A2/2015/2839

IN THE COURT OF APPEAL
LONDON

BETWEEN:-

STEPHANE (STEVE) PARIS (1)

ANGEL GARDEN (2)

Claimants / Appellants

and

ANDREW LEWIS (1)

MELANIE BYNG (2)

Defendants / Respondents

Appellants' Submissions prior to Oral Hearing on 22nd March 2016

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1. The Appellants submit that this summary, in accordance with CPR 16, contains arguable points of principle, and proof of a large number of factual errors and procedural irregularities to be raised at the Hearing, adding up to a miscarriage of Justice.
2. The Appellants will be relying on the evidence contained in their permission to appeal bundle as well as that submitted with this document (AC-09 - AC-90). The matters to be raised concern two previous hearings:
   i. the PTR, at which the re-instatement of claims of covert harassment following disclosure was not allowed on the basis of the Overriding Objective of avoiding legal action, and of time and cost savings, and the firm premise that a recognised course of conduct identified by the Judge could be examined as background to defamation, used to dismantle the "reply to attack" defence, and to prove malice;
   ii. the five day Hearing, in which the lack of discrete claims in harassment was openly used as a reason to prevent the Appellants from following lines of questioning which would show

malice, as well as proving beyond reasonable doubt the claimed course of conduct in covert stalking, harassment, shunning and incitement to shun.

3. HHJ Seys-Llewellyn QC misdirected himself regarding the PHA 1979: in spite of citing the Act's definition, *"the essence of the tort is the tormenting of and the direct effect upon a Claimant"* (para 38 of the PTR), he failed to ask the necessary question of what the likely effect on a target would be of a course of conduct described by him as *"Covertly inciting organisations and individuals to shun the Appellants by portraying them as dangerous and mentally unstable. I could, by going through the 24 pages of appendices, pick out a number of obvious candidates for this"* (PTR Judgement, para 44 v). He thus put the needs of the court timetable before those of justice and failed to give the proper chronological significance to the Appellants' responses to continuing unprovoked attacks on them in the context of known damaging and long-lasting negative effects of such a course of conduct.
4. This misdirection extended into the defamation hearing, artificially reducing the relevance of the whole malicious and tormenting harassment of the Respondents over several years to an unjust narrow obligation to show malice limited to only about what has been specifically claimed as qualified privilege (AC-89).
5. In his final judgement following a five day hearing in defamation alone, the tormenting course of conduct highlighted by the learned Judge above had changed from shunning the Appellants, into multiple statements that the Appellants' case was a "belief" that *"the Second [Respondent] has, and has from the outset, been engaged in a campaign encouraging others to publish remarks critical or defamatory of the [Appellants]"*(paras 228, 241, 243 and 249). This is markedly dissimilar to the previously cited claim above.
6. HHJ Seys-Llewellyn QC misdirected himself as to the Defamation Act 1998 in attributing qualified privilege to the circumstances of the case at all: "*if the defendant is responding to an attack which he knows to be justified he is guilty of malice, though the view has also been expressed that in such a case one might equally well say that there was no privileged occasion*". (14.51 (p598) of Gatley). When the Appellants wrote to the 1st Respondent objecting to his covert attacks (AB-322 - AB-345) he then published that letter in a defamatory post about them, even though he *had* made the attacks complained of.
7. The Judge's misdirection in characterising the November 2012 publication as a *reply to attack*, therefore allows the Respondents to "gain benefit from their own wrong". The blog post was a retort to the Appellants' distressed entreaties (quoted within it) that he should cease from his covert attacks on them. "*A publishes words which B considers defame him. B publishes a response in self defence. A then publishes further defamatory material, purportedly by way of*

rejoinder to B's response. It has been held in Australia that A's second publication is not protected by qualified privilege because (1) it would inhibit B's right of self-defence, since by exercising it he would be laying himself open to further privileged attacks; and (2) assuming the original attack to be unjustified, A would be gaining benefit from his own wrong." Gatley (598)

8. HHJ Seys-Llewellyn QC misdirected himself as to the *fact* of publication per se, ignoring uncontested evidence of the 1st Respondent's deliberate (AC-26) — not automatic, or in bulk (para 109)— republication of the blog post, and thus failed to acknowledge the necessary proof of malice in the 1st Respondent's own admission that he knew what he was publishing went against the public record. This goes against his obligation to his readership as a publisher to update his information, as stated in Flood v Times (2013): *"§13. Mr Price submits that the reader of the website publication who read it after 5 September 2007 would reasonably understand it to be making a statement not only about events as they were on 2 June 2006, the date at the head of the article, but also about events up to the date at which it was being read. Were that not so, there would be no need for a responsible journalist to update the article by including a reference to events subsequent to the original publication. But the Court of Appeal had held that the journalist or publisher was under an obligation to do that."*
9. HHJ Seys-Llewellyn QC similarly misdirected himself regarding his duty under the Act to look at facts as they were and not as the Defendants "believed" them to be. He should not have allowed the 2nd Respondent's "belief" that the 2nd Appellant *"had a personality disorder"* (para 254), to justify her using her husband's credentials to spread malicious defamation of, "*a clinical judgement, not a personal opinion*" of Borderline Personality Disorder (AB-296-8), with the *explicit* intention to cause shunning. The misdirection engages the Appellant's Article 8 rights. In the recent case of Yeo v Times Mr Justice Warby said "§145. *A defamatory attack can, it appears, undermine personal integrity if it has "an inevitable direct effect" on private life which is quite severe, such as ostracisation from a section of society*."
10. This duty also applies to the 2nd Respondent's repeated privacy invasions and disability abuse in lying about the 2nd Appellant's actual physical disability (AB-308, AC-10, AC-17).
11. HHJ Seys-Llewellyn QC stated in para 226 viii) that *"the consistent thread of communications by the Second [Respondent] is to encourage people not to engage publicly with the [Appellants] in relation to allegations of what did or did not transpire in relation to the ill-fated holiday in France."* This statement flies in the face of the evidence in front of him. As a small example, he quoted from an email at Para 250 from the 2nd Respondent to Richy Thompson of the BHA, but omitted the part containing the 2nd Respondent's targeting of the Appellants' work: as she said elsewhere, *"anything else is a distraction"* (AB-300). That email to Richy Thompson

includes *"it's best not to give them any attention or RT their work. I'm occasionally forced into warning others if they're being prolific (as they are today)."* (AC-12) In characterising such exchanges as merely a "consistent thread […] in relation to allegations of […] France", the Judge ignored the obvious constant cyber-stalking of the Appellants to incite shunning of them and their work.

12. HHJ Seys-Llewellyn QC stated in para 229 that *"in the case of each [Respondent] the defence will be defeated if malice is shown. The burden of showing this is on the [Appellants]."* Yet he ignored the context of the case, including the dozens of pages of the 2nd Respondent's background covert email participation in the initial online attack (AB227-259), implying in his judgement that there were only 4 emails by the 2nd Respondent during that time period (para 240-242).
13. The learned Judge's statement at Para 263 for example that *"if this were evidence of a wish to damage the [Appellants], or to neutralise their publications in relation to Steiner Schools generally, one would expect vastly greater illustration of it in the array of email tweet and blog material, but there is none"* uses the amount of *overt* publication as a measure of a *covert* course of conduct, and ignores "the wish to damage" in the many disclosed emails (for example, AC-50-51) which contained exactly such information, including the quote to Richy Thompson above.
14. The Judge described malice as *"lack of honesty or bad faith"* (para 35), yet he quotes an email from the 2nd Respondent at para 79 which was painstakingly shown during the 5-day hearing to be riddled with malicious defamation, including about the Appellants' work. Court transcripts will show the dismantling of those claims when put next to the evidence, and also of Mr Price interrupting the Appellants to stop them from analysing the matter further.
15. While ignoring the Respondents' covert actions, and the many inconsistencies even between their written witness statements and oral evidence, including in matters substantive to malice, he paid undue importance to the Respondents' demeanour, a tendency recently addressed in Suddock v The Nursing and Midwifery Council: *"§59. Experience has taught us that the way in which someone behaves while giving evidence is not a reliable indicator of whether he or she is telling the truth. Whilst demeanour is not an irrelevant factor for a court or tribunal to take into account, the way in which the witness's evidence fits with any non-contentious evidence or agreed facts, and with contemporaneous documents, and the inherent probabilities and improbabilities of his or her account of events, as well as consistencies and inconsistencies (both internally, and with the evidence of others) are likely to be far more reliable indicators of*

where the truth lies. The decision-maker should therefore test the evidence against those yardsticks so far as is possible, before adding demeanour into the equation."

16. Had HHJ Seys-Llewellyn QC properly considered the Respondents' course of conduct in extensive shunning and sabotage in regard to both the PHA and Defamation Acts, the Judge would have had to take the effect of it *on* the Appellants into consideration, instead of effectively punishing the Appellants *for being affected by it*. This also applies to para 106 of the judgement which ignores and virtually ridicules the known effects of shunning and harassment. Similar prejudice was tackled in Suddock v The Nursing and Midwifery Council where a target of 'framing' had been found negatively "*assertive and challenging*": *"§154. However, it may have looked at her behaviour in a very different light if it had appreciated that there was clear evidence that someone was trying to frame her, and that one of the witnesses against her was demonstrably untruthful, not just muddled. An innocent person facing that situation might well have presented as assertive and challenging, especially if she was trying to represent herself. A decision based substantially on Ms Suddock's attitude and behaviour, taken in the absence of an appreciation that there might have been justification for it, cannot fairly be allowed to stand."*
17. HHJ Seys-Llewellyn QC misdirected himself as to the natural and ordinary definition of words:
    i. para 168 overrules the natural and ordinary definition of the word "claims" as defined by the Oxford English Dictionary (a source he relied on in para 176) stating that the actual meaning of the word would only apply had it been italicised or underlined;
    ii. para 200 misquotes the Appellants' use of the word "grooming" by chopping up the sentence so as to render it entirely different to the original, which remains unaltered in the public record online (AC-63-74); i.e. it has been rewritten by the Respondents, and the Judge then applied the most extreme possible meaning to that, which had clearly never been intended. Adopting tampered evidence to justify all of the 2nd Respondent's actions and publications about the Appellants raises the issues in para 15 above and substantially interferes with the Article 10 rights of the Appellants, appearing to seek to prevent their carefully contextualised warnings to other parents about exploitation of children, with right of reply.
18. Much lesser false attribution (with no tampering and to a Defendant), was turned over on Appeal in BCA v Singh where the principle was seen to be so important that it led to libel reform: *"§8. in deciding the meaning of the words the judge overlooked their context; he paraphrased them damagingly"*.
19. Not prosecuting the obvious perjury of submitting deliberately tampered evidence to the Court, in spite of this being made clear at the hearing, and easily measurable against the public record,

shows a clear loss of impartiality. Claiming in his Judgement to have read the original article in full, he nevertheless accepts and promotes the Respondents' version. This applies also to several other perjuries of both Respondents and their Witness during the hearing.

20. HHJ Seys-Llewellyn QC misdirected himself as to a large amount of basic facts in the case, eg:
    i. He showed a severe lack of computing knowledge which led him to the erroneous conclusion as to what happens when a word or email address is treated as spam in a Wordpress blog's comment section (para 75 and 77);
    ii. Misdirection as to the use, and permanent nature of Twitter's archive (para 126 and 140), going against established principle, e.g. McAlpine V Bercow.
    iii. Chronology was altered, including regarding matters of public record to justify actions and conclusions, which couldn't have been justified, had the proper course of events been reported accurately (Para 12 and Para 187/AC-33, 34, 35);
    iv. He confused two videos, stating that promoting one which was not about the Respondents was nevertheless harassing them to allow Qualified Privilege (Para 186 / AC-52-62);
    v. He mistakenly applied the visitor count from one post onto another, and then claimed that as a result, very few people saw that post. In fact it was very widely promoted to potentially 60,000 people (28b of Claimants' Closing Submissions) by the Respondents and their followers (AC-19-23);
    vi. He stated the Appellants had "*no such objective "proof"*" (para 219) that the 1st Respondent *"had been playing a major part in a broad and active smear campaign and fermenting it"* (para 218). In fact they had his communications with @animalsinsuits which included a clear threat to shun those continuing to communicate with the Appellants (AB-322 - AB-345).
21. Unequal treatment of parties extended to HHJ Seys-Llewellyn QC's contradictory misdirections with regard to the CPR, in stating that following pre-action guidelines, including the Appellants' huge efforts and expense to try and *avoid* legal action, had amounted to threatening the Respondents. HHJ Seys-Llewellyn QC has ignored the principles of free speech so carefully enunciated in BCA v Singh, where refusing open debate was judged as a lack of confidence in the market place of ideas: "*§12. By proceeding against Dr Singh, and not the Guardian, and by rejecting the offer made by the Guardian to publish an appropriate article refuting Dr Singh's contentions, or putting them in a proper prospective, the unhappy impression has been created that this is an endeavour by the BCA to silence one of its critics.*"
22. He further misdirected himself as to this principle in ignoring the Respondents' contradiction outside Court of positions claimed under oath within it, as well as by allowing both

Respondents to claim alarm about statements they had been invited to respond to, but chose not to, as an explicit policy: *"let her scream into the void"* (AC-11), *"push on, as if in ignorance"*(AC-14).

23. He did not consider the effects upon the Appellants of such covert torment by those with much greater readership and influence. Mr Bishop's Expert Report states:*"It is evident that the [Respondents] and Interested Party orchestrated a campaign to cause serious harm to the [Appellants]."* (AB- 187)
24. The Judge misdirected himself as to Jurisdiction, exonerating witness Dr Byng by stating that no communication of his concerning the Appellants could be found in disclosure, despite knowing that Dr Byng was not a defendant and therefore not bound to disclose anything at all. However, his wife's email communication does show his direct involvement. (AB-290-293, 360-361).
25. HHJ Seys-Llewellyn QC further prevented parties being on equal footing by procedurally misdirecting himself as to the execution of his own order from the PTR commanding the 1st Respondent to supply warning emails potentially going to malice before the final hearing:*"he knows most of the big-hitters so he has put out a warning"* (AB-304). This engages Article 6. The 1st Respondent still remains in breach of that Order.
26. HHJ Seys-Llewellyn QC has nevertheless made an extreme and punitive costs order on the Appellants which must engage their Article 8 rights: taking the family's home while promoting admitted defamatory statements about their agency against bullying, subjects them, including specifically the children, as well as a respectable Human Rights process, to degrading treatment as well as being an arbitrary and unfair interference with their family life.
27. The lack of prosecution of the clear covert cyberstalking and harassment in this case, and the artificial removal and separation of it from the visible defamation, and actually rewarding it, can therefore only result in more harassment. The sale of the family's home, will not cover the Order, forcing the family to also have to give their future address to Respondents whose constant claims in front of a Judge to want "nothing to do with" the Appellants are more honestly expressed in private emails, eg,.: *"Happy to talk to anyone who wants anything checked about them."* (AC-18), *"The police is an option, but Angel, at the moment is in New Zealand"* (AB-346) and *"I am happy to give her a hole in the head anytime"* (AC-13).
28. The Appellants' Article 6 Rights, by the lack of accuracy and balance, are engaged. The Judgement makes it sound as if there was no merit to the case whatsoever, and yet HHJ Seys-Llewellyn QC had the same information at the PTR, where he cited both time and money in refusing to re-instate the harassment claims. If he considered the Appellants had no chance of

success, the same duty bound him to prevent them being led to trial only to have costs heaped upon them. But the necessary question was never asked in assessing whether justice necessitated re-amendment of the claims, given the limits he would be applying to the course of conduct in defamation alone.

29. It is not in the public interest, and does not accord with the stated aims of the police, CPS and other agencies, to infringe Article 10 Rights to free expression of the targets of covert harassment. Punishing targets for the effects upon them of a long course of conduct of harassment and shunning, by degrading and misrepresenting their use of free speech in self defence, with right of reply offered allows the Article 10 Rights of the Respondents to take away the Appellants Rights, engaging Article 17.

30. HHJ Seys-Llewellyn QC misdirected himself in not taking any notice of the submitted well known case law supporting the Appellants' case, having deliberately counselled them to pay close attention to it, in a case where, due to the course of conduct of covert shunning, the percolation effect of rumour, observed in Slipper V BBC [1991], was particularly relevant: *"Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs."* These covert actions have been either ignored or mischaracterised by the judge after Mr Price's embarrassing and untrue claim at the hearing, following admission that there had been a background campaign, that it was "limited" (AC-88): the potential effect upon the target had never been investigated. As the 2nd Respondent said herself in February 2012,*"Just remember - there are lots of people who know about this now and they will tell each other."* (AB-302), and in May 2012 Richy Thompson told her, *"[David Colquhoun] gave me a similar warning some time ago!"* (AC-12)