 2005 when it converted to a Limited

Liability Company, known as Las Vegas Sands, LLC. That does not explain why the proceedings were brought in the name of Las Vegas Sands Corp.

35. A Defence was served on 12th January 2006. It did not admit paragraph 1 of the Particulars of Claim. It set out the Defendant's case as to the activities of the Second Claimant:

> "It is admitted and averred that the Second Claimant owns controls and directs the operation of a number of companies which conduct business of the kind described in [para 1 of the Particulars of Claim]. However, according to its own Annual Report filed with the United States Securities and Exchange Commission for the fiscal year ended December 21, 2004, the Second Claimant is: "… a parent company with limited business operations. Our main asset is the stock of our subsidiaries" (p79)".

36. The Defence then sets out a description of the corporate structure of the group of which the Second Claimant is the parent.

37. On 15th May 2006 the Reply was served by Salans with the Statement of Truth made by the same partner. In that document reference is made to the Third and Fourth Claimant and their activities. As to the Fourth Claimant it is said that it "has been planning to develop one or more "Regional Casinos as provided for by the Gambling Act 2005"". The Reply does not plead in detail to the Defence. Rather it responds in detail to Particulars of Justification which are set out in a separate document of the same date.

38. In the Particulars of Justification it is pleaded:

> "The Second Claimant is the parent of a group of companies formed by or at the direction or instigation of the First Claimant and operated under his control in and after the late 1980s with the aims of acquiring and operating the Sands Hotel and Casino in Las Vegas ("The Sands"), and establishing other gambling ventures…"

39. As to that, the Reply pleads:

> "The Sands Hotel was purchased by the Las Vegas Sands Inc [that is the Third Claimant]… a company formed by the First Claimant and others in 1988…"

40. The Reply substantially admits (and in part corrects), pleas in the Particulars of Justification as to the activities of companies which are subsidiaries of, or controlled by, the Second Claimant. At that point, the Reply does not in terms say anything about the activities of the Second Claimant itself. Later, in a section under the

heading "The Claimants' Business Practices; Summary", the Reply sets out a number of statements starting "the Claimants and their subsidiary companies…". The technical effect of the Reply is a joinder of issue with the description of the activities of the Second Claimant pleaded in the Defence.

THE CASE LAW ON JOINDER

41. The relevant provisions of the 1980 Act and the CPR (and before that the RSC) have received consideration in the numerous cases. The case upon which Mr Price QC mainly relies is that of *Morgan Est v Hanson Concrete* [2005] 1 WLR 2557; [2005] EWCA Civ 134. Jacob LJ gave a judgment with which Hooper LJ (the only other member of the court) agreed. At paras 40 to 43 he said this:

> "**40** There is no reason to construe "in mistake" restrictively. On the contrary it is important to remember that the source of the rule was the 1980 Act which had the obvious intention of liberalising the position from that under the Limitation Act 1939. Likewise the overriding objective of doing justice is likely to be undermined if one gets finicky about different sorts of mistake. The jurisdiction is for putting things right.
>
> **41** In the present case there was clearly a mistake about naming company B. The very form of the particulars of claim suggest that it was company A that was intended to be named: see Buxton LJ quoted in para 28 above. The rather meagre, muddled and second-hand evidence in support of the application by a Mr Sayers does say this much:
>
> "It was the intention throughout to bring the claim in the name of the party holding the right to bring the claim … At the date the proceedings were issued it was believed the correct claimant was B."
>
> **42** Assuming that was so it is a little difficult to see why the assignment to company B was not pleaded. A more logical view is that it was intended to name company A. But I do not think it matters-there was a clear mistake one way or another. Things can and should be put right by substituting A for B. There is no prejudice to the defendants. They are deprived of an unmeritorious defence arising solely from a blunder by the other side-that does not count as prejudice.
>
> **43** Mr Norris objected that if one says "I intended the claim to be by the party holding the right to the claim" one is using the wide test expressly eschewed by Lloyd LJ in *The Sardinia Sulcis* [1991] 1 Lloyd's Rep 201. That may be so, but why does that matter if no one is prejudiced? "

42. The rule has been considered more recently by the Court of Appeal in *Weston v. Gribben* [2006] EWCA Civ 1425. A judgment was given by Lloyd LJ with whom

Sedley and Hallett LLJ agreed. He set out passages from the judgment of Jacob LJ, including the paragraphs cited above, and then said this:

> "39. Thus the application of rule 19.5(3) has to be viewed in the statutory context of section 35(6) and of the overriding objective, and in the factual context of the nature of the claim made, the amendments sought to be made and the evidence as to the nature and the circumstances of the mistake which it is said was made in respect of the original claim.
> 40. In *Morgan Est*, whichever company was, or was to be, the claimant, the claim was the same. Each company had been entitled to sue on the contract at some time. Apart from, presumably, changing the particulars of claim to allege that company A had been the contracting party and that companies B and in turn C had taken assignments, no alteration would have been needed to the formulation of the claim in consequence of the amendment to change the claimants from company B to companies A and C. In *The Sardinia Sulcis*, which I use here purely for the purposes of illustration, also being a case concerning the wrong claimant, proceedings had been started in the name of the owner of the vessel but by then, unknown to the persons responsible for formulating the claim, the original owner had merged with another company and ceased to exist, and its successor should have been named instead of the original owner. Apart from alleging that process, no change would have been necessary to the formulation of the claim in order to substitute the correct claimant in place of the incorrect claimant.
> 41. Cases in which the mistake is as to the defendant are more common. Among the cases cited in *Morgan Est* there are examples of unknown or overlooked transmission of title, such as *Parsons v George* [2004] EWCA Civ 912, where the tenant sued the original landlord but not the parties who had by then become entitled to the reversion. There are also examples of confusion between companies with similar names (for example *Gregson*) and a case where the mistake was as between two unconnected pharmaceutical companies, as to which of them was the manufacturer of the correctly identified batch of a vaccine which was said to have damaged the claimant: *Horne-Roberts v Smith Kline Beecham PLC* [2001] EWCA Civ 2006.
> In none of these cases would it be necessary to do more than change the name of the defendant and, where relevant, allege the devolution or transmission of the title, as in *Parsons v George*. No other change would need to be made to the formulation of the claim. That seems to me to be a process which is consistent with the words of section 35(6) which refer to the substitution of the new party "for a party whose name was given in any claim made in the original action". Attention has therefore to be focussed on the "claim made in the original action" in relation to which the original party's name is said to

> have been used by mistake for that of the party proposed to be substituted. As Sedley LJ suggested in the course of argument, it may be a convenient working test to ask whether you can change the identity of the claimant or, as the case may be, the defendant without significantly changing the claim. For my part that seems to me to be a sensible approach, consistent with the terms of the rule and in particular of the Act. In all of the other cases under the CPR to which our attention was drawn, this working test would have been answered in favour of substitution. "

43. In that case the outcome was different from that in *Morgan*. In paragraph 18 of the judgment it is recorded that Mr Weston had in his witness statement explained the mistake saying:

> "When this case began I understood that, as sole administrator of Grass, I could sue on its behalf in my name".

44. Mr Weston claimed in that case that he had been defrauded of property in Spain by forgery of his signature in a document in Spanish. His signature was notarized in London by Mr Gribben. Judgment in default was obtained against Mr Gribben, but he did not satisfy the judgment. The claim was brought against the Foreign and Commonwealth Office ("FCO") on the footing that it had, by a document known as an apostille, certified that the signature notarized by Mr Gribben was Mr Weston's genuine signature. Mr Weston sought to substitute for himself as Claimant the company, Grass, which had been the owner of the property.

45. Lloyd LJ then said this:

> "45. Thus the claim sought to be made by Grass is based on the same causes of action and the same loss, though now said to have been suffered by Grass rather than by (or as well as by) Mr Weston. The status of Grass which gives rise to the claim has already been mentioned in the particulars of claim at paragraph 2. The basis for the allegation of a duty of care owed by the FCO is different and the same goes for the basis on which an ability to sue for misfeasance is identified. It is therefore by no means so simple an amendment process as would have arisen in *Morgan Est* and the other cases cited. The duty of care has been reformulated significantly. Mr Warwick's point that the matters proposed to be relied on are for the most part already mentioned in the particulars of claim is fairly made. That, however, is likely always to be the case because of the constraint imposed by section 35(5)(a) and CPR rule 17.4(2).
> 46. The effect of that rule is that, in any case where the present question has to be addressed, there is bound to be at least a very substantial overlap between the facts on which the new claim is based and those on which the existing claim is based.
> 47. In my judgment the amendments that would be necessary to the formulation of the particulars of claim, as they stood at the

time of the hearing before the judge, would be too substantial to pass Sedley LJ's test. I have in mind in particular the different basis that would have to be asserted for the duty of care owed by the FCO and the different formulation of the case in misfeasance. This is not, in my judgment, a case in which the substitution of Grass for Mr Weston can be made without significant alteration to the formulation of the claim to enable it to be asserted on behalf of Grass. I therefore consider that, unlike the position in the various previous cases cited to us, the substitution is not permitted by rule 19.5(3)(a). It would go outside the scope permitted by section 35(6)(a) in that it is not a substitution of Grass as one party for an existing party in respect of "any claim made in the original action", but in respect of a materially different claim. On that basis Mr Weston's appeal must fail. Though he did not express his reasons for it, the judge's refusal to allow Grass to be joined so as to assert a claim to the whole of the Dominion Beach loss was correct.

48. It is therefore not strictly necessary to consider the second question arising under rule 19.5(3)(a) which is whether a mistake had been made within the ambit of the rule. Nevertheless, that point having been the subject of submissions to us, I will express my view on it. It seems to me that on this point too Mr Weston's appeal must fail.

49. The case is rather different, in this respect as well, from *Morgan Est* and the other cases cited to us. The particulars of claim identify Grass and state correctly its position as the legal owner of the Dominion Beach property. Those responsible for formulating the claim were under no mistake as to the relevant facts concerning the identity, position and status of Grass, or the position of Mr Weston as its director, even if the formulation of the claim is confusing in some respects.

50. I have already read what Mr Weston said at paragraph 18 of his witness statement as to his state of mind. The problem with that statement is that it does not fit with the terms of the claim as it was formulated. If his intention had been to put forward a claim by Grass but in his own name on its behalf as sole director, it seems to me clear that the particulars of claim would have been formulated differently. In particular, it would not have been relevant to allege anything about Mr Weston in relation to the company other than his status as administrator. A duty of care should have been alleged as being owed to Grass as owner of the property rather than as being owed to Mr Weston as signatory of the document. Grass should have been identified as a foreseeable victim of misfeasance as owner of the property, rather than Mr Weston as signatory of the document. Loss should have been alleged as suffered by Grass, not by Mr Weston, in respect of the Dominion Beach property, albeit that the amount of loss would have been the same amount. It does not seem to me that it is possible to read the

particulars of claim and come to the conclusion that Mr Weston was seeking by that pleading to assert a cause of action belonging to Grass. It just does not fit. The proposition asserted in paragraph 18 of the witness statement is therefore not credible. Nor does that proposition fit with anything that had been asserted in the correspondence before the claim. Just as in relation to the Barcelona Property which belonged to AEH and in relation to the berth which belonged to Mr Weston himself, the claim was formulated and asserted as a claim on the part of Mr Weston personally. Taking up words used in *Morgan Est* at paragraph 41, one could not say that the very form of the particulars of claim suggest that it was Grass that was intended to be named. Grass was named as a separate, albeit relevant, entity but Mr Weston was identified as the person, quite distinct from Grass, who had suffered the loss and to whom the relevant duties were owed.

51. Mr Warwick in his skeleton argument and his submissions said that, in any event, even if that statement in the witness statement was not accepted, since the claim was always for the entire value of Dominion Beach it was plainly a mistake to sue in the name of someone who could not bring such a claim and that that was a relevant mistake for the purposes of the rule. Certainly with hindsight it was a mistake to do so but it does not seem to me to follow that it was a mistake such as is referred to in the section or the rule. It may have been a conscious and deliberate tactical decision which proves in the event to have been a bad choice. That would not be a relevant mistake.

52. If it were a relevant mistake it is difficult to imagine an incorrect decision that could not be overcome under the rule, subject to the constraints imposed by rule 17.4. Of course it can always be said, as Jacob LJ did in *Morgan Est* at paragraph 42, that to override a limitation defence only deprives the defendant of an unmeritorious defence arising solely from a blunder by the other side. But not all circumstances in which the wrong party is named necessarily arise from a blunder. It is true that there are aspects of the formulation of Mr Weston's original claim which suggest a degree of ineptitude on the part of those then advising him. Nevertheless at that stage he and his advisers knew all the relevant facts and circumstances. At the time of the issue of proceedings it was open to him to cause Grass to sue, since by then he was again in control of it. He chose not to do so but rather to assert a personal claim for personal loss.

53. Mr Warwick submitted that paragraphs 42 and 43 of Jacob LJ's judgment, which I have quoted above, show that it is sufficient, and within the rule, for the party in question to say "I intended the claim to be by the party holding the right to the claim". But that is not what Mr Weston said in his witness statement. He gave a specific explanation of the nature of the

> mistake, but one which is not credible. It does not seem to me that, in that situation, it is open to Mr Weston to assert, as Mr Warwick ingeniously sought to, that even ignoring the evidence there must nevertheless have been a relevant mistake. 54. I do not accept that Mr Weston or his lawyers made the mistake that he seeks to describe in paragraph 18 of his witness statement. If he did not make that mistake, then there is no evidence before the court of what, if any, mistake he did make and no basis on which the case can be held to be within rule 19.5(3)(a), even if the case satisfied the test as to the nature of the claim, contrary to the view that I have expressed on that point already"

SUBMISSIONS ON JOINDER

46. Mr Price QC submits that the present case is similar to *Morgan* and that the Defendant is being finicky about the mistake. Mr Warby QC submits that this is a case, like *Weston*, where changing the identity of the claimants to add the Third and Fourth Claimants requires significant changes to the claim itself. He submits that is demonstrated by the extensive nature of the amendments in the draft paragraphs 1 and 1A to 1E. Mr Price QC responds to that, that while the amendments may appear extensive in those paragraphs, in substance the change to the claim is not significant and the material in the paragraphs referred to should best be regarded as further information of that claim, and not a change to that claim.

47. In order to determine whether the claim has changed significantly, it is necessary to bear in mind the constituents of a claim in libel. In a nutshell they are that the words complained of have been published to a third party by the defendant, that they refer to the claimant, and that they are defamatory of the claimant. Where, as here, the corporate claimants are not expressly identified in the words complained of, the case on reference will be a significant part of the claim. And where, as here, the draft amendment includes a new defamatory meaning, it is necessary to consider whether that is a significant change or not.

NEW CLAIMANTS – JURISDICTION

48. Mr Warby QC takes two points on jurisdiction. He submits that it is not shown that there has been a relevant or qualifying mistake, that is to say, a mistake within the meaning of the 1980 Act s.35 (6)(a) and CPR 19.5(3)(a). Further, he submits that what is sought is not the substitution but the addition of a party. CPR Part 19.5(3)(a) can be utilised only for the substitution, rather than the addition of a party: *Broadhurst v Broadhurst* [2007] EWHC 726 (Ch) at para 30.

49. The submission that what is sought is an addition not a substitution is not a purely formal point. It does not rest on the fact that the amendment would leave the Second Claimant as a party to the action. Mr Warby QC accepts that what looks like an addition may in substance be a substitution. For example, if a claimant makes a claim for the conversion of two cars, he may subsequently discover that he had no title to the second car but that his wife did have the necessary title. In relation to the first car his claim remains good. In relation to the second car he may have named himself as claimant in mistake for his wife, and apply to join his wife in substitution for himself

as claimant in respect of that car. In form the result will look like the addition of a claimant, since the amendment will result in there being two claimants. But in substance it is a substitution, because the causes of action in respect of the two cars are separate.

50. Here Mr Warby QC points to the number of facts pleaded in the draft amendments to paras 1 to 1E and, and the new meaning at para 4(2A). He submits that they show that what is pleaded in the draft is a new cause of action.

51. In libel a single publication of words referring to, and defamatory of, two persons at the same time (eg "the Smith twins are a couple of thieves") gives rise to two separate causes of action. Each has a separate claim. It follows that if an amendment is allowed in a libel claim which results in there being four claimants instead of two, then there have been introduced two new causes of action. If the wrong claimant was originally named in mistake for another, and the new claimant is substituted, then it is not necessarily the case that a new cause of action has been introduced.

52. Mr Price QC submits that in the amended plea the Third Claimant now assumes the role wrongly attributed to the Second Claimant in the original claim. That is not literally correct, because the Third Claimant has not been substituted for the Second Claimant in para 1 of the draft. Instead, para 1 of the draft takes away from the Second Claimant the role previously attributed to it, and paras 1A to1C and 1E attribute to each of the Second Claimant, the Third Claimant and the Fourth Claimant specific roles, albeit roles that might come under the general description of the role described in para 1, namely trading or operating in the gambling, entertainment and related industries.

53. Nevertheless, I accept that Mr Price QC is right in substance. The Third Claimant could have been substituted for the Second Claimant in para 1, and the specific roles attributed to the Third Claimant in paras 1A to 1C and 1E can be regarded as further particulars of that role. It follows that I accept that in substance the Third Claimant has been substituted for the Second Claimant in the draft.

54. The same argument is advanced for the Fourth Claimant. This is so, notwithstanding that there is only one action attributed to the Fourth Claimant in the amendment, namely the exclusivity agreement executed on 27 April 2004 with Middlesbrough. For the rest it appears that the Fourth Claimant is not trading, but is waiting for a role, in that it is pleaded that it may "possibly" apply for a licence to operate a casino in the UK. There is a question as to whether as a non-trading company the Fourth Claimant can sue for libel. I consider that issue in relation to the Second Claimant below.

55. Mr Price QC submits that even if the Third Claimant becomes a claimant, the Second Claimant can remain. He submits that the Third Claimant can be a claimant in substitution for the Second Claimant's existing cause of action, and the Second Claimant can amend its claim.

CONCLUSION ON JOINDER

56. Subject to the question whether, as a non trading company, the Fourth Claimant can sue, I would accept that if the amendment resulted only in Mr Adelson and the Fourth Claimant being claimants, the Fourth Claimant would be named in substitution for the

Second Claimant. But I cannot accept that two or more new claimants can be substituted for one original claimant in a claim for libel. It may perhaps be possible in other causes of action. But in libel, each claimant has a claim because the defamatory words refer to it. If two new claimants are to stand in place of one original claimant, then at most one of the two new claimants can be in substitution. If the number of claimants is to be increased by the amendment made after the expiry of the limitation period, then there must be an application to add a new claim in accordance with s35(5)(a) of the 1980 Act and CPR Part 17.4, or an application under s32A of the 1980 Act. No such application is before me.

57. I cannot accept that even if the Third Claimant becomes a claimant, the Second Claimant can remain. If the Second Claimant amends its claim it will either be to plead a new cause of action, or it will be to alter its case in respect of the existing cause of action. If the Second Claimant is to advance a new claim, then it must apply under CPR Part 17.4, and if it is not to advance a new claim, then the Third Claimant cannot be substituted for the Second Claimant.

58. It follows that if the Second Claimant is to remain a claimant, then neither the Third Claimant nor the Fourth Claimant can be made claimants. Subject to the point on mistake, and to other arguments considered below, it is for the Claimants to elect which company they now wish to be named as the second claimant in the action: the Second Claimant, the Third Claimant or the Fourth Claimant.

59. In the light of this analysis, I return to consider whether it has been shown that the Second Claimant was named in the claim form in mistake for the Third Claimant and the Fourth Claimant. I might have been more receptive to the submission that there has been such a mistake if it were not proposed that the Second Claimant remain a claimant in the action. It is proposed that the Second Claimant remain a claimant, and I am not persuaded that the Second Claimant was named in the claim form in mistake for any other company.

60. It is not in issue that there has been a mistake. It was incorrect to plead of the Second Claimant that it trades and operates in the gambling industry. But Mr Price QC also submits that the law permits a non-trading company to sue for libel, and the Second Claimant wishes to pursue a claim for libel on that footing in this action. If the mistake as to the Second Claimant being a trading company had not been made, then it seems to me at least as likely as not that the Third Claimant and the Fourth Claimant, or at least one of them, would have been named in the claim form in addition to the Second Claimant. In fact I think it probable that they would have done what they now apply to do, and joined all three from the start. If that is right, or may be right, then it is not shown that the Second Claimant was named in the claim form in mistake for either of the Third Claimant or the Fourth Claimant.

61. From this finding on mistake alone it follows that there is no jurisdiction to grant the application that the Third Claimant and the Fourth Claimant be named as claimants. But I also hold that there is no jurisdiction because the joinder of the Third Claimant and the Fourth Claimant would involve the addition of new claims.

THE SECOND AND FOURTH CLAIMANT – CAUSES OF ACTION AND STRIKE OUT

62. Although I refuse the application to join the Third Claimant and the Fourth Claimant, the application to amend para 1 to add the words "through its operating subsidiaries" is unobjectionable. Since that is the correct position, the amendment ought to be made. I have not heard argument on this, but if the Second Claimant does still have a cause of action, then it might be that paras 1A to 1C of the draft could be allowed with the names of the companies referred to given in substitution for the descriptions Third Claimant and Fourth Claimant.

63. Whether the Second Claimant can remain a claimant depends upon whether, on the facts now agreed, it can maintain the claim it now wishes to advance. The claim it now advances appears from paras 1, 1C and 1E which, as it seems to me, should now be considered on the footing that they read as follows:

> "The Second Claimant was incorporated in August 2004 and since December 2004 its shares have been traded on the New York Stock Exchange (para 1).
>
> The Second Claimant has negotiated and entered into exclusivity agreements with a number of football clubs with a view to the possible establishment of a casino in their area… (para 1B.2)
>
> The Second Claimant has an international reputation. References to 'Las Vegas Sands' are generally understood, both in the US, the UK and elsewhere as references to the Second Claimant (para 1C).
>
> In the premises, the Claimants will aver that the words complained of were and would be understood to refer to the Second Claimant, and that the said words were likely to damage the reputation and goodwill of the Second Claimant as a publicly traded corporation in the eyes of the financial and investment community (para 1E)".

64. It is unfortunate that this issue should arise for decision by me when Eady J is expected to be the trial judge, and he has already made, and will continue to make, case management decisions on issues arising before the trial.

65. It is also unsatisfactory for me to attempt to decide this issue without giving the Claimants an opportunity to reformulate the case of the Second Claimant in the light of the decision that I have reached disallowing the application to join the Third Claimant and the Fourth Claimant.

66. The Defendant accepts that there is one part of the words complained of which is capable of being understood as a reference to the Second Claimant. These are the words:

> "Bizarrely, he even sued himself. In a case that is still active, his Las Vegas Sands parent company joined an affiliate, Grand Shoppes Mall, to claim £27m in damages for lost revenue from

> the Venetian Casino Resort because it allegedly opened behind schedule."

67. The meaning complained of pleaded by the Claimants arising out of those words is:

> "That their cut-throat, ruthlessly aggressive and despicable business practices include:
>
> (a) provoking and contesting or bringing inordinate and unreasonable numbers of court cases, to the extreme of:
>
> bringing a bizarre and irrational claim for damages against one of their own companies;…"

68. This is one of the meanings in respect of which the offer of amends was made and accepted. Mr Warby QC submits that it follows that there is no issue for trial on that meaning. He also submits that it follows from what is now agreed to be the non-trading status of the Second Claimant that the words complained of are incapable of being read by a reasonable person as making a defamatory statement about the Second Claimant. The other meanings complained of which could be understood to refer to a corporation (as distinct from those relating to Mr Adelson's private life) are:

> para 4(1) "…shamelessly exploiting Manchester United Football Club by operating a gambling complex at Old Trafford, Manchester, by stealthy and underhand means,…"
>
> and
>
> Para 4(2) "That their cut-throat, ruthlessly aggressive and despicable business practices include:
>
> (a) provoking and contesting or bringing inordinate and unreasonable numbers of court cases, to the extreme of: …
>
> (ii) bringing an absurd claim for trespass against picketing union members by falsely claiming to own the pavement outside their Venetian casino;

69. I do not consider that the remaining claims of the Second Claimant can be struck out on this basis by me at this stage. It may be that the trial judge might entertain another application and decide that they cannot go forward. The Claimants will by then have been able to reformulate the Second Claimant's case (if so advised) and witness statements may have been exchanged. The factual position is likely to become clearer when they have been.

70. The issues of law in relation to claims in libel by corporations that do not trade may be in a state of development. In support of the proposition that a non-trading corporation may sue, Mr Price QC referred me to *McDonald's v Steel* unreported 31 March 1999, to *Multigroup Bulgaria v Oxford Analytica* [2001] EMLR 28, and to the passages there cited from *Derbyshire CC v Times Newspapers* [1993] AC 534, upholding the decision of the Court of Appeal [1992] 1 QB 770. At p809H Balcombe LJ gave examples of how a non-trading company might be damaged, namely in its

ability to obtain credit or attract staff. Neither of these examples applies in this case, but reliance is placed on the ability to negotiate for business to be carried on by a subsidiary to be formed in the future arguably another example. Mr Price QC also referred to other cases. In *Shevill v Presse Alliance* [1996] 959 it was held that a corporation may sue even if it does not trade within the jurisdiction.

71. Mr Warby QC submitted that the Second Claimant's case is now that it is a mere holding company, with neither competitors nor customers, and that "damage in the eyes of the financial and investment community" can in this context only be a reference to its share price. Damage to its share price cannot be recovered in libel proceedings brought by a company: *Collins Stewart v Financial Times Ltd* [2005] EMLR 5.

72. If these points arise again, they should be argued on the basis of a revised draft amendment, and any witness statements or other evidence then available.

NEW CLAIMANTS – DISCRETION

73. Since I have decided that there is no jurisdiction, no question of discretion arises in relation to the joinder of new claimants.

74. I turn to consider the application to amend the claim for aggravated damages.

AGGRAVATED DAMAGES AMENDMENTS

75. Mr Warby QC submits that the amendments to the claim for aggravated damages are a tactical move to attempt to increase the damages. The additional draft particulars in aggravation of damages at para 6 are extensive, covering some 6 pages. They are, and could only be, advanced on behalf of the individual Claimant, Mr Adelson. They are advanced 18 months after service of the Particulars of Claim on 19 October 2007. The wording used at para 6.2A (3)(b) is that the article contained statements "which no fair-minded journalist would have published or, worse still, *which the author cannot have believed to be true*" (Mr Warby QC's emphasis).

76. Mr Warby QC submits that this is an allegation of a lack of belief in the truth on the part of the journalist in relation to 10 matters, and that if it is not formally an allegation of malice, it is akin to one. A plea of malice would be available in answer to the defence of privilege, but no plea of malice is made in the Reply. A plea equivalent to one of malice could also have been made in response to the offer of amends. See s.4 (3) of the 1996 Act and *Milne v Express Newspapers* [2004] EWCA 664; [2005] 1 WLR 772 para 49. No such allegation was made at that time.

77. He submits that this is exceptional. It is not unusual for a claimant to seek to amend to add, in aggravation of damages, allegations about the conduct of a defendant *during the litigation*. Damages can, of course, be aggravated by the conduct of a defendant during the litigation. But it is unusual to see an amendment put forward a few weeks before trial which harks back to the time of publication (some 23 months earlier) and asserts that there are features of the publication, and the Defendant's conduct in that regard, which upset the Claimant, and which warrant increased damages.

78. On this part of the amendment there is evidence from Mr Adelson in the form of a witness statement dated 23 April, that is just before this hearing. He states that his lawyers were always aware of his complaint about both the business and the personal aspects of the article. He does not explain why they did not complain of the personal aspects until the letter of 20 September 2005, to which he refers, or why the matters now sought to be introduced were not pleaded when the Particulars of Claim were served (including a plea of aggravated damages) in October 2005. He states that it is only in the course of preparing his witness statement for the trial with his solicitors, and with them having had sight of the material voluntarily disclosed by the Defendant as being in its possession at the time of the article, that he has had this opportunity, with his advisers, to take full stock of the journalist's failings in preparing the article.

79. Neither in the witness statement nor in argument have I been shown any document disclosed by the Defendant.

80. Mr Warby QC submits that the investigation that would be required of the journalist's state of mind would extend the trial, and the trial estimate (without the amendments) already runs up to the beginning of the long vacation. The investigation would be akin to that where there is a *Reynolds* defence.

81. Mr Price QC submits that these are matters of a kind which libel claimants commonly rely on, and that Mr Adelson could have given them in chief, after setting them out in his written witness statement.

82. If these matters had appeared for the first time in the witness statement it seems to me that the same issues would have been raised at that time. The Claimants' decision to give warning in the form of a draft amendment to the Particulars of Claim was the correct course. The Practice Direction to CPR Part 53 at para 2.10 requires a claimant to give full details of the facts and matters on which he relies in support of his claim for damages and refers to rule 16.4(1)(c). That requires the grounds for claiming aggravated damages to be pleaded.

83. For the purposes of this application I shall assume that Mr Adelson was hurt and outraged by the article, as he says in his witness statement. It does not follow that I must accept that it is as a result of this that he wants these amendments.

84. The aim of libel claimants is vindication as well as compensation. For many claimants vindication is in practice the only objective to be achieved. It is notorious that the level of damages in libel actions is commonly disproportionate to the costs. For claimants of large means the amounts which a libel jury can award in compensation are relatively small sums. The amounts by which compensatory awards can be increased on account of aggravation of damage are generally relatively small as well for a person of large means. In the Particulars of Justification the Defendant pleaded that Mr Adelson has earned hundreds of millions if not more than a billion dollars. This is admitted in the Reply.

85. A multi-millionaire or billionaire, such as Mr Adelson, is as much entitled to compensation for the libel (if that is what it was) as any other litigant. He is also entitled to a proper compensation for any aggravation of damage arising from matters he is permitted to plead. But I cannot accept that compensation, as opposed to vindication, is the main objective of these proceedings. I noted that Mr Price QC

appeared with two juniors on this one day hearing before me. This is not uncommon in heavy cases such as this, but it suggests that the financial outcome is not the primary consideration in the case. There is no reason why it should be. I infer that, however hurt and outraged Mr Adelson is, the main reason for applying to make these amendments is not because he wants to achieve more money in compensation. I also infer that if he were not permitted to make these amendments, then the prejudice to him, in the form of less compensation than he might otherwise obtain, is not of itself very significant to him.

86. Having regard to the overriding objective, in my judgment the time and costs that would be required to investigate at trial the new matters sought to be introduced is not proportionate to the amount of money involved in any possible increased award of aggravated damages, is not proportionate given the financial position of Mr Adelson, and would distract the jury from concentrating on the already complex issues which they will have to decide.

87. Subject to the specific matters discussed below, the interests of justice do not require that the amendments be allowed, and I do not allow them.

88. In any event, and in case I have made an error in exercising my discretion in that way, I shall consider some of the specific objections raised by the Defendant to particular paragraphs.

AGGRAVATED DAMAGES AMENDMENTS - SPECIFIC OBJECTIONS

Para 6.2A (2)

89. In his Skeleton Argument Mr Warby QC puts his submission as follows:

> "Para 6.2A(2) refers to a "gratuitous reference to the First Claimant's 'East European Jewish stock'", and makes the allegation that the Defendant "preferred to" paint such a picture of Mr Adelson "because such a story made better copy" etc. This is what used to be called a scandalous allegation, that is to say an allegation of serious impropriety made without any sufficient basis. If the Cs genuinely wish to assert that this was an anti-semitic article they should say so clearly and unambiguously, and set out a proper factual basis for the "inference" that the D's reference to Mr Adelson's ethnic origins was gratuitous and inspired by the motives alleged"

90. I would not refuse permission on this ground. It is arguable that a reference to Mr Adelson being of 'East European Jewish stock' is not relevant to the article. It is personal. The inclusion in speech or writing of references to personal matters irrelevant to the matter under discussion can be hurtful and offensive. This is so whether the personal characteristic in question is creditable, discreditable or neither. This is a matter which I would in principle be willing to allow to be added by amendment. It cannot materially affect the length of the hearing, and the jury cannot avoid noticing the phrase in the article (if they think it relevant) in any event. But the paragraph will need re-drafting to exclude the other matters in that paragraph for which I do not grant permission.

para 6.2A(3)(b)(iv)

91. This is pleaded in effect as a double negative. Mr Warby QC submits that the affirmative allegation intended to be made ought to be made clear. If Mr Adelson does know about English football and love the game, then he should make that clear. I would have refused permission to make this amendment on this ground.

para 6.2A(3)(b)(vi)

92. Mr Warby QC submits that an association with glamorous younger women is either alleged to be defamatory, in which case that should be pleaded and the meaning set out, or it is not alleged to be defamatory, and in either event it has not previously been raised, even in the letter of 20 September 2005. In my judgment, it should be made clear whether it is alleged to be defamatory or not. If it is so alleged, then it cannot be introduced without giving the defendant an opportunity to prove the truth of it in mitigation: see Gatley 10th ed para 32.51 footnote 16. It is too late for that now. If it is not relied on as defamatory, the case would have to be set out. I would have refused permission to add this paragraph on this ground.

para 6.2A(3)(b)(vii)

93. As already noted, the Claimants have accepted an offer of amends in relation to two meanings pursuant to s.2 (2) of the 1996 Act. The second meaning relates to Mr Adelson's private life and is in para 4(3):

> "That he has behaved in a similarly pitiless and despicable way in his private life:
>
> (a) telling his first wife on the night before she underwent an operation for cancer that he wanted to divorce her, not even doing so himself but sending a friend to do it".

94. Mr Warby QC submits that, in relation to meanings for which an offer of amends has been accepted, the new amendment in para 6.2A(3)(b)(vii) is impermissible. He refers to the words of May LJ in *Nail v News Group Newspapers Ltd* [2004] EWCA Civ; [2005] EMLR 12. Eady J had declined to take account of additional material the claimant sought to adduce on the issue of compensation. May LJ upheld this decision saying, at para 15:

> "… a claimant should not normally be permitted to enlarge significantly pleaded allegations upon which the offer of amends was made and accepted… claimants should therefore plead the full substance for which they seek redress."

95. Mr Price QC submitted that the amendment was directed to the decision on compensation under the Act, and that the amendment should be allowed without prejudice to whether the trial judge would allow the point to go before the jury.

96. Mr Warby QC responded by referring to the 1996 Act s.3, which provides:

> "(2) The party accepting the offer may not … continue defamation proceedings in respect of the publication concerned

> against the person making the offer, but he is entitled to enforce the offer to make amends as follows …
>
> (5) If the parties do not agree on the amount to be paid by way of compensation, it shall be determined by the court on the same principles as damages in defamation proceedings".

97. I accept Mr Warby QC's submission. I would not have given permission for this amendment.

para 6.2A(3)(b)(ix)

98. This relates to allegations about involvement in litigation. The same observations apply as in relation to para 6.2A(3)(b)(vi).

THE OUTCOME OF THE APPLICATIONS

99. It follows that the Claimants' applications for permission to amend are all refused, except where they are unopposed, but that the Claimant may re-apply in respect of para 6.2A(2). The Defendant's application to strike out is also refused.