Neutral Citation Number [2006] EWHC 25 (QB)

Case No: HQ04X04027

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/01/2006

Before :

MR JUSTICE TUGENDHAT

- -

Between :

MR SAYED HUSSEIN	**Claimant**
- and -	
WILLIAM HILL	**Defendant**

- -
- -

Mr Hussein in Person
Anna Coppola and Richard Munden (instructed by **Wragge and Co)** for the **defendant**

Hearing dates: 12th January 2006

- -

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.

.....

MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. This is the hearing of a Pre Trial Review in an action for slander and libel commenced on 14th December 2004. The brief details of the claim set out in the claim form by the claimant himself read as follows:

> "The defendants between the March 04 and December 04 have defamed the claimant by notices stating the claimant was a racist a con man and trouble maker. They have carried on a campaign of slander via one Richard Crimp and two other managers calling the claimant racist, con man, thief and cheat in front of hundreds of witnesses and criminal intimidation. Value to be assessed £100,000."

2. The claim is closely linked to earlier proceedings as appears from paragraph 1 and 2 of the Particulars of Claim dated 3rd January 2005, which include the following:

> "1. Arising out of the claimants complaints against her Ladyship Mrs Hallett meeting defence counsel in another case before this Hon. Court. The complaints were also against this defendant, their solicitors and counsel. As a result of all of claimants actions the defendants in their fury took all of the actions as hereunder.
>
> 2. The defendants caused a poster to be published describing the claimant as a racist a con man and a very dangerous person …"

3. By a consent order dated 2nd November 2005 the trial has been fixed for 6th February 2006 before a judge and jury estimated to last eight to ten days. It is therefore important that so far as possible I should resolve all outstanding preliminary matters in this hearing.

4. A Defence was served on 19th January 2005. There is a complete denial of publication of a poster or any other words defamatory of the claimant. There then follows a section headed "Abuse of Process" covering some three pages of the document, in which the defendants set out their case that:

> "The claimant's motive in bringing these proceedings is not to vindicate his reputation but rather to continue a personal campaign of vexing and inconveniencing the defendant and/or to gain a financial advantage by bringing a grossly exaggerated claim against the defendant in the hope of persuading the defendant to settle out of court or in the hope that he might succeed in his false claim. As such, the proceedings are an abuse of process and should be struck out."

5. The Defence refers to a number of other proceedings involving these parties and it is necessary to refer briefly to these. The history of the relationship between these parties starts on 8th or 9th September 2001. There is no dispute that on 9th September 2001 the claimant was assaulted by Stephen Whyms, who was then an employee of

the defendant firm of bookmakers. There was at about that time, apparently on 8th September, a difference between the parties about a ticket which the claimant alleged to be a winning bet, but which the defendant disputed.

6. On 15th February 2002 the claimant issued proceedings against the defendant for personal injury, loss of a watch and slander (case number HQ 02 X00501). The claim was initially limited to £57,500, but at the beginning of the trial the claimant applied for permission to amend his Particulars of Claim as he put it to "remove the limit on the damages claimed" and to claim "damages for aggravated assault", the aggravation being the way in which this litigation had been allegedly conducted by the defendants. The assault occurred at the Locarno branch of William Hill in Streatham. Mr Whyms who is of Afro-Caribbean origin, was employed there as a deputy manager cashier. The case was heard before Hallett J (as she then was) on 26th and 27th January and 3rd February 2004. She gave judgment on 18th February 2004 the neutral citation is [2004] EWHC 208(QB).

7. Hallett J concluded her judgment as follows:

> "46 I have no doubt that Mr Hussein when he realised he had a claim against the defendants deliberately exaggerated it in the hope of persuading the defendants to settle out of court. He has involved others in concocting a grossly inflated claim. When the defendants refused to settle, he embarked upon a campaign against them. This included making wild allegations of lies, racism and attempts to pervert the course of justice. …
>
> 48….I am not persuaded on the balance of probabilities that Mr Whyms struck Mr Hussein three times including twice to the head or face. I am not satisfied that there was any blow to the head at all let alone one causing pain or injury but leaving his sunglasses perched on his head. I am satisfied there was probably one blow, maybe two, to the area of the right upper arm.
>
> 49 I reject Mr Hussein's evidence about the effect of such an assault upon him. If he suffered any loss of memory concentration or absentmindedness, as described by his witnesses, such symptoms date from a long time after the assault. I consider it far more likely that they are attributable to his age and pre-existing heart condition and diabetes. I am not satisfied that he was wearing a watch currently worth £7,500 that fell from his right wrist and went missing as a result of the assault.
>
> 50 I am satisfied that although the claimant is entitled to judgment, as is conceded by the defendants, and to damages, the damages should be only nominal. The sum will be £50 in total. … I am also minded to have a copy of this judgment sent to his professional body [the claimant is an accountant] and I am considering sending the papers to the Director of Public Prosecution….. "

8. The claimant applied for permission to appeal. Amongst other matters he raised two new points. One was that a receipt for the allegedly missing watch had been suppressed by the defendants. Another was that Hallett J had had some improper private contact with the defendants and was trying to cover her tracks. In his submissions to me at this hearing Mr Hussein referred to both these matters on a number of occasions. Both these, and his other grounds of appeal, were considered in a detailed judgment delivered by Mummery LJ on 17th June 2004. The neutral citation number is [2004] EWCA Civ 899. Having considered all these matters Mummery LJ refused permission to appeal. This judgment should be read with the judgments of Hallett J and Mummery LJ.

9. About a month later the claimant started his second action by a claim form issued on 27th July 2004 (claim number HQ 04X02328) naming four defendants. The defendants named are William Hill plc, each of solicitors Berrymans Lace Mawer, counsel Ms Foster, who represented the defendant in the first action, and Dr Fry the consultant who gave expert medical evidence for the defendant in that action. The brief details of the claim as set out in the form are as follows:

> "In an action for damages for assault admitted by the First defendant the defendants approached the trial judge ex-parti to prevent the claimant from producing documentary evidence which proved that the defendant's expert withdrew parts of his medical report. The medical report submitted by the Fourth defendant was a totally false report done in consideration of a large bribe. To further pervert the Course of Justice Third defendant [that is counsel] met the trial judge ex-parti to prevent exposing the perversion of Justice by all the defendants. This was a denial of my Human Rights and also my Fundamental Rights. This was also contrary to common law prevention of corruption. Value unlimited. "

10. In a Statement of Claim dated 13th August 2004 the claimant enlarged upon these allegations. In addition, he alleged that the transcript of the tape recording of the proceedings had been forged, that "the Judge is now unlawfully refusing to release [it] for experts to examined as to editing and voice analysis", and that "the defendants and more importantly their legal representatives had corrupted the courts system to alter the mechanical recordings in the control and custody of" the Court. The final paragraphgraph reads:

> "8 The claimants requests that in view of the seriousness of this action and its value in excess of £5,000,000 the case be allocated to a jury trial to prevent this defendant from perverting the course of justice again."

11. On 10th November 2004 Master Eyre made an order:

> "Upon considering the claim form and 'Statement of Claim' and without a hearing and pursuant to rule 3.3 of the Civil Procedure Rules and it appearing to the court therefrom that this action is merely a collateral attack on the verdict of Hallett J in a previous action by the claimant (HQ 02X00501), and

> accordingly amounts to an abuse of process it is ordered (1) that the claim form be struck out and the action dismissed (2) that the claimant pay the defendants costs with liberty to the parties to seek a summary assessment".

12. The third action, started a month later, is the slander action in which this pre trial review is being heard. A fourth action was started by the claimant on 23rd August 2005 naming as defendants a Mr Tim Reynolds and Mr William Hill PLC. The brief details of the claim in that action read:

> "The First defendants on the instructions of the Second defendants did on 5th June saw off the wheel nut which held the weight of my car body. I saw the First defendant and employee of the Second defendant key my car. The same day when I got into my car within three miles the front nearside wheel collapsed the resulting accident caused me to break my finger. The Second defendant then got their employees to assault me in June to prevent me from going out of my home and stop my case. Loss of car and injuries and damages value £8,500 more than £1,500 limited to £100,000."

13. The fifth action was commenced by the claimant on 12th September 2005 (claim number HQ 05X02663) naming as defendant William Hill Plc. The brief details of that claim read as follows:

> "The claimant had claimed damages for an assault by a servant of the defendants at their premises and the loss of a watch value £7,700 the defendant by deceit and perjury stated that I did not provide receipt or replacement value for the watch in fact the defendants insurers had the documents. The defendants told the court I did not tell anyone about the head injury. In fact it was in the Police Report and notes from my GP. The defendants lied about weight of instrument used to their doctor and in secret meeting to their judge. The claimant claims £7,700 for the watch and £200,000 general damages. Interest under the Supreme Court Act and costs value £207, 000. "

14. What was and was not said and recorded about the head injury and the weight of the instrument used in the assault are both matters which are dealt with in the judgment of Hallett J, as is the allegation about the missing watch. The allegation about the secret meeting with the judge was considered by Mummery LJ.

15. The most recent development in the first action was an order made by Master Eyre two days before this hearing, on 10th January 2006. He made absolute an interim charging order on some property sought by the defendants to secure the order for indemnity costs which had been made by Hallett J. The Master also made a civil restraint order after reciting the following:

> "And further on hearing the claimant as follows: 'These crooks have suppressed the evidence every time there is a fraud by you and your judges, you stay everything. You are racist as much

> as Mrs Justice Hallett is – you are particularly so! These barristers' clients suppressed the evidence deliberately' and to similar effect, before leaving the court room abruptly".

16. The papers concerning the allegedly suppressed evidence consist of six pages which the claimant handed up to me during this hearing. The first page is the claimant's copy of a letter dated 26th September 2001 written by "Hussein and Co" to Norwich Union. It states:

> "Herewith the original estimate for my watch and the original purchase receipt. Because of its condition it will not photocopy clearly therefore I am sending you the original".

17. The second page is a copy of a letter signed by the claimant to Greenwoods solicitors who were instructed by Norwich Union. It asks for confirmation that they still have the estimate for replacement of the watch. On 27th May Greenwoods had asked for communications between Norwich Union and the claimant to be addressed to them. The last document is a letter dated 15th June 2005 from Greenwoods to the claimant in which they thank him for a letter dated 2nd June and enclose "a copy of the card setting out the cost of a watch". The enclosure are photocopies of the front and reverse of what looks like the business card of a representative of Patek Phillipe giving an address at Harrods Fine Jewellery Hall in London. On the printed card there appears in handwriting: "3802/200 J £7,700 gent's 18 carat yellow gold Patek Phillipe with date automatic on a crocodile strap".

18. The copy letter of 26th September 2001 is the only one of these documents that refers to a receipt. It is at best a previous consistent statement by the claimant which could add nothing to the evidence already before Hallett J. When I asked him why he had not produced it to her, he gave as his explanation the effect of the attack on his mind, an effect which Hallett J had found did not result from any assault.

19. In an allocation questionnaire filed on 7th February 2005 solicitors for the defendant estimated that the hearing would take three days and that the defendant's overall costs would be likely to be £65,000. At the hearing before me this estimate had risen above £172,000 for an estimated eight-day trial.

20. In his allocation questionnaire the claimant wrote the following:

> "It's important that this matter is heard by a jury as the defendants previously met the trial judge in the absence of the other party to action.
>
> There have been previous proceedings before. The trial judge met counsel for Defence ex parte. The defendants influenced the judge in the secret meeting. The judge has not denied the meeting".

21. On 23rd May 2005 the defendants issued an Application Notice for permission to amend the Defence. Permission was given on 26th May 2005. The amendment adds a plea of justification to the effect that insofar as the words complained about are that the claimant is a trouble maker, a con man, a dangerous person (meaning that there

are reasons to be cautious when dealing with the claimant) and a racist, the words were true in substance and in fact. The particulars of justification refer to two new matters one is the dispute about what the claimant said was a winning ticket about which I need say no more. A second matter is a reference to the claimant having assisted a Mr McManus in separate defamation proceedings brought by Mr McManus against the defendant. In those proceedings the claimant, as is common ground, identified himself throughout as Mr H S Shah. Hallett J had refused to permit the defendant to adduce evidence on this to her, regarding it as a peripheral issue (paragraph 47 of her judgment).

22. However the main particulars relied on are a series of facts which are found as such in the judgment of Hallett J in the first action. Importantly, the particulars include matters which are also relied on as part of the abuse of process point pleaded in the original Defence. On 22nd August 2005 the claimant served a six page "Response to Amended Defence".

23. In paragraph 12.1(iii) of the Defence the defendant pleads that the claimant deliberately exaggerated and concocted the personal injury claim in an attempt to extract a grossly inflated award of damages from the defendant. Hallett J had found this is a fact at paragraph 46 of her judgment. In his response to this dated 22nd August 2005 the claimant stated that this allegation is false.

24. In paragraph 12.1(iv) of the Defence the defendant pleads that the claimant attempted to extract damages of £5million against the defendant and others in the action referred to in paragraphs 9 and 10 above, being the action struck out on 10th November 2004. In his response to this dated 22nd August 2005 the claimant stated that this allegation is false and that "…I brought the action because of defendants and their legal and medical advisors perversion of justice. No one can extract anything a Court of Law has to rule on it."

25. In paragraph 12.1(vi) of the Defence the defendant pleads that the claimant is a man who is prepared to say anything to pursue his claim against the defendant, and relies on the accounts of what he said to Dr Hussein (which it says is inconsistent with what the video shows) and to Hallett J, as found by Hallett J in paragraph 24 of her judgment. In his response to this dated 22nd August 2005 the claimant states: "The only thing is the video which has never been proved as original in any event it's what the defendant wants the court to believe. …"

26. In paragraph 12 (viii) of the Defence the defendant pleads that the claimant was inconsistent in what he said about Dr Hussain, as found by Hallett J in paragraph 32 of her judgment.

27. In paragraph 12.1(vii) and (ix) of the Defence the defendant pleads that the claimant invented the accounts of the lasting impact of his injuries in the personal injuries case, including loss of his livelihood, as found by Hallett J in paragraphs 44 and 45 of her judgment. In his response to this dated 22nd August 2005 the claimant states "As a direct result of the assault I have been forced to retire and any other statement by the defendants is slanderous".

28. In paragraph 12.2 of the Defence the defendant pleads that the claimant is a racist, and relies on the findings of Hallett J at paragraph 5 of her judgment, which is as follows:

> "Mr Hussein admitted that when he was arguing with Mr Whyms at the desk he told Mr Whyms "I do not need you making monkey faces at me. I need my change". He denied saying "fucking monkey faces" as recorded by Mr Samuels in an interview with Mr Hussein on 12th September 2001. Mr Hussein told me that Mr Whyms kept pulling faces as he tried to get his point across. He denied getting angry and he denied calling Mr Whyms "a fucking monkey" which he conceded would have been a racist remark. I should say that given the claimant accepted the use of the term monkey would have been racist if directed at Mr Whyms. The distinction between calling Mr Whyms "a monkey" and saying he was pulling "monkey faces" is to my mind a fine one…. "

29. In his Response the claimant states that the allegation that he called Mr Whyms a 'fucking monkey' is a filthy lie, but he admitted saying "I do not need you making monkey faces at me. I need my change". He denies admitting that would have been racist, but admits "I had said perhaps it would be racist depending on the context". He adds:

> "If you question the defendant's calculations on your winning bet you are trouble maker. In fact the defendant's employee was a violent man who had attempted to assault another customer the previous week. He was high on drugs, a cocaine user who regularly visited a drug den called Home James in Brixton. He was a time bomb waiting to explode and the defendants knew about him. At leas three managers knew about and did nothing about it. I did nothing that was racist. This allegation is an insult to the concept of racism…
>
> I gave the defendant £50 and instead of being given my change the defendant makes faces at me. What was it he was doing. Was he not robbing me. I am to say yes sir because you are Afro Caribbean you can rob me. I am not allowed to say anything. I did not call him a monkey. This is yet another twist by the defendant. You ask for your change and you are a racist. You challenge them for your money and you are a racist, and their counsel secretly meets the judge to prejudice her against a Muslim and reminds her of 9/11, the truth is because the claimant and his doctors were Muslim it just suited the defendants".

30. On 21st December 2005 solicitors for the defendant spoke to the claimant and it is common ground that the letter of 22nd December accurately records what was said. The solicitors confirmed that the Pre Trial Review had been listed for half to one day hearing on 12th January. The solicitors added "we hope to be able to agree the contents of the judge and jury trial bundles with you prior to this date, but any outstanding issues will be dealt with at this hearing". It is at least regrettable that more was not said to the claimant as to what was expected to occupy the half a day to one day hearing. The solicitors wrote to the claimant on 6th January with a draft of an Application Notice, and in a second letter of the same date, a copy of findings of the Solicitors Disciplinary Tribunal dated 4th March 2002. In relation to the latter they

asked if he would confirm whether he was the Mr Hussein referred to in the findings. He has told me that he is, and that he took no part in the proceedings. On 9th January 2006 the solicitors wrote again enclosing the sealed copy of the Application Notice together with the relevant enclosures. Mr Hussein tells me he did not receive this until the evening of 11th January.

31. By the Application Notice dated 9th January 2006 the defendants asked for three orders. The first is for permission to re-amend the Defence to add as part of the particulars of abuse of process a reference to the proceedings issued on 12th September 2005. Secondly the defendants asked for an order striking out certain sections of the Particulars of Claim which refer to "criminal intimidation" on the ground that is not a cause of action known to the law. Thirdly the defendants asked for an order striking out substantial passages from the Response to the Amended Defence filed in August 2005, on the ground that those passages are either irrelevant or raise issues which have been conclusively determined against the claimant by Hallett J in her judgment in the first action.

32. It is also regrettable that the claimant was not warned that the defendant proposed to ask me to rule upon the abuse of process point which had been raised by them in their original defence on 19th January 2005 and to which the claimant had responded in detail on 22nd August 2005.

33. Because he had not received the Application Notice, as he told me, until so late, and because he had not been informed that the abuse of process point was to be raised at this hearing, the claimant asked me for an adjournment. I did not accede to that application when it was made at the start of the proceedings. I heard the arguments advanced by Miss Coppola for the defendant and the arguments for the claimant advanced by himself. Having heard the argument over half a day, I decided that I should not grant the adjournment requested. My reasons are, first, that it does not appear to me that there is anything which the claimant could be expected to say at an adjourned hearing which he was not in a position to, and did, say to me on 12th January. He had dealt with the abuse of process points on 22nd August 2005 in writing. As to the Application Notice, the application to re-amend is a very short point which could not justify an adjournment. The same can be said of the second point in relation to the Particulars of Claim. As to the third point, the contents of the Response, the real issue here is one with which the claimant must be familiar by now. It is the extent to which, if at all, he can re-litigate the matters upon which Hallett J found against him. As already noted, his second action was struck out on this point on 10th November 2004.

34. In reaching my decision not to adjourn the case I had particular regard to the overriding objective. It is vital that these points be resolved before the hearing date which is some three weeks away. This is the last occasion on which to resolve them without interfering with the preparations for the trial. The claimant asked for an adjournment of seven days, but it seemed to me unlikely that the matter could be listed for half a day in the intervening period before a Judge who hears jury actions in this court. Inevitably costs would start to rise steeply in the final weeks before a trial. Considerations of saving expense would not have deterred me from adjourning the proceedings if I had thought it necessary to do justice to the claimant. But if, as I consider to be the case, justice can be done to the claimant, in the sense of giving him

a fair hearing on these points, then there are strong case management reasons for dealing with the matter here and now.

35. Miss Coppola addressed me on the three points in the Application Notice in the order in which they appear, and concluded with the point on abuse of process raised in the defence. The claimant addressed me on the points as they were made by Miss Coppola. I find it convenient to consider the points arising out of the Response to the Amended Defence, and the general abuse of process point together. I shall deal with those first.

36. The first point of controversy arises out of paragraph 9 of the Particulars of Claim and the corresponding paragraph of the Defence. In the Particulars of Claim the claimant pleaded:

> "The defendant's Manager and other employees who have been slandering the claimant have been in their company uniform and during their working time. This is clearly on the orders of the defendants and with their knowledge".

37. In response to that in the Defence the defendant states that that paragraph is unclear. The Defence continues:

> "If the facts and matters pleaded in paragraph 9 are intended to relate to the allegations of slander against the defendant's employee Mr Crimp pleaded in paragraph 4 to 6 of the Particulars of Claim, they are denied. …"

38. In his response to that the claimant writes :

> "Paragraph 9 [of the Defence] is false. The defendants knew of the history of Mr R Crimp in his slandering Mr McManus when the defendants paid …. They continued to employ him and let him go to a Ladbrokes shop in their time, they had to have instigated and encouraged him."

39. The defendant objects to the reference to Mr Crimp allegedly slandering Mr McManus, on grounds of relevance, and to the figure on grounds of confidentiality. The claimant relies on this as similar fact evidence. It does not seem to me that the allegation that Mr Crimp slandered Mr McManus can assist the court in deciding any of the issues in this action. The defendant's allegations relating to Mr McManus and how the claimant identified himself as Mr Shah are relevant to the action, being part of the plea of justification. But whether or not the defendant or Mr Crimp slandered Mr McManus is a separate issue which is not relevant to these proceedings. The defendant's objection on this point is well founded.

40. The next issue goes to the general abuse of process point. In response to the allegation that he is conducting a personal campaign of vexing and inconveniencing the defendant for financial advantage, the claimant responded as follows:

> "1. My watch was taken by the defendant's employees.

2. I was assaulted.

3. The defendant's employees interviewed me on tape and twisted what I had said.

4. The defendants lied to their doctor that a tube used in the assault weighted 30 grams, when it weighed 730 grams.

5. The defendants faced with the real tube then produced the tube and admitted the weight of the tube as well.

6. Lied that I did not produce receipt for my watch and that I fraudulently claimed £7,500 when in fact receipt and estimate was sent to their insurers.

7. The defendants knowingly employed a violent drug addict.

8. The defendants employed thugs to threaten me.

9. The defendants since the incident have carried on a claim in my name with the insurers when they stated in court that I did not produce any receipt or estimate for it and have attempted to claim £7,500 fraudulently or some other fraudulent claim against the insurers.

10. The defendants have deliberately been sending their officials to the Ladbrokes shop where I usually go when in fact if they are telling the truth about observing the opposition they could easily go to the Ladbrokes shop opposite the fire station from their shop from the one they have been deliberately confronting me.

10b.The solicitor for the defendants who also allegedly represents Norwich Union the defendant's insurers admits to have in her possession an estimate for replacement value for the watch. She denies she has the receipt for the watch. She says she does not know where the estimate came from into her possession. The solicitors for defendants claimed in the trial before Mrs Justice Hallett that I had made a fraudulent claim for £7,500 when in fact this defendant was involved all the time in perverting the cause of justice by pretending to the court that no receipt or estimate had been sent to the insurers.

11. The defendants security officers interviewed me on tape they failed to produce the tape and told lies on behalf of his employers…

12a. The security officers find the tube and admit its weight in the first day after the assault, its weight goes down from 730 gms to 30 gms and hits lost, who was the con men I say it was

> the defendants and their employees who deliberately kept on lying to the court.
>
> 12a. A gullible doctor is lied to who then is bribed or because of his false pride refused to review his opinion after the dramatic change in weight in the tube used in the assault. A doctor who admits his mistake to GMC but the defence involve the Judge in a constitutional breach by deliberately meeting the Judge to get her to prevent production of letters written by their doctor admitting his misunderstanding and mistake.
>
> 12c. The report to the police made within two hours of the incident states:
>
> (1). Two hits one on the head one on face.
>
> (2). Says clearly what had been said to the assailants. The doctor's notes also say two hits. The defendants twisted the whole evidence and say that I did not mention the head injury and say that I mention the story of being hit on the head some months afterwards. Who is telling lies.
>
> 12d. The defendant's employee was known to the defendants to be a violent man. The previous week he had attempted to assault another customer, he had to be physically restrained to stop him doing so. The Branch Manager knew of it and the defendants lied that they did not know of their employee's propensity to violence. The defendant's management are scoundrels and liars. They are perjurers who think nothing of bribery to get their ends and their staff are forced to follow suit.
>
> 12e. The defendants insurers ask for the receipt and estimate of value I send it to them and the defendants lied to the court. "

41. These matters are dealt with in the judgment of Hallett J. She sets out the matters relating to the watch, to the weight of the tube, the conflicting medical evidence, and the conflicting evidence of fact. Her conclusions are unequivocal as to the watch. In paragraph 11 she said "I found [the claimant's] evidence about the watch totally unconvincing and it made me doubt his veracity generally". She found the defendant's witnesses to be honest and she believed them. She said in paragraph 18 "I found Dr Shah's evidence less than convincing. I got the distinct impression that he was prepared to say whatever he believed would help Mr Hussein". In paragraph 19 she said "I have little doubt that Dr Fry got it right". In paragraph 24 she said, "I hope I have included enough of the various accounts given by Mr Hussein and his witnesses to explain why I now have real doubts as to whether Mr Hussein consulted any doctor about the effects of this assault". In paragraph 31 she said: "I will not trouble further with Dr Hussein's evidence as I found it totally unconvincing and very troubling. He too seemed to be prepared to say whatever would advance Mr Hussein's case. This is not something I say lightly given Dr Hussein's qualifications. Where there was any conflict between him and Dr Fry I unhesitatingly accept Dr Fry's evidence…" She added in paragraph 35 that "nothing daunted by the loss of Dr

Hussein Mr Hussein invited me to ignore his evidence and to rely upon the evidence of Dr Fry as to the possibility of his having suffered from an adjustment reaction".

42. It is clear that the matters raised in these paragraphs of the Response are an attempt to reopen the matters which were decided conclusively against the claimant in the judgment of Hallett J and in the judgment of Mummery LJ. The findings of fact in Hallett J's judgment raise a serious obstacle to the claimant on the defence of Justification. The claimant's other explanation for introducing them is that they go to the credibility of the defendant.

43. Matters going to credibility can and should be put to a witness in cross-examination when that witness's credibility is being challenged. That is to say they should be put in that way if they are proper questions. They should not be in a statement of case. The defendant's objections in relation to these matters on that point are well founded. These passages also clearly demonstrate that the claimant is attempting to defeat the defendant's defence based on the judgment of Hallett J by challenging that judgment itself.

44. The claimant returns to these points later in his Response. Referring to the issue of publication in these proceedings he states:

> "… Are eight witnesses telling lies all independent witness. The defendant's witnesses are all dependant on their bread and butter on defendants, who will lie for their employer…"

45. The Response also includes the following:

> "11.5.The claim was properly brought and the over protective system denied me justice. The defendants and their Legal Advisors should explain their conduct in meeting the judge. The so called collateral attack should examine the conduct of a judge in so called secretly meeting a party before a trial…
>
> (v) The evidence that huge parts of case was overlooked and defendants were able to hoodwink the court because of claimant's dispairment is clear. A judge previously influenced by secret briefings is not much of a surprise.
>
> (vi) This is a direct contradiction to the facts. I am not allowed to tell her if an offer had been made. The findings is totally false. I refused at least three offers. It's the judge's pre-conceived prejudice as a result of the secret meeting.
>
> (vii) No response is required except to say that I not only tried to assist at mediation but I did everything in the case. The defendants committed a serious tort and the victim was entitled to bring action.
>
> (I interpose to say that these two paragraphs relate to the McManus claim).

> (viii) On the facts stated above, the defendant's lies perversion of truth and secret meeting with the judge – it's no surprise. The only question is should the judge should not have disqualified herself from this case….
>
> 12f. The day before the trial opened the defendants met Dr Hussein and bribed him to change his evidence. This is my doctor why did the defendants meet him?
>
> 12g. To add to everything the defendant counsel met the trial judge prior to the trial and discussed the case. The Judge does not deny the meeting but the counsel involved denies the meeting to the Bar Counsel. Not only Judge met defence counsel but agreed to exclude important evidence from the case..
>
> 11(2) There is no reason why aggravated damages should not be applied for.
>
> 11(4) The finding at (1) by Mrs Justice Hallett is wrong in fact and in law. Lord Justice Brooke had to spend many years to try and prevent racism in the Judiciary. Mrs Hallett was mislead by the lies of Mr Samuels and Defence counsel.
>
> 12(ii) The finding of Mrs Hallett is wrong as shown by the admission of M/S Greenwoods.
>
> 11(iii) This finding is also misconceived she knew of the Police report and knew of the notes of Dr Shah. Dr Shah referred me to Dr Hussein within a reasonable time.
>
> 11(iv) The finding as to loss of livelihood is based on false evidence of the defendants."

46. So far as the law is concerned, Miss Coppola submits that a decision of a court exercising a civil jurisdiction is binding on the parties to that action in any later civil proceedings. See *Trade & Industry Secretary v. Bairstow* [2003] EWCA Civ 321; [2004] Ch 1, paragraph 38 (c). She further relies on a statement of the law by Diplock LJ (as he then was) in *Thoday v. Thoday* [1964] P. 181, 198:

> "There are many causes of action which can only be established by proving that two or more conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff in order to establish his cause of action: and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action. If in litigation upon one such action any of such separate issues as to whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, either upon evidence or upon admission by a party to the litigation, neither party can, in

> subsequent litigation between one another upon any cause of action which depends on the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not or deny that it was fulfilled if the court in the first litigation determined that it was."

47. In order to arrive at the conclusion that she did arrive at, namely that the award of damages should be £50 and no more, Hallett J had to reach a determination on a number of issues. These included the nature and extent of the injuries, if any, suffered by the claimant as a result of the admitted assault, whether or not he lost the watch as he claimed and by necessary implication whether the claimant was a truthful witness.

48. It follows that the claimant cannot defeat the defence of justification in paragraphs 12.1(iii), (iv), (vi), (vii), (viii) and (xi) in the way he seeks to do in the Response. It is not open to him to attempt to persuade another court in this action that the findings of Hallett J in the first action were wrong. Those parts of the Response must be struck out.

49. In support of her general submission in relation to abuse of process Ms Coppola relied on the judgment of Simon Brown LJ (as he then was) in *Broxton v McClelland* [1995] EMLR 485 at 497-8 cited in *Wallis v. Valentine* [2002] EWCA Civ 1034; [2003] EMLR 8 paragraph 31:

> "(2) … the institution of proceedings with an ulterior motive is not of itself enough to constitute an abuse: an action is only that if the Court's processes are being misused to achieve something not properly available to the plaintiff in the course of properly conducted proceedings. The cases appear to suggest two distinct categories of such misuse of process:
>
> (i) The achievement of a collateral advantage beyond the proper scope of the action – a classic instance was *Grainger v Hill* where the proceedings of which complaint was made had been designed quite improperly to secure for the claimants a ship's register to which they had no legitimate claim whatever. The difficulty in deciding where precisely falls the boundary of such impermissible collateral advantage is addressed in Bridge LJ's judgment in *Goldsmith v Sperrings* Limited at page 503 D/H.
>
> (ii) The conduct of the proceedings themselves not so as to vindicate a right but rather in a manner designed to cause the defendant problems of expense, harassment, commercial prejudice or the like beyond those ordinarily encountered in the course of properly conducted litigation.
>
> (3) Only in the most clear and obvious case will it be appropriate upon preliminary application to strike out proceedings as an abuse of process so as to prevent a plaintiff from bringing an apparently proper cause of action to trial".

50. She also relies in particular on the following passages from the judgment of Sir Murray Stuart Smith, paragraphs 32 and 33 (in which he expressed his agreement with the views of Eady J he cited):

> "I would add the following three matters. First, where Simon Brown LJ speaks in paragraph (2)(ii) of the conduct of the proceedings, this is not confined as Mr Price submitted, to the conduct of proceedings after the issue of the claim, but includes the initiation of the claim itself. Secondly, at the interlocutory stage the test is an objective one. In *Goldsmith v Sperrings Limited* [1977] 1 WLR 478 Lords Justices Scarman and Bridge dismissed the defendant's appeal from refusal of the judge to strike the action out as an abuse of process. Lord Denning MR dissented; he considered the action was brought for the collateral purpose of cutting off the channels of distribution of the defendant's paper 'Private Eye'. At page 499E, Scarman LJ said:
>
> "No application has been made in these proceedings to cross-examine Sir James Goldsmith. He has not been confronted with the challenge direct. Instead, he has to meet a case based on adverse inference said to arise from surrounding circumstances. It is this circumstantial case which has, as I understand his judgment, impressed Lord Denning MR. In so far as the Master of the Rolls is saying that Sir James Goldsmith's purpose must be objectively ascertained, that is, by reference to what a reasonable man placed in his situation would have in mind when initiating or pursuing the actions, I respectfully agree with him."
>
> Thirdly the *Broxton* and *Goldsmith* cases were prior to the Civil Procedure Rules. In *Schellenberg v British Broadcasting Corporation* [2000] EMLR 296 Eady J, in an application to strike out for abuse of process, rejected the claimant's submission that the overriding objective under the CPR was irrelevant. At page 318 he said:
>
> "Even in a jury action it is regarded under the CPR as a judge's duty to take a realistic and practical attitude. He or she is expected to be more proactive even in areas where angels have traditionally feared to tread.
>
> I have seen nothing to suggest that the CPR are to be applied any less rigorously, or the judges are to be less interventionist, in litigation of the kind where there is a right to trial by jury. That important right is sometimes described as a 'constitutional right', although the meaning of that emotive phrase is a little hazy. Nevertheless I see no reason why such cases require to be subjected to a different pre-trial regime. It is necessary to apply the overriding objective even in those categories of litigation and in particular to have regard to proportionality. Here there

> are tens of thousands of pounds of costs at stake and several weeks of court time. I must therefore have regard to the possible benefits that might accrue to the claimant as rendering such a significant expenditure potentially worthwhile."

51. Accordingly I ask myself what a reasonable man placed in the claimant's situation would have in mind when initiating or pursuing the present action, bearing in mind the whole context of this and the other actions which he has commenced (which I have set out above) and bearing in mind what he himself says in the passages in his Response to Amended Defence quoted above, and in his submissions to me.

52. I have no doubt that one purpose is to achieve the collateral advantage of re-litigating before a jury the very issues which were decided against him by the judge.

53. I also ask myself what the possible benefits are that might accrue to the claimant as rendering worthwhile the very significant expenditure of costs which is involved in an eight day jury trial. If, as is clearly the case, the findings of Hallett J are binding, it must follow that any award of damages would have to take into account the claimant's reputation as it stands in the light of that judgment. I have not been asked to strike out or give judgment summarily on the issues of publication and justification. I say nothing more about them, save that, having read the witness statements in relation to publication, it is clear to me that there is a real issue in this case. Nevertheless for the purposes of this point I assume that the claimant might succeed on both issues. The claimant submits that the damages on that footing would be in the range of £30,000 to £100,000. That might not be an unrealistic estimate, if his reputation was unblemished in the judgment of Hallett J. But in the light of that judgment no jury properly directed could award damages of such magnitude. In my judgment this is one of those cases where it can be said that (assuming the claimant wins), the game is not worth the candle.

54. I am not confident that this is a claim genuinely pursued to vindicate the damage to the claimant's reputation caused by the slanders which he alleges were published of him. On the contrary the only conclusion which can reasonably be drawn from the history of the matter, which has been set out above, is that the proceedings in this action, and in the action number 2328 struck out in November 2004, and in the action on the watch brought on 12th September 2005, are all brought so as to cause the defendant problems with expense, harassment, commercial, prejudice beyond those ordinarily encountered in the course of properly conducted litigation. I say nothing about the action commenced on 23rd August 2005 which relates to events which were not the subject of the judgment of Hallett J.

55. Accordingly the defendant succeeds on the third point raised in the Application Notice, and in the general abuse of process point raised by them in paragraph 11 of the Defence served in January 2005.

56. In the light of these conclusions I do not need to reach a determination on the first and second points raised in the Application Notice. But in case the matter goes further I should say that as to the first point I would have granted leave to re-amend the Defence. As to the second point I would have struck out from the Particulars of Claim the references to criminal intimidation. There is no such cause of action known

to the law. While what those words referred to can be the subject of a cause of action the Particulars of Claim does not allege the necessary factual matters.

57. Before leaving this case I wish to add that, if I had not reached the conclusions that I have reached, and if I had allowed it to go to trial, I would have wished to be addressed on the question whether the action remains one which ought properly to be tried by a jury. There is every reason to expect that the claimant would have been unable to confine his evidence and submissions to the matters relevant to the action, with the result that there would be a real risk that the jury would have to be discharged at an early stage. The claimant submits that he has a right to trial by jury, but both parties also have a right to a fair trial. How this would have been resolved I cannot say.