Case No: HQ10D02911

Neutral Citation Number: [2015] EWHC 3070 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/11/2015

Before :

Sir Michael Tugendhat
On appeal from Master McCloud
-
Between :

Robert Lawrence Weston	**Claimant/ Respondant**
- and -	
Kenneth William Bates	**First Defendant/ Appellant**
and	
Leeds United Football Club**Second**	Defendant/Responde

- -
- -

Mr Simon Myerson QC (instructed by **Messrs Weightmans**) for the **Claimant**
Mr Justin Rushbrooke QC and Mr Jacob Dean (instructed by **Messrs Carter-Ruck**) for the **First Defendant**
Mr Daniel Lewis (instructed by Chadwick Lawrence Solicitors LLB) for the Second Defendant

Hearing dates: 8th October and 11th November
- -

Judgment

Insert Judge title and name here :

Introduction

1. In this libel action the First Defendant ("Mr Bates") appeals against the Order of Master McCloud of 9 March 2015, whereby she refused his application to strike out the claim pursuant to CPR 3.4(2)(b) and/or (c). The Second Defendant has taken no part in the argument. It supported Mr Bates's application to the Master (by way of letter to the Court) but did not seek permission to appeal her decision. It is therefore technically a Respondent, but will be referred to as "the Second Defendant" in this document to avoid confusion. The Claimant/Respondent will be referred to as "Mr Weston".

Factual introduction

2. There are three publications complained of, each made as long ago as August, September and October 2009. All of them were in hard copy, and none on the internet. At the time the words complained of were published Mr Bates was Chairman of the Second Defendant. He sold his interest in the Second Defendant in December 2012 and has had no involvement in its management since then.

3. Mr Weston, through his Jersey company The Phone-in-Trading-Post Ltd trading as Admatch ("Admatch"), had provided credit card processing services to the Second Defendant's predecessor in title, Leeds United Association Football Club Ltd ("LUAFC") for a period in 2004. At that time Mr Weston's friend and business partner, Mr Levi, was a director of the Club. In January 2005 a consortium led by Mr Bates took control of LUAFC, and Mr Bates became Chairman.

4. In December 2005 the Second Defendant's predecessor in title issued proceedings against Admatch to recover amounts owing pursuant to the credit card processing agreement ("the First Jersey action"). Those proceedings were ongoing as of the date of the publications complained of. The course of those proceedings was subsequently summarized by the Bailiff in his judgment in Leeds United Football Club Ltd v Admatch [2011] JRC016A (19 January 2011). Admatch's defence was largely being conducted by Mr Weston in person. Admatch's defence was that it was entitled to set-off the sum claimed against sums which another company linked to Mr Weston was said to have advanced. The card processing agreement had been the subject of a number drafts, and this defence was based on a draft ("The Fourth Draft Agreement") which Mr Weston alleged had been entered into by agreement between himself for Admatch, and Mr Levi for the Second Defendant.

5. Neither Mr Weston nor Mr Bates reside, or has resided, in this jurisdiction at any time material to this action. Mr Weston resides in Jersey and Mr Bates in Monaco.

6. Of the three publications made in 2009, the first was in the form of a letter to Leeds United season ticket holders, and the other two in the form of articles in the programmes distributed at home matches. They were each written by Mr Bates in his capacity as chairman of the Second Defendant. It is common ground that the first publication was on an occasion of qualified privilege, but the other two were not.

7. There are differences between the words complained of in each publication. But for present purposes, it is sufficient to set out the words complained of in the first publication (which form one paragraph in a two page document printed in small type), and a part of the words complained of in the second publication.

8. In the first publication Mr Weston complains of the following:

> "On a related note, Levi's business partner, Robert Weston, who is the former husband of Levi's current wife and who served a jail sentence for perverting the course of justice, has lost his battle in the Jersey High Court to avoid paying costs to date in our attempt to recover the £190,400 which Weston has admitted Admatch (his company) owes to Leeds United. He claims that Admatch has no assets, in which case has he taken the money which should have been held on trust? If this is so, you can imagine what further offence(s) may have been thrown up".

9. In the second publication Mr Weston complains of (amongst other words) the following:

> "One would have thought that Mr Weston would want to resolve the matter, get into court win his case and get on with life. Not a bit of it! Every possible delay – including medical problems – has been thrown up…"

10. The defamatory meanings complained of in respect of the three publications, can be summarized into three main categories: Mr Weston was personally liable for the costs of the First Jersey action; that there are grounds to believe that he acted in breach of trust by dissipating monies owed by Admatch to the Second Defendant; and he had invented or exploited illness in order to delay progress in the First Jersey action. The court has not been asked to determine the meanings of the words complained of, but it is common ground between the parties that the meanings are not within what is commonly called Chase Level 1 (actual guilt), but fall into one or other of the lower two levels, namely there being reasons to believe that he acted in this way.

11. These proceedings were issued on 30 July 2010, the last day of the limitation period for the first publication complained of. Proceedings were then served on the Second Defendant on 30 November 2010, the last day of validity of the Claim Form. The Particulars of Claim included a complaint about a further publication which had taken place after the Claim Form was issued, in September 2010. There was at that time no application to amend the Claim Form.

12. ln December 2010 the Second Defendant issued proceedings against Mr Weston and Mr Levi personally in Jersey, seeking payment of the sum said to be due from Admatch, by reason of Mr Weston's alleged breach of trust in relation to the monies owed under by Admatch ("the Second Jersey Action").

13. These libel proceedings were served on Mr Bates in Monaco in January 2011. Mr Bates acknowledged service stating an intention to contest jurisdiction, disputing that valid service had taken place. The Second Defendant served its Defence on 9 June

2011, taking the point that no proceedings had been issued in relation to the September 2010 publication. ln August 2011 the Second Jersey action was stayed, on Mr Weston's application, on the basis that England was a more appropriate forum for the claim than Jersey.

14. On 8 September 2011 Mr Weston issued an application to amend his Claim Form in these libel proceedings, seeking to introduce the September 2010 publication. However, that application was not heard until 9 March 2015. The interval between those dates includes a two year period, March 2012 to April 2014, relied on by Mr Bates as a delay constituting a breach of the CPR by Mr Weston. When that application was ultimately heard, it was refused, and there was no appeal against the Master's decision to refuse the application. The action is therefore proceeding on the 2009 publications alone.

15. In October 2011 the Second Defendant issued proceedings against Mr Weston (and Mr Levi) in England, seeking payment of the sum said to be due from Admatch, by reason of Mr Weston's alleged breach of trust ("the Chancery Division proceedings").

16. By order dated 6 February 2012 Master McCloud dismissed Mr Bates's application to set aside service in the libel claim. She gave Mr Bates permission to appeal against that part of her order. She also ordered that time for service of Mr Bates's Defence, and Mr Weston's Reply, be extended to 14 days after the determination of Mr Weston's outstanding application to amend his Claim Form. But the order contained no time limit, or other directions, as to when the application to amend was to be heard.

17. On 15 March 2012 Mr Bates 's appeal from Master McCloud's decision on the service issue was dismissed (by myself). 15 March 2012 marks the start of the second period of delay relied on by Mr Bates.

18. On 10 July 2012 Mr Bates indicated consent to the amendment of the Claim Form sought by Mr Weston, on conditions as to costs. These conditions were never met. Mr Bates chased for a response to that letter on 17 August 2012, and again on 3 September 2012, none was forthcoming.

19. Then on 25 March 2014 Mr Weston wrote to the Defendants suggesting that the claim had been "effectively stayed" by Master McCloud on 6 February 2012. He referred to Mr Bates's letter of 10 July 2012 and asked for consent to the amendment to the Claim Form. Mr Bates replied on 17 April 2014 disputing that the clam had been stayed, inviting Mr Weston to discontinue given his delay, and indicating an intention to apply to strike out the claim should it be pursued. Mr Weston sought a date for the hearing of his application to amend, and this marked the end of the two year period of delay relied on by Mr Bates.

20. It was in those circumstances that the application to amend came on for hearing before Master McCloud on 9 March 2015, after a further delay (not the fault of Mr Weston) of about one year. By then it was five years and seven months after the first publication complained of. Mr Bates had issued his application to strike the claim out as an abuse and for failure to comply with the rules on 10 February 2015.

21. The claim has made no substantive progress since the Second Defendant's Defence was served on 9 June 2011. The time has not yet come for Mr Bates to file a Defence. There has been no Reply to the Second Defendant's Defence. The claim has not yet been allocated. The time has not yet come for Mr Bates to elect whether he wishes to apply for jury trial. Mr Myerson informed me that Mr Weston would not seek trial by jury, and it seems unlikely that the case would be tried by a jury. There has been no cost budgeting.

The outcome of the proceedings in Jersey

22. In December 2009 the Second Defendant was permitted to plead by amendment that the agreement with Admatch was in the form of the Third Draft document which did not contain the provision for set off upon which Admatch relied in defence of the claim. The Jersey court ordered that in the event that Admatch sought to rely on the Fourth Draft document, it should set out with particularity (a) how the alleged agreement arose (b) when it was alleged to have been drafted (c) to whom it was sent and (d) by whom it was allegedly agreed and when it was agreed. The court ordered disclosure of documents alleged by Admatch to relate to the set-off agreement. Admatch failed to comply, and judgment was entered against Admatch accordingly.

23. In Leeds United Football Club Ltd v Admatch [2011] JRC 016A (19 January 2011) the Bailiff stated the position as follows:

> "47. I accept that [Admatch] has a history of being late in complying with orders of this Court, although the plaintiffs are not without fault in this area either. Furthermore, [Admatch] has twice failed to comply with unless orders [for discovery]. However, its failures have in the end been remedied and there are only two respects in which the defendant is in default at present. They both arise out of the order of this Court dated 17th December 2009. In the first place [Admatch] has failed to file its re-amended answer to the re-amended particulars of claim. That should have been filed by 1st February 2010 but was deliberately not filed, as was made clear by Mrs Weston in her e-mail of 4th February. In the second place it has failed to file its revised affidavit of discovery, which should have been done by 15th February 2010….
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> 49. … I propose to order that, unless [Admatch] files its re-amended answer to the re-amended particulars of claim (as described in paragraph 2 of the Act of 17th December 2009) and the revised affidavit of discovery (as described in paragraph 5 of the said Act) on or before 23rd February 2011, (being 5 weeks from the date that this judgment is formally delivered), the answer of [Admatch] shall be struck out without further order and the plaintiffs shall be entitled to judgment…."

24. On 30 July 2015, that is after the Master's judgment in this libel action had been delivered, the Court of Appeal in Jersey delivered their judgment on an appeal by Mr Weston against an order and judgment of the Royal Court both dated 5 September 2014. That judgment dealt with issues as to costs arising out of the litigation between

LUAFC and Admatch. Mr Weston was ordered to pay two thirds of the costs. The Court of Appeal said (Weston v Leeds United Association Football Club Ltd [2015] JCA 159A):

> "11. The learned Bailiff found that Mr Weston had promoted the defence of the proceedings for his own benefit rather than in the interests of Admatch. This was because, if Admatch were successful in its defence, there could be no grounds for anyone coming after Mr Weston or his companies, whereas it made no difference to Admatch as such whether it succeeded because it had no assets to be taken and no ongoing business to defend… 23. … We note that … the court had observed that Mr Weston had accepted that the £190,400, otherwise owed to Leeds was disbursed from Admatch for the benefit of him and one or more of his companies. It was they who had the interest to avoid a decree against Admatch which might then be traced… 52. … The conduct of this litigation has effectively shielded Mr Weston from a tracing claim in respect of that sum…"

25. The outcome of the Jersey proceedings (as at the date of the Second Defendant's Defence) is pleaded in that Defence by way of Particulars of Justification. In the present proceedings Mr Rushbrooke does not rely on it directly as a defence. Rather he relies on it to show in what circumstances the delay to these libel proceedings has occurred, and how much of the words complained of cannot be disputed, thus in turn showing (as he argues) how little by way of vindication Mr Weston could ever achieve in this action, if he were to win it at a trial.

26. The Chancery Division proceedings came to an end, on 27 March 2104, as a result of an application by Mr Weston for security for costs. The order was made but was not satisfied.

Mr Bates 's Application to strike out

27. The application to strike out is made under CPR 3.4(2)(b) and 3.4(2)(c). The power under CPR 3.4(2)(b) is invoked on the grounds that the claim is (or has become) an abuse in that: the claim is not being prosecuted for the only proper purpose of libel claims, namely vindication of reputation, and/or; the claim is being prosecuted for an impermissible collateral purpose, namely as another front in a wider dispute between Mr Weston and the Defendants and/or; any remaining value to Mr Weston in the claim is disproportionate to the expense of trying it, such that it is no longer worth the candle; and/or there has been inordinate and inexcusable delay by Mr Weston rendering a fair trial no longer possible.

28. The power under CPR 3.4(2)(c) is invoked on the grounds that there has been a serious breach of the CPR by Mr Weston, for which the only appropriate sanction is the striking out of the claim. It is said that he is in breach of the requirement placed on the parties by CPR 1.3 to help the court to further the Overriding Objective, including as it does, saving expense, ensuring that cases are dealt with expeditiously, and that an appropriate share of the court's resources are allotted, taking into account the need to allot resources to other cases.

29. Given Master McCloud's order of February 2012 (that time for Mr Bates's Defence was extended until after the application to amend had been decided) the failure to bring the application on for decision had the effect of staying the claim.

Decision of the Master

30. The Master gave an extempore judgment after hearing several hours of argument. The relevant passages are as follows:

> "12. ... I am satisfied that the reason for not progressing this case was the parallel deceit claim first in Jersey but then latterly and primarily in the Chancery Division. What is clear is that, at least as regards the Jersey claim and logically as an extension the Chancery claim, it was being said in Mr. Yell's witness statement [he was acting for the Defendants] and the pleaded case of the Second Defendant that the proper forum for resolution of the trust dispute was the Jersey court. It later became the Chancery Division case, of course, but the same reasoning must, surely, apply. We had the Second Defendant very clearly arguing that a stay of these proceedings would be appropriate if they were proceeded with, because that venue and not this was the appropriate forum.
>
> 13. In that context, it seems to me perfectly reasonable, whether or not that was in fact a shared understanding between the First Defendant and the Claimant, for the Claimant to have taken the view that, if he had pressed on with this whilst the trust issues were being resolved in the Chancery case, he would be at risk of some sanction, stay or striking out given the Second Defendant's position. Even leaving that aside, it is my view that that was indeed the right forum for dealing with that issue and the fact that that did not lead to a judicial determination is not in fact down to Mr. Weston, it was down to the Second Defendant.
>
> 14. I turn to deal with the periods of delay in this case. There were two periods of delay that were referred to. The first period was the simple fact that this claim was issued hard up on the limitation period and then served at the end of the point where one had to serve. I see that, I understand it and it is relevant and I must take it into account. It would certainly have put this Claimant at risk had the service point, for example, gone against him. However, in terms of culpability, it is of less relevance than the period focused on more, which is the second period of what is referred to as delay, which is the delay after the claim had been issued and served.
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> 15. As regards that second period, there was a drawn out fight over the validity of service and then an appeal from my decision, which [ie the appeal] was not upheld. As of March, once the service point was out of the way, if this was standing

alone as a case,that would be the point at which one would say "Right now, we have to get on with this case." However, that is where the Chancery proceedings intervened. The Chancery proceedings were then afoot. As I have already said, it was reasonable for the Claimant and indeed reasonable for the Second Defendant to have expressed the view that the Chancery Division was the forum to deal with those, by then, pleaded issues, i.e., the trust issues. I accept, as I have said, that the degree of overlap between the issues in the Chancery Division and the pleaded meanings in this case that I was taken to justifies that...

18. I turn to the question of whether or not there was an understanding between the parties. I have already said that it was reasonable, even leaving aside any understanding, for Mr. Weston to have proceeded on the footing that the Chancery Division was the place where these allegations should be dealt with in relation to the trust action. ... I do not, however, need to make a finding on whether there was an understanding because, even if there was not, in my judgment, it would be a reasonable view to take.

19. I return to the Jameel point and whether this is a case where one would get a real degree of vindication if this matter was litigated. The content of the publications is in really quite strong terms. This is a case, as Mr. Myerson said, where it will be necessary for a court to reach a conclusion as to truth or falsehood and, even at this distance in time, where publications have been circulated, it does not seem to me to be established that one would expect the sting of that to tail away to such an extent that such strong allegations have fallen down below the Jameel threshold. I do not have material before me to tell me that Leeds' fans have forgotten all about it and the mere fact that this would be adjudicated upon and that the public's attention would be drawn to a justification of Mr. Weston if he succeeded in a public judgment, in my view, remains a solid and substantial reason why a claimant would still wish to proceed with this matter.

20. In terms of the submission in relation to collateral purpose, I do not accept the point. The decision in Goldsmith v Sperrings [1977] 1 WLR 478 is important here. Goldsmith stresses a "but for" test as to collateral purpose: but for the collateral purpose, would these proceedings have been brought? The question was raised hypothetically when talking about the situation where a litigant with a genuine cause of action which he wishes to pursue in any event also has an ulterior purpose, whether a claimant could, on that ground, be debarred from proceeding and the judge very much doubted it.

21. I agree with that view. Even if some element of this were to be about teaching Mr. Batess a lesson (and I do not necessarily accept that it is) and if these proceedings would have been issued in any event for vindication, then it simply does not satisfy the "but for" test in Goldsmith. There are probably virtually no defamation proceedings where there is not some element of collateral purpose. Very many of these proceedings involve people falling out with one another and wanting to get back at each other and, if the mere presence of some collateral purpose was sufficient to defeat a claim, then they would almost always be defeated. So I do not accept that that is the case. For all those reasons, it seems to me that the question of abuse falls away.

22. There is then the question of cogency of evidence. Can there be a fair trial due to delay? It was said, on the question of malice, which is likely to need to be pleaded in response to a plea of qualified privilege that the cogency of the evidence may have declined due to the delay.

23. I do not accept that the delay here has been such as to prevent a fair trial. The likelihood of ultimately the question of malice being pleaded would have been apparent to both sides from the contents of the Particulars of Claim in the first place. If a Defendant is going to be likely to plead qualified privilege and he knows that at the start and can foresee that malice is likely to be raised, that is not something that is being sprung on him. He has had plenty of time, indeed both sides have had plenty of time, to give instructions to their lawyers and to make sure their cases are firmly recorded. I do not, therefore, accept that such delay as there has been, albeit as I have found justified delay, could in any event lead to such lack of clarity as to render this matter an abuse due to delay,

24. As regards the plea of justification that is likely to be made, I note and accept the point that the Chancery case was litigating over much of those issues - not over the heading of justification, but the heading of, in effect, a breach of trust - and that the First Defendant, right up until December 2012, was running the litigation. He headed up the club and it cannot, in all seriousness, given that the club was the Claimant, be said that he lacks the evidential ability to pursue the case which the club in any event had sought to pursue some time ago and elected, for whatever reason, not to pursue. I do not, therefore, accept the evidential cogency point either".

Applicable law

31. CPR Part 3.4(2) includes the following:

> "The court may strike out a statement of case if it appears to the court … (b) that the statement of case is an abuse of the court's process or (c) that there has been a failure to comply with a rule, practice direction or court order".

32. In CPR Part 1 ("the overriding objective") it is provided that the court must seek to give effect to the overriding objective when exercising any power given to it by the Rules. The overriding objective is to deal with cases justly and at proportionate cost. This in turn is defined as:

> "1.1… (2)… (c) dealing with the case in ways which are proportionate (i) to the amount of money involved; (ii) to the importance of the case; (iii) to the complexity of the issues; … (d) ensuring that it is dealt with expeditiously and fairly; (e) allotting to it an appropriate share of the court's resources whilst taking into account the need to allot resources to other cases and (f) enforcing compliance with rules, practice directions and orders.
>
> 1.2 The Court must seek to give effect to the overriding objective when it (a) exercises any power given to it by the rules…
>
> 1.3 The parties are required to help the court to further the overriding objective".

33. It was during the period of delay (on 1 April 2013) that the Overriding Objective was amended so as to include expressly the objective of dealing with cases "at a proportionate cost", and to introduce as an element of dealing with a case justly and at a proportionate cost "enforcing compliance with rules, practice directions and orders".

34. There has been no dispute between the parties on the applicable law. It is further summarized in the skeleton argument for Mr Bates as follows.

35. The decision of the Master which is challenged is not an exercise of discretion. There can only be one correct answer to the question of whether a claim is an abuse. The appellate court will be reluctant to interfere with the decision of a Judge below which involved the balancing of a number of factors, but it will interfere where the judge has taken into account immaterial factors, omitted to take account of material factors, erred in principle or come to a conclusion that was impermissible or not open to him (Aldi Stores Ltd v WSP Group pIc [2008] 1 WLR [16]) or come to a decision that was plainly wrong (Stuart v Goldberg [2008] EWCA Civ 2 [76] & [81]).

36. A court may strike out a libel action where there has been delay on the part of a claimant. Delay may be relevant in a number of different ways. Delay may include a breach of the rules and thus provide a ground for a strike out under CPR 3.4(2)(c).

37. Delay may make it unnecessary or impossible for a claimant to obtain any worthwhile vindication, and where no worthwhile vindication is possible, the action may be struck out. There are a number of references in the case law to publications being

ephemeral, a word derived from the Neill Report, for example in Bewry v Reed Elsevier [2104] EWCA Civ 1411 at para 5, and Steedman v BBC [2001] EWCA Civ 1534 at para 20. In Jameel v Dow Jones [2005] QB 946 the Court of Appeal recognized that a claim may be struck out where the reputational interests at stake in the proceedings are not proportionate to the court time and the cost it would take to resolve. Before asking (at para 67) the question "To what extent will this action, if successful, vindicate the claimant's reputation?", the court stated in a much cited passage at para 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 the judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice".

38. Delay may also lead to the inference that the proceedings are pursued for a collateral purpose and thus an abuse of the process of the court. For example, in Grovit v Doctor (unreported) CA, 38 October 1993, approved by the House of Lords in the same case at [1997] 1 WLR 640, Glidewell LJ said at page 15:

> "The purpose of a libel action is to enable the Plaintiff to clear his name of the libel, to vindicate his character. In an action for defamation in which the Plaintiff wishes to achieve this end, he will also wish the action to be heard as soon as possible. If the Plaintiff delays in prosecuting such an action, and gives no valid explanation for his delay, the court is entitled to infer that his motive for the delay is not a proper one. Whether or not the Judge's suggested explanation for the delay is correct, we are entitled to infer that [the Plaintiff's] motive in delaying is not a proper use of a libel action and this constitutes an abuse of process ".

39. Where defamation proceedings are running concurrently with other proceedings in which related issues arise, there are circumstances in which it may be appropriate for the claimant in the defamation proceedings not to prosecute those proceedings until the outcome of the other proceedings is known: Khalili v Bennett [2000] EMLR p996.

40. The "but for" test derived from Goldsmith v Sperrings [1977] 1 WLR 478 and referred to by the Master was disapproved in Crawford Adjusters v Sagicor General Insurance [2014] AC 366 at [65]. The law as stated by Lord Wilson JSC in Crawford Adjusters is that if a claimant has a predominant improper purpose, then that is sufficient for collateral purpose abuse, even if he also has a subsidiary legitimate purpose.

Grounds of Appeal

41. The Grounds of Appeal are that the Master erred in not finding that Mr Weston was in breach of the CPR r1.3 in failing to progress the action and that the action was an abuse of the process for a number of reasons, which I paraphrase as follows. The

remaining value to Mr Weston of the claim was disproportionate to the expense of trying it, such that the game was not worth the candle. A fair trial was no longer possible. The action was being pursued as part of a long running quarrel with Mr Bates, to "teach him a lesson", and/or for the benefit of lawyers acting on a no win no fee basis, and not for vindication of Mr Weston's reputation.

What is at stake in this action

42. I invited the parties to address me first on the issue of what remained at stake in this action.

43. Mr Rushrooke's submissions included that, in addressing this issue at para 19 of her judgment, the Master took into account only the seriousness of the allegation, and failed to take into account what could be inferred from the delay, and that she was wrong to include amongst her reasons that she had no material to tell her that Leeds fans had forgotten all about it. She was wrong to conclude the matter by finding that there remained "a solid and substantial reason why [he] would still wish to proceed with this matter". She failed to have regard to the countervailing considerations. Mr Rushbrooke relied on the following facts. Mr Weston lives abroad and adduces no evidence of any continuing connection with Leeds or football, and the publications were ephemeral. They were in the form of written documents only, which had been distributed to Members of the club and all those attending the matches for which the programmes had been prepared, and more than six years ago. There was no dispute that that Mr Weston had three convictions in Jersey for perverting the course of justice and one for larceny, and that, as recited above, the claim against Admatch for £190,400 had succeeded, and Mr Weston had been ordered to pay costs on the basis that he had conducted Admatch's defence, not for Admatch's benefit, but for his own. He was responsible for the failure to comply with the unless order for disclosure in relation to the agreement on which he had relied as giving rise to the set-off which was his defence. Finally, it is not suggested that this is a case in which any injunctive relief could be granted.

44. Mr Myerson submitted the Master's approach to the reputational interests at stake was cogent and founded on the evidence. She was entitled to take the view, for the purposes of this application, that the sting of the libel had not fallen away. No court has determined whether the money was held on trust, and the issue of whether Mr Weston had been entitled to take the money was still a live one. The fact that judgment had been entered in default against Admatch does not affect Mr Weston's reputation.

45. In my judgment the Master cannot be faulted for taking the view, for the purposes of this application, that the allegations against Mr Weston are, if viewed in isolation, sufficiently serious, and sufficiently widely published, to justify the pursuit of a libel action, albeit that they are below Chase Level 1. Thus the issue in the libel proceedings would not be whether Mr Weston had acted dishonestly or in breach of trust, but whether there were the relevant grounds (in accordance with the actual meaning which the court found the words to bear) for believing or suspecting that he had acted dishonestly or in breach of trust.

46. However, in my judgment she erred in reaching her decision on the basis of there being no material before her to tell her that Leeds fans have forgotten all about it. In

considering this she was quite rightly turning from the gravity of the allegation to the circumstances of the publishees in whose estimation Mr Weston alleged that his reputation had been damaged. But there is no basis in the authorities for a requirement that there be such evidence on this point, whether at trial, or at the stage of an application to strike out. On the contrary, the courts have repeatedly placed emphasis upon the need for libel claimants to pursue their claims expeditiously. This is in part because publications in hard copy in newspapers are ephemeral. The leaflets of the kind here in question were no less ephemeral than a newspaper. While a libel claimant may continue to suffer distress from such a publication (as Mr Collins states is the case of Mr Weston), it does not follow that he continues to suffer any harm to his reputation which is serious enough to tip the scales in his favour when a court is considering whether the action should be struck out.

47. I also accept that the Master erred in failing to take into consideration what, assuming that the claimant were to succeed at trial, would fall to be taken into consideration in assessing damages by way of vindication. Assuming that these matters had not sufficed for Mr Bates to make good his defence of justification, they would have to be take into account at that stage. They include his now non-existent connection with Leeds, and football, the facts about his convictions and his disposal of the money claimed by the Second Defendant that cannot be disputed (as set out above), and what the Jersey courts have said in public judgments cited above about the conduct by Mr Weston of the litigation brought against Admatch.

48. Thus, looking at these matters afresh, as an appellate court must do in these circumstances, I take the view that there is very little that Mr Weston could achieve by way of vindication, if he were to obtain judgment in his favour at a trial which would take place, if at all, only some seven or more years after the publications complained of. The costs already incurred in all the proceedings relating to the disputed sum of £190,400 are already very large indeed (many times the sum of £190,400), and there can be no doubt that an investigation of the dispute, and Mr Weston's conduct both in relation to the disposal of that sum, and in relation to the litigation about that, would be very substantial indeed, and very time consuming.

The Delay in the proceedings

49. Mr Rushbrooke submitted that the Master, in para 14 of her judgment, erred in that she did not consider what reasons, if any, Mr Weston advanced for the delay in leaving till the last possible time the issue and service of the proceedings. He submits that there was no good reason that was, or could be, advanced for this delay. However, she did state that it counted against him, at least in so far as she said that "it would certainly have put [Mr Weston] at risk had the service point, for example, gone against him". Mr Rushbrooke submits that she erred in not taking it into account in deciding whether the claim was brought, or was being pursued for some improper purpose, whether or not it was also being brought for the purposes of obtaining vindication.

50. He notes that at one point illness had been advanced by Mr Weston as an excuse for this delay, but this was demonstrated to be untrue by Mr Yell in his witness statement of June 2011 at paras 12-15. This explanation has not been repeated.

51. In relation to the second period of delay (March 2012 to March/April 2014), he submitted that the Master erred in finding that the overlap between the Chancery Division proceedings and the libel proceedings was such as to justify that delay, or at least to justify the failure of Mr Weston to bring the matter before the court for the court to decide whether or not, and if so on what terms, the libel proceedings should be stayed. He submitted that she further erred in failing to have regard to the case management alternatives that the court would have ordered, had Mr Weston asked for such directions in seeking a stay of the libel action pending the resolution of the Chancery Division proceedings. On 28 February 2014 the court gave directions in the Chancery Division proceedings, towards a trial to take place in July 2014. It would have been possible to give parallel directions in the libel claim. For example, disclosure of documents on the issue of whether the disputed money had been held on trust might have been ordered to stand in both actions, and the issues in the two actions which overlapped would have been defined. Further Mr Rushbrooke relies on Mr Weston's conduct in causing Admatch not to comply with the Jersey court's order the breach of which led to judgment being entered against it in default.

52. Mr Myerson submitted that the Master was entitled to take the view that she did take for the reasons that she gave, which are consistent with Khalili v Bennett. He rightly accepts that it would have been better if an application had been made to the court for directions, rather than simply not progressing the action. He submits that the delay is more apparent than real, because it is likely that there would have been delay to the libel proceedings, and Mr Weston was entitled to, and it was reasonable for him to, apply for security for costs in the Chancery Division proceedings.

53. In my judgment, the Master was entitled to take the view that she expressed in paras 15-17 of her judgment, in so far as that related to the delay awaiting the result of the Chancery Division proceedings. I reach this view with some hesitation, because the rules have become more strict since Khalili v Bennett was decided.

54. But in my judgment she erred in failing to give to the delay in the first period of delay the weight that it deserved. In this case (as in the case of Grovit) that delay, and the absence of any explanation, gives rise to a strong inference, in my judgment, that Mr Weston was abusing the process of the court, whether or not he might also have had it in mind to seek vindication of his reputation. His subsequent conduct of the libel action and of the proceedings in Jersey might, if it had been different, have led the court to draw a different inference. But the conduct by Mr Weston of Admatch's defence of the proceedings in Jersey is consistent with the inference that I find must be drawn.

55. It follows in my judgment that this appeal must succeed.

Other grounds of appeal

56. In these circumstances, I do not need to address the further grounds advanced by Mr Rushbrooke. However, I should mention one point that has arisen following the judgment of the Master. Sadly Mr Levi died last July. Mr Rushbrooke submits that it is clear that he was to be a witness for Mr Weston on the issue of whether it had been agreed between them, acting for their respective principals, that Admatch would have the right of set off upon which Mr Weston relied. Mr Rushbrooke submits that no fair

trial would now be possible, because Mr Levi's evidence could be adduced as hearsay, but could not be the subject of cross-examination.

57. In my judgment Mr Myerson is right on this point. It is normally not a disadvantage to a defendant if an important witness for a claimant dies before the trial. And there are means, short of striking out the claim, by which the court before or at trial can address any unfairness which might otherwise arise.

Conclusion

58. For these reasons the appeal will be allowed and the libel proceedings will be struck out.