Neutral Citation Number: [2010] EWHC 2710 (QB)

Case No: HQ08X03657

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/10/2010

Before :

THE HONOURABLE MRS JUSTICE SHARP DBE

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Between :

Cristiano Ronaldo	**Claimant**
- and -	
Telegraph Media Group Limited	**Defendant**

- -
- -

James Price QC and Adam Speker (instructed by **Schillings**) for the **Claimant**
David Price of **David Price Solicitors & Advocates** for the **Defendant**

Hearing dates: 22nd October 2010

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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 HONOURABLE MRS JUSTICE SHARP

Mrs Justice Sharp:

1. The trial in this libel action is due to begin on the 8 November 2010. Last Friday afternoon, I heard an application by the defendant, Telegraph Media Group Limited, for this action to be stayed as abuse of the process of the court. At the hearing, on the application of the *Telegraph* I made an Order pursuant to section 4 (2) of the Contempt of Court Act 1981 that there should be no reporting of the hearing because it was anticipated that mention may be made of matters it might not be appropriate for a jury to know about. In view of the imminence of the trial, I continue that order (which for the avoidance of doubt covers any report of this judgment) until after the trial of this action or the litigation otherwise comes to an end.

2. I have decided that the *Telegraph's* application should be refused, and these are my reasons.

The action

3. The action is brought by Cristiano Ronaldo who is a world famous footballer against the publishers of the *Daily Telegraph* ("the *Telegraph*"). He sues in respect of an article published in the *Telegraph* on the 18 July 2008 headed: "Ronaldo back in the limelight" which appeared in the Sports Section of the *Telegraph*. He also sues for the publication of the same article on the *Telegraph*'s website, this time headed: "Cristiano Ronaldo's night out in LA sure to anger Sir Alex Ferguson and Man United." Both articles were illustrated by a photograph of Mr Ronaldo on crutches. The article in the newspaper was a prominent one at the top of the page, of which it occupied between a third and half; and it was flagged up by a "taster" on the front page of the Sports Section, also illustrated by a photograph of Mr Ronaldo on crutches. It is fair to say, as Mr James Price QC who acts for Mr Ronaldo, submits, that the story itself is treated as one of the most significant of that day's sports stories.

4. Publication was substantial. About 778,585 hard copies of that edition of the *Daily Telegraph* were sold, and there were about 21,000 visits to the online article. It is generally accepted that readership is a multiple of circulation; and on that basis, it will have run into millions.

5. At the time the article was published, Mr Ronaldo played for Manchester United, managed then, as now, by Sir Alex Ferguson. It is common ground that Mr Ronaldo had surgery to his ankle on 7 July 2008, and remained in hospital to 10 July 2008. He would have been due to begin pre-season training at about this time, but was given time off to recover from the operation.

6. The natural and ordinary meaning complained of in the amended Particulars of Claim is this:

> "By partying in the Hollywood nightclub, Villa, where he danced without his crutches and drank copious amounts of champagne when he was recovering from his recent ankle operation, [Mr Ronaldo] was behaving unprofessionally, irresponsibly and with a reckless indifference to his recovery."

7. There is a claim for aggravated damages in which it is said amongst other matters, that the article was distressing for Mr Ronaldo because he takes his health and fitness extremely seriously, rarely drinks alcohol and had not been drinking that evening, and did not take to the dance floor, with or without crutches. It is also said that the *Telegraph* delayed responding to Mr Ronaldo's letter of complaint, and when it did respond it sought to make a news story out of its error by seeking Mr Ronaldo's agreement to a clarification that provided him with "a further opportunity to underlie his commitment to Manchester United" a matter that had nothing to do with the *Telegraph*, and did not address Mr Ronaldo's complaint. Reliance is also placed on the terms of the *Telegraph*'s defence and amended defence, and its implicit acceptance, because of the way the defence is pleaded, that there were substantial inaccuracies in it (because of the failure to defend "the central allegation that [Mr Ronaldo] put down his crutches to dance and drank copious amounts of champagne") and the failure to correct those inaccuracies.

8. Mr James Price says that Mr Ronaldo was a professional sportsman, and a very highly paid one. It was plainly his duty to his Club and to his fans to ensure he was fit to resume training at the earliest time, and not to jeopardise his recovery, or even worse, to risk further injury to his ankle. It follows he says, that a jury could well take the view that this is a serious libel of Mr Ronaldo, both professionally and personally, suggesting as it does that he is willing to put his own passing pleasures ahead of his fitness and his duties to his Club and the fans. He draws attention to the fact that the article says that Mr Ronaldo and his party of four models, were served with £10,000 worth of Cristal champagne. Even if a Los Angeles nightclub was able to charge £250 a bottle that would mean 40 bottles of champagne had been served.

9. In the *Telegraph*'s defence (as re-amended) it is denied that the words are defamatory, and the reasons for that are set out in some detail. It is said that the article is seeking to draw a "tongue in cheek" comparison between the characterisation of Mr Ronaldo as a "slave" by Sepp Blatter, the Fifa president, because of Manchester United's refusal to grant him his dream move to Spain, a characterisation with which Mr Ronaldo agreed, and the celebrity lifestyle he appeared to be pursuing in Los Angeles. It is also said the article is not about Mr Ronaldo's operation, or his recovery programme.

10. In the alternative, the *Telegraph*'s defence is that the article is true, or substantially true. The meaning which the *Telegraph* alleges to be true is this:

> "Shortly after having undergone surgery on his ankle and when he would otherwise have been due to return for pre-season training and having publicly agreed with the suggestion that he was being treated like "a slave" because of Manchester United's refusal to allow him to terminate his contract in order for him to fulfil his wish to move to Real Madrid and having behaved out of line with the reasonable expectations of Manchester United, [Mr Ronaldo] went on an unnecessary trip to Los Angeles unconnected with Manchester United, notwithstanding the reservations of his medical team, during which he "lived it up" and went "out on the town" on crutches, thereby unnecessarily increasing the risk of injury to the ankle and/or lengthening the requisite period of recovery and absence

> from football and generating inevitable media coverage including photographs."

11. This plea is supported by twenty six paragraphs of particulars. As to aggravated damages amongst other matters, the *Telegraph* denies that it sought to make a news story out of Mr Ronaldo's complaint, or that the proposed clarification had nothing to do with his complaint and did not address it. It is also denied that there are substantial inaccuracies in the article.

12. It is said, by Mr David Price who appears on behalf of the *Telegraph*, that the "originator" or "original publisher" of the story of which he says the material part of the article complained of in the *Telegraph* was a report, was the *Daily Mirror* ("the *Mirror"*). On Thursday, 17 July 2008 the *Mirror* published a front page article described as an EXCLUSIVE with the banner headline, RON THE LASH, illustrated by a photograph of Mr Ronaldo on one side (on crutches), and one of Paris Hilton on the other. Along the bottom of the page in large type are three sub headlines: underneath the photograph of Mr Ronaldo: "Man Utd's crocked star "dancing" at club"; "He spends £10,000 on bubbly and vodka"; and underneath the photograph of Miss Hilton: "He snubs Paris Hilton for posse of sexy models." The full story on page 7 is in the same vein, with the headline: "One hell of a do, Ron".

13. Mr Ronaldo sued the *Mirror* for libel in respect of its article. In his claim against the *Mirror*, Mr Ronaldo relied in aggravation of damages on seven republications: two were of blogs, two were in the *Sun* newspaper, one was in the *Star* newspaper, one was in the *Evening Standard* and one was in the *Western Mail*. The *Mirror* defended its article by a plea of justification, which included in it, an allegation that Mr Ronaldo had been drinking and attempting to dance whilst at the Villa nightclub in Hollywood.

14. Both the *Mirror* and the *Telegraph* relied in their defences on section 12 of the Defamation Act 1952[1] . In the *Telegraph* defence, it was said that:

> "[Mr Ronaldo] has made claims against MGN Ltd and Sports Newspapers Ltd in respect of the publication of words to the same or similar effect as the words on which he has brought these proceedings. [The Telegraph] reserves the right to rely on these and any other claim under s.12 of the Defamation Act 1952."

15. On 14 October 2009, shortly before the actions were due to be tried,[2] both actions came before me for a pre trial review. The substantial matter in dispute was whether the actions should be tried at the same time, before the same judge and jury. Mr Ronaldo's counsel, Mr Adam Speker, invited me to order they should be on the grounds that it would save time and costs. This application was strenuously resisted by Mr David Price, on behalf of the *Telegraph*.

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[1] This provides that: "In any action for libel or slander the defendant may give in evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication."

[2] The trial date was then set for the 9 November 2009.

16. Because I was persuaded that there was a risk of injustice to the *Telegraph* if the actions were tried together, I refused the application, even though extra costs would be incurred if the actions were tried separately. [3]

17. When resisting the application, Mr Price submitted amongst other matters, as my ruling recorded at [20]-[21], that there was a real risk of prejudice to the *Telegraph* if the two actions were heard together because there are important differences between them: first, as to the nature and character of the articles, and second, as to the defences which are relied on in both. It was said that the character and content of the two articles are very different; and that the plea of justification relied on by the *Telegraph* was both narrower in some respects, and broader as to the matters relied on than that relied on by the *Mirror*.

18. Given the differences between the two articles and actions, including as to the meanings defended, it was said there was real risk that the *Telegraph* would be "tarred with the same brush" as the *Mirror*.

19. Mr Price also submitted that:

> "[A]lthough section 12 is relied on by each defendant, it would be better if the jury in the *Telegraph* action had the benefit of considering what actual sum was awarded against the *Mirror*, if any, when considering what sum, if any, should be awarded in respect of the words complained of in the Telegraph action."

20. For listing reasons it did not prove possible to accommodate two jury trials, one after the other, and the *Telegraph* (as it was entitled to do) did not accede to the alternative suggestion made by me after my ruling, that its trial could be heard immediately after the *Mirror* trial, by judge alone, that is, the same judge who had dealt with the *Mirror* trial, though Mr Ronaldo would have been content with that course. Thus the *Telegraph* action had to be taken out of the list and the trial date re-fixed.

21. The *Mirror* action subsequently settled shortly before it was due to be tried. The terms of settlement included payment of damages of £25,000, and of Mr Ronaldo's reasonable costs of the action and the reading of a Statement in Open Court. The statement was read out on the 9 November 2009. In it, the substance of the allegations made by the *Mirror* was set out, the *Mirror* accepted the allegations it had published were untrue, and apologised for having made them. It was also said that Mr Ronaldo had been paid substantial damages by the *Mirror* and that Mr Ronaldo considered himself to be fully vindicated.

22. Following that settlement, there appear to have been difficulties between the parties to this action agreeing the terms of the order made at the PTR. This delayed the re-fixing of the trial; and in the event, in April this year it was fixed, as I have said for 8 November 2010.

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[3] See [2009] EWHC 2862 (QB). In that ruling I also dealt with the history of the amendments to the pleadings, and reference can be made to it for that background if necessary.

The application to stay this action

23. On 11 October 2010, the *Telegraph* issued the application to stay this action as an abuse of the process in reliance on the principles developed by the Court of Appeal in *Jameel (Youssef) v Dow Jones & Co Inc.* [2005] QB 946, CA. The three grounds referred to in the application notice itself are these. First the claim as advanced in the Amended Particulars of Claim does not (or does not any longer) serve the legitimate purpose of protecting Mr Ronaldo's reputation. Second, the continuation of the claim is a restriction on the *Telegraph's* freedom of expression which is not necessary for the protection of Mr Ronaldo's reputation. Third, the costs and court resources involved in a trial would be disproportionate to any legitimate advantage to Mr Ronaldo in pursuing the claim to trial. The evidence relied on in support in Part C of the application notice centres on the *Mirror* settlement.

24. The original meaning pleaded in the Particulars of Claim prior to amendments made in October 2009, relied on a natural and ordinary meaning and an innuendo meaning. What was pleaded was this:

> "In their natural and ordinary meaning the said words meant and were understood to mean that by partying and drinking champagne when he should have been recovering from his recent ankle operation, the claimant was deliberately behaving in a manner calculated to dismay and/or anger his manager, Sir Alex Ferguson.
>
> By way of innuendo the said words meant and were understood to mean that the claimant, who was, following his ankle operation, supposed to be resting and recuperating at a rehabilitation clinic in order to ensure that he would be able to return to playing football as soon as possible, instead flew to Hollywood where he went partying in nightclubs, dancing without his crutches, drinking champagne and deliberately behaving in a manner calculated to dismay and/or anger his manager, Sir Alex Ferguson".

25. Although his skeleton argument contained a considerable number of observations on various developments in the law of defamation and the *Jameel* jurisdiction, Mr David Price's submissions may be summarised as follows. First, it is said that as a result of the amendment to meaning, Mr Ronaldo's claim to vindication in this action is no different to that in the Mirror action, with the result that vindication of his reputation in that action (widely reported, including by the *Telegraph*) has now vindicated his reputation in this one. He has it is said, no other legitimate reason to pursue his action, and there has been no evidence from him that he has, in the absence of a threat to republish, an existing offer by the *Telegraph* to "disavow" the allegations, and in the light of the fact that the defamation here (if it be one) is not serious.

26. Second, it is said, the *Telegraph* was, in effect, the reporter, not the originator of the allegation complained of. The court it is said should be readier to apply the *Jameel* principles in such circumstances, having regard to existing ECHR principles relating to reported speech, the importance of freedom of expression for defendant publishers

and the fact in particular, that the originator, is in a better position to provide true vindication than a mere reporter (and damages can be claimed in the original action for the republication as well).

27. In effect, Mr David Price submits this action is "lawyer driven" and is only maintained now so Mr Ronaldo can recover his (considerable) costs in bringing it rather than for the legitimate purpose of vindication. He submits in essence that Mr Ronaldo is the victim of his own success in the *Mirror* action. Where satisfaction has been obtained from the original publisher, as here, the right course is for the successful claimant to discontinue against the republisher, and if appropriate, make an application for his costs on discontinuance.

28. Mr David Price accepts the application is made late in the day, but he relies on the delay in bringing the matter to trial by Mr Ronaldo, and the additional developments in the *Jameel* jurisdiction – in particular the decision of Tugendhat J in *Hays v Plc v Hartley* [2010] EWHC 1068 (QB) - which he submits support his application and which have occurred since this action was re-listed for trial in April 2010.

29. Mr James Price submits that notwithstanding the *Mirror* settlement, it remains the case, in accordance with well settled principles, that Mr Ronaldo is entitled to proper compensation and vindication for a serious (and certainly non-trivial) libel published to millions of readers, which is completely untrue. This is particularly so where the *Telegraph* continues to run a full plea of justification. He submits the application is made unacceptably late, and is, in reality, a last throw of the dice by a defendant facing an imminent trial. He submits had I been told at the PTR that the consequence of success against the *Mirror*, either as a settlement or after a trial was that the *Telegraph* action would be struck out as an abuse, I might have declined to make the order that the trials should be heard separately. And he invites me to consider what would have happened had I not made that order: namely that the jury would have been invited in accordance with well-established principles, to assess damages for each publication taking account of the fact by virtue of section 12 of the Defamation Act 1952, there should be no "double recovery".

30. He submits on the facts, where clearly the *Mirror* and the *Telegraph* have their own circle of readers and the differences between the two newspapers, there would have been no question of the jury assessing compensation for the *Mirror*, and then declining to award anything in respect of the *Telegraph* publication on the ground that Mr Ronaldo was sufficiently vindicated by the *Mirror* action.

31. Such matters as are now relied on by the *Telegraph* in this application are, he submits, matters if anything which go to mitigation of damages. To deny Mr Ronaldo compensation and the vindication he is entitled to would be a breach of his article 6 rights of access to justice, and without doubting the importance of the article 10 rights of the defendant publisher, they do not have pre-eminence over the article 8 rights of a claimant such as this one, in circumstances such as these, to vindicate his reputation and be compensated for the damage done to it by the words complained of. There is nothing wrong with a claimant in any event, obtaining his costs for a legitimate action properly pursued; and it would be wrong for a claimant in the position of this one, to be penalised, as he would be, on the *Telegraph' s* argument, if he was forced to discontinue with the ordinary costs consequences of doing so. The facts bearing on

the decision in *Hays* Mr James Price submits bear no resemblance to the facts in this case.

32. Mr James Price also submits that the *Telegraph* should be held to the stance it adopted at the PTR (that there should be two separate trials) and that it should not now be allowed to adopt the entirely different stance that the action should not be tried at all.

33. As for the suggestion that the court should be more inclined to invoke the *Jameel* jurisdiction in relation to reported speech, Mr James Price submits as preliminary observations, that what was published was hardly a neutral report, and was a repetition by a serious newspaper of vapid tittle tattle without checking or verification or giving any opportunity to Mr Ronaldo to comment. But in any event, he says, there are powerful legal objections to such an approach *viz* the place for such points to be advanced, is in a defence of privilege. Here, a *Reynolds* privilege was pleaded by the *Telegraph,* but was abandoned (with the *Telegraph* paying the costs of abandonment) after a credible answer to the plea of good faith was pleaded in the Reply.

Discussion

34. It is well settled that the compensatory principle applies to any award of damages in an action for libel, and that for a personal claimant, there are three relevant elements to the assessment of such an award: damage to reputation, vindication and injury to feelings: see for example *John v MGN Ltd* [1997] QB 586 at 608 where the Court of Appeal said:

> "The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt, and humiliation which the defamatory publication has caused."

35. The assessment of damages includes a substantial subjective element for the reasons explained by Lord Hailsham in *Cassell & Co Ltd v Broome* [1972] AC 1027 at 1070-1 citing Windeyer J in *Uren v John Fairfax & Sons Pty Ltd* [1967] 117 CLR 118 at 150 where he said:

> "It seems to me that properly speaking, a man defamed does not get compensation *for* his damaged reputation. He gets damages *because* he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways: as a vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation here is a solatium rather than a monetary recompense for harm measurable in money."

36. A number of factors are likely to be of importance in assessing damages including the gravity of the libel, the extent of publication, the need for vindication and injury to feelings. The element of vindication is likely to assume a greater importance where a defendant continues to assert the truth of a libel, or fails or refuses to apologise.

37. An apology is not a defence to an action but it may (though not invariably will) be relevant in mitigation. Equally, the absence of an apology may be an important feature in aggravation of damages because the defendant's conduct, including of the action itself is capable of increasing the injury to a claimant's feelings. See for example, what is said by Lord Reid in *Broome* at 1085, by Nourse LJ in *Sutcliffe v Pressdram Ltd* [1991] 1 QB 153, at 184 CA, by the Court of Appeal in *John* at 607; by Neill LJ in *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670, at 683 and in *Gleaner Co Ltd v Abrahams* [2004] 1 AC 628 at [34], [36]. If the matter comes before a jury, the jury will be directed to take into account all such matters up to and including the date of their award in their assessment of damages.

38. A claimant is entitled to bring a separate action for libel where (as is not unusual) the same or similar defamatory allegations are published in a number of different publications by different publishers. The separate publications are separate torts. He may bring one action and rely on any further publications by different publishers as republications, but he is not obliged to do so. There may be good reasons for bringing separate actions: for example the conduct of the individual publishers may require separate consideration in the context of a claim to aggravated damages, or the publications may be such that the claimant considers only separate actions will result in an appropriate vindication, or there may be questions as to whether one publisher can properly be made liable for the other publications on which the claimant wishes to sue.

39. Where separate claims are brought, there are well established principles deriving from the highest authority, and from statute, which apply to the assessment of damages. These have been developed or enacted as the case may be having regard to the right of the individual claimant to redress for the harm done by the individual publication and to the principle that each publisher, as a tortfeasor is responsible for the harm done by his or her tort. There may be common elements of damage caused by similar publications for which damages must be apportioned in accordance with section 12 of the Defamation Act 1952. Compensation must be gauged and awarded accordingly.

40. I think it is instructive to consider as Mr James Price invites me to do, what would have happened had I not acceded to the *Telegraph's* application at the PTR to separate the *Mirror* and the *Telegraph* actions. If the jury had concluded the words were defamatory and false, it would have had to assess damages in respect of each publication having regard to the above principles and the law as stated in *Dingle v Associated Newspapers* [1961] 2 QB 162 (CA) and [1964] AC 371 (HL) and in *Lewis v Daily Telegraph* [1964] AC 234.

41. In *Dingle v Associated Newspapers* [1961] 2 QB 162 (CA) and [1964] AC 371 (HL) the question at issue was whether the judge who had assessed damages at trial, was in error in mitigating the amount awarded against the defendant by taking into consideration the effect on the plaintiff's reputation of other publications of the same libel (which had appeared in a privileged form before or at the same time as the libel complained of). The Court of Appeal held the judge was wrong to do so, and the House of Lords dismissed the appellant newspaper's appeal. It was also held that the judge had also been mistaken in concluding that a subsequent article in the same newspaper, one month after the publication complained of, reporting the finding of the select committee that "cleared" the claimant, amounted to an ample or complete

vindication of him (see the observations of Sellars LJ at page 161 and Holroyd Pearce LJ at page 183).

42. As Sellars LJ observed at page 171:

> "It has not been the law that a man pays less for his defamatory remarks which he cannot justify merely because someone else has published previously or concurrently the same libel. If it were otherwise a defamed man might have no adequate redress, for the full range and extent of publication or republication can rarely if ever be traced and established and every offender brought to justice."

43. Sellars LJ went on to say at page 173:

> "These statutory provisions only emphasise the existence of the general rule of Saunders v. Mills 6 Bing. 213 and in no way serve to prevent a plaintiff from receiving the full compensation for the wrong done to him but only to prevent him being paid the full damage more than once, or at least to avoid an overlapping of damages, taking into consideration that the matters for assessment may not always have common features affecting the amount of damages, some defendants may have apologised at once most generously, or may have made the publication complained of in excusable circumstances, whereas others may have acted maliciously and sustained their allegation to the end. Damages for libel of the same purport would clearly from the nature and extent of a publication not necessarily be the same against all defendants against whom liability was established, except in the case of joint tortfeasors."

44. Devlin LJ made observations to the same effect at page 186-187:

> "The reasoning behind Saunders v. Mills 6 Bing. 213 and Harrison v. Pearce 1 F. & F. 567 is, I think, simply that the damage done by other publications is deemed to be irrelevant. So in one sense it is. If each publisher is thought of as having his own circle of readers or listeners, he will be made responsible for the publication to them but not beyond, and it is irrelevant to say that some other publisher will be responsible for another publication of the same libel to another circle. But in defamation the damage goes beyond the harmful effect upon the minds of those who receive the publication at first hand. There has to be taken into account as well, for example, the element of mental distress which does not increase proportionately with the extent of the publication.
>
> More important, there is the slow spread of the libel beyond the immediate circle; and if eventually the whole public mind is permeated, no one can identify each separate source of

> infection. The damage due to mental distress and to widespread repetition constitute, it may be said, an indivisible injury for which the damages cannot be separately assessed as between different publications of the same libel, and therefore each wrongdoer whose act is a substantial cause of the injury must pay for the whole. "... each publisher is answerable for his act to the same extent as if the calumny originated with him." This statement of the law in Gatley (4th ed., p. 106), has recently been approved in Cadam v. Beaverbrook Newspapers Ltd [1959] 1 Q.B. 413. and in "Truth" (N.Z.) Ltd. v. Holloway [1960] 1 W.L.R. 997, 1003.
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> ...The common law position has been partly alleviated by legislation which foreshadowed to a limited extent the solution that was later applied for joint torts in 1935 [Law Reform (Married Women and Tortfeasors) Act, 1935]. The Law of Libel Amendment Act, 1888, s. 5, provides that where actions are brought in respect to the same or substantially the same libel against two or more defendants, the actions may be consolidated and tried together and the damages given in respect of the libel apportioned between the defendants. By the Defamation Act, 1952, s. 12, enlarging the scope of a similar provision previously made in section 6 of the Act of 1888, the defendant is permitted to give in evidence in mitigation of damages that the plaintiff has recovered damages or brought actions for damages or received or agreed to receive compensation in respect of publications to the same effect as that sued upon."

45. Devlin LJ went on to say this at page 190-1:

> "If a man reads four newspapers at breakfast and reads substantially the same libel in each, liability does not depend on which paper he opens first. Perhaps one newspaper influences him more than another, but unless he can say he disregarded one altogether, then each is a substantial cause of the damage done to the plaintiff in his eyes. A fortiori, when a reader of the "Daily Mail" picked up the issue for June 16 and read the article complained of, it is not possible to say how much damage was done by the privileged extract from the report and how much by Bromley's story; all that can be said is that they combined to injure the plaintiff's reputation.
>
> In the application of these general principles to damage done by a libel there are two qualifications to be borne in mind. Each of them is illustrated by an authority relied upon by Mr. Faulks. The first is that damage done by two distinct libels is separately measurable and it is immaterial that the two libels form part of the same publication. The second is that the damage done by the publication of a libel must be measured, albeit roughly, in accordance with the number of people to whom the publication

> is made. A man's reputation is in the keeping of others and it is by words uttered to those others that it is injured; the larger the number to whom the publication is made the greater the injury. If the libel is spread from mouth to mouth by a series of utterances, the damage done by each must be separately assessed; if the publication consists of only one utterance to a large number, there can be only one assessment but it must be made in accordance with size."

46. In *Lewis v Daily Telegraph* there were two successive trials against two national newspapers for substantially similar articles where the meaning complained of for each was the same. At page 261 Lord Reid explained how each jury should be directed:

> "Here there were similar libels published in two national newspapers on the same day and each has to be dealt with by a different jury. If each jury were to award damages without regard to the fact that the plaintiffs are also entitled to damages against the other newspaper, the aggregate of the damages in the two actions would almost certainly be too large. Section 12 of the Defamation Act, 1952, is intended to deal with that. In effect it requires that each jury shall be told about the other action, but the question is what each jury should be told. I do not think it is sufficient merely to tell each jury to make such allowance as they may think fit. They ought, in my view, to be directed that in considering the evidence submitted to them they should consider how far the damage suffered by the plaintiffs can reasonably be attributed solely to the libel with which they are concerned and how far it ought to be regarded as the joint result of the two libels. If they think that some part of the damage is the joint result of the two libels they should bear in mind that the plaintiffs ought not to be compensated twice for the same loss. They can only deal with this matter on very broad lines and they must take it that the other jury will be given a similar direction. They must do the best they can to ensure that the sum which they award will fully compensate the plaintiffs for the damage caused by the libel with which they are concerned, but will not take into account that part of the total damage suffered by the plaintiffs which ought to enter into the other jury's assessment."

47. In my view, even if those principles are considered through the prism of jurisdiction developed by the Court of Appeal in *Jameel* the argument that although the *Telegraph* action was not an abuse of the process when it was begun, it became one as a result of the settlement in the *Mirror* action is misconceived.

48. In *Jameel* the Court of Appeal determined it was an abuse of the process for defamation proceedings to be pursued that were not serving the legitimate purpose of protecting the claimant's reputation, which included compensating the claimant only if his reputation had been unlawfully damaged. Publication was to five individuals, three of whom were in the claimant's camp, and the other two had no recollection of

having read the claimant's name. The Court held that that publication was minimal and damage to the claimant's reputation insignificant.

49. In my view this is a very different case on its facts. The *Telegraph's* application in this case ignores it seems to me, Mr Ronaldo's prospective entitlement to compensation for the harm done by the publication in the *Telegraph*. I can see no reason why the settlement of the *Mirror* action deprives Mr Ronaldo of his entitlement to compensation for the harm done to his reputation by the *Telegraph* article, in the event the jury concludes in his favour that the words were defamatory and untrue; nor can I conclude that the damages Mr Ronaldo will recover will be minimal. The *Telegraph* article was published to a probable readership of more than a million people. I also think I am entitled to take notice, as Mr James Price invites me to do, of the fact that the nature of the *Telegraph* and *Mirror* newspapers is different, a matter Mr David Price relied on at the PTR, and the overlap in readership must be slight, a feature of potentially considerable significance for the reasons explained in the passages in *Dingle* cited above. I do not consider the allegation of unprofessionalism – if that is the conclusion the jury reaches on meaning - can be dismissed as trivial; the jury may regard it as serious for the reasons advanced by Mr James Price, and it has not been suggested a jury would be perverse to ascribe the meaning complained of to what was published. The *Telegraph* article upset Mr Ronaldo and injured his feelings for the reasons he has explained in his witness statement, and relies on in his claim against the *Telegraph* for aggravated damages.

50. It cannot thus be said in my view that the damages obtained by Mr Ronaldo in settlement of the *Mirror* action, are apt to compensate Mr Ronaldo in respect of the separate harm the *Telegraph* article may have caused. Nor can it be presumed that the damages he obtained on settlement were intended to do so; on the contrary, it seems to me, in particular, given the reliance by both sides on section 12, I cannot infer that the damages of £25,000 was compensation for anything other than the publications complained of in the *Mirror* action itself.

51. Looking at it another way, in my view it is fanciful to suppose that had the actions been tried together, the jury would have assessed compensation for the *Mirror* publication and then declined to award anything in respect of the *Telegraph* action, on the ground that the claimant was sufficiently vindicated by the outcome of the Mirror action or *vice versa* for that matter. Nor indeed do I consider this would have been the result if the actions had been tried one after the other by a separate jury (as they would have been, but for the fact that the *Telegraph* trial had to be re-fixed). Liability cannot in circumstances such as these, sensibly depend upon which newspaper is sued first.

52. Moreover, if the submissions made on behalf of the *Telegraph* are correct, a publisher relying on section 12 of the Defamation Act 1952, or a republisher (as the *Telegraph* suggests it is in this case) need only wait until after the conclusion of the first action – whether after a trial or settlement - and report the result, without correction or apology of its own, and then it can apply to have the action struck out. This would in my view have serious implications potentially, for a claimant's article 8 rights to the protection of his or her reputation, quite apart from the potential encouragement that might be given to republish defamatory allegations appearing in another newspaper, and then to refuse to compromise legitimate complaints that are made about them.

53. As to vindication, I cannot accept the suggestion made by Mr David Price that Mr Ronaldo has been completely vindicated because that is what his counsel said in the Statement in Open Court. I agree with Mr James Price that this submission does not accord with reality; Mr Ronaldo was fully vindicated in the *Mirror* action. He can hardly have been expected to say he did not feel fully vindicated because the *Telegraph* was continuing to run a defence of justification in a different action.

54. But in any event, it seems to me that it is difficult, if not impossible for the *Telegraph* to argue that Mr Ronaldo has been fully vindicated by the *Mirror* settlement, the Statement in Open Court and the *Telegraph's* own report of it, in the face of a plea of justification which is steadfastly maintained. As Mr James Price says, the statements of case are a matter of public record, and the terms of the defence are referred to in my public judgment at the PTR. Though the *Telegraph* says it is willing to publish "a disavowal" it has not done so.

55. The matters relied on by Mr David Price, in particular the report by the *Telegraph* of the outcome of the *Mirror* action, including the *Mirror's* acceptance that events did not happen as reported and that Mr Ronaldo did not drink or dance but sat in a corner with the Portuguese national team physiotherapist may be relevant in mitigation of damages. I do not think however that a jury would be perverse to reject the submission that this mitigation operated to reduce the damages to nil or to a minimal sum in the absence of any similar acceptance or apology by the *Telegraph*. I consider it unarguable in these circumstances that it is an abuse of the process for Mr Ronaldo to continue with his action against the *Telegraph* because it has reported another newspaper's acknowledgement that a related libel in that different newspaper was false. As for costs, as I have already said in *Haji-Ioannou* it would not be right to strike out a case, merely because the costs were high in the absence of other factors which make the action an abuse. Moreover the CPR makes provision for costs to be dealt with proportionately during the proceedings themselves, and after a trial.

56. There have been a number of libel cases post *Jameel,* where the courts have declined to strike the action out on *Jameel* grounds, for example, *Mardas v New York Times Co* [2009] EMLR 8, and a decision of mine, *Haji-Ioannou v Dixon* [2009] EWHC 178 (QB).

57. Mr David Price however, relies in particular, as I have indicated, on a recent decision by Tugendhat J in *Hays Plc v Hartley* [2010] EWHC 1068 (QB) where a claim was struck out. I do not however consider the salient facts of *Hays* are materially similar to those in this case.

58. In *Hays*, the claimant was a corporation. This was highly material as the judge found, for two reasons. First, it did not claim to have suffered any financial loss and so in any event could only recover modest damages. Second, the claimant had no article 8 right which was engaged by the alleged libel and the claim. The defendant was a middleman who passed on allegations originating with ex-employees to a journalist on the *Sunday Mirror*. The ex-employees themselves subsequently communicated the allegations to the journalist. The claimant did not sue the *Sunday Mirror* because it had a potential Reynolds defence, which the judge found the claimant may have no real prospect of defeating if the defendant were to amend to rely on it in defence to an allegation that the *Sunday Mirror* article was a republication of what he said to the journalist. In any event, republication in the *Sunday Mirror* was balanced by giving

proper coverage to the claimant's case, so damages for republication could only have been modest. The ex-employees settled the case and made an agreed public statement in effect, acknowledging the falsity of the allegations. The public statement was published on the *Sunday Mirror's* website. Accordingly, the claimant had received vindication both from the originator of the libel, that is, the ex employees, and from the newspaper. What was left therefore was a claim in respect of the publication by the defendant as a single individual to the journalist. The claimant had said damages were of secondary importance, and in any event damages were not worth pursuing because there was little prospect that the claimant would ever be able to enforce an award. The symbolic value of an award of damages would not add any value in terms of vindication to the public statement made by ex-employees who were the authors of the allegations, and the only persons, apart from the claimant in a position to know where the truth lay. There was no basis for granting an injunction restraining repetition.

59. The judge concluded the claimant had acted properly in suing the defendant, when the ex-employees denied publication, but that was not a reason to allow the action to continue once it was apparent there was nothing to be gained. The claimant would incur costs in discontinuing the action against the defendant, but they would ordinarily have been expected to recover those costs from the ex-employees, since it was their denial of publication which had led to the claimant suing the defendant.

60. Mr James Price emphasises that in *Hays*, the claimant had been fully vindicated by the originators of the libel and the newspaper. The defendant was a middleman who had published the allegations to a single individual, and had no more to offer. There was no prospect of the claimant obtaining compensation or need for injunction. *Hays* has no bearing therefore on the very different situation in this case of the publication of related libels in more than one mass circulation newspaper, and where in the instant action, the *Telegraph* maintains that it is able to justify the substantial truth of the libel.

61. I also do not consider the court should generally be readier to invoke the *Jameel* jurisdiction in relation to cases involving reported speech, as Mr David Price submits in reliance on *Thoma v Luxembourg* [2003] 36 EHRR 21 in particular at [62] and [64] citing *Jersild v Denmark* [1994] 19 EHRR 1. The *Jameel* jurisdiction itself after all requires the court to consider the true value of the vindication available to a claimant on the facts of the case before it, as the Court of Appeal did in *Jameel* itself (at [59] and [67] – [69]), and Tugendhat J did in *Hays*.

62. In any event, Mr David Price's submissions are predicated on the assumption that this case is indeed one concerning reported speech, of the nature considered by the ECHR in the above cited cases, albeit as he accepts, not involving speech of the greatest weight, in article 10 terms. Since as a result of my judgment this matter will go for trial, if it does not settle, it would not be appropriate for me to say any more than there are certainly arguments (namely those made on behalf of Mr Ronaldo to which I have referred in the first part of paragraph 33 above) that this case is not concerned with the sort of reported speech with which the cases of *Thoma* and *Jersild* were concerned.

63. Mr David Price's submissions also seem to me to be, in part at least, to amount to an attack on the repetition rule itself; and there are fundamental difficulties it seems to me with the arguments he advances. As Mr James Price says, the impact of *Thoma*

and related cases has already been considered in this jurisdiction by the Court of Appeal in *Mark v Associated Newspapers* [2002] EMLR 38, at [27]-[35] of the judgment of Simon Brown LJ with which Mummery and Dyson LJJ agreed. In short, as Mr James Price submits, the repetition rule is wholly consistent with Strasbourg jurisprudence, and any supposed tension between *Thoma* and the repetition rule has been resolved by the reportage defence in such cases as *Al-Fagih v HH Saudi Research and Marketing (UK) Ltd* [2002] EMLR 13 CA, *Mark* itself, and *Roberts v Gable* [2008] QB 502. In *Roberts*, the Court of Appeal reviewed the law on reportage and was satisfied that "we walk in tune and in step with the Convention and the Strasbourg jurisprudence." The *Telegraph* therefore has had the opportunity to raise points concerning these matters in its *Reynolds* defence: but that defence was abandoned after service of the Reply.

64. It would be an odd result in this case, if I were to strike this action out now, having regard to the submissions made at the PTR by Mr David Price, and the imminence of the trial. There may be exceptional circumstances which merit a late application. Generally it seems to me, however if such applications are to be made they should be made as soon as possible.

65. It is not necessary however for me to say more about the contentious allegations made on both sides about various matters, because, in the event I do not consider this action is an abuse of the process of the court for the reasons I have given, and accordingly the *Telegraph*'s application is refused.