Neutral Citation Number: [2009] EWHC 178 (QB)

Case No: IHJ/08/1081

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6th February 2009

Before :

MRS JUSTICE SHARP

- -

Between :

SIR STELIOS HAJI-IOANNOU	**Claimant**
- and -	
(1) MARK DIXON	
(2) REGUS GROUP PLC	
(3) TIM REGAN	**Defendants**

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David Sherborne (instructed by **Schillings**) for the **Claimant**
Hugh Tomlinson QC & Lorna Skinner (instructed by **Olswang**) for the **Defendants**

Hearing dates: 23rd January 2009

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Judgment

Mrs Justice Sharp

Introduction

1. The Defendants, Mr Mark Dixon, Regus Group plc (Regus) and Mr Tim Regan, apply to strike out the Claimant's action for libel and/or slander on the ground that it is an abuse of the process of the court.

2. The Claimant, Sir Stelios Haji-Ioannou is a well-known businessman and entrepreneur, and is particularly well-known as the founder of easyJet plc and of the easyGroup group of companies ("easyGroup"). Regus is a FTSE 250 company and describes itself in these proceedings as the world's largest provider of workplace solutions (including serviced offices). It operates in over 70 countries. Its founder and chief executive is the First Defendant, Mr Dixon. The Third Defendant, Mr Regan is a director of Regus. He is also its company secretary and is employed as the Head of Legal and Company Secretary for the Regus group of companies. In this action Sir Stelios sues the Defendants in respect of a series of statements to a journalist employed by the Financial Times newspaper on the 8 and 9 May 2008, made by a Public Relations company engaged by Regus.

3. Before coming to the application itself, it is necessary to set out the background to these proceedings.

Background

4. This action has its roots in events which took place in 2006 and 2007. It is common ground that in November 2006 Sir Stelios announced plans to launch a business entitled "easyOffice" which would provide serviced offices. In one of the articles appearing at about that time he is quoted as saying: "It won't be like Regus, which is all marble fronts and huge expense for big corporations."

5. In March 2007, Sir Stelios and Mr Dixon met by chance in Monaco where they both live and agreed to have lunch there, which they did. On 17 March 2007 Sir Stelios sent an email to Mr Dixon, suggesting a breakfast meeting on the 20 March 2007. The email contained some numbered points he was considering in relation to the easyOffice business. These points provided what Sir Stelios described as a "heads up of where we are", and finished by saying: "Please let me know if there is something we can do together in this space." The two men arranged to have a breakfast meeting at the Savoy Hotel on the 20 March 2007.

6. The breakfast meeting took place, and was attended by Sir Stelios and two of his colleagues, and Mr Dixon and two of his colleagues (the Chief Financial Officer of Regus and its International Property Director). It is common ground that there was further contact between the parties after the breakfast meeting.

7. However the nature of the contact between the parties, including after the breakfast meeting, is in dispute. It is Sir Stelios's case that the purpose of the breakfast meeting was to discuss a possible joint venture between the two businesses, and that the content of his email, and subsequent discussions which followed were confidential. The Defendants say the purpose of the breakfast meeting was to see if there was any common ground that would allow the parties to work together; and that nothing which was said, before, during or after the breakfast meeting, was confidential: a discussion merely took place in general terms, and discussions which took place subsequently, were informal and inconclusive.

8. The evidence put before the court for the purposes of this application includes a witness statement from Mr Tench, of Olswang, solicitors for the Defendants and a witness statement from Mr Regan; and a witness statement in response from Sir Stelios, and from Rachel Atkins of Schillings, solicitors for Sir Stelios.

9. In his witness statement, Mr Tench gives an account of the Defendants' case on the facts. He says that during the early months of 2007 Regus was looking for an internet-based brokerage service to buy to compliment its business. In Spring 2007 Regus approached a company called Nuclei Limited, which operated a web brokerage service under the name "Easy Offices" with a website at www.easyoffices.com. Regus acquired Nuclei in September 2007.

10. Mr Tench says that during the course of due diligence enquiries before the acquisition, Regus discovered that there had been a dispute between Nuclei and easyGroup in respect of the use by Nuclei of the word "easy". No proceedings had been issued and correspondence had been intermittent. Nonetheless Mr Regan, on behalf of Regus, considered it prudent to prevail on Nuclei to register the mark "EASYOFFICE" as a trademark. In the course of doing so, it was discovered that the trademark "EASYOFFICE" had been registered in various relevant classes by easyGroup. In August 2007, Nuclei applied for a declaration that a number of easyGroup's registrations of the "EasyOffice" trademark were invalid. In October

2007, easyGroup lodged an opposition to the application. A meeting between the parties in November 2007 and subsequent discussions failed to resolve the dispute in which proceedings are currently stayed until February 2009.

11. The implication of what Mr Tench says, though it is not stated expressly, is that the approach from Sir Stelios on the one hand, and Regus's interest in purchasing an internet business and eventual purchase of Nuclei on the other, were coincidental. Sir Stelios however says that he took it as no coincidence that discussions between the Defendants and Nuclei began after the Savoy meeting in March 2007. Accordingly, he instructed Reed Smith, solicitors acting for Sir Stelios's companies and on 2 May 2008 that firm sent a letter ("the Reed Smith letter") to Mr Dixon. The Reed Smith letter made a number of allegations against Mr Dixon and Regus: in particular, that they had misused confidential information disclosed to them by Sir Stelios in the course of what were described as joint venture negotiations to their commercial advantage, in relation to their decision to start catering for the low-end segment of the market and to purchase Nuclei. The letter finished by requiring Regus within 14 days to provide, amongst other things, undertakings and an account of profits derived from the use of the confidential information.

12. On 8 May 2008 Sir Stelios contacted Mr Tom Burgis, an experienced financial journalist from the Financial Times, and supplied him with a copy of the Reed Smith letter, a document headed: "easyOffice – Regus: Chronology of Main Events" and various emails passing between the parties. Sir Stelios says that he did this because he was concerned about the tactics being employed by Mr Dixon and Regus which he felt were designed to stifle easyOffice before it had an opportunity to launch; and because he believed that Regus's shareholders should be made aware of the inappropriate manner in which Mr Dixon and Regus were acting. He says the Financial Times was the natural and legitimate forum for raising awareness of this issue with the shareholders.

13. Later that day, Mr Burgis approached Regus's public relations advisors, Brunswick Group LLP for a comment on the Reed Smith letter, and they provided a response by email that afternoon. The email included the following words "to be attributed to a spokesperson [for Regus]" which form part of the words complained of:

> "These allegations are completely unfounded and we have absolutely no case to answer. Regus pioneered services offices almost 20 years ago and was the original low cost champion offering products from a price as low as £10. Since 2001, there have been a number of meetings when Stelios has picked our brains on this sector."

14. The Defendants also instructed solicitors, and on 8 May 2008 Messrs Latham & Watkins solicitors for Mr Dixon, Regus and Nuclei, sent a response (the LW letter) to the Reed Smith letter, strongly disputing the claims it contained. Under the heading 'Defamation' the LW letter said that the Reed Smith letter made serious but unfounded allegations against Mr Dixon and Regus, that Latham & Watkins had been informed that Sir Stelios had sent the Reed Smith letter to the Financial Times, and "To be publicly branded dishonest is a very serious slur on his [Mr Dixon's] professional integrity. The same is true for Regus."

15. On 9 May, Brunswick sent a further email to Mr Burgis which included the following words also for quotation, and which also form part of the words complained of:

> "The meeting was with a number of people and held in a public place. There was no detailed business plan presented just a high level discussion where Regus, with its 20 year experience in the sector, shared their insight and gave advice. There was no confidential information given or used by Regus to its commercial advantage."

16. On 9 May 2008, Messrs Stock Fraser Cukier, solicitors instructed by the Defendants in place of Latham & Watkins in relation to defamation, wrote to Reed Smith complaining (in short) that Sir Stelios and easyGroup had defamed Regus and Mr Dixon by giving Mr Burgis, and thereby publishing the Reed Smith letter. Complaint was made that the Reed Smith letter contained extremely serious allegations against Mr Dixon and Regus and Stock Fraser Cukier asked for undertakings from easyGroup and Sir Stelios by the 13 May 2008 that it would not be republished.

17. On 10 May 2008 an article written by Mr Burgis was published in the Financial Times (the article). Its headline was "Office politics sees Stelios lock horns". The article provided an account of the dispute between Sir Stelios, Mr Dixon and Regus; and included in quotation marks, attributed to a Regus spokesman, the words complained of in this action. Those words had been provided to Mr Burgis by Brunswick as I have said. No complaint to the Financial Times about the article has been made by either side.

18. On 13 May 2008, Reed Smith acknowledged that Sir Stelios had provided the Reed Smith letter to the Financial Times and refused to give the undertakings requested by Stock Fraser Cukier.

19. On 15 May 2008, Stock Fraser Cukier wrote a letter of claim pursuant to the Defamation pre-action Protocol to Reed Smith on behalf of Mr Dixon and Regus, complaining that Sir Stelios had libelled their clients. In that letter complaint was made in strong terms, of the provision by Sir Stelios to Mr Burgis of the Reed Smith letter; and of emails which Sir Stelios had also sent to Mr Burgis on the 12 and 14 May 2008. A full written apology, a statement in open court, damages and a written undertaking were demanded. On 19 May 2008, Reed Smith replied, describing the demands made in the Pre-Action Protocol letter as inappropriate, and stating that "your clients [Mr Dixon and Regus] have defamed ours, which has made the wrong all the worse."

The proceedings

20. Another firm of solicitors now entered the scene. On 29 May 2008 Schillings, solicitors acting for Sir Stelios in relation to "reputation management" issues, wrote to Mr Dixon and Regus enclosing the issued Claim Form in these proceedings. It is common ground that no Pre-Action protocol letter was ever sent to the Defendants.

21. The Particulars of Claim were served on 11 June 2008. The words complained of are the words contained in the emails from Brunswick which are set out in paragraphs 13 and 15 above (though in reverse order) but also include and are introduced by the

words "The meeting was at Claridges and not the Savoy…" The defamatory meaning complained of is that Sir Stelios:

> "had deliberately lied to the Financial Times by making a series of wholly unfounded allegations against the Defendants to the effect that they had taken unfair commercial advantage of the joint venture discussions with the Claimant and the confidential information he provided to them, at a meeting at Claridges, which allegations the Claimant knew were completely untrue (even including details such as the location of the meeting itself which he falsely claimed took place in the Savoy)."

22. The Claim was originally formulated in slander. It was pleaded that Mr Dixon had spoken the words complained of to Mr Burgis in a telephone conversation. On 4 July 2008 Mr Dixon applied to strike out the proceedings against him on the ground that that he had not spoken the words complained of. That application was not pursued (as the Defendants describe it) or abandoned (as Sir Stelios describes it) when an amendment to the Particulars was formulated to reflect the fact that, as the witness evidence in support of the strike out had made clear, the words complained of were published in telephone calls and contained in emails from Brunswick as described above; and that at all material times, Brunswick had acted on behalf of Mr Dixon and Regus. By the same amendment, Mr Regan was added as a Third Defendant.

23. The Defendants then issued a second application for a ruling under CPR 53PD that the words complained of were not capable of bearing the meaning pleaded in the Particulars of Claim. That second application was dismissed by Mr Justice Eady on 3 October 2008. The Amended Claim Form was served on 6 October 2008 and on 3 December 2008 the Defence in this action was served. The Defence relies on the defence of justification but to a lower defamatory meaning than that relied on by Sir Stelios. The meaning justified is that Sir Stelios has made wholly unfounded allegations that Mr Dixon and/or Regus had improperly misused confidential information divulged by him at a meeting on the 20 March 2007 to their own commercial advantage. Express dishonesty therefore is not alleged. The Defendants also rely on the defence of qualified privilege on the ground that the statements made on their behalf to Mr Burgis were made in reply to an attack made upon them by Sir Stelios. On the same day that they served their defence, the Defendants issued a third application, this time to strike the action out on the ground that the action was an abuse of the process of the court.

Abuse of the Process

24. The Defendants' case was initially put on two bases: first, that there is no realistic prospect of the action yielding any tangible or legitimate advantage such as to outweigh the disadvantages for the parties in terms of expense, and for the wider public in terms of the use of Court time and resources. Second, that the proceedings were not brought to vindicate Sir Stelios's right to reputation, but rather to advance his commercial interests and to cause expense, harassment and commercial prejudice to the Defendants beyond that normally encountered in the course of properly conducted litigation. Before me, Mr Hugh Tomlinson Q.C., appearing on behalf of the Defendants did not pursue that second ground. On behalf of the Defendants, he submitted that this action falls fairly and squarely within the principles laid down by the Court of Appeal in *Jameel (Yousef) v Dow Jones Co Inc* [2005] QB 946, which

represented a "sea change" in the approach of the courts to an application such as this; and that the court's willingness to strike an action out as an abuse had been reinvigorated by the introduction of the Civil Procedure Rules in 1998 and the case management powers given to the court.

25. In *Jameel* a foreign claimant brought proceedings in this jurisdiction against a US newspaper for libel in respect of an article posted on an internet website in the USA which was available to subscribers here. The allegations were serious, but of the five publishees, three were "members of the claimant's camp", and there was evidence that neither of the other two subscribers knew of the claimant or had any recollection of reading his name. The Court of Appeal struck out the action on the ground that there had been no real or substantial tort in the jurisdiction, and it was an abuse of the process to continue with the claim. Publication had been minimal, damage to the claimant's reputation was insignificant and the damages and the vindication that the claimant would receive at trial would be minimal. If the Claimant succeeded at trial, the cost of the exercise would have been out of all proportion to what had been achieved.

26. Mr Tomlinson submits there are a number of matters, which must be looked at cumulatively rather than distinctly, and which, when taken together make it clear that this action is an abuse of the process, having regard to the approach of the Court of Appeal in *Jameel*. First, that the publication complained of is to one person only, Mr Burgis. Second, that Sir Stelios was 'the author of his own misfortune'. It was he who drew Mr Burgis's attention to the dispute between himself and the Defendants; and he who provided Mr Burgis with copies of both the Reed Smith and LW letters. It is to be inferred (so Mr Tomlinson submits) that Sir Stelios knew it was likely in those circumstances that Mr Burgis would seek the Defendants' response, knew that one would be provided and knew that it was likely to contain robust denials of Sir Stelios's account of the dispute. Sir Stelios was also responsible for communicating these denials to Mr Burgis, since the content of the LW letter which he provided to Mr Burgis, was "substantially similar" to the words complained of. If Sir Stelios genuinely believed what was said was damaging to his integrity, it is inconceivable, it is submitted, that he would have transmitted the LW letter to the Financial Times.

27. It is also said, that as matters now stand, Sir Stelios has nothing to gain by continuing the action. So far as damage is concerned, his reputation is unlikely to have been damaged in the eyes of Mr Burgis, particularly having regard to the balanced way in which the article was written. In open correspondence between the parties Sir Stelios has said he is willing to waive his claim to damages and that his sole priority is vindication. He says that he wants the Defendants to acknowledge that he did not lie, and complains that they still refuse to confirm that he did not lie. Mr Tomlinson submits that these statements are extremely surprising since the Defendants have made it clear that they had no intention to allege, and were not alleging that Sir Stelios had lied or acted dishonestly. Thus, it is said, the contention that the purpose of the action is vindication is unsustainable, since Sir Stelios's honesty is not in issue. There is nothing to be gained from these proceedings, as they currently stand it is said, since even if Sir Stelios fought the action and won, whether he lied or not, is simply not in issue.

28. What is more it is said if Sir Stelios had made it clear in a proper pre-Action protocol letter that all he wanted was an acknowledgement from the Defendants that he did not

lie to Mr Burgis, such an acknowledgement would have been forthcoming . Finally, it is said the costs of the action, including as it does the issues of justification, qualified privilege and malice (a Reply has not yet been served but it is plain that malice will be alleged if it is, as Mr Sherborne, appearing for Sir Stelios, has confirmed) are likely to be very substantial and the trial is likely to last 5 to 10 days. The cost and use of resources – including the commercial prejudice to the Defendants in the use of management time in fighting the claim, is entirely disproportionate when measured against the fact that very little if anything is to be gained from the action.

29. Mr Sherborne, who appeared for Sir Stelios submits that although publication is limited in the sense that it relates to the making of statements to a journalist at the Financial Times, the statements were repeated (as intended) in the pages of the most highly influential newspaper in the business and financial world. The allegation was moreover a serious one, striking he says at the heart of Sir Stelios's core attributes, his honesty and integrity, key elements of his personal and professional reputation. In view of the Defendants' approach to the litigation, their persistence in a plea of justification and the issue of malice, an award of damages by the jury, if Sir Stelios was successful, could well be substantial. It would be plainly wrong he submits for the Court to conclude that they would necessarily be so small as to deprive Sir Stelios of his right to pursue his remedies because the costs of the action would far outweigh them, as is predominantly the case in libel or slander actions.

Discussion

30. As both counsel accepted, the Court is being asked to exercise a draconian power and should only do so in an exceptional case. When considering whether that power should be exercised, it is not normally helpful to make detailed reference to the facts of other cases in which the court was invited to strike an action out as abuse. As Mr Justice Eady pointed out in *Mardas v New York Times Company* [2008] EWHC 3135 at [15] "what matters is whether there has been a real and substantial tort within the jurisdiction (or arguably so). This cannot depend upon a numbers game, with the court fixing an arbitrary minimum according to the facts of the case."

31. Publication of a libel or indeed a slander, to one person may be trivial in one context, but more serious than publication to many more in another. Much depends on the nature of the allegation, and the identity of the person about whom and the person or persons to whom it is made. To that extent, the decision in each case is "fact sensitive". However, the court should not be drawn into making its decision on the basis of contested facts material to the issue of abuse which ought properly to be left to the tribunal of fact to decide.

32. This action is brought by a businessman who is extremely well-known in this jurisdiction, especially within the financial world. The allegations in this action, on the meanings which the Court has held already they are capable of bearing, are very serious – in short, dishonesty. They were made to a journalist from the Financial Times, Mr Burgis, for him to pass on to that newspaper's readers (as Mr Burgis knew at the time). The Financial Times is one of the world's leading business newspapers. In those circumstances it is not obvious to me, and I am not prepared to infer for the purposes of this application, that Mr Burgis was likely to disbelieve or discount what he was told by Brunswick on behalf of the Defendants so that the Court could safely say that Sir Stelios's reputation had suffered little, if any damage. Mr Dixon after all

is himself a well-known and extremely successful businessman, and Regus is a large and successful company. Nor can it safely be inferred from the fact that the journalist wrote a balanced article setting out both side's contentions in a way that did not attract complaint by either side, that no damage was done to Sir Stelios's reputation. Mr Burgis may have written the article in the way he did for any number of reasons, including for example, the provision of prudent legal advice (I note that in one of the emails from Mr Dixon to Brunswick exhibited to Mr Tench's witness statement, reference is made to the Financial Times article, having been "crawled all over by their lawyers").

33. Mr Sherborne who appears for Sir Stelios has invited me bear in mind in this context the complaints made in Stock Fraser Cukier's letter of the 15 May 2008 about Sir Stelios's publication of the Reed Smith letter to Mr Burgis. It is difficult, so he submits, for the Defendants to argue that publication to Mr Burgis is unlikely to have damaged Sir Stelios's reputation in circumstances where the Defendants themselves complained in strong terms of the damage done to their reputation by the publication of one letter to the same individual. While I can see the forensic temptation of such a submission it seems to me it is of no assistance to the point the Court has to decide, since the matter must be viewed objectively.

34. In my judgment, it also cannot be said at this stage that damages are likely to be minimal if Sir Stelios wins at trial. The allegations are serious (on the meaning which the Court has found them capable of bearing); and an award would take account of the effect on Sir Stelios of the unsuccessful plea of justification (albeit to a lesser meaning) as well as other matters relied on in aggravation, including the fact that the Defendants published the words complained of to Mr Burgis, knowing and intending that what they said would be republished in the Financial Times. No application has been made to strike that plea out and I see no reason in principle why the Court should not take such matters into account when considering whether damages are likely to be minimal as the Defendants suggest.

35. The Defendants may ultimately persuade a jury that there is very substantial mitigation available to them. As I have already indicated, it is said that Sir Stelios brought the matter on his own head in two respects: by speaking to Mr Burgis in the first place, and by supplying him with the LW letter (which it is said is substantially similar to the words complained of in this action). It is not however part of the Defendants' pleaded case that Sir Stelios caused or consented to the publications complained of; and I do not think it would be right for me to conclude that Sir Stelios did not genuinely believe what was said was damaging to his integrity, as Mr Tomlinson invites me to do, in the face of evidence from Sir Stelios on that point. Sir Stelios says that he believed the statements by a large plc and two of its senior executives branded him a liar, that he viewed the allegations as an attack on his honesty and integrity, this was something he took seriously, and the fact they were made to a highly influential journalist at the leading newspaper in the financial and business world made the matter immeasurably worse. He also says he does not believe that the Defendants needed to accuse him of lying to the Financial Times in any response they chose to give. There is also a dispute of fact about precisely when in the sequence of events, the LW letter was given to Mr Burgis which may be material. It is said on behalf of Sir Stelios that he gave a copy of the LW letter to Mr Burgis, after the publication of the words complained of, not before; and I think it was

accepted by the Defendants in submissions that at the time Sir Stelios gave the LW letter to Mr Burgis, he did not know of the content of the emails from Brunswick. But these are not matters which it seems to be that I should determine or indeed would be able to determine at this stage, and their resolution must be left for the trial.

36. I am unable therefore to conclude that it is likely that there has been no damage to Sir Stelios's reputation, or that his claim is not genuine as suggested or that if this matter went to trial, the amount of damages Sir Stelios would be awarded would be trivial or insignificant. A jury (or judge if the matter was tried by judge alone) might consider that an allegation of dishonesty made about this claimant to a financial journalist for the purposes of publication in an important financial newspaper with aggravating conduct, merited a substantial award. It is trite that an award of damages in libel actions serves not only to vindicate the reputation of the claimant, but also to compensate him for injury to his feelings.

37. It is true to say that in his witness statement made in opposition to this application Sir Stelios has said that his reason for bringing the action is not a financial one, it is to vindicate his reputation. It has also been said in open correspondence on his behalf that he would be prepared to waive his claim for damages in order to achieve a settlement of the action. Neither of those factors in my view bite on the question whether it is an abuse for Sir Stelios to continue with the action to trial, in the event the parties cannot reach a settlement. I do not think it would be right to conclude from the fact that a party is prepared to waive a remedy he might otherwise be entitled to at trial for the purposes of settlement, that he would have no interest in asking for or receiving that remedy at trial. Claimants who would otherwise be prepared to taken a sensible and proportionate approach to litigation should not so it seems to me be discouraged from doing at risk of having their action stayed or struck out as an abuse.

38. It is said by the Defendants that Sir Stelios has now been offered what he wants. The Defendants are prepared to give him an undertaking not to repeat the allegation of which he complains, they have always made it clear that they did not intend to accuse him of dishonesty, and are prepared to accept that he was not dishonest. Had they appreciated so it is said, that what he really wanted was a public acknowledgement of that nature, one would have been provided straightaway. The failure to write a pre-action Protocol letter which would have made the position clear should be held against Sir Stelios.

39. On analysis the position is not, it seems to me so clear cut. There was a dispute before me about precisely what had been offered and when. The Defendants' position until a day or so before the hearing, if not the hearing itself, was that they did not intend to allege that Sir Stelios had acted dishonestly and they did not believe that they had made that allegation to Mr Burgis. A "drop hands" offer by Mr Dixon made in December 2008 was initially not responded to. Correspondence on settlement, initiated by Olswang, began again on 19 January 2009, that is 4 days before the hearing, and there was then a flurry of correspondence. At that point, Sir Stelios was asking (through Schillings) for an undertaking, costs, and an apology published in the Financial Times which could include a statement that the Defendants did not intend to call Sir Stelios a liar, but which also had to include an acceptance by them that the words complained of may have been understood to suggest that he was and a full acceptance that Sir Stelios had not lied.

40. That offer was rejected by Olswang on 21 January, 2 days before the hearing, The Defendants at that point refused to pay Sir Stelios's costs or apologise in the Financial Times (as so far as I am aware, that is still the position). In their letter of 21 January however, it was said by Olswang that: "it was never [the Defendants'] intention to suggest that [Sir Stelios] deliberately lied to the Financial Times and they accept that he did not." Schillings wrote back challenging the assertion made in Olswang's letter that this concession had been made before and drawing attention to the difference as they saw it between what was now being said by Olswang and what was said by Mr Regan in his witness statement supporting the Defendants' application. In his witness statement Mr Regan said this:

> "The Defendants do not and have never sought to allege that the Claimant had lied to Mr Burgis or the *Financial Times* or that he acted dishonestly…We do not now seek and have never sought to call the Claimant's honesty and integrity into question in relation to these matters".

41. In the light of that, and perhaps recognising that the position was not entirely clear, Mr Tomlinson began his submissions to me by making it clear in open court, that the Defendants accept that Sir Stelios did not lie to the Financial Times. In the light of all the circumstances of this case, however such a late concession does not seem to me to form a proper basis for this court to find that the continuation of Sir Stelios's action is or would be, an abuse.

42. Whether or not an acknowledgement that Sir Stelios did not lie would have been forthcoming immediately if it had been made clear on behalf of Sir Stelios from the outset that this was what he really wanted, is a matter which is strongly in dispute and cannot be resolved now. The determination of the rights and wrongs of what happened, and indeed of the merits of the position of each party on settlement as set out in the correspondence, will have to wait until trial. At that stage, of course, they may well be relevant on the issue of costs in accordance with CPR44.3(4).

43. I bear in mind the expense this case will undoubtedly take to try. But it would not be right to strike out an action as an abuse, merely because the costs are high, or considerably higher than the amount that might be recovered at trial. That is, unfortunately, commonplace in libel litigation. The matter must be looked at "in the round." Adopting that approach, I am unable to conclude as matters stand at this stage, applying the principles identified by the Court of Appeal in *Jameel*, that Sir Stelios has nothing to gain from this action, or that the potential benefits to Sir Stelios of continuing with his claim are so outweighed by the expense and time which the case will undoubtedly take to try it that the court should strike the action out now.

44. On the other hand, the court is under a duty to actively manage cases in accordance with the overriding objective of enabling the court to deal with cases justly. Questions of proportionality and costs are material to that objective. Active case management includes the court helping the parties to settle the whole or part of a case. Here, the parties are, or appear to be actively engaged in the process of negotiating for the purposes of settlement (I assume that the flurry of correspondence to which I have referred was engaged in for that purpose, and not merely to improve either sides' position for the purposes of this application). In the circumstances of this case, I consider that it will assist that process if proceedings were to be stayed for a short period, so that negotiations can continue without the pressure and cost that continuing

the litigation process itself necessarily involves. I should add that neither side invited me to take this course, although it was raised as an option by me during the course of argument.

45. The application to strike the action out as an abuse of the process is therefore dismissed. The action will however be stayed for a short period from the date of the handing down of this judgment. It is to be hoped that the parties will take full advantage of the "breathing space" this provides. I do not consider a short stay will unduly hinder the progress of the litigation from the perspective of either side, in the event that no settlement can be reached; and the parties may make submissions on the length of the stay, either orally or in writing, when this judgment is handed down.