Neutral Citation Number: [2009] EWHC 2838 (QB)

Case No: IHJ/09/0717

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/11/2009

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

- -

Between :

(1) LONZIM PLC	**Claimant**
(2) DAVID LENIGAS	
(3) GEOFFREY WHITE	
- and -	
ANDREW SPRAGUE	**Defendant**

- -
- -

Mr Anthony Hudson (instructed by **Mishcon de Reya**) for the Claimants
Mr Godwin Busuttil (instructed by **Stephenson Harwood**) for the Defendant

Hearing dates: 4 November 2009

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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.

.....

THE HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat:

1. This action for slander and libel arises out of a dispute between shareholders and managers of the First Claimant ("LonZim") as to the management and control of that company.

2. At the outset of these proceedings the shares in LonZim were held as to 24.25% by Lonrho Plc ("Lonrho"). It is incorporated in the Isle of Man, was set up by Lonrho in 2007 to invest in Zimbabwe, and is listed in London on the Alternative Investment Market.

3. The Second and Third Claimants, Mr Lenigas and Mr White, are the Chairman and an Executive Director of the First Claimant. But they also hold corresponding positions in Lonrho, Mr Lenigas as Chairman, and Mr White as Chief Executive Officer. Their addresses, as given to the court, are in the Isle of Man.

4. The Defendant, Mr Sprague, is a non-executive director of AMB Capital (Ireland) Limited ("AMB"), which is a subsidiary of AMB Capital Limited, an investment bank based in South Africa, of which he is the Chief Executive Officer. AMB first acquired shares in LonZim on 20 March 2009, and at the time of the AGM at which the slander was allegedly published it held a little over 20% of the share capital of LonZim. Mr Sprague lives in the Republic of South Africa. Mr White has said in his witness statement that on 14 July 2009 AMB sold approximately half its shareholding in LonZim, leaving it with only 9.25%.

5. Proceedings were served out of the jurisdiction, in South Africa, pursuant to the order of the Master dated 29 May 2009. Permission had been sought under CPR r6.36 on two bases: (i) that the claim was for an injunction ordering the defendants to refrain from further publishing the slander and libel within this jurisdiction (6BPD3.1 (2)) and (ii) that the claim is made in tort where damage was sustained within the jurisdiction or resulted from an act committed within the jurisdiction (6BPD3.1 (9)).

6. The application of Mr Sprague is not to set aside the order of the Master, but (in brief) for summary judgment under CPR r24, on the ground that the Claimants have no real prospect of success in establishing any significant publication within this jurisdiction of the words complained of, and for the proceedings to be struck out under CPR r3.4 as an abuse of the process of the court.

7. I gave my decision at the end of the hearing. These are the reasons for my decisions.

8. The Claim Form was issued on 15 May 2009. The action now relates to two publications. It originally related to three publications.

9. The first publication complained of is a slander ("the AGM slander claim"). The words complained of were allegedly spoken at the Annual General Meeting of LonZim held in London on 30 April 2009. The words complained of are said to mean that the Claimants

> "had seriously mismanaged LonZim's assets and had repeatedly paid an inflated price for assets which would not deliver a return".

10. There is an allegation that the words are calculated to disparage the Claimants in the way of their trade or business. This is a necessary averment in an action for slander where, as here, there is no plea of actual damage.

11. The words complained of do not expressly identify Mr Lenigas and Mr White. They are as follows:

> "The Investment in the Leopard Rock hotel is not a good use of shareholders money. At the price it was purchased it will not make a return for shareholders".
>
> "LonZim's investment in Beira was like "betting on a donkey in the Grand National".
>
> "LonZim is consistently overpaying for assets that will not make returns for shareholders".
>
> "The assets in LonZim's portfolio are dead and there is a better use of funds. LonZim's assets do not have a life in any environment".

12. The AGM was attended by shareholders of LonZim and by others who had a sufficient interest in its affairs to be allowed entry. No Defence has been served, and I have received no submissions on the defences which might be expected to be raised in such a case, such as qualified privilege and fair comment. The submissions for Mr Sprague on this slander allegation focus on the mild and impersonal nature of the alleged meaning, and the very small number of persons alleged to have heard the words complained of, and the association, of at least two of them, with the Claimants.

13. The second publication complained of is alleged to be through the online edition of a South African weekly magazine called 'Financial Mail' ("the Financial Mail libel claim"). The print issue of that magazine was dated 1 May 2009, and it is said that the online edition is still accessible. The main issue in relation to this complaint is whether there is any evidence of substantial publication (and therefore damage sustained, or a tort committed) within this jurisdiction. Mr Sprague had spoken to a journalist from that magazine in South Africa, and she had included in an article headed 'Revolt over LonZim assets' a number of quotations from Mr Sprague. The words complained of are:

> "**An epic battle is looming** between the board of African conglomerate Lonrho and activist shareholders over the fate of LonZim, a subsidiary which was set up by Lonrho in 2007 "to invest in the recovery of Zimbabwe".
>
> The consequences could be dramatic: the entire board could be sacked and all the assets sold and the cash returned to shareholders.
>
> SA-based AMB Capital, through its Irish subsidiary, which has a 20.75% stake in LonZim, has called an emergency general

meeting to vote out the current board and replace them with four new AMB-nominated directors.

Dave Lenigas – Divestment of policy

"This has the potential to be a long, drawn out and potentially hostile affair," says AMB director Andrew Sprague.

AMB is supported in its action by Damille Partners IV, which owns 6.25% in LonZim. The board of Lonrho, which holds 20% equity stake in LonZin, will fight AMB's proposals.

It sees the action as "a divestment policy which is not in the best interest of shareholders", says Lonrho chairman Dave Lenigas. "AMB bought its equity in LonZim at an extremely low average price of 16p/ share. This is below the current market price. If AMB is permitted to sell the assets and return capital to shareholders, it will make a profit on its investments if it can deliver an exit price of over 16p/ share. The majority of other shareholders will not."

The long-term success of these investments is dependent on resurgence in the Zimbabwean economy. Divesting the portfolio now will deprive shareholders of significant value, says Lenigas.

Sprague disagrees. "Lonrho [which manages the operations of LonZim] has mismanaged the assets. LonZim is overpaying for assets that will not deliver a return, even when the economy recovers."

LonZim recently acquired the Leopard Rock hotel for US$8m. "It's a 50-room hotel with a lovely view and golf course. But at that price it will never deliver a return to shareholders," says Sprague.

He also questions the strategy. Deals are funded from equity, without including debt financing. Big projects are planned in areas that lack basic infrastructure. There are also corporate governance blunders.

Last year LonZim spent £3m buying nearly 60m shares in Lonrho, without informing shareholders. "This is not LonZim's mandate. The deal was done because the parent company was running out of money," says Sprague. Lonrho also doubled executives' pay and reduced the cost of executive options from 44p to 6p, without informing shareholders. "This is self enrichment at its best," says Sprague.

> AMB does not intend that LonZim pulls out of Zimbabwe. "We believe in the opportunity, but there are better assets to invest in."

14. It is pleaded that these words mean that the Claimants

> "(i) had mismanaged LonZim's assets and had repeatedly paid an inflated price for assets which would not deliver a return; (ii) had improperly, and contrary to their mandate and the interests of shareholders, purchased nearly 60m shares in Lonrho for the improper reason that Lonrho was running out of money; (iii) had cynically and greedily indulged in self-enrichment at the expense of, and contrary to the interests of, shareholders."

15. There had originally been a third claim, namely for slander in respect of the words spoken by Mr Sprague to the journalist which were republished by the Financial Mail. This was abandoned by the Claimants when Mr Sprague produced evidence that the conversation took place in South Africa. I have not had to enquire how that claim ever came to be included in the Claim Form for which permission was obtained to serve out of the jurisdiction.

16. The Claimants have now issued their own Application Notice dated 14 October 2009 for permission to amend the Claim Form to introduce a fourth complaint. This complaint is in respect of a second article in the Financial Mail containing the following quotation from Mr Sprague spoken to the journalist on 7 August 2009:

> "We think [the Claimants] will clean up their act with regard to corporate governance – that will be good for all shareholders".

17. The meaning complained of in relation to this article is that the Claimants

> "managed and continue to manage LonZim without regard to the principles of good corporate governance".

THE APPLICABLE LEGAL PRINCIPLES

18. The relevant law is set out in the judgment of the court in *Jameel v Dow Jones* [2005] QB 946 as follows:

> "40 We accept that in the rare case where a claimant brings an action for defamation in circumstances where his reputation has suffered no or minimal actual damage, this may constitute an interference with freedom of expression that is not necessary for the protection of the claimant's reputation. In such circumstances the appropriate remedy for the defendant may well be to challenge the claimant's resort to English jurisdiction or to seek to strike out the action as an abuse of process. We are shortly to consider such an application.....
>
> 54 … An abuse of process is of concern not merely to the parties but to the court. It is no longer the role of the court

simply to provide a level playing field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice. …

55 There have been two recent developments which have rendered the court more ready to entertain a submission that pursuit of a libel action is an abuse of process. The first is the introduction of the new Civil Procedure Rules. Pursuit of the overriding objective requires an approach by the court to litigation that is both more flexible and more proactive. The second is the coming into effect of the Human Rights Act 1998. Section 6 requires the court, as a public authority, to administer the law in a manner which is compatible with Convention rights, in so far as it is possible to do so. Keeping a proper balance between the article 10 right of freedom of expression and the protection of individual reputation must, so it seems to us, require the court to bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the claimant's reputation, which includes compensating the claimant only if that reputation has been unlawfully damaged.

56 We do not believe that *Duke of Brunswick v Harmer* 14 QB 185 could today have survived an application to strike out for abuse of process. The Duke himself procured the republication to his agent of an article published many years before for the sole purpose of bringing legal proceedings that would not be met by a plea of limitation. If his agent read the article he is unlikely to have thought the Duke much, if any, the worse for it and, to the extent that he did, the Duke brought this on his own head. He acquired a technical cause of action but we would today condemn the entire exercise as an abuse of process....

66. ... It is … not legitimate for the claimant to seek to justify the pursuit of these proceedings by praying in aid the effect that they may have in vindicating him in relation to the wider publication....

69 If the claimant succeeds in this action and is awarded a small amount of damages, it can perhaps be said that he will have achieved vindication for the damage done to his reputation in this country, but both the damage and the vindication will be minimal. The cost of the exercise will have been out of all proportion to what has been achieved. The game will not merely not have been worth the candle, it will not have been worth the wick.

70 If we were considering an application to set aside permission to serve these proceedings out of the jurisdiction we

> would allow that application on the basis that the five publications that had taken place in this jurisdiction did not, individually or collectively, amount to a real and substantial tort. Jurisdiction is no longer in issue, but, subject to the effect of the claim for an injunction that we have yet to consider, we consider for precisely the same reason that it would not be right to permit this action to proceed. It would be an abuse of process to continue to commit the resources of the English court, including substantial judge and possibly jury time, to an action where so little is now seen to be at stake. Normally where a small claim is brought, it will be dealt with by a proportionate small claims procedure. Such a course is not available in an action for defamation where, although the claim is small, the issues are complex and subject to special procedure under the CPR".

19. As to proof of publication, it is established that in the case of a complaint concerning the internet, there is no presumption of law on which a claimant can rely. The claimant must prove publication. He may do this by inference, when such an inference is one that is open to a jury, properly directed. See *Al Amoudi v Brisard* [2007] 1 WLR 113. Juries are directed that they must not speculate, and that a fact is proved if they find that it is more likely than not that it occurred.

THE AGM SLANDER CLAIM

20. The AGM was not open to the public. Some 30 or so people attended, and they did so on the basis that they had a sufficient interest in, and knowledge of, the affairs of LonZim to be permitted to do so. That much is agreed. The Claimants rely on the knowledge of the publishees of LonZim and its management to support the inference that the publishees would have understood the slander complained of as referring to Mr Lenigas and Mr White.

21. In the Particulars of Claim the Claimants plead publication of the alleged slander as follows:

> "During a break in the AGM a conversation took place between the Defendant and a number of people, including a number of LonZim shareholders and representatives from LonZim's brokers and LonZim's public relations company. During the conversation, the Defendant spoke and published in the presence of all persons present [the words complained of] … "

22. In Further Information supplied on 24 June 2009 the Claimants add:

> "It is not possible for the Claimants to definitively list all of the persons who were present in the room when each of the allegations was made. However, the Claimants can confirm that there were between five and seven individuals present at the time that some or all of the allegations complained of were made and these included: James Etherington of Renaissance

> Capital Limited, Charles Vivien of Pelham PR and Simon Jacobs of GH International Trading Services Limited".

23. The Claimants have submitted a witness statement from Mr Etherington. He states that whilst he was with Renaissance Capital, an investment bank, he worked as a consultant on projects for clients including LonZim. He is now an associate director of ABN Amro Bank NV. He attended the AGM in his capacity as a representative of LonZim's broker. Part of the business of the meeting was to consider a resolution by AMB to remove LonZim's directors from the Board and to replace them with directors from AMB, and to change the investment strategy of LonZim. While votes were being counted, he joined a group of two or three people who were with Mr Sprague, but whose identities he does not know. Charles Vivian came to join the group. One of those present was asking questions about the finances of AMB's proposals. After hearing the words complained of, Mr Etherington asked Mr Sprague to be less partisan in the factual assertions he was making in relation to LonZim's management and investments, and to clarify and/or correct some of the misleading inferences he was making. The resolutions proposed by AMB were eventually defeated at an EGM of LonZim's shareholders held on 30 July 2009. Mr Etherington ends his statement saying that the discussions which took place at the AGM were entirely professional.

24. In his witness statement dated 13 October 2009 Mr White gives evidence that Mr Etherington and Mr Vivian informed him that there were three or four other people present when Mr Sprague made the allegations complained of.

25. Two others have been identified as being present at the AGM talking to Mr Sprague. These have not given statements to the Claimants, but their involvement is described in a letter from the Claimants' solicitors dated 17 July 2009. The third person told the solicitors that he heard only the first of the four statements allegedly spoken by Mr Sprague and now complained of. A fourth person present has allegedly told the Claimants' solicitors that he heard the words complained of. He has also given information to Mr Sprague, including that he had not heard Mr Sprague "say anything he regarded as defamatory".

26. I infer from the correspondence and witness statements that this issue has now been fully investigated by both sides. Mr Busuttil submits, and I accept, that there is no real prospect of the Claimants now identifying any further witnesses who might give evidence that they heard Mr Sprague speak the words complained of.

27. Mr Busuttil submits that this evidence does not disclose the commission of a 'real and substantial tort' (*Jameel* para [70]). Assuming that the words complained of are defamatory at all, they are at the trivial or innocuous end of the range of such meanings. At least two of those present, Mr Etherington and Mr Vivian, were 'members of the Claimants' camp' being representatives of professional advisers or agents of LonZim (*Jameel* paras [17] and [30] and *Brunswick v Harmer*). While it is not an essential constituent of the tort of slander that any publishee should have thought the worse of the claimant, it is notable that no evidence is adduced by the Claimants that any publishee has thought any the worse of the Claimants as a result of hearing what Mr Sprague said.

28. Mr Hudson submits that there is no real factual dispute in relation to the slander. The publishees are people important to the Claimants and the allegations are serious. He invited a comparison with the words complained of by Mr Kiam in *Kiam v MGN Ltd* [2003] QB 281, and with the allegations against a doctor in *Houston v Smith* (unreported 16 December 1993) summarised in para 38 of that report. The meaning complained of in *Kiam* included that, through the claimant's professional failures, the company he managed faced imminent collapse. The meaning complained of in *Houston* is sexual harassment of a colleague and staff, published in the presence of several patients of the claimant.

29. Mr Hudson's submissions were made in respect both of the AGM slander and of the Financial Mail libel. In my judgment, in the case of *Kiam*, the number of readers of the newspaper, and the gravity of the meaning complained of, both take that case outside any reasonable comparison with the number of publishees and the meaning complained of in relation to the AGM slander claim. And in the case of *Houston*, while the number of publishees is comparable to those in the AGM slander claim, the gravity of the meaning complained of is in a different order altogether from the gravity of the alleged slanders.

30. Mr Hudson submits that the Claimants wish to obtain vindication and an injunction. An injunction is necessary because there have now been three defamatory publications by Mr Sprague. Mr Sprague has not filed a defence, nor indicated what his defence might be. If he has a defence, then the matter should go to trial.

31. I am at a loss to understand what vindication the Claimants might obtain from the verdict of a court, or why, or on what grounds, this claim in slander is being brought at all. The professional people and (I shall assume) the one or two shareholders of LonZim, to whom the alleged slanders were spoken, were at the AGM to vote, or attend upon the vote, in respect of resolutions, including that proposed by AMB. Mr Lenigas and Mr White won on the resolutions which were eventually put to a vote at an EGM of LonZim held on 30 July 2009. This dispute is already history. I cannot imagine why the opinions of any of alleged publishees concerning the Claimants would be influenced one way or another by any verdict on these matters to be given by a jury or judge. Any such verdict could only be given many months after the underlying dispute had been resolved. It has in practice been resolved through the votes in the meetings of LonZim, and the subsequent disposals by AMB of their shareholdings. What Mr Sprague is alleged to have said is clearly opinion, and whether his opinions were right or not will be proved (if at all) by the gains or losses that may eventually be made by LonZim on the assets in question. The publishees themselves were as well placed as Mr Sprague to form their own opinions. The meanings complained of do not relate to the personal reputations of Mr Lenigas and Mr White (LonZim, as a corporation, has no personal reputation for this purpose), but only to their professional judgment or competence.

32. The prospect of the Claimants obtaining an injunction is unreal. Any damages could only be very small. They would be totally disproportionate to the very high costs that any libel action involves.

33. It is not enough for a claimant to say that a defendant to a slander action should raise his defence and the matter go to trial. The fact of being sued at all is a serious interference with freedom of expression: *Jameel* paras [40] and [55]. The prospect for

a shareholder at a company meeting of being sued by claimants such as these, for expressing opinions or views such as those alleged here to be slanders, would inhibit free expression. It would be very much against the public interest. The public interest in relation to company meetings is that there should be a free expression of views, and that differences be resolved by the votes cast.

34. If the expression of such views is to give rise to a slander action, there must be reasonable grounds for bringing that action. It is the duty of the court to bring to an end proceedings that are not serving the legitimate purpose of defamation proceedings, which is to protect the claimant's reputation. I have no hesitation in categorising this part of the claim as an abuse of the process of the court. The claim is vexatious.

THE FINANCIAL MAIL LIBEL CLAIM

35. The main issue in respect of this part of the claim has been whether there is any evidence of publication within England and Wales.

36. The evidence in support of the application for permission to serve out was in the form of a witness statement of Mr Rhodes of Mishcon de Reya, the Claimants' solicitors. He stated that:

> "A significant proportion of The Financial Mail's website's daily traffic is comprised of users from within this jurisdiction … The Claimants have a good cause of action against the Defendant … the Claimants have a good claim with a reasonable prospect of success".

37. The witness statement was so drafted to meet the requirements of CPR 6.37. The evidence of significant publication within the jurisdiction also reflected the law that where an action is brought under that rule in this jurisdiction the damages awarded must be based only on the publication to publishees within this jurisdiction: *Shevill v Presse Alliance SA* [1995] 2 AC 18 and *Jameel* para [66].

38. It is not apparent on what basis Mr Rhodes felt able to make in his statement the assertion that a significant proportion of The Financial Mail's website's daily traffic is comprised of users from within this jurisdiction. None of the evidence before me supports that.

39. The first evidence as to any publication within this jurisdiction which condescends to any detail is that of Mr Sprague in his witness statement of 29 July 2009, made in support of his application made on 30 July. He made enquiries of the publishers of The Financial Mail's website, and he sets out detailed reasons for saying that there is no evidence of online publication within this jurisdiction. The publishers informed him that in the period 1 May 2009 to 30 June 2009 (the two months starting with the date of first publication in South Africa) their records showed a total of 65 visits to the specific article in which the words complained of appear. It is not possible to say whether these visits included more than one visit by the same person. Nor is it possible to say in which jurisdiction the visitors were located. However, the publishers did say that on average approximately 6.79% of visits to their website are made by users of the internet based in the United Kingdom. If the average percentage

of 6.79% is applied to the 65 visits, the result is that about 4 visits might have been made by one or more visitors based in the UK. It is not possible to say how the 6.79% average figure might be attributed to which of the different jurisdictions within the UK. London is not the only important financial centre in the UK. Edinburgh is another.

40. The evidence for the Claimants in response to Mr Sprague's application was in a witness statement from Mr White dated 13 October 2009. Mr White does not challenge the factual evidence of Mr Sprague, although he criticises it by way of argument. Nor does he give any evidence of any enquiries made on behalf of the Claimants into the extent of publication (if any) within this jurisdiction of the words complained of as the Financial Mail libel. Instead he exhibits an e-mail dated 30 April 2009. It is addressed to himself, and generated by the Google Alerts service. It reproduces an extract from the article in which the words complained of appear. The extract does not itself include the words complained of. It would be necessary to click on the link to read the words complained of. The search term for the alert is 'lonrho', and the e-mail lists a number of hits, that is extracts from, and links to, other articles in which the word Lonrho appears.

41. Mr White asserts that many people within the jurisdiction are likely to have alerts set up for 'LonZim'. In support of this he refers to nothing which occurred before 7 August, the date of the publication of the second Financial Mail article, which is the subject of the application to amend. Nor does he give any reasons for his assertion. He exhibits three e-mails which were sent to him by correspondents in England referring to the 7 August article. One of these is from a correspondent who had received a Google e-mail alert with the search term 'lonrho africa'. This correspondent is a representative of a company which had previously undertaken corporate intelligence work for a company of which Mr White was a director. Another is a solicitor who had acted for Lonrho in the past. The third is a representative of LonZim's broker Renaissance Capital: see paragraph 23 above.

42. Mr White's evidence is supplemented by a letter from his solicitors in response to a request for further information, which is dated 24 June 2009 and includes a formal statement of truth. In that letter Mr Rhodes states that a search was carried out on 22 June 2009 through a company called Alexa Internet, which specialises in internet navigation and intelligence. The search was for a three month average of the website of the Financial Mail and he states that it indicated that the site is visited by approximately 330 visitors who access the site from the UK. The information he gives does not relate to the specific articles containing the words complained of, nor does it identify in which jurisdiction within the UK the visitors might have been located. Similar information is given in a letter from the Claimant's solicitors dated 17 July 2009, in which is also stated that 'identical searches' were carried out before the claim was issued. If so, the results of the earlier searches have not been given.

43. Mr Hudson advances criticisms of the evidence adduced by Mr Sprague from the publishers. I do not have to consider these criticisms, because they do nothing to strengthen the case for the Claimants, and it is the Claimants who bear the burden of proof on the issue of publication. He submitted that the Claimants should have further time in which to investigate whether there have been publications in England. I reject that. I have seen nothing to suggest that there is a real prospect of any further evidence emerging. I would add that an application for permission to serve out of the

jurisdiction is a serious matter, and such investigations should have been made before any witness statement included an assertion that there had been substantial publication within the jurisdiction and that there is a good cause of action with a reasonable prospect of success.

44. Mr Hudson also referred to the fact that the words complained of are still accessible on the internet. The publishers of the website are not defendants to these proceedings. Whether an interviewee such as Mr Sprague remains liable for a republication of his words on the internet indefinitely after he has given an interview to the journalist, is a question which may arise in another case. In the present case there is no evidence as to complaints made by the Claimants to those responsible for the website, and nothing to suggest that Mr Sprague could do anything to modify or stop the continued availability of the articles in question online.

45. I do not have to decide whether, if this was all the evidence on publication adduced before a jury, the case would have to be withdrawn from them. The position may well be that it would. It seems to me that whether or not any person in this jurisdiction read the words complained of in the Financial Mail libel is a matter of speculation and no more. What I do decide is that, taken at its highest, this is evidence at best of minimal publication of the words complained of in the Financial Mail libel (and likewise for the 7 August complaint), and certainly not evidence of any substantial tort committed within the jurisdiction.

46. The meaning complained of in relation to this cause of action is somewhat more serious than that complained of in relation to the AGM slander. But in the light of my decisions in relation to the extent of publication, I do not need to consider further the gravity of the alleged libel.

47. Assuming that there was minimal publication within this jurisdiction, there is no prospect of an award of damages greater than a very modest sum, and no prospect of an injunction being granted. The costs and court resources that would be required to achieve this would be disproportionate.

THE PROPOSED AMENDMENT

48. The article in the Financial Mail dated 7 August 2009 under the headline 'Failed Coup' starts as follows;

> "A fierce bid to unseat LonZim executives, review its investments and commitments and return cash to shareholders fizzled to nothing at an extraordinary general meeting (EGM) last week.
>
> The EGM was called by minority shareholders [AMB] …
>
> But the attempt to shake up LonZim failed as AMB and Damille were unable to generate the necessary shareholder support …
>
> Andrew Sprague – Disappointed

> …
>
> [there then follow the words complained of, followed in turn by quotes from Mr White and from others]"

49. This claim suffers from the same fatal defects as the Financial Mail libel. In addition, although I do not have to consider this in detail, the gravity of the meaning alleged is much less than that alleged in the Financial Mail libel. If it had been included in the original proceedings (which of course it could not have been, by reason of the date), then I would have struck it out for the same reasons as I struck out the Financial Mail libel.

50. If I had considered that the claim would not be an abuse of process, I would still not have given permission to amend. I would have struck out the existing proceedings and left it to the Claimants to ask again for permission to serve out, if so advised.

OTHER MATTERS

51. While I have not taken this into account in reaching my decisions set out above, there is further evidence which would support the conclusion that this claim is an abuse of process in a different sense. That is, that it is being pursued for reasons other than to obtain vindication of the Claimants' reputations.

52. On 15 July 2009 Mr Lenigas personally sent the following e-mail to Mr Sprague (notwithstanding that at that time they were both represented by solicitors):

> "… I will nail you to the corporate cross for the stuff you said about us. It was wrong and seriously out of order.
>
> I will be calling your chairman tomorrow to discuss.
>
> I will also get a whole lot of African governments involved.…
>
> You should have worked with us not against us. Zim government now has a sick view of your life.
>
> I will stomp your corporate head …
>
> I hope they replace you at AMB …
>
> You are a disgrace to the Zim race…"

CONCLUSION

53. The action will be struck out. The Claimants' application for permission to amend the Claim Form is dismissed.

54. I consider the claims in these proceedings to be totally without merit. Pursuant to CPR 3.4(6) I am required to record this fact.