Neutral Citation Number: [2006] EWHC 819 (QB)

Case No: HQ05X03106

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/04/2006

Before :

THE HON. MR JUSTICE EADY

- -

Between :

Lady Colin Campbell	**Claimant**
- and -	
Lily Safra	**Defendant**

- -
- -

Jonathan Crystal (instructed by **Stock Fraser Cukier**) for the **Claimant**
Richard Rampton QC and **Heather Rogers** (instructed by **Mishcon de Reya**) for the **Defendant**

Hearing date: 28th March 2006

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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. This is an unusual case in a number of respects. The Claimant is Lady Colin Campbell, who describes herself as a "critically acclaimed authoress". The Defendant is Lily Safra, who is described by the Claimant as a "socialite" and by herself as "philanthropist". She resides in Monaco.

2. The claim is based upon two causes of action, libel and inducement to breach of contract, both of which the Defendant submits are without merit. I am asked to strike them out or to give summary judgment in her favour. Evidence has been served on both sides.

3. In June 2005 the Claimant's novel, entitled *Empress Bianca* was published by Arcadia Books Ltd ("Arcadia"). The relevant publishing contract was dated 4 March 2004. According to the Defendant's evidence, she only became aware of the book after a telephone conversation had taken place between a *Sunday Telegraph* journalist called Charlotte Edwardes and her public relations consultant, Mr Mark Bolland. Mr Bolland has said in evidence that this took place during the late afternoon of Friday, 1 July, when he was standing in a railway station on the way to a dinner appointment in Oxfordshire.

4. According to this evidence, Ms Edwardes raised the subject of the Claimant's book (describing her as "Georgie Campbell") and said that she had heard that Mrs Safra was discussing with her lawyer the possibility of suing over its contents. Up to that point, according to Mr Bolland, neither he nor Mrs Safra knew anything about the book. After his conversation with Ms Edwardes, he immediately telephoned Mrs Safra on his mobile phone and enquired if she knew anything about it. She replied that she did not.

5. There was another conversation with Ms Edwardes, when Mr Bolland rang her back to confirm that Mrs Safra knew nothing about the book. She was not prepared to accept this, however, and according to Mr Bolland told him that she knew Mrs Safra was aware of the book. So far as Mr Bolland was concerned, she was effectively suggesting that either Mrs Safra was lying about it or that Mr Bolland was lying on her behalf.

6. In view of Ms Edwardes' attitude, Mr Bolland apparently spoke on the following day, 2 July 2005, to Mr MacLennan, the Chief Executive of the Telegraph Group, to inform him that, if a story was going to be published suggesting that Mrs Safra did know about the book, it would be inaccurate. He also spoke to the then editor of the *Sunday Telegraph*, Sarah Sands, and emphasised that Mrs Safra was unaware of the book. Nevertheless, she seemed to him to be determined to publish the story, and indeed he concluded that the publishers of the book and/or the author were trying to use the *Sunday Telegraph* as a vehicle for publicity. He told Ms Sands that Mrs Safra had no comment to make on the subject. He had already told Ms Edwardes on the Friday that Mrs Safra was not a litigious person by nature. Up to this point, according to the evidence of Mr Bolland and Mrs Safra, neither of them had seen the book itself.

7. On Sunday, 3 July, an article was indeed published in the *Sunday Telegraph* in these terms:

"**Lily Safra's friends rage at society thriller 'based on her billionaire husband's death'**

By Charlotte Edwardes

Friends of Lily Safra, the widow of Edmond Safra, the billionaire banker who died in a fire in his Monaco apartment in 1999, are furious about a novel which they claim is a thinly veiled account of her life – but in which the central character murders two of her four husbands.

Mrs Safra, a philanthropist and friend of Prince Charles and the Duchess of Cornwall, is said by her public relations adviser not to have read, or even to be aware of, Empress Bianca, the latest work by Lady Colin Campbell, who has previously written biographies of Diana, Princess of Wales, and on the Royal marriages.

Her friends are angry, however, at what they say are the 'ridiculous similarities' between the character in the novel and Mrs Safra. 'The author has just stolen her life story and then accused her of being a murderer,' said one. 'Some details are so exact that it can only be a deliberate attack.' The book, Lady Colin's first novel, is the story of a 'sugar-coated monster' whose terrifying social ambition has violent streaks. The story, which spans seven decades and several continents from 1930s Latin America to present-day London, has been described as a 'whodunnit in the Lamborghini set'.

Last night, Mark Bolland, Mrs Safra's public relations adviser, sought to play down the significance of the book, insisting that Mrs Safra did not know of its existence. Asked if she was considering legal action, he said: 'Mrs Safra has never litigated in the past, it's not like her.' He added: 'This is, remember, a work of fiction'.

The book chronicles the life of Bianca Barnett, the daughter of a Jewish mother and English father who move to Brazil to seek their fortune. Like Mrs Safra, Bianca grows up in Latin America as the daughter of an English émigré, and marries four times.

Like Mrs Safra, Bianca has three children with her first husband, whom she later divorces, and her beloved first son is killed in a car accident on a mountain road.

Mrs Safra's second husband, Alfredo 'Freddie' Monteverde, ran a multi-million pound electronics business and suffered from manic depression – as does Bianca's second husband, Freddie Piedraplata. Mr Monteverde committed suicide by shooting himself in the chest while his wife was out to lunch,

leaving her with a £200 million inheritance; in the novel, Bianca receives an identical inheritance after ordering a hitman to kill her husband but make it appear suicide.

Both women – fictional and real – married their third husbands in 1972, then quickly divorced them. Like Mrs Safra, Bianca moves to New York and buys a sprawling villa in the Côte d'Azur.

Like Mrs Safra, Bianca's fourth husband, called Philippe Mahfud, is a billionaire Lebanese-Jewish banker who suffers from Parkinson's disease and becomes so paranoid about his safety he hires a security team made up of ex-members of the Israeli intelligence unit, Mossad.

In the novel, Mahfud dies in a bizarre fire in his fortified penthouse in the tax haven of Andorra; Mr Safra, who lived in the tax haven of Monaco, died along with his nurse in a fire started by Ted Maher, a member of his security team, who is serving a 10-year sentence for murder. Maher says he started the fire in a wastepaper basket in order to impress his boss by staging his rescue. In the novel, Bianca manipulates the nurse to start the fire in the wastepaper basket which is designed to kill her husband.

Mr Safra left most of his estimated £2.8 billion fortune to the wife he adored, who has since relocated to Belgravia (as does the fictional Bianca). She is a patron of the arts and a generous benefactor. Mrs Safra did not, of course, murder her husbands – but Lady Colin has teasingly dedicated Empress Bianca to Christina Fanto, a niece of Freddie Monteverde, and has told interviewers that the character of Bianca was inspired by a real person.

'Bianca was brought to justice; not through the judicial system, but the social system,' she said last month. 'Many people in the upper echelons of society are very tolerant of foibles, but blood does not go down well in drawing rooms'.

Asked by *The Sunday Telegraph* if the book's lead character was based on Lily Safra, Lady Colin said: 'I am loath to say if it was or wasn't. I don't want to narrow the field by discounting people'.

She admitted, however, that the book, which was published by Arcadia last month, 'didn't come out of my imagination'.

Asked whether she was afraid of legal action she said: 'I have no fear of hearing from anybody'.

> Gary Pulsifer, the chief executive of Arcadia, said: 'We didn't have it read for libel. It's a novel, a work of fiction'."

The article was accompanied by two photographs. The first was of Mrs Safra, with the caption "Lily Safra: apparently unaware of the book's existence". The second was of Lady Colin Campbell, with the caption "Lady Colin Campbell says the central character in her novel is inspired by a real person, but will not say who".

8. According to the Defendant's evidence, it was only on Monday, 4 July, that copies of the book were purchased for her, and her advisers, to read. She concluded that the main character in the novel was indeed based upon her, as the article in the *Sunday Telegraph* had suggested, and that she had therefore effectively been accused of having murdered her second and fourth husbands. Whether she was correct about that is not a question which directly arises before me on the present applications. The Claimant says that she knew nothing about Mrs Safra and did not base the book on her life. Be that as it may, through her solicitors, Mrs Safra obtained the publication of an apology in the next issue of the *Sunday Telegraph*, on 10 July 2005. It was brief and to the point:

> "Mrs Lily Safra
>
> In last Sunday's issue (July 3 page 13) we reported claims that the central character of a recently published novel was based on Lily Safra, the widow of Edmond Safra. It was never our intention to suggest that the actions attributed to the fictional character had been carried out by Mrs Safra in reality and readily accept that any such suggestion would be entirely untrue. We understand that our linking of Mrs Safra's name with that of the novel's central character has greatly upset her. We very much regret this and apologise unreservedly to Mrs Safra for any embarrassment caused".

9. On 12 July 2005 Mrs Safra's solicitors, Mishcon de Reya, wrote on her behalf to Arcadia complaining about the book and seeking various remedies and, in particular, the withdrawal and pulping of the book. The complaint was encapsulated in two paragraphs:

> "In creating the character of Bianca, it is clear that the author intends readers to understand that Bianca is Mrs Safra. The book thereupon defames Mrs Safra by asserting that, like 'Bianca', Mrs Safra murdered two of her husbands.
>
> Publishers of books such as yours have only two defences to a libel action: (a) absence of reference to the claimant and (b) justification of the defamation. The defence that 'Bianca' is not Mrs Safra will fail because of the many parallels between the two (we attach a schedule of the more obvious parallels). The defence of justification is not available to you as Mrs Safra is not a serial murderer".

10. Mr Rampton QC, appearing for Mrs Safra, placed considerable emphasis in the course of his submissions upon the heads of comparison contained within the attached schedule. It is thus desirable that I should set them out:

> "1. Both have an English father who was an engineer/surveyor.
>
> 2. Both grew up in South Africa.
>
> 3. Both had three children by their first husband, the eldest of whom was killed in a car crash.
>
> 4. In both cases, following the death of the eldest son, the daughter raises his child as her own.
>
> 5. Both divorced their first husband in the late 1960s.
>
> 6. Both then marry millionaire businessmen who run multi-million pound companies the success of which is based on selling electrical goods.
>
> 7. In both cases, the second husband has an adopted child from a previous marriage who lives with them.
>
> 8. Neither has any children after their first marriage.
>
> 9. In both cases the second husband dies and they remarry.
>
> 10. Both third marriages end in divorce.
>
> 11. Both then marry a billionaire Lebanese-Jewish banker.
>
> 12. The fourth husband is in both cases diagnosed with Parkinson's disease and both men become increasingly paranoid about security.
>
> 13. In both cases the fourth husband dies in a fire started by a nurse and in both cases another of the husband's nurses dies with him.
>
> 14. The nurse who starts the fire is in both cases an American citizen who has previously been a green beret.
>
> 15. In both cases the wife of the nurse who started the fire travels to visit her husband, in the book the wife is detained by the authorities. Similar allegations were made by Mr Maher's wife.
>
> 16. Both women relocate to Belgravia after their marriage.
>
> 17. Both women inaugurate public statues in a former government building in London and afterwards attend a dinner hosted by royalty".

11. In due course, on 18 July, Arcadia expressed apologies to Mrs Safra's solicitors, in writing, for any distress which the publication had caused her. It also agreed to cease distribution of the book and to recall copies already distributed. Settlement was finally reached with Arcadia on 25 July 2005.

12. It has been necessary to set out this background in a little detail, so that the nature of the Claimant's case, both in relation to libel and inducement to breach of contract, can be properly understood.

13. The claim in libel is based upon an article headed "Pulp fiction: the millionaire socialite, the English lady and a book too far" and published in the *Independent on Sunday* on 24 July 2005. It is the Claimant's case that the following words were published by Mrs Safra or on her behalf:

> "Lily Safra, 67, a wealthy benefactor who counts Prince Charles among her friends, claims her life has been 'stolen' in a new book by Lady Colin Campbell, 55, the best-selling biographer of Princess Diana.
>
> Mrs Safra, thought to be worth around £650m, called in lawyers because she claimed the main character in Lady Colin's debut novel, *Empress Bianca*, was a defamatory, thinly disguised version of her life. …
>
> While Mrs Safra is relying on the discreet communication skills of Mark Bolland, former PR Adviser to the Prince of Wales, Lady Colin has gone on the offensive. …
>
> 'The main character in the book is scarcely sympathetic. Bianca Barrett stops at nothing to achieve the social status she desires, even murdering two of her four husbands. …'".

14. The defamatory meanings pleaded on behalf of the Claimant are as follows:

> "(1) The Claimant had stolen the Defendant's life for portrayal in *Empress Bianca*."
>
> (2) The Claimant had written a novel which was a thinly disguised defamatory version of the Defendant's life.
>
> (3) The Claimant had accused the Defendant of murdering two of her husbands".

15. The second cause of action is formulated in paragraphs 5 and 6 of the particulars of claim:

> "5. Arcadia books is a small independent publisher with limited resources. By letter dated 12 July 2005 the Defendant threatened Arcadia Books with litigation if it did not, amongst other things, withdraw *Empress Bianca* forthwith from all outlets and distributors, both in this jurisdiction and elsewhere and pulp, under supervision, all retrieved copies.

> 6. In response to the Defendant's threat of litigation, Arcadia Books agreed, amongst other things, to cease distribution of *Empress Bianca* and pulp all copies of the book in its possession and those returned to it. The Defendant knew or would have appreciated that by so acting, Arcadia Books would be in breach of its agreement with the Claimant and this would cause her significant loss and damage".

It is by no means obvious to me from this pleading that withdrawal of the book in such circumstances would constitute a breach of the publishing agreement – still less that Mrs Safra would have formed such a perception. There is no reason to suppose that she had seen the contract or received any legal advice about its terms.

16. It is submitted by Mr Rampton that both these claims are "hopeless". His primary case in relation to the libel claim is that, beyond bare assertion, there is nothing to support the suggestion that Mrs Safra was responsible, directly or indirectly, for the publication of the words complained of. She and Mr Bolland both deny it in their witness statements, and there is nothing of substance to set against that evidence. As to the alleged inducement to breach of contract, Mr Rampton submits simply that the paragraphs which I have cited do not disclose a cause of action, having regard to the essential ingredients of that tort, as identified in *Douglas v Hello! Ltd (No3)* [2006] QB 125. I need to address these submissions in turn.

17. As I have said, Mr Rampton's primary submission turns upon lack of publication, but he had a battery of other points in reserve. He even suggested at an early stage that the words complained of were not defamatory although, I think rightly, he did not press this before me. He did, on the other hand, submit that there would be available to his client defences of qualified privilege (by way of "reply to an attack"), fair comment on a matter of public interest, and justification (based primarily upon the schedule of similarities and the "coy" observations of the Claimant in the *Sunday Telegraph* article of 3 July). It has to be recognised that a defendant in a libel action who contends that one or more of these defences is unanswerable, so as to justify summary judgment under CPR Part 24, faces a formidable hurdle. Nevertheless, I shall come to these arguments in due course after I have addressed the case on publication.

18. Mr Rampton began his submissions by observing that he had come to court assuming that the case his client would have to meet was that she had authorised the publication of the words actually complained of in the *Independent on Sunday* on 24 July, either directly or indirectly. Having seen the skeleton argument of Mr Crystal, who represented the Claimant, he realised that the emphasis was now placed on the article in the *Sunday Telegraph* of 3 July and the letter of complaint to Arcadia from Mrs Safra's solicitors on 12 July. What is said, it now seems, is that the publication of the words complained of, on 24 July, was causally linked to the earlier article and letter and, what is more, that this must have been foreseeable to Mrs Safra and to any agent acting on her behalf. That element of foreseeability would, it appears, be necessary in the light of the well known principles on liability for republication adumbrated in such cases as *Speight v Gosnay* (1891) 60 LJQB 231, CA and *McManus v Beckham* [2002] 1 WLR 2982, CA. At all events, it is not alleged that either of these earlier publications gave rise in itself to a cause of action.

19. Mr Rampton submits, in the first place, that it would simply be absurd for his client to encourage or foster an allegation in the *Sunday Telegraph* to the effect that she was to be identified with "Bianca" in the novel – not least because she would be portrayed as a double murderer. Whereas there might be some publicity advantage for the Claimant in such a publication, it was impossible to conceive what the benefit would be for Mrs Safra. There was no evidence that she herself had communicated with the *Sunday Telegraph*, and Mr Bolland's only communications were, if he is to be believed, directed towards discouraging publication in the ways I have recounted above. Moreover, there is no evidence from any *Sunday Telegraph* personnel (in particular from Ms Edwardes) to link Mrs Safra or Mr Bolland with that publication. Thus, says Mr Rampton, if responsibility for the 3 July article is indeed an essential link in establishing responsibility for the 24 July article, the Claimant's case lacks substance.

20. Mr Crystal says that a jury would "inevitably" conclude that Mrs Safra *was* responsible for the 3 July article, on the basis that it has her "finger prints all over it". In other words, it would be a proper inference that Mrs Safra was indeed "rubbishing" the novel through the means of the *Sunday Telegraph* and asserting that it was based upon her life story. I take it, therefore, to be implicit in Mr Crystal's case that Mrs Safra and Mr Bolland must be lying when they have said in evidence that they knew nothing about the book until the conversation took place with Ms Edwardes on 1 July and could only derive their knowledge as to its contents from the *Sunday Telegraph* article – until they obtained copies on 4 July. In the absence of any supporting evidence from *Sunday Telegraph* witnesses, it seems to me that this would be a very bold inference to draw. There needs to be *some* evidential basis for it either from a witness or, at least, from the inherent probabilities. As Mr Rampton submits, none has so far emerged.

21. There are sometimes circumstances in which the court can determine the issue of responsibility for publication by way of the summary jurisdiction available under CPR Part 24: see e.g. *Wallis v Valentine* [2003] EMLR 8. It is likely that the court will, when invited to do so, adopt the approach proposed in *Bataille v Newland* [2002] EWHC 1692 (QB) and cited in Gatley on Libel and Slander (10th edn) at para. 30.28:

> "First it seems that I should address the primary facts relied upon by the claimant for establishing the defendant's responsibility for the publication of the 12th January letter. The burden is upon the claimant to establish those facts at trial. At this stage, I should make all assumptions in favour of the claimant so far as pleaded facts are concerned.
>
> Again, in so far as evidence has been introduced for the purpose of the present application, I should assume that those facts will be established, save in so far as it can be demonstrated on written evidence that any particular factual allegation is indisputably false.
>
> The next question is whether, on the facts assumed, a properly directed jury could draw the inference for which the claimant contends. In this case, of course, the inference is that the second defendant was, in some sense, a participant in the publication of

> the letter. I should only rule out the case against the second defendant if I am satisfied that a jury would be perverse to draw that inference …
>
> If the defendant's case is so clear that it cannot be disputed, there would be nothing left for a jury to determine. If, however, there is room for legitimate argument, either on any of the primary facts or as to the feasibility of the inference being drawn, then a judge should not prevent the claimant having the issue or issues resolved by a jury. I should not conduct a mini trial or attempt to decide the factual dispute on first appearances when there is the possibility that cross-examination might undermine the case that the defendant is putting forward."

22. I have come to the conclusion here that Mr Rampton's submissions on publication are correct. Bare assertion is not enough. Nor is the Claimant's suspicion or belief. There is no evidence to support the Claimant's case and the inherent probabilities point against involvement on the Defendant's part. As Mr Rampton put it, it just does not "stack up". In these circumstances, a basic ingredient is missing from the defamation claim and the Defendant is entitled to summary judgment in that respect.

23. For the sake of completeness, I need now to address Mr Rampton's other submissions in support of summary judgment. First, there is a strong argument that, *if* the Defendant had taken the opportunity to defend herself in the light of public suggestions, implications or hints to the effect that she was a murderer, she would be protected by qualified privilege in doing so. That would be in accordance with, and subject to, the well known principles governing "reply to attack". It would be necessary to show, for example, that she had communicated the relevant response on an appropriate scale and that she had gone no further than was reasonably necessary for the purpose of defending her legitimate interests: see e.g. *Vassiliev v Frank Cass & Co Ltd* [2003] EMLR 761 and *Fraser-Armstrong v Hadow* [1995] EMLR 140.

24. It is relevant, in particular, in this context that the Claimant herself had positively encouraged readers to believe that her book at least *might* be based on the Defendant's life. That was the clear implication of her "coy" remarks in the *Sunday Telegraph,* cited above. There are other comments in that article, too, which would entitle the Defendant to put her side of the matter before the public at large. Mr Rampton has also relied on other statements in the mass media in July 2005, which he attributes to the Claimant and/or Arcadia, as giving rise to a right to respond on Mrs Safra's part. I need not go into these for present purposes since I am quite prepared to assume, as I have said, that there would be a strong *prima facie* case of privilege.

25. Nevertheless, in general terms, it is not often that it will be satisfactory for a judge to uphold a defence of qualified privilege on a summary basis where it may depend, in part, on facts which are controversial and would ordinarily require to be determined at trial: see e.g. the discussion in *Kearns v General Council of the Bar* [2003] 1 WLR 1357. In that case, of course, there was no dispute as to the publication of the letter by the Bar Council. Here by contrast the assertion of publication is flatly denied.

26. If I were to rule that there was an unassailable defence of qualified privilege, therefore, it could only be on a hypothetical basis. If I proceed on the assumption, in the Claimant's favour, that her pleaded assertions are correct (as the passage from *Bataille v Newland* would require), it could hardly be appropriate for me to be selective about those assertions. Thus, if I had been prepared to make the assumption that the Defendant did indeed cause the publication of parts of the *Sunday Telegraph* article and of the *Independent on Sunday* article, contrary to the unequivocal evidence of herself and Mr Bolland, it would not be appropriate for me at the same time to dismiss the assertion of malice as manifestly unsustainable. On the hypothesis in question, I would have to assume that Mrs Safra had lied to the court in denying publication. Her motive for lying might be relevant to the plea of malice. That would make it highly unsatisfactory to rule that qualified privilege would be bound to succeed in the hypothetical circumstances. Judges are naturally wary of ruling on hypotheses generally – not least because one hypothesis tends to lead to another. Once embarked on that route, one may find oneself having to construct a whole edifice of hypotheses. I must have firmly in mind that summary judgment should be reserved for situations where the facts are clear and do not require investigation at trial.

27. Similar problems arise in relation to fair comment and justification. As to the former, there is the malice difficulty which I have already highlighted in the context of privilege.

28. Although one might at first doubt the element of public interest, it has been long established that observations about a book which has been published are likely to be classified as relating to a matter of public interest for that reason: See e.g. Gatley on Libel & Slander (10th edn.) at para. 12.35. There are, however, other barriers also to summary judgment on a defence of fair comment.

29. Mr Rampton argues that Mrs Safra's inference that the Claimant based the book on herself is capable of being treated as comment rather than fact. I am not so sure. It would be a matter for argument once the facts had been established at trial. Not all inferences are regarded by the law as matters of comment. The point was developed in *Hamilton v Clifford* [2004] EWHC 1542 (QB) at [56]-[60]:

> "56. For present purposes what matters is that English law needs to accommodate the strand of Article 10 jurisprudence which is intended to protect libel defendants, and journalists in particular, from having to prove the unprovable. It is consistent with established English principles in drawing a clear distinction between fact and comment. There is nothing inherently inconsistent with Article 10 in a body of law which requires journalists to treat facts as sacred and to be prepared to prove them where necessary. By contrast, there would be an undesirable inhibition on the journalist's role if he were also required to justify matters which are incapable of objective verification: see e.g. *Lingens v Austria* (1986) 8 EHRR 407.
>
> 57. So far as opinion and value judgments are concerned, English law has long recognised, through the defence of fair comment, that in that context honesty is the touchstone

provided the facts are accurately stated or sufficiently indicated. …

58. The rules were, however, more opaque, or at least less readily accessible, when it came to inferences drawn about facts, and especially facts which are in practice unverifiable. The classic example is of course inferences about a person's motives, reasoning or thought processes. That was the subject of Tom Bower's article in the *Branson* case. Although on one view assertions about a person's state of mind are factual in character, they are in important respects analogous to value judgments, not least because they are generally unverifiable and perceived by readers to be in their nature subjective: see e.g. *De Haes and Gijsels v Belgium* (1997) 25 EHRR 1; *Nilsen and Johnsen v Norway* (1999) 30 EHRR 878.

59. It was held, for example, in *Branson* that any reasonable reader of Mr Bower's piece would see straight away from the nature of the allegations, relating as they did to Sir Richard Branson's state of mind, that the author *could* not have direct knowledge, and that accordingly he must have been expressing his own views or inferences: [2001] EMLR 800, 805 at [8]. That is why it was held that the article was susceptible to a defence of fair comment but not one of justification. The principle was succinctly expressed in *Branson v Bower (No 2)* [2002] QB 737, 740 at [1]:

> 'A defendant should not be required to justify value judgments or opinions expressed on matters of public interest as though they were matters of objectively verifiable fact'.

See also at [27].

60. I understand it to be this point that [counsel] now prays in aid. It should perhaps be emphasised that nothing in the *Branson* decisions was intended to conflict with or undermine the repetition rule. They were not supposed to provide a way round the disciplines which the law imposes in respect of factual allegations which are objectively verifiable, e.g. to the effect that a claimant has committed a criminal offence. There is a fundamental difference in kind between saying, as Mr Bower did in the Evening Standard, 'Revenge rather than pure self-righteousness has motivated Richard Branson's latest bid to run Britain's lottery', and alleging that someone has been raped. For reasons of policy, as explained in the recent authorities in the Court of Appeal cited above, one is not permitted to seek shelter behind a defence of fair comment when the defamatory sting is one of verifiable fact. Depending on the meaning of the particular words complained of, a defendant has either to justify the primary factual allegation,

> e.g. of rape, or comply with the necessary disciplines to establish 'reasonable grounds to suspect'. Fair comment does not provide an escape route in such circumstances."

30. The allegation or inference that the book was based on Mrs Safra's life is, at least arguably, a verifiable matter of fact. The state of the Claimant's knowledge at the time she conceived and/or wrote the book, and her research methods, are issues on which it should be possible to come to a conclusion and, in particular, following disclosure and cross-examination. Those are matters which in this respect are potentially distinguishable from a person's motives, which are more susceptible to subjective interpretation.

31. As to justification, I can see great force in the Defendant's contention that the similarities are so striking that there can only be one conclusion. Yet I have to remember that the Claimant contends that it was all coincidence and that, in certain respects, she did not even know of Mrs Safra's circumstances. Of course it seems implausible. Judges are confronted, however, with implausible scenarios frequently: it does not do to jump too readily to conclusions. I have in mind the words of Simon Brown LJ in *Spencer v Sillitoe* [2003] EMLR 10 at [31]:

> "I do not think that the court's power properly extends to denying a claimant the chance of persuading a jury, albeit against all the odds, that his account of the meeting is the truth and his adversary's is not. Were the jury in this case actually to find for the claimant, I do not think that this court could then strike down their verdict as perverse; and that, as I believe, is the touchstone by which the r.24 power falls to be exercised in a case like this …".

32. Although it is often tempting to hold that a plea of justification is bound to succeed, and occasionally it is appropriate to do so with a view to avoiding wasted time and expenditure, I take the view that in this instance I would be exceeding the bounds of the jurisdiction.

33. I would not for these reasons have granted summary judgment on any of Mr Rampton's subsidiary grounds.

34. Finally I must turn to the other cause of action. As I have already demonstrated, the plea at paragraphs 5 and 6 of the particulars of claim is exiguous to say the least. The law relating to this tort has been closely analysed and recently restated in two appellate authorities: *Douglas v Hello! (No3)* [2006] QB 125 and *Mainstream Properties v Young* [2005] EWCA Civ 861, [2005] IRLR 964.

35. It is fundamental that the mental element, which is an essential ingredient of the tort, is not established merely by demonstrating that the defendant was aware that the conduct in question would be likely to cause economic harm to the claimant. Otherwise, obviously, the availability of this cause of action would inhibit a good deal of legitimate activity aimed at the advancement or protection of one's own interests. This would be especially harmful, I apprehend, in the conduct of commercial affairs.

36. It is clear from the recent authorities that a claimant must go further and establish either (a) an *intention* to cause economic harm to the claimant, as an end in itself, or (b) an *intention* to cause economic harm to the claimant because it is a necessary means of achieving some ulterior motive. So much is clear, for example, from the observations of the Court of Appeal in *Douglas v Hello!* at [159] and [223]-[224].

37. It is as plain as can be that the complaint contained in the letter of 12 July 2005 was directed to protecting Mrs Safra's own legitimate interests; in particular, of course, the right to vindicate her reputation and integrity, as reflected in Article 8 of the European Convention on Human Rights and Fundamental Freedoms. In turn, such a right is recognised among the exceptions identified in Article 10(2). On any view, the content of the book itself and the "coy" remarks of the Claimant in the *Sunday Telegraph* on 3 July were at least capable of conveying to reasonable readers that Mrs Safra is a murderer. It is common ground that she is not. In seeking to have the book withdrawn, she and her solicitors were intending to prevent such damaging allegations spreading and taking hold. That was entirely legitimate. It plainly would not accord with public policy that *bona fide*, and successful, requests for the withdrawal of defamatory allegations should be met with satellite litigation of this kind.

38. It is conceivable that, in some circumstances, the threat of libel litigation by a rich and unscrupulous complainant could be used as an economic weapon against an impecunious researcher or publisher – rather than for any legitimate purpose. Such a situation is likely to occur only rarely and a conclusion on the true motivation of the claimant would, in such a case, require the most careful and rigorous scrutiny. That is not relevant here. No one has suggested that Mrs Safra was using the law of defamation as a blunt instrument to hide wrongdoing.

39. Apart from the mental element, it has been recognised that there are two forms which the tort of inducing a breach of contract can assume. One can induce a third party to break a contract directly. In such a case, the inducement may be actionable without the need to show any other element of illegality or "unlawful means". The other form which the tort can take is that of *indirect* inducement. Where this is relied upon, it is necessary to show that the means adopted were in themselves unlawful.

40. Against this background, Mr Rampton submits that the claim should be struck out since the pleading is missing all these essential elements and thus does not disclose a cause of action.

41. It seems to me that the pleading fails to set out a foundation for any of the following ingredients:

    i) that there was any direct inducement;

    ii) that there was indirect inducement though unlawful means;

    iii) that there was an intention to cause economic harm to the Claimant (whether as an end in itself or as a means of achieving some ulterior motive).

42. In the result, the Defendant is entitled to succeed in respect of both causes of action.