GROUNDS OF APPEAL IN APPLICATION TO REOPEN PERMISSION TO APPEAL IN CASE 3SA90091

1. These Grounds of Appeal relate to two Judgements made in the High Court of England and Wales in the same case:
   - The Judgement of HHJ Seys Llewellyn of 15th July 2015 and;
   - The Judgement of HHJ Seys Llewellyn of 2nd February 2015.

2. The Applicants urgently seek to re-open Appeals into both the decision of HHJ Seys Llewellyn of 15th July 2015 in Defamation, and his earlier decision at the PTR not to allow re-amendment of the Particulars of Claim to re-include harassment.

3. In the case of both judgements, fresh and incontrovertible evidence has been disclosed by the Respondents' solicitor when they vexatiously and unnecessarily served another case against the Applicants (claim number C00SA374). This new evidence makes reopening the appeal an urgent necessity to avoid serious injustice under CPR Pt 52.17(1).

4. The evidence in question can be found of page 102 of the Respondents' exhibit bundle for case C00SA374 released on the 9/8/2016, a copy of which is attached at the end of this submission. This is part of mediation correspondence which had been until now unavailable to the courts due to being confidential. The statement in question is as follows:
   "I want to make it clear that there has been no clinical assessment of Angel Garden's mental health by my husband, Ms Garden is not his patient and he has never diagnosed her with any mental health issue. Any comments I have made which might suggest otherwise are untrue and understandably distressing to Ms Garden."

Malice

5. In his final Judgement for case 3SA90091, HHJ Seys Llewellyn stated at paragraph 229 that:*"In the case of each Defendant the defence will be defeated if malice is shown."*
   And at paragraph 231 ii:
   "To establish malice, the Claimant must show the desire to injure him or her was the dominant motive for the defamatory publication."

6. In spite of copious mental health smearing, HHJ Seys Llewellyn dismissed the case of malice, citing at paragraph 252 that the Appellants had failed to prove that the dominant motive was to

harm them, and expressly citing the lack of malice to be due to the 2nd Respondent's "honest belief" in the 2nd Applicant's mental illness, stemming from the 2nd Respondent's own understanding.
(this "honest belief" was itself allowed, based on clearly tampered evidence contradicting the public record, that Lord Justice Simon wrongly stated was not one of the Appellants' original grounds of Appeal in the permission to appeal hearing on 22nd March 2016.)

7. Although email statements from disclosure suggest the use of such, as from email disclosure C7-3611: *"At the end of this is his [Professor Byng's] clinical judgement, which she seems to have forgotten."* or C8-3727: *"Angel has a borderline personality disorder. This is a clinical judgement, not a personal opinion. It isn't simply depression. It makes her very dangerous, but luckily for us and sadly for others the danger is to those close to her"*,
these appear strongly persuasive of the use of Professor Byng's professional medical credentials to fuel the smear, the Judge was persuaded by the Respondents' demeanour in court, when she insisted that the clinical judgement she stated the 2nd Appellant had, did not come from Professor Richard Byng, her husband, but was her own, insisting that anyone can make a clinical judgement on someone else.

8. Whatever personal beliefs held, there can be no other motive *than malice* to fraudulently use the medical credentials of a doctor, to pass someone off as mentally ill. At the hearing the doctor in question admitted that such use would add weight to such a smear. Such an action can only happen out of a desire to cause that person maximum harm by leveraging mental health stigma. The new information therefore is both admission and incontrovertible proof of malice, and the expressed "honest belief" in the 2nd Respondent's own ability to make such a "clinical judgement" is now incontrovertibly revealed to be a fabrication, intended to mislead the Judge, disproved by the 2nd Respondent's own open admission of fraudulently using the medical credentials of a doctor in order to cause harm to the 2nd Applicant, clearly knowing that this would cause distress.

9. The Judgement in favour of the Respondents in Defamation, in view of this incontrovertible evidence of malice, should therefore be immediately set aside, under CPR Pt 52.17(1), and the reopening of the appeal allowed.

Harassment

10. The Applicants were refused re-amendment of the particulars to re-include claims in covert Harassment during the PTR Hearing on the 2nd of February 2015, in spite of all the evidence presented to HHJ Seys Llewellyn, and despite him identifying a *"number of obvious candidates"* of *"covertly inciting individuals and organisations to shun the Claimants by portraying them as dangerous and mentally unstable"*. This describes exactly the course of conduct admitted at 4 above, but denied in court to persuade the Judge of her lack of malice.

11. The admission in the released mediation document of the 2nd Respondent that she lied about the 2nd Applicant's mental health and that this was "understandably distressing" to the Applicant, is a clear admission of conscious harassment. There can be no doubt that the 2nd Respondent knew her course of conduct was harassment. This new information should have an urgent bearing on the dismissal of the claims in consideration of court timetables and of the Respondents' costs, as HHJ Seys Llewellyn said in his Judgment when refusing: *"I am satisfied that one would have to vacate this trial with a loss of precious court resources and very great extra expense, in terms of effort, to both parties and in terms of legally represented costs of preparation to the Defendants."* (paragraph 44 of the PTR Judgement).

12. In further stating at the PTR, on refusing the claims, that in order to gain relief from the harassment the Appellants would have to win the case in defamation, the way was opened for the huge costs order awarded against the Appellants, based on the above persuasion of a lack of proven malice.

13. The Judgement dismissing the Applicants' claims in covert harassment should therefore be set aside, and appeal allowed to re-amend on this admission of conscious harassment. Due to the pernicious and secretive nature of the course of conduct in covert harassment, the unreasonable exclusion of those claims to favour the Respondents' costs, which the Applicants' are now being made to pay, has resulted in severe injustice.

14. Due to the Respondents' actions in breaking the confidentiality of the mediation negotiations to submit those admissions of lying into court in a new claim, the Applicants strongly re-assert their right to a fair trial, and respectfully requests that the Court of Appeal honours its positive obligation under the Human Rights Act to ensure one, by granting the request to reopen the Appeals. When one lie has been openly admitted, adopted by both Respondents, and promoted by their representatives, the whole testimony of those parties must be subject to the

strictest suspicion, in the interest of avoiding further serious injustice. The evident willingness to mislead UK Judges by perjury, which was a ground of the Appellants' original appeal, has obviously had the desired effect: persuading judges of the Respondents' 'honesty' by means of fraud. This must throw the whole Judgement of HHJ Seys Llewellyn into question, and reopening of the appeal must be allowed.

Reopening Appeal

15. Regarding the Court's jurisdiction in reopening Appeals or allowing a new Appeal on the basis of fresh information, the Applicants are mindful of the findings in Bishop v Choker [2015] EWCA in which the Court of Appeal exercised its jurisdiction to reopen an order refusing permission to appeal when it was alleged that a judgment was obtained by fraud.

16. The Applicants understand the cumulative effects of the conditions upon CPR Pt 52.17(1) in the court's consideration of the necessity to reopen appeals:
    a) that it is necessary to do so to avoid real injustice;
    b) the circumstances are exceptional and make it appropriate to reopen the application for permission to appeal;
    c) there is no alternative effective remedy.

17. Judge Smith LJ gave judgment in Noble v Owens that the 'true principle of law' (derived from Joesco v Beard) is that: *"where fresh evidence is adduced in the Court of Appeal tending to show that the judge at first instance was deliberately misled, the court will only allow the appeal and order a retrial where the fraud is either admitted or the evidence of it is is incontrovertible. In any other case the fraud must be determined before the judgement of the court below can be set aside".*

18. In this case, the fraud is both admitted *and* incontrovertible. The Applicants therefore submit that this is such an exceptional case, that the Orders of HHJ Seys Llewellyn should be urgently set aside to avoid, or at least ameliorate, real injustice.

19. The Applicants also acknowledge the Court's inherent jurisdiction in deciding that there is no alternative effective remedy in forcing Applicants to issue new proceedings to prove fraud before setting aside orders and re-opening an appeal under CPR Pt 52.17(1). That is especially true in this case, as this evidence has come to light as part of the Respondents'

aggressive pursuit of the Applicants' family's home which is happening right now.

20. The Applicants therefore request an URGENT stay of execution and a setting aside of the Costs Order of HHJ Seys Llewellyn of 15th July 2015 in order to avoid or at least ameliorate serious injustice as a result of this new evidence, as the Respondents are currently actively and aggressively pursuing an Order for Sale seeking to throw the Applicants' family out of their home by the end of this month, September 2016. This is already a serious injustice, granting those now shown to have admitted harassment of the Appellants immense power over their and their family's existence, and will remain so until such time as the costs order is set aside, the Charging Order upon the Applicants' home is removed, and until the reopening of the Appeals of both Judgements based on this fresh evidence is allowed.

21. In view of the extent of this fraud and the length of time the Applicants have lived under this now demonstrated harassment, and threat of losing their family home because of it, the Applicants urgently request that the Court of Appeal give Costs protection to the Applicants going forward.

Date: 14 September 2016

Stéphane Paris

Angel Garden

BRYAN CAVE

Robert Dougans
Direct: 44 20 3207 1214
Fax: 44 20 3207 1881

22 October 2014

Our Ref: KU1/96R/P026728

Your Ref: CET/73150-2/KLB

AND BY EMAIL

Douglas-Jones Mercer
16 Axis Court
Mallard Way
Swansea Vale
Swansea SA7 0AJ
FAO Mrs Clare Tregoning

Without Prejudice, Save as to Costs

Dear Sirs,

Claim No. 3SA90091 – Paris & Garden v (1) Lewis & (2) Byng

We write further to your letter dated 17 October 2014.

Notwithstanding your first paragraph, we remain of the view that your clients claims were and are ill-conceived and have achieved nothing but distress and costs to all involved. As context for the below offer we make the following points:

1. No new heads of action have been added to the claim. The nebulous reference to *"issues of further defamation"* are not particularised (for a start you have not even identified the documents you complain of) nor is there any evidence to suggest that publication extended beyond the recipients. We do not see that that there is any viable claim that you would be able to bring, even once you have "consider[ed]" the position. If your clients were to seek permission to amend so as to bring yet another ill-conceived claim, we put you on notice that the Second Defendant would oppose any such application on the basis that pursuant to the principle in *Jameel v Dow Jones* and *Kaschke v Osler* such claims would be an abuse of process.

2. The First Defendant does not believe that he has misrepresented the settlement achieved by your clients, nor do we understand how any alleged misrepresentation relates to your clients' case in defamation. In any event the article was written prior to such settlement being achieved. All our client has done is repeat details, published by your clients themselves, about the background to the settlement. Any

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difference in understanding between the First Defendant and your clients as to the effect of the settlement is therefore entirely beside the point.

3. The First Defendant is not prepared to risk others commenting on his blog about the Claimants and risk the issue of further proceedings against him by your clients, or anyone else for that matter.

4. The Second Defendant objects deeply to all references to her "*grooming*" the Claimants children, and to the reference to her on a website regarding sexual violence.

In the interests of drawing a line under these proceedings, our clients are prepared to make the following offer in full and final settlement of all claims your clients may have against them as of the date of settlement:

1. Within 7 days of the agreement Dr Lewis and Mrs Byng undertake to remove, to the extent they are able, all tweets published by them and complained of in the Amended Particulars of Claim;

2. Within 7 days of the agreement Dr Lewis undertakes to delete the blog post complained of in the Amended Particulars of Claim and replace it with the following:

> *Angel Garden and Steve Paris do not agree that I have previously accurately described their dispute in 2012 with the Tūrangi Rudolf Steiner School. [I think the best way to clarify the position is to post the entire joint statement below:]* or *[In the interests of transparency and by way of clarification, I publish the entire joint statement below:]*
>
> [IMAGE OF JOINT STATEMENT]

Dr Lewis is required to keep the statement on his website for a period of at least 3 months.

3. Within 7 days of the agreement Mrs Byng and or Professor Byng will email Alicia Hamberg and "composmentis", blind copying Bryan Cave, with the following statement:

> *I want to make clear that there has been no clinical assessment of Angel Garden's mental health by my husband, Ms Garden is not his patient and he has never diagnosed her with any mental health issue. Any comments I have made which might suggest otherwise are untrue and understandably distressing to Ms Garden.*

Ms Garden and Mr Paris are not permitted to use the language above for any public purpose.

4. Bryan Cave will, within 3 days of receipt of the emails referred to in point 3 above, confirm to Douglas Jones-Mercer that the emails were sent.

5. Within 7 days of the agreement Angel Garden and Steve Paris will undertake to remove any reference regarding Mrs Byng to "*grooming*" or "*seductive behaviour*" and will undertake

not to repeat such allegations. Ms Garden will use her best endeavours to remove the End Victimisation Now post about Mrs Byng and Dr Lewis.

6. Angel Garden and Steve Paris will undertake not to tweet, blog or make public statements about Dr Lewis or Mrs Byng, and Dr Lewis and Mrs Byng will undertake not to tweet, blog or make public statements about Angel Garden or Steve Paris, in all cases save as required by law or otherwise out of reasonable necessity.

The Defendants have for more than two years now wanted absolutely nothing to do with the Claimants. We suggest it would be sensible if both sides undertake not to make public statements about the other going forward as a sensible resolution to this matter.

In the mediation we made it clear that the Defendants' concession that they would not require the Claimants to pay the Defendants costs as a condition of a settlement would not be open for much longer as costs continue to mount. This concession is still on the table for this offer, but will not be repeated. We urge the Claimants to think of all the families involved in this litigation and bring this litigation to an end.

Yours faithfully,

Bryan Cave

Bryan Cave