



Neutral Citation Number: [2019] EWHC 375 (QB)

Case No: HQ18M03448

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22/02/2019

Before :

**MASTER COOK**

Between :

**HAYDN PRICE**

- and -

**GWENDOLINE MARY WATKINS**

**(ACTING BY HER Litigation friend Dylan Watkins)**

**Claimant**

**Defendant**

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**Haydn Price in person**

**Victoria Simon-Shore** instructed under the Public Access Scheme

Hearing date: 25 January 2018  
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**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.

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MASTER COOK

## **Master Cook:**

1. This is the hearing of the Defendant's application to strike out the claim pursuant to CPR 3.4 (2) (a) and/or (b) on the basis that the Claim Form and Particulars of Claim disclose no reasonable grounds for bringing the claim in libel or any other basis and that the action is an abuse of the court's process pursuant to the principle set out in the case of *Jameel v Dow Jones and Co.* [2005] EWCA Civ 75.

## **The Parties**

2. Neither party is represented by solicitors. The Defendant has retained counsel acting under the Public access scheme for the purpose of this hearing only.
3. The Claimant is in his early 50's and describes himself as a British citizen, journalist, business man and director of small English media companies. He says that he has a Masters' degree in copyright law and EU copyright law. He currently resides in County Wicklow, Ireland.
4. The Defendant, now aged 95, was a former code-breaker at Bletchley Park during the Second World War, an author in her own right and the widow of Vernon Watkins, a poet and a close friend of the poet, Dylan Thomas. In recent years, her health has deteriorated significantly, particularly her short-term memory and her general recall of dates and time periods is limited. This much is confirmed in a letter from her GP dated 24 November 2017. In these proceedings she is represented by her son Dylan Watkins who acts as her Litigation Friend and who together with his two brothers Gareth and Conrad act as attorney pursuant to a Lasting Power of Attorney covering property and affairs registered with the Court of Protection on 27 October 2009. Gareth Watkins has provided a witness statement in support of this application and says that his mother is able to talk fluently about her childhood and early adult life and about her husband and Dylan Thomas but that her short-term memory especially for dates and time scales is poor.

## **The background to this action**

5. The Claimant met the Defendant, then aged 87, several times at her home in Mumbles, Swansea between 5 May 2011 and 25 August 2011. Over the course of these meetings, the Claimant's company Pablo Star Ltd ("PS Ltd") purported to purchase the copyright of a selection of photographs of Dylan Thomas. In total 8 photographs were purchased for the sum of £1,000 from the Defendant on 18 July 2011 and a further sum of £350 was paid, probably on 25 August 2011, for two additional photographs. The written evidence relating to these contractual agreements is extremely unclear. According to Gareth Watkins the Defendant was not given a copy of the contract for the assignment of the copyright in advance of the first sale and the Claimant did not recommend that the Defendant obtain legal advice or have an agent present at that meeting. Moreover, it would appear the Defendant wrongly sold copyrights in 2 photographs to which she did not have title. The Claimant takes great exception to the suggestion that he behaved with any impropriety in connection with the acquisition of the copyright in the photographs and refers to contemporaneous e-mails which he says demonstrates that the Defendant knew exactly what she was doing.

6. PS Ltd assigned its copyright in the Photographs to a second corporate vehicle, Pablo Star Media Ltd (“PSM”) controlled by the Claimant. To date PS Ltd/PSM and/or the Respondent have recovered in the region of €35,000 in damages against 15 defendants for copyright infringement in respect of the Photographs, against individuals, companies, organisations and governments in multiple jurisdictions. The Claimant has brought and/or threatened claims in the Courts of the Republic of Ireland, The Netherlands, the United States of America and England and Wales. As of 22 January 2016, 5 new cases had been adjourned in the Dublin District Court and the Claimant and/or PS Ltd/PSM had another 6 proceedings on foot. A flavour of this litigation can be discerned from the following reported cases; *Pablo Star Media Ltd v Richard Bowen* [2017] EWHC 2541 (IPEC) and *The Welsh Ministers v Haydn Price and another* [2017] EWCA Civ 1768.
7. By way of further background, this claim follows another, defamation action *Price & Anor v Watkins* issued by the Claimant and PS Ltd against the Defendant in the Dublin Circuit Court (“the Dublin proceedings”) over correspondence sent by the Defendant to her friend Barbara Epler of New Directions Publishing, New York on 18 September 2014 (“the 2014 Letter”) At the time the Defendant sent the 2014 Letter, New Directions was being pursued in the Dublin District Court by the Claimant and PS Ltd for damages for alleged copyright infringement in respect of the Photographs. Ms Epler had asked the Defendant for some background information pertaining to the sale of the copyrights. The Claimant sought €75,000 in damages over the letter written to Ms Epler by the Defendant, in which she referred to “*that bad man Haydn Price whose actions have blackened my otherwise serene old age*”.
8. The Claimant sued on the alleged publication of the 2014 Letter to the Dublin District Court when New Directions sought to rely upon it as an enclosure to a letter written to the Court, without New Directions having first submitted to jurisdiction. It is apparent from the transcript of proceedings of the hearing on 22 January 2016 that the Claimant read the contents of 2014 letter to Miss Epler in open court, see transcript pages 7 and 8 lines 13 to 24.
9. Judgment was entered in the Defendant’s favour by the President of the Dublin Circuit Court, Mr Justice Groarke. The case was struck out on the ground that there was no proof of publication in the Republic of Ireland, see page 50 of the transcript of the 22 Jan 2016 hearing lines 30-32. The Claimant has lodged an appeal against that decision which is due to be heard in March 2019.

### **The current proceedings**

10. The Claimant issued the Claim Form on 27 September 2018 the brief details of claim are set out as follows:

“The claim is for;

Defamation and breach of wider obligations of confidence and trust and to act in good faith, keep information confidential, duty of care and other written and implied obligations to the Claimant. The Defendant has breached the Claimant’s privacy, acted in a grossly malicious and negligent manner and attempts to bring the Claimant into disrepute and ridicule. The

Defendant has persistently failed to rectify these things and continues to maintain that her account of events is true. The Defendant has therefore acted with continued malice and negligence. The circumstances under which the Defendant first obtained information and interacted with the Claimant were plainly circumstances which imported an obligation confidence and trust and were supported by written contracts for which consideration was paid to and kept by the Defendant.”

11. Attached to the Claim Form are Particulars of Claim which at paragraphs 5 to 19 make it clear that the Claimant is seeking to allege that he had been defamed by a 9-page witness statement in the Defendant’s handwriting dated 29 April 2012. He alleges that the witness statement only came to his attention on 28 September 2017 as part of the documentation in copyright proceedings in Holland between Pablo Star Media Limited and the Welsh Ministers. A transcribed copy of the witness statement is annexed to this judgment. Paragraphs 20 to 29 of the Particulars of Claim go on to set out additional claims which are described variously as being for breach of confidence and negligence. The relief sought is damages, *including aggravated and/or exemplary damages for defamation and breach of contract, duty of care, confidence and trust and negligence* together with an injunction *restraining the Defendant from publishing any further information concerning the Claimant* and an order under section 12 of the Defamation Act.
12. When I first saw the Defendant’s application and having read the particulars of claim I thought it wise to give some guidance to the parties in the notice of hearing as to how they should prepare for the hearing which I did in the following terms:

**“IT APPEARS TO THE COURT THAT NEITHER PARTY IS REPRESENTED**

**THE PARTIES ARE REMINDED OF THE FOLLOWING MATTERS**

1. This claim appears to a defamation claim.
2. The time limit applicable to actions for libel, slander or malicious falsehood is one year from the date on which the cause of action accrued, see the Limitation Act 1980 section 4A
3. Part 53 of the Civil Procedure Rules applies to Defamation claims.
4. Practice Direction 53 sets out specific requirements for pleading defamation claims, see in particular paragraphs; 2.1, 2.2, 2.3, and 2.10
5. The Defendant’s application is made under Civil Procedure Rule 3.4.(2) (a) and/or Rule 3.4 (2)(b).

6. In the circumstances the court will not be conducting a trial or reviewing large quantities of evidence. The court will consider whether the Claimant has brought his claim in time and if so whether he has set out in accordance with the Civil Procedure Rules.
7. The Court is also being asked to consider whether the statement made on or about the 27 September 2017 was made on an occasion of absolute privilege namely that the statement was made in the course of judicial or quasi-judicial proceedings.

**THE ABOVE FACTORS ARE DRAWN TO THE PARTIES ATTENTION SO AS TO ENSURE THE PROPER USE OF COURT TIME AND RESOURCES AND TO ENSURE THAT ONLY MATERIAL WHICH IS DIRECTLY RELEVANT TO THE ISSUES BEING CONSIDERED BY THE COURT IS FILED BY THE PARTIES”**

13. Unfortunately, notwithstanding this advice the Claimant failed to provide the Defendant with his evidence in good time for the hearing. The result is that I have a hearing bundle prepared on behalf of the Defendant comprising 182 pages and three ring binders of documents prepared by the Claimant comprising 2457 pages. Many of the documents submitted by the Claimant are irrelevant to the issues raised in this application and almost all of the relevant documents submitted by the Defendant are to be found in the Claimant’s bundle. The Claimant has also provided a lengthy witness statement and a skeleton argument. In many respects these documents overlap. This has not made the preparation for this hearing at all easy. Fortunately, Ms Simon-Shore prepared a skeleton argument for the hearing which has identified the issues arising in this application in a structured and logical fashion. It provided a useful template for the hearing.

#### **The Defendant’s submissions**

14. Ms Simon-Shore identified four specific defects in the pleading of the Claimant’s case in the Claim Form and Particulars of claim
  - i) They fail to satisfy the requirements of para. 2.1 PD53 in that the Particulars of Claim do not provide the Defendant with information necessary to inform her of the nature of the case she has to meet. Most fundamentally, the claim does not contain proper particulars of publication;
  - ii) The publication the subject of the claim is not identified in the claim form, contrary to para. 2.2 PD53;
  - iii) Contrary to para. 2.3 PD53, the Defendant does not identify the defamatory meaning which he alleges the words complained of conveyed. The Claimant asks the court to consider jointly the purported meanings of the 2014 Letter and the 2012 Statement read together see paragraph 17 of the Particulars of Claim; and

- iv) The Defendant has not given full details of the facts and matters on which he relies in support of his claim for damages, nor has he pleaded the information specified in rule 16.4(1)(c), namely his grounds for claiming aggravated and exemplary damages.
15. Ms Simon-Shore accepts that some of these defects could be cured by amendment, however she also submits that there are fundamental flaws in the Claimant's claim which are irremediable, the most obvious of which concerns the Claimant's failure to plead to whom the Defendant is alleged to have published 2012 statement. She submits that it is not clear whether the Claimant brings his claim in respect to publication of the 2012 Statement to the Dutch Court or to his Dutch solicitors, to neither or to both. The Claimant has failed to indicate the way in which he alleges the Defendant is responsible for publication in the Dutch proceedings.
16. Ms Simon-Shore submits that any amendment to improve the currently defective pleading of the defamation claim would be bound to fail on the basis that there is an unassailable defence of absolute privilege which would attach to those publications. Publication of the words complained of to a court of law would plainly fall to be covered by absolute privilege as a document filed as an exhibit in court proceedings; see *Lincoln v Daniels* [1962] 1 Q.B. 237. As such, any claim, even if properly made against the Defendant, would be defeated by a defence of privilege
17. Ms Simon-Shore draws attention to paragraph 5 of the Particulars of Claim

*“... Publication **must have** occurred because the document was written in April 2012 and has now appeared 5 years later in Holland through a third party not connected to the Defendant. In between 2012 and 2017, the [2012] statement **obviously passed** from the Defendant to other people before reaching Holland...”*

She submits that this pleading does not disclose a permissible case on publication. It does not allow the Defendant to know the case she must meet.

18. Ms Simon-Shore drew my attention to *Gatley on Libel and Slander* (12th ed.) where at para 26.5 it is stated that;

*“Unless there are good grounds for variance, the particulars of claim should allege, in respect of each publication relied on as a cause of action, that the words were published by the defendant on a specific occasion to a named person or person other than the claimant”*

And at paragraph 26.7;

*““...In very exceptional cases, particulars of claim may be permitted to stand notwithstanding that they fail adequately to identify the circumstances in which or the person or persons to whom the defamatory words are alleged to have been published. This may arise, for example, where the particulars of publication are essentially within the knowledge of the*

*defendant and not of the claimant.... The court will not, however, entertain an action of a speculative nature and such a course will only be permitted where the claimant can show by uncontradicted evidence that publication by the defendant has taken place”*

She submitted that the present case does not fall within that ‘*very exceptional category*’. Despite the Claimant’s optimistic assertion, nothing is ‘obvious’ about the circumstances of publication over the years 2012 – 2017.

19. Ms Simon-Shore submits that the circumstances in which the 2012 statement was originally published are tolerably clear, indeed, the Defendant did not seriously dispute them in his submissions to me and paragraphs 27 and 28 of the Particulars of Claim are consistent with them. It would seem that the 2012 statement was the Claimant’s attempt to provide her recollection of the meetings that took place between the parties in 2011 to her solicitor Rosemary Morgan in order to defend claims that the Claimant threatened against herself personally and also to assist others in defence of claims also brought against them by the Claimant: see paragraphs 26 to 30 of Gareth Watkins’ witness statement. The purpose of the statement appears to have been to allow Ms Morgan to assess the merits of the claim threatened against her client by the Claimant and to provide information on behalf of the Defendant to Ceredigion Town Council (which was also subject to a copyright complaint from the Defendant). It is also clear from an e-mail dated 29 April 2012 that the Claimant asked Mr Jeff Towns, a friend of hers, to take the statement to Rosemary Morgan. Mr Towns had also been threatened with legal action by the Claimant.
20. Ms Simon-Shore submits that Publication to Rosemary Morgan itself is immune from suit on the basis that it is a communication between solicitor and client; see *More v Weaver* [1928] 2 K.B. 520 CA, per Scrutton L.J. The Statement is also protected by an evidential privilege as a communication between solicitor and client for the purpose of actual contemplated litigation and/or for the purposes of obtaining legal advice, per *Three Rivers District Council and others v Governor and Company of the Bank of England* [2004] UKHL 48 per Lord Scott at [10] and [29].
21. Ms Simon-Shore points to the fact that the Claimant does not appear to have availed himself of the opportunity, put to him in correspondence, to ask his Dutch Lawyers to make enquiries as to where the copy of the witness statement came from. She suggests that it is highly unlikely that any publication of the 2012 Statement has taken place for any other purpose than for the defence of actual or contemplated legal proceedings brought by the Claimant for copyright infringement in respect of the Photographs.
22. In the circumstances, Ms Simon-Shaw submits any further publication of the 2012 Statement is not only time-barred, but highly likely to be protected by the immunity from suit afforded to witnesses under the rule in *Watson v McEwan* [1905] A.C. 480, [1905] 7 WLUK 99. She relies upon section 4A of the Limitation Act 1980 which provides that the time limit for bringing a claim in defamation is twelve months from the date of accrual of the cause of action, and submits;
  - i) the limitation period for publication to Ms Morgan expired on 30 April 2013, and

- ii) any hypothetical publication in the period between publication to Ms Morgan and publication in the Dutch proceedings is almost certainly statute-barred.
23. Ms Simon-Shore recognises that the court has a jurisdiction to extend the s4A time limit under s32A of the Limitation Act 1980 but points to the fact that the Claimant has not made any such application despite his reference to the possibility of such an application in paragraph 8 of the Particulars of Claim and neither has he set out an arguable case as to why it should be extended. She further points out that Claimant has provided no explanation which would excuse a delay of 364 days before he issued the present claim.
24. Miss Simon-Shore submits that it would be inequitable for the court to extend the limitation period beyond twelve months and relies upon the following principles derived from the case of *Nugent v Willers* [2019] UKPC 1;
- i) It is for the claimant to make out a case for the disapplication of the normal limitation rule.
  - ii) The court is required to have regard to all of the circumstances and in particular the length of and reasons for the delay; the date when the facts relevant to the cause of action became known to the claimant & the extent to which he acted promptly and reasonably; and the extent to which, having regard to the delay, relevant evidence is likely to be unavailable/ less cogent than it would have been if the claim had been brought within time.
  - iii) Allowing an action to proceed will always be prejudicial to a defendant but, conversely, the expiry of the limitation period will always be in some degree prejudicial to the claimant. Accordingly, in exercising its discretion, the court must consider the degrees of prejudice to the claimant and the defendant, all of the other circumstances to which attention is directed by the section and any other relevant circumstances of the particular case in issue.
  - iv) It was plainly the intention of Parliament that a claimant should assert and pursue his need for vindication speedily.
  - v) There is high authority for the proposition that the delay to be considered in applying s32A is the delay subsequent to the expiry of the limitation period.
  - vi) A Court is entitled to treat some periods of delay as more relevant than others and, depending upon the circumstance of the case, to have particular regard to the period since the Claimant became aware of the facts and acted promptly and reasonably thereafter.
25. Section 32(A)(1) of the Limitation Act 1980 requires the court to have regard to the degree to which the operation of section 4A prejudices the Claimant and to whether any decision to extend the limitation period would prejudice the Defendant.
26. Ms Simon-Shore submits that the Defendant would be significantly prejudiced by a decision to extend the limitation period. The Defendant is 95 years old and in generally frail health. She wrote the 2012 Statement in response to the threats of the Claimant to commence legal action against her, some 9 months after the incident which formed



the subject-matter of that document. To extend the usually short limitation period applied to defamation actions in the present scenario would expose the Defendant to a second very costly defamation action brought against her by the same party over substantially the same allegations. The passage of time which has elapsed since the Defendant wrote the words complained of has deprived her of recall of material events to such an extent that to force her to defend these proceedings would put her at a significant forensic disadvantage.

27. On the other hand Ms Simon-Shore submits, the likely prejudice to the Claimant in the event that limitation period is not extended appears to be negligible:
- i) The Claimant attempts to litigate two defamation claims against the Defendant over substantially the same allegations. At the strike-out hearing of the defamation claim issued against the Defendant in the Dublin proceedings, the Claimant presented his case as necessary to defend his reputation over the allegation that he had taken advantage of the Defendant in respect of the sale of the copyrights, see transcript page 5 lines 15-32. The claim was struck out at that hearing for lack of proof of publication, but in addition to that ruling on technical grounds, Groarke J went on to make certain factual observations about the Claimant's conduct towards the Defendant's complaint (within the 2014 Letter) about how 'the deal was done': see transcript from line 5, page 51 to the end of the judgment overleaf. As that decision is subject to an appeal brought by the Claimant, it is clear that the Claimant does seek to have litigated in both the Irish and English courts the propriety of his conduct and the validity of the contracts and there is a possibility (albeit remote) that the Claimant will obtain judgment in the Dublin Court.
  - ii) The Claimant can obtain no tangible benefit in pursuing this claim to trial. At the very heart of the Claimant's complaint is his denial that he obtained the copyright title to the Photographs improperly. He contends that the existence of contracts apparently signed by the Defendant and certain emails which on their face demonstrate a cordial exchange between the parties are enough to prove that the Defendant was malicious when she wrote the 2012 Statement. He points to inaccuracies within the 2012 Statement as illustration of the deceit of the Defendant. However, this is misconceived in law as inaccuracies in and of themselves are not probative of malice; the Claimant would be required to prove at the very least that the Defendant had been indifferent to the truth when she wrote the words complained of: see *Tse Wai Chun v Cheung* [2000] HKCFA 86 [2001] EMLR 31 at [40]. Any claim that the Claimant could pursue against the Defendant would be defended on the basis that the words were protected by either absolute or qualified privilege or were an expression of the Defendant's opinion, honestly held at the material time. Inaccuracies within the 2012 Statement would not defeat any of those defences. It is therefore highly unlikely that the Claimant will ever achieve a judgment that would vindicate his reputation.
  - iii) Moreover, it seems likely that a considerable motivating factor for the Claimant in pursuing this litigation is that he hopes to achieve either a retraction of the 2012 Statement or a judgment in his favour which would facilitate his pursuit of other parties alleged to be infringing his copyright in the Photographs. This appears unnecessary: the Claimant does not need to be

able to pursue his claim in the present case in order to challenge a case which relies on the 2012 Statement. The Claimant could adduce the same material he looks to rely upon in the present case in his attempt to prove the propriety of the transaction in each and every case where the validity of the assignment of copyright is put into dispute.

- iv) The case that any hypothetical publication of the 2012 Statement has caused the Claimant or is likely to cause the Claimant serious harm to his reputation, pursuant to s1(1) Defamation Act 2013 is bound to fail. The Claimant has not been able to identify any harm which he has suffered in the intervening years and it would seem highly artificial for him to claim that he has so suffered if he were to discover that the words complained of were published to 1, 3, 5 or even 10 additional publishees in 2013 or the following 4 years. The scope of publication of a handwritten statement pertaining to events that occurred some 7 years ago is likely to be extremely limited. This is not a case of publication to the world at large or in the media.

28. In relation to the particular factors set out in s32A (2) of the Limitation Act 1980 to which the Court must have regard Ms Simon-Shaw submitted as follows;

The length of, and the reasons for, the delay on the part of the claimant.

- i) The length of delay is impossible to calculate since any notionally time-barred publications upon which the Claimant seeks to rely are, at present, hypothetical. The earliest the 2012 Statement might have been published is the date on which it was written, 29 April 2012, and the latest notionally a couple of days before the 2012 Statement was filed in the Dutch proceedings – 28 September 2017. The Claimant claims that he was unaware of any publication until the 2012 Statement was filed in the Dutch proceedings.

The date on which the claimant became aware of any facts relevant to the cause of action

- ii) On the Claimant's own case, this was 28 September 2017.

The extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action

- iii) The Defendant contends that the Claimant did not act promptly and reasonably once he became aware of the 2012 statement at the pre-action stage is set out at paras 38 – 44 of Gareth Watkins' witness statement. The Claimant has failed to explain why he waited 364 days, one day short of the limitation period for libel, before issuing the claim when the vindication of his reputation should have seen him act expeditiously upon learning of the allegedly defamatory material.

The extent to which, having regard to the delay, relevant evidence is likely to be unavailable or to be less cogent than if the action had been brought within the usual limitation period

- iv) The Claimant seeks to prove that the Defendant published the 2012 Statement maliciously. The only available route for the Claimant to succeed in doing so would be for him to establish that at the time the Defendant wrote the words complained of (and at the time of any subsequent publication of which she was authorized) she lacked an honest belief in the imputations conveyed or that she was reckless as to the truth or falsity of the allegations contained therein. The written agreements for assignment of the copyrights upon which the Claimant places great reliance in this regard fall extremely far short of fatally undermining a belief that he took advantage of the Defendant or behaved towards the Defendant in an improper manner. If she did not communicate her concerns at the time of the sales to the Claimant's company, it does not follow that she did not honestly hold that belief in 2012, based on her recollection.
  - v) The contemporaneous email exchange between the parties suffers from very similar problems. The documentary evidence is not capable alone of proving malice on the part of the Defendant. In order to prove that she was malicious in drafting the words complained of, the Claimant would be required to cross-examine her. The deterioration in the mental faculty and physical capability of the Defendant in the intervening years (since the expiry of limitation in 2013) has been described in some detail by her son at paragraphs 9 and 10 of his witness statement. He plainly states his belief, based on his day-to-day care of her, that his mother would never be in a position to give evidence during any trial that were to take place. The Court has before it the evidence of the Defendant's General Practitioner, which is generally supportive of that conclusion. Dr Watkins has also addressed the further decline the Defendant has suffered in the period between the date on which the Claimant became aware of the 2012 Statement and the date of issue, at paragraph 50 of his witness statement.
  - vi) Furthermore, in the intervening period, the original email correspondence from the period covering 2011 and 2012 has been deleted from the Defendant's computer: see paragraph 14 of Dr Watkins' witness statement. While the Defendant's sons managed to extract the Defendant's emails as a collective file of emails exported from the mailbox from her then computer in 2015, the availability and the cogency of such evidence may very well have been affected. The earliest date of these emails was 19 December 2011, so nothing remained from the period of the contract signings, making it more difficult for the Defendant's Litigation Friend (and potentially the Court) to determine what really took place during that period.
29. In the circumstances Ms Simon-Shore submits that this is a case *par excellence* in which it would be inequitable for the limitation period to be extended.
30. As an alternative argument Ms Simon-Shore also relies upon the principle derived from the case of *Jameel*, that it could be disproportionate to continue proceedings to vindicate a libel where the claimant had not suffered a 'real and substantial tort'.
31. Ms Simon-Shore relies upon her submissions, summarised at paragraphs 27 and 28 above and submits the claim is 'not worth the candle'. The expense to the parties and to the public purse and the effort and strain involved in the claim being litigated to trial are entirely disproportionate to any tangible benefit the Claimant is likely to

achieve. Accordingly, she invites the Court, in the alternative, to strike out the defamation claim as an abuse of process.

32. Lastly, Ms Simon-Shore submits that the remaining causes of action described in the particulars of claim as *breach of contract, duty of care, confidence and trust and negligence* should also be struck out for the following reasons;
- i) There is no freestanding cause of action recognizable in law in respect of a defendant's failure to act in good faith.
  - ii) It is clear from the pleaded case that no contractual obligations of confidentiality were owed to the Claimant as all material contracts were made between the Defendant and Pablo Star Ltd.
  - iii) The Claimant has failed to plead or identify within his evidence any confidential information which he alleges was abused.
  - iv) The Claimant has failed to plead and particularise a properly arguable case that the Defendant owed the Claimant the requisite tortious duty of care.

### **The Claimant's submissions**

33. The Claimant began his submissions by making the obvious point that he was not a lawyer and that he had done his best when drafting the Particulars of Claim. He accepted that he had not properly complied with the requirements of Practice Direction 53 when setting out his claim for defamation. He said that he now knew what was required and should be given the opportunity to amend his claim to put right the mistakes.
34. The Claimant was also at pains to point out that his claim was not simply restricted to defamation but also included the claims for breach of contract, breach of duty of care, breach of confidence and trust and negligence.
35. The Claimant informed me that he believes this English case has the ability to restore his reputation, confirm that the things the Defendant said were untrue and prevent further dissemination of further untruths. He said that the court can award damages for the upset, damage and hurt he has suffered and stop the Defendant and those that represent her from further breaches of contract, duty and care. In short, it will protect him from unjust attack and damage. It will also help protect the property rights the Defendant sold years ago. All things covered by UK law, Article 10 of The Human Rights Act 1998 and EU law.
36. The Claimant wished to rely upon the contents of the 2014 letter and in a particular the following extracts;

*"I am only too glad to write to you about that bad man Haydn Price, whose actions have blackened my otherwise serene old age."*

*"He made enquiries and found that I was 89, deaf and partially sighted, and lived alone. He wished to see the collection and plotted with someone I had thought a friend to visit my house."*

*“He stayed for 7 hours; I could not get him to leave.”*

*“stood by wishing I had not done so, feeling very miserable and apprehensive because I sensed that he was a violent and unstable man and I was alone in the house with him.”*

*“He got such a bad name that he eventually left the UK”*

37. The Claimant made it clear that the reason he wished to rely upon these extracts from the 2014 letter was to support his contention that 2012 Statement was defamatory. However, when pressed as to how the 2014 letter could possibly be relevant to the meaning of the earlier statement he was eventually prepared to confirm that it was only the 2012 which was the subject of this action.
38. The Claimant referred me to the case of *Williams & Humbert Ltd v W&H Trade Marks (Jersey) Ltd* (1986) AC 368 HL. He submitted that striking out a statement of case is appropriate only if it is “plain and obvious” and abundantly clear that the relevant pleading is unsustainable because there is no proof to support it.
39. The Claimant submitted that his statement of case was not suitable for striking out because it “raises a serious live issue of fact which can only be properly determined by hearing oral evidence.
40. The Claimant submitted he had demonstrated seriously misleading statements had been made by the Defendant and that he had exhibited an extensive email exchange between himself and the Defendant 2011 which leaves no doubt that the Defendant entered into the agreements over many weeks freely and without intimidation.
41. The Claimant’s response to the submission that he had not set out a properly particularised plea of publication was to suggest that the only way the statement could have appeared in Holland was if the Defendant or her representatives had released it in to public circulation. He submitted the fact that the Defendant failed to provide details of who the statement was given to causes the problem. He further suggested the court would order disclosure by the Defendant and her representatives and others in relation to this issue. He maintained the Defendant has enough information to know the case she must meet.
42. The Claimant wished to make it clear that he brings his claim in respect of each stage between the 2012 Statement being written and given to a third party and its arrival into Dutch Court but not the actual inclusion in the Dutch case or communication to the Defendant’s solicitor. He repeated that he had not failed to indicate the way in which he alleges the Defendant was responsible for publication; the publication cannot have arrived in Holland without the Defendant’s assistance at sometime between 2012 and 2017.
43. The Claimant referred to the case of *Gentoo Group Ltd. & Anor v Hanratty [2008] EWCA Civ 968* as an example of a case of publication based on inference and referred to the following extract from the judgment of Smith LJ;

“11. The claimants' case is based upon the drawing of inference. They will rely on evidence of private

communications between him and those now known to be responsible for the website. They rely on the elaborate steps that were taken to conceal the identities of those involved, including the applicant. The claimants also claim to have expert handwriting evidence which would help to show the applicant's involvement. However, Mr Price asserts, and I have no reason to think that he is wrong, that that handwriting evidence relates only to an article which is not one of the six articles complained of. Even though I accept what he says is true, it does not seem to me that the handwriting evidence will necessarily be irrelevant to the issue of involvement. The claimants also submit that there were other tell-tale signs from which an inference of the applicant's involvement could be drawn. ”

12. I would accept that none of these items of evidence taken singly, assuming they can be proved, could of itself be said to demonstrate involvement in the management or control of this website. However, the judge held that, taken together it could not be said that the claim did not have reasonable prospects of success. It seems to me that in that he was plainly right, and despite all that Mr Price has said.

13. The claimants allege that it can be inferred that the applicant was involved with the other three men and the company, who have now admitted their involvement in the publications and in what the claimants would call a "campaign of defamation" against them. I accept that Mr Price does not for one moment accept that there was any such campaign. But that is how the claimants put it. The claimants argue that this campaign was, in effect, a joint enterprise and that that can be inferred from the available material. The judge expressed the view that, although it is unusual to base a defamation claim on joint enterprise, there is no rule of law which says that responsibility for publication could not be proved by demonstrating joint enterprise.”

44. The Claimant submitted that Ms Simon-Shore’s submission that; *“It appears unlikely that any publication of the 2012 Statement has taken place for any other purpose than for the defence of actual or contemplated legal proceedings brought by the Respondent for copyright infringement in respect of the Photographs”*, is disproved by her acceptance that Mr Towns had a copy of the statement. However, as I have previously noted the Claimant accepted that he had also threatened Mr Towns with proceedings for breach of copyright at the time.
45. In the circumstances the Claimant submitted that he had set out a sustainable case on publication.
46. The Claimant accepted that his defamation claim had been brought outside the one-year limitation period. His explanation was that he had always thought he had one year from discovering the contents of the statement to bring his claim, see paragraph 30 of his skeleton argument. He accepted that he would have to rely upon the

provisions of s4A of the Limitation Act and submitted that he had an arguable case to justify time being extended.

47. The Claimant's primary submission was that he had been diverted by his other litigation in Holland, Ireland, New York and the Companies Court. He also relied upon the other arguments set out in his skeleton argument and to a large extent repeated above. In short, he submitted that he had a good argument that it would be equitable to extend the limitation period because he would be severely prejudiced if his action could not proceed and that he acted promptly given the surrounding circumstances of his other litigation.
48. The Claimant submitted that the *Jameel* jurisdiction was an exceptional one. He accepted that it applied not just to defamation claims but to all tort claims. He drew my attention to the remarks of Lewison LJ in *Sullivan v Bristol Film Studios Ltd* [2012] EWCA Civ 570;

“29. The mere fact that a claim is small should not automatically result in a court refusing to hear it at all. If I am entitled to recover a debt of £50 I should, in principle, have access to justice to enable me to recover it if my debtor does not pay. It would be an affront to justice if my claim were simply struck out. The real question, to my mind, is whether in any particular case there is a proportionate procedure by which the merits of a claim can be investigated. In my judgment it is only if there is no proportionate procedure by which a claim can be adjudicated that it would be right to strike it out as an abuse of process.... When in future a judge is confronted by an application to strike out a claim on the ground that the game is not worth the candle he or she should consider carefully whether there is a means by which the claim can be adjudicated without disproportionate expenditure.”

49. The Claimant's final submissions concerned his claims for breach of contract, breach of duty of care, breach of confidence and trust and negligence. As far as I could understand these submissions, they appeared to be premised on the fact that the two signed contracts for the sale of the copyrights dated 11 and 18 July 2011 each contained standard privacy, good faith and confidentiality clauses.
50. Clause 3 of the 11 July contract contained the following wording;

“... I will keep any/all confidential information obtained through or relating to this work (and or the company/its personnel) confidential at all times and will not make any public disclosures or reference to the foresaid of any kind ...”

Clause 5 of the 18 July contract contained the following wording;

“I agree that I have acted in good faith in dealing with the company... I agree that I will sign any further reasonable paperwork that may be required to give effect to this assignment and provide adequate assistance to the same end...”

51. The Claimant's submission was to the effect that whilst these contracts were made between the Defendant and his company, he personally had a right to expect the Defendant to honour her obligations. In the circumstances he submitted the three essential ingredients of an action for breach of confidence had been made out and were present, namely (a) that the information was of a confidential nature, (b) that it was communicated in circumstances importing an obligation of confidence and (c) that there was an unauthorised use of the information.
52. The Claimant submitted that the Defendant's account in her statement was untrue. He asked the rhetorical question; Why should I spend the next 20 years hearing this when it is not true? This he said raised a serious issue about what the Defendant had said which should be aired. This, he suggested, was sufficient to properly found his action in deceit.

### **Discussion and decision**

53. CPR 3.4 (2) (a) and (b) provides;

“The court may strike out a statement of case if it appears to the court—

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;”

54. The principles applied to such applications are well known. A statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined at a hearing, *Bridgeman v McAlpine-Brown* 19 January 2000, unrep, CA. A court should not strike out a statement of case unless it is certain that the claim is bound to fail, *Hughes v Colin Richards & Co* [2004] EWCA Civ 266. Where a statement of case is found to be defective the court should consider whether the defect can be cured by amendment, *Soo Kim v Young* [2011] EWHC 1781 QB.
55. The Claimant has realistically accepted his defamation claim does not comply with the requirements of PD 53 in the following respects;
- i) He has not identified the publication which is the subject of the claim in the claim form. Para 2.2 PD 53.
  - ii) He has not identified the defamatory meaning which he alleges the words complained conveyed. Para 2.3 PD 53
  - iii) He has not given full details of the facts and matters on which he relies in support of his claim for damages, not has he pleaded any grounds for claiming aggravated and exemplary damages. Para 2.10 PD 53 and r 16.4(1)(c).
56. Ms Simon-Shore accepts that were these the only defects in the pleadings then the court should give the Claimant the opportunity to cure them by amendment. I agree. But these are not the only defects. It is a fundamental component of a claim for libel



that the words complained of were published by the Defendant to a third party. As far as pleading a claim for libel the only formal requirement is to give the Defendant notice of the claim they have to meet, see PD 53 para 2.1. I accept the position is as stated by the authors of *Gately* and set out at paragraph 18 above.

57. In my judgment this case does not fall within the “*very exceptional*” category for the reasons urged by Ms Simon-Shore. It is particularly telling that the Claimant has it within his power to ask his Dutch lawyers to find out how the witness statement came to be introduced into the Dutch proceedings and yet he has not done so.
58. On the basis of the evidence before me I accept the Claimant would be unable to rely upon a publication to Rosemary Morgan either because it was undoubtedly a communication between solicitor and client and therefore immune from suit and/or would be protected by an evidential privilege as a communication between solicitor and client for the purpose of actual or contemplated litigation, see *Bennett v Commissioner of Police of the Metropolis* (1997) 10 Admin LR 245 at 252. Any publication of the statement to Mr Jeff Towns would be covered by a similar privilege. In the course of argument, the Claimant effectively accepted this was the position which is why he needs to put his case in the way that he does.
59. In my judgment the Claimant cannot show by uncontradicted evidence that a publication, which would not be covered by privilege, has taken place. In the circumstances the allegation of publication is purely speculative and should not be allowed.
60. However, even if he could demonstrate that there had been a publication of the witness statement which was not covered by some form of litigation privilege the Claimant would still need to persuade the court to disapply the one-year limitation period. I accept the court should apply the principles set out in the case of *Nugent v Willers* and that it is for the Claimant to make out a case for the disapplication of the normal rule.
61. I accept the submissions of Ms Simon-Shore that the prejudice to the Defendant will more than outweigh any prejudice to the Claimant. The Defendant’s age and deteriorating health will clearly put her at a substantial forensic disadvantage. I was singularly unimpressed with the material deployed by the Claimant in an attempt to demonstrate that other people of the Defendant’s age, for example Angela Lansbury, Ken Dodd and Mel Brooks were mentally alert and active. The evidence of the Defendant’s GP and son presents a clear and uncontradicted picture of an elderly lady whose faculties are in decline. I have no doubt this will impair her ability to participate in this litigation in particular, to provide instructions on the contemporaneous documentary evidence, to interact appropriately with her legal representatives and to participate meaningfully in the trial process.
62. At the core of the Claimant’s case is his desire to defend the validity of the copyrights he has acquired as explained at paragraph 35 above. He already has an action directly related to the copyright issues proceeding in Holland and against the Defendant for defamation in Ireland. I have to say that there is force in Ms Simon-Shore’s submission that the Claimant is unlikely to obtain any tangible benefit by pursuing this claim to trial for all of the reasons set out at paragraph 27 (ii) above.

63. In particular, I do not accept the Claimant can realistically assert that he has pursued his need for vindication speedily. His own evidence at paragraph 22 of his witness statement is that on discovering the existence of the 2012 statement he promptly took legal advice. He then chose to wait one day short of a year before issuing proceedings. The only explanation he has given for this delay is that he mistakenly thought he had a year in which to bring proceedings and that he was diverted by his other litigation. I find these excuses far from compelling.
64. In the circumstances I accept Ms Simon-Shore's submission that this a case *par excellence* in which it would be inequitable to extend the limitation period.
65. I now turn to consider the Claimant's remaining claims in tort and contract. These are in my judgment simply unsustainable and based on a wholesale misunderstanding of the law of contract and tort on the part of the Claimant.
66. As for the claims in contract the Claimant has demonstrated no factual or legal reason why he should be able to rely on a contractual obligation when he was not a party to the relevant contract.
67. English law simply does not recognise a free-standing cause of action in respect of a defendant's failure to act in good faith.
68. An action for deceit requires proof of some misrepresentation or misleading conduct on the part of a defendant together with an intention that the claimant should act on it, see generally *Clerk & Lindsell on Torts* 22<sup>nd</sup> Ed chapter 18. No such facts have been alleged or pleaded by the Claimant.
69. An action for misuse of private information or breach of confidence requires the Claimant to identify some personal or private information which he alleges to have been misused, see *Gately* para 22.2. The Claimant has simply failed to identify in his evidence or set out in his particulars of claim any such confidential information. The best he can do is to point to the terms of the contracts referred to at paragraph 50 above. He places particular reliance on wording of paragraph 3 of the contract dated 11 July 2011 when asserting that the Defendant owed him a duty to keep some unspecified information confidential, see paragraphs 20 and 36 of his witness statement. These matters cannot begin to justify a claim for misuse of private information.
70. Lastly, I accept Ms Simon-Shore's submission that the Claimant has failed to plead and particularise any properly arguable case that the Defendant owed the Claimant any relevant duty of care. As I understand it the claim articulated by the Claimant in paragraph 29 of the particulars of claim is as follows; the Claimant has refused to retract the statement she made to her solicitor in 2011, in the circumstances she is in breach of her underlying obligations to the Claimant's company and her continuing failure to rectify matters to the Claimant's satisfaction is negligent. This, with all respect to the Claimant, is a legal nonsense.
71. In the circumstances I am satisfied that the Claim Form and Statement of Claim disclose no reasonable ground for bringing any of the remaining claims articulated by the Claimant.

72. These conclusions are sufficient to resolve the application and therefore I need not go on and determine the abuse argument based on *Jameel*. In summary therefore I find that that the claim should be struck out for the following reasons;
- i) The Claimant has not set out a viable case of publication to a third party.
  - ii) This is not a defamation claim which would fall within the “*very exceptional*” category of claims where the pleading of an inferred publication should be permitted.
  - iii) Any such publication the claimant has proved or is likely to prove would be covered by a form of absolute privilege.
  - iv) The defamation claim was commenced outside the one-year limitation period and there is no arguable case to extend the limitation period.
  - v) All remaining claims are incoherent and fail to disclose any recognisable claim against the Defendant.
  - vi) None of the above could be cured by permitting the Claimant to amend his claim.

### **Post script**

73. In considering this application it has not been necessary for me to consider whether the witness statement is in fact defamatory of the Claimant. As Ms Simon-Shore has made clear there is a powerful argument to effect that the statement is nothing but an expression of the Defendant’s opinion, honestly held at the time. Having carefully considered the e-mails between the Claimant and the Defendant I do not think they necessarily prove the Claimant’s case that the Defendant was being deceitful or malicious. The words of Mr Justice Groarke bear repetition;

“Now I am not going to go so far as to say that Mr Price took advantage of Mrs Watkins. I do not think I can come to that conclusion. But he certainly should have been an awful lot more careful in the way in which he was dealing with an elderly person with, apparently, such human infirmities. There are ways in which business should be conducted. And I put that as a lack of wisdom on his part because I don’t want to use pejorative terms which might be unfair. I am not going any further. I don’t have to. I’m dismissing the case.”

74. The Claimant has shown himself to be a persistent litigator. It is apparent from this judgment that the Claimant has put forward many misguided and unarguable points in support of this claim. I would urge him to take some professional legal advice if he intends to persist in this litigation.

## Schedule

[Parts in square brackets are added by transcriber]

STATEMENT BY GWENDOLINE MARY WATKINS

(born 31.12.1923) of 460 MUMBLES ROAD, SWANSEA SA3 4BX

I was 87 and 8 months when I was introduced to Hayden [*sic*] Price on August 23rd 2011 by the daughter of an old friend now dead. She told me that he was helping her with a podcast for the centenary of her father Alfred Janes the artist, who had been a close friend of my late husband Vernon Watkins, and whom I had known for until his death. Haydn Price was in charge of recording equipment as I talked about the Dylan Thomas circle for two hours. I have heard that he still possesses that recording, of which I have no copy, although I assume the material contained in it to be my copyright. M/s Janes said that H Price was helping her a great deal with her podcast, and was a serious collector of anything to do with Dylan Thomas. If I had not had this introduction, I should never have given him permission to visit me at my house.

He arrived at this address very early the next day, when I had only just finished lunch. He stayed for an immensely long time, talking mainly about his somewhat chaotic life in various countries, and ultimately began talking rather wildly, so I thought, about his relationship with Jesus Christ (evidently quite an intimate one!) I have visited patients in psychiatric hospitals many times, and I began to think he was mentally unstable. All at once he became quite serious, said that he collected anything to do with Dylan Thomas, and that M/s Janes had told him that I had a remarkable collection of photographs of Thomas and his friends and asked to see them. I hoped that he would leave when he had seen them as it was now about 5 p.m. He admired them, and began to talk quite seriously about copyright of photographs. He said he had a Law degree, and that he had studied that aspect in particular. Being an author I of course knew about literary copyright, but had assumed (if I thought about it at all) that the copyright of a photograph belonged to the owner. I now know that this is not so. H.P. selected about a dozen photographs of which he said I had the copyright and offered me £1000 for them. I explained that I had sold the originals to a friend, and that what he was looking at were only copies. He said that did not matter, that I still owned the copyright, if I had not assigned it to the buyer. I said that I had never done so, because I assumed that he had bought the copyright with the photographs, and that therefore he had every right to use or publish them as he pleased. In fact, most of those photographs had already been published, mostly without permission or attribution in literally hundreds of newspapers, magazines, programmes and other ephemera, and I told H.P. that I had folders of those reprints. He said that did not matter, he would like to buy the copyright. I was very dubious about this, and did not really have confidence in him. I was also very exhausted by this time, as it was nearly 7 o'clock. I had not eaten or drunk for 7 hours, as I did not want to offer him food or drink in case he should stay longer. He eventually left, after telling me that I should ask any member of my family about selling the copyright. I asked one of my sons (who naturally knew no more of photographic copyright than I did), and who said that as the photographs had been reproduced so often, that they were not likely to be much used in the future, and that it seemed to be all right to sell the copyrights.

My financial circumstances at that time were rather sparse. When I moved into this address, I became a tenant-in-common with a former colleague at the Universities of Washington and Reading, who had recently retired and wished to live by the sea. This was very advantageous for me, as it meant that many expenses were shared, such as Council Tax, electricity and gas bills, Water Rates, house insurance, cleaning, repairs, etc. But this lady had died some years before, which meant that my expenses were greater. I live on three small pensions, one a

Civil List Pension, awarded for my husband's services to literature. I was particularly in need, at the time of HP's visit, of some money to help a granddaughter who had been seriously ill for years, and was finding it difficult to support herself. If it had not been for that circumstance, I should never have considered having any dealings with HP, as I thought him a very strange and possibly unreliable person. The fact that he had a Law Degree (if this was true) gave me some confidence that he could not behave illegally.

He came back the next day, at about 4 o'clock, with a contract.

I should explain that at that time (and of course still, plus the deterioration of two years) I was partially sighted. The left eye has only distorted and peripheral vision, the right eye needs glasses and has a latent cataract. I was and am very deaf, my left ear has no hearing at all, my right has none without a hearing aid at full volume. I also had and have osteo-arthritis in both knees. I can walk about the house with a stick or crutch, but need a wheeled support to go outside the house. I was also rather nervous to see H.P. again. He was not at all talkative, rather silent, cleared one of my desks and set up a scanner. He proceeded to scan the photographs he had chosen; it is possible that he copied some others, as my collection was on a large table nearby.

One of the photographs which he is now claiming that I sold the copyright can not be so. I would not have signed away the copyright of the photograph of Dylan and Caitlin with Wyn Lewis at Worm's Head, because I have always known that that photograph was a gift from Mrs J.C. Wyn Lewis, who owned the copyright. In my book Portrait of A Friend (Gomer Press, Llandyssul, 1983), I explicitly state in the Acknowledgements, "I am greatly indebted to J.C. Wyn Lewis for allowing me to reproduce the photograph on page 87. This is the photograph in the contract which I have allegedly signed (though not across the photograph). Either another photograph was there, or if not, my tired eye and mind betrayed me. I could not actually read the contract for my eye was watering, and H.P. read (so he said) and explained it to me. He also said that I and my family were still welcome to use the photographs whenever we liked, and that he would make an announcement that he now owned the copyright of 12 photographs, especially to the person he [*sic*] now owned the original photographs. (This he did not do.) He then gave me a cheque for £1000 pounds, which appears on my Bank Statement, as does the Standing Order for £100 which I was then enabled to make monthly to my granddaughter when she needed it. In spite of the financial benefit, I now profoundly wish that I had had no dealings with this man.

He later e-mailed me several times and asked me to read and correct a long commentary which he intended visitors to the D. Thomas house at 5 Cwmdonkin Drive to listen to as they passed through each room. I did not intend to do anything more for him, but it was so illiterate and so poorly researched and therefore incorrect, that I was impelled to correct it and send it back to him. Soon after he asked me to try to conciliate a man who was refusing to meet him or to be involved with him in any way. I emailed a definite refusal and intimated that I did not wish to see him again.

I deeply, deeply regret having had anything to do with Haydn Price. He has been harassing me recently with threats of legal action and has taken away all the peace of mind of my old age.

G M Watkins  
29 April 2012