



Neutral Citation Number: [2007] EWHC 3028 (QB)

Case No: HQ05X03072

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19/12/2007

**Before :**

**THE HON. MR JUSTICE EADY**

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**Between :**

**Sheldon Adelson**  
**Las Vegas Sands Corp**  
**- and -**  
**Associated Newspapers Ltd**

**Claimants**

**Defendant**

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**James Price QC, Justin Rushbrooke and Godwin Busuttil** (instructed by **Schillings**) for the  
Claimant

**Mark Warby QC and William McCormick** (instructed by **Reynolds Porter Chamberlain**  
**LLP**) for the Defendant

Hearing date: 4 December 2007  
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## **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.

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**THE HON. MR JUSTICE EADY**

**The Hon. Mr Justice Eady:**

1. Two applications were argued before me on 4 December 2007, whereby the Claimants sought to introduce, by one means or another, claims to recover libel damages on behalf of two companies which are not so far parties to this litigation. An earlier attempt to achieve the same objective, albeit by a different procedural route, failed earlier this year before Tugendhat J and the Court of Appeal. The circumstances may thus appear less than auspicious. Mr Price QC is undaunted, however, and indeed expressed himself to be emboldened by some remarks made in the course of argument in the Court of Appeal on that occasion, although they are not reflected in the judgments. Another hurdle confronting Mr Price is the fact that the defamatory publication of which the two companies wish to complain, and which gave rise to the existing claim, occurred as long ago as 28 May 2005. The primary limitation period thus expired on 27 May 2006.
2. The application before Tugendhat J was heard on 25 April 2007, being founded on the court's jurisdiction to add new parties in accordance with the CPR 19.5. The existing Claimants are Mr Sheldon Adelson and Las Vegas Sands Corp. The application was to join Las Vegas Sands LLC ("LLC") and Las Vegas Sands (UK) Ltd ("UK Ltd") as, respectively, third and fourth Claimants. That was the application rejected both by the learned judge and on appeal.
3. The Claimants therefore decided on a fresh two pronged strategy. They wish to have the limitation period disapplied under s.32A of the Limitation Act 1980 (inserted by the provision of the Defamation Act 1996) on the basis that it would be "equitable" to do so in all the circumstances. If that fails, they wish to re-amend the existing particulars of claim so as to enable the second Claimant to recover in respect of the damage said to have been occasioned to the reputations of LLC and UK Ltd.
4. Why is it so important to bring in the new companies? The basic principle, so far as corporate libel claimants are concerned, is that they can only be hit "in their pockets" (having obviously no feelings to be hurt), and any compensation must be focused on trading or business reputation: see e.g. *D & L Caterers Ltd v D'Ajou* [1945] KB 364, 367, CA. The potential problem for the existing corporate claimant is that it is a holding company and may ultimately be held to have no trading reputation. If this argument of the Defendant is upheld, there may be adverse costs consequences in respect of the second Claimant – even if Mr Adelson himself were to succeed. For these reasons, it is obviously desirable for the Claimants to mount an effective corporate claim, if they can, in respect of at least one other company which can demonstrate that it was (a) referred to in the offending article and (b) damaged as to its trading reputation.
5. I record at this point that this problem was not spotted for the first time in April 2007. It was expressly pointed out in the defence, served on 12 January 2006, at which time there remained four and a half months of the twelve month limitation period unexpired. It is thus clear that when resolving the s.32A application the court will require the fullest explanation for the delay before anything was done about it. That is one of the factors which the statute expressly requires to be taken into account. Even before Tugendhat J in April 2007, no application was made under s.32A. All eggs were deliberately placed in the CPR 19.5 basket. As the Court of Appeal observed, there might have been some good (tactical) reason for that decision, although the

Claimants' stance now appears to be that this was one of a series of mis-judgments by the legal team – none of whom apparently offered any advice before February 2007 as to how a claim should be framed in order to recover losses to the group's business interests. That is despite the fact that the point raised in the defence was recognised as severely jeopardising the second Claimant's entire claim; so much was expressly recognised in the Claimants' skeleton argument before Tugendhat J.

6. At all events, the CPR 19.5 route was closed off, finally, by the Court of Appeal. What is now sought to be done is to start a fresh action by the two new corporate entities and to have it consolidated with the existing proceedings. It is said that this would not involve significant delay because the Defendant has had no inhibitions about pleading its defence by reference to those entities and the Claimants had none about giving disclosure of documents. The progress of the litigation towards trial would not be significantly affected by a need for further pleading or disclosure, save perhaps in a formal sense. Mr Warby QC accepts that there would not need to be any substantive changes to the pleaded defence. Although the circumstances are unusual, the court's jurisdiction to disapply limitation periods has been well explored over the years. There are similarities between the relatively recently acquired jurisdiction under s.32A (applying to defamation) and that under s.33, although of course there are also differences.
7. The Claimants' alternative case is less well trodden. This is based on the proposition that the second Claimant in the existing action can recover in respect of any corporate losses within the group, in any event, and that there was accordingly no need for the companies which are actually said to have suffered the losses to be joined at all. That proposition appears to be inconsistent with apparently established principles of law, such as for example:
  - i) Companies are individual legal entities;
  - ii) One company cannot recover losses incurred by another;
  - iii) One libel claimant (personal or corporate) cannot recover in respect of injuries to another person's reputation;
  - iv) Any libel claimant must show that the words would be understood by reasonable readers to refer to him, her or it;
  - v) A corporate claimant must show generally that it has a "trading reputation".
8. It is in this context that Mr Price told me that he was fortified by comments made in the course of argument in the Court of Appeal to the effect, as I understand it, that in a future case the Court of Appeal might wish to explain or develop the law in some way which would enable a non-trading holding company to recover in defamation proceedings for injury done to the group as a whole (assuming that it has a "group pocket") or for damage to the reputation of trading subsidiaries (which may not have been joined as parties). Nevertheless, my duty is to apply the law as I, having had the assistance of counsel, understand it to be at present. As I have said, there was nothing in the judgments of the Court of Appeal to support Mr Price's contention. That may well be simply because the court was on that occasion solely concerned with the CPR 19.5 jurisdiction.

9. I turn first to the s.32A application. Some light has been thrown upon the exercise of this jurisdiction in the Court of Appeal decision in *Steedman v BBC* [2002] EMLR 318. One of the main reasons why Parliament chose to shorten the limitation period for libel and malicious falsehood was because of the need to encourage genuine claims to be brought and pursued expeditiously. That accords with the recommendations made in 1991 by Sir Brian Neill's Committee on Defamation Practice and Procedure, which underlay the reform: see also *Grovit v Doctor* [1997] 1 WLR 640.
10. It might be thought, against this background, that if the potential claim of an individual or corporate entity has not been spotted at or shortly after the time of publication or, having been identified, is not pursued with any degree of vigour, the court would have little sympathy with an application to disapply. In particular, an application brought well after the limitation period for purely tactical reasons, such as to save or recoup some costs, rather than genuinely to protect reputation, would not chime with the public policy considerations underlying either the 1996 defamation reforms or the overriding objective of the CPR. It is therefore crucial to identify, through such evidence as is made available, exactly why it is that the delay has occurred in any particular case.
11. It was at one time thought that the "paramount" consideration on such applications was the extent to which the relevant defendant would, or would not, be prejudiced: see e.g. *Hartley v Birmingham City District Council* [1992] 2 All ER 213, 224 (Parker LJ). As was pointed out in *Steedman v BBC* at [22], on the other hand, there has been a "sea change" in attitudes towards delay, which is recognised as in itself contrary to the public interest.
12. It is true that the Defendant in the present case would not be greatly prejudiced in the narrow sense of how it is to present its defence. Yet it has conducted itself on the basis that it only had to face the original claimants, and has indeed made at least one open offer to settle on that basis. Between its pointing out the position in the defence in January 2006 and the summer 2007 (a delay which is obviously longer than the original limitation period itself) it had no reason to think that an application would be made to disapply the limitation period. The two corporations in question could have issued proceedings before it expired.
13. There is, on the other hand, prejudice in the broader sense; that is to say, it would now be vexed by two additional claims which *may* result in having to pay compensation to either or both of the companies (which would not *ex hypothesi* have been payable to the second Claimant) and, perhaps of greater significance, costs which have been described by the Claimants themselves as "huge" and "dwarfing the potential damages".
14. In my judgment, the limitation defence currently available to the Defendant cannot in this case be characterised as a "windfall" or "an unexpected adventitious advantage": cf *Hartley*, cited above, at 227 (Leggatt LJ). That was a very different case, where the delay was minimal.
15. It is reasonable to suppose that, if the two proposed corporate claimants had genuinely been damaged by the publication, this would have been made clear from the outset and some attempt made to quantify the damage. The fact that they are now sought to

be introduced, well over two years after publication, strongly suggests that there is some collateral purpose, such as tactical positioning for advantageous terms of settlement.

16. If the position is that a substantial claim in respect of damaged reputation was simply missed or, even after the matter was highlighted in the defence, not pursued through lethargy – *if* that were the position – there would be a claim over against the relevant lawyers. That is part of the background circumstances to be taken into account when deciding what is “equitable”. Indeed, the claim in negligence would, so far as liability is concerned, be relatively straightforward (again, I emphasise, *if* that was the position). It is only fair to record that the Claimants’ legal representation has changed over the course of the litigation.
17. Also relevant is the conduct of the Defendant. Here, far from causing obstruction, it was the Defendant who drew attention to the problem confronting the second Claimant – and the Claimants who failed to take action.
18. There is thus clearly a potential prejudice to the Defendant. What is the prejudice to the Claimants if the limitation bar prevails? I would expect to see some clearly identifiable damage, and at least an attempt at quantification, if a genuine claim had simply been overlooked. Yet, so far as UK Ltd is concerned, there is nothing of substance produced. There is no indication of anything but a vague intention of doing business in this jurisdiction (despite the government’s apparent abandonment in July 2007 of the “super casino” project) and no evidence of any readers in whose eyes it has suffered injury to reputation. Where the merits are unconvincing, it is clear that the potential prejudice is correspondingly less: see e.g. *Hartley*, cited above, at 224 d-e (Parker LJ).
19. Another consideration put forward by the Defendant is that the Claimants should not be allowed a “second bite of the cherry”. Mr Price argues that this is not a fair characterisation of what they now seek. He says that they simply chose the wrong procedural route and should not be penalised for seeing the error of their ways. Mr Warby points out, however, that apart from the delay significant costs have been incurred in pursuing and resisting the applications earlier this year. That is wasteful and not in accordance with the spirit of the CPR or the overriding objective. The expenditure of time and money should be proportionate to the objective sought to be achieved. Moreover, even if the Claimants’ procedural error was not their fault, it is certainly not something for which the Defendant should suffer.
20. I accept that Parliament, following the recommendations of the Neill Committee, decided to put in place a more flexible regime, in the sense that the much reduced period of limitation should be balanced by a broader discretion on the court’s part to extend the period, having regard to what is perceived to be “equitable” in all the circumstances of the case. But genuine libel claims must still be pursued with vigour: that is the most important policy consideration underlying the legislative change. It is now two and a half years since publication, and I see no reason to disapply the disciplines Parliament chose to adopt for this form of litigation. That application is rejected.
21. As to the alternative route of reamendment, Mr Warby’s primary submission is that it is based on a bad point – at least so far as the present law is concerned. The second

Claimant is simply not permitted to recover libel damages in respect of injury to other legal entities, whether subsidiaries or otherwise, and I should not therefore allow the reamendment. In any event, he argues, it is far too late. If the point is a good one, it should have been taken at the very latest before Tugendhat J and/or the Court of Appeal.

22. As I have said, I am obviously bound to apply the law as it stands and not on the basis of hypothetical changes which might be implemented in later cases. Mr Warby is plainly correct, as I have always understood the position, and Mr Price does not seriously dissent from his summary of the existing state of the law. Where the law is in a state of development, and cannot finally be determined at the interlocutory stage, it may be right in some cases to allow an amendment to go forward for later argument. Here, however, the relevant law is not in a state of flux. It would be wrong in principle for me to allow a bad point to be pleaded. In any event, as a matter of discretion I would disallow the amendment at this late stage. It is neither necessary nor desirable for new parties to be added, since the real issues can be determined justly and fairly as the action is at present constituted. By the same token I would not consider it appropriate to introduce, indirectly, a claim on their behalf. The second application is also refused.