



Neutral Citation Number: [2019] EWHC 3372 (QB)

Case No: HQ18M01270

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MEDIA AND COMMUNICATIONS LIST**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 06/12/2019

**Before :**

**MRS JUSTICE WHIPPLE**

**Between :**

**Javnshir Feyziyev**

**Claimant**

**- and -**

**Paul Radu**

**Defendant**

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**Mr Adam Wolanski QC and Ms Felicity McMahon** (instructed by **Atkins Thomson**) for the  
**Claimant**

**Mr Jonathan Price and Ms Jennifer Robinson** (instructed by **Weil, Gotshal & Manges**  
**(London) LLP** ) for the **Defendant**

Hearing dates: 3<sup>rd</sup> & 4<sup>th</sup> December 2019

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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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MRS JUSTICE WHIPPLE

## **Mrs Justice Whipple :**

### **Background**

1. The background to this claim is set out in the judgment of Warby J [2019] EWHC 957 (QB) at [1]-[9] and I shall not repeat it here.
2. Warby J decided that the First Article, published on 4 September 2017, had this meaning:

“There are reasonable grounds to suspect that the claimant, through the company AvroMed, engaged or assisted in illegal money laundering and in the bribery of influential European politicians, journalists and businessmen on a vast scale.”
3. He decided the Second Article, published on 20 September 2017, had this meaning:

“There are strong grounds to suspect that the claimant, though the company AvroMed, engaged or assisted in illegal money laundering and in the bribery of influential European politicians, journalists and businessmen on a vast scale.”

### **Procedural Position**

4. Since the case was before Warby J in April 2019, the Defendant has re-pleaded his truth defence to maintain that the Articles were substantially true, pursuant to s 2 Defamation Act 2013, in light of the meanings above. That Amended Defence was served on 24 May 2019. The defence was re-amended following a hearing before Richard Spearman QC sitting as a deputy High Court Judge on 16 October 2019, with the amendments contributing to but not fundamentally changing the shape of the truth defence. It has recently been re-re-amended, again in a way which does not fundamentally change the shape of the truth defence. I shall for ease refer to the current version of the pleading as the “defence”.
5. The Claimant has thus been aware of the Defendant’s defence of truth, as it is advanced in light of the meanings of the Articles, since May 2019. The trial window was allocated on 16 July 2019 and the case was fixed for trial on 6 August 2019, with a trial estimate of 2 weeks. On 25 November 2019, the Claimant filed his listing questionnaire which attached a trial timetable. I am told that timetable is agreed. It follows that both parties consider that the time allocated to them is sufficient for them to call – and tender for cross examination – those witnesses of fact whose statements have been served; it also builds in sufficient time for opening and submissions.
6. On 19 November 2019 the Claimant issued an application to strike out the truth defence, alternatively for summary judgment to be entered on that part of the defence (the “application”). The Claimant accepts that the Defendant can proceed with the remainder of his case at trial (the Defendant runs two other defences: (i) a denial of responsibility for the publication and (ii) that publication was in the public interest). The PTR was already listed for one day on 3 December 2019. The Claimant’s application was therefore listed to be heard at the same time and at short notice, the PTR was listed to start on 3 December 2019 and extend into a second day on 4

December 2019. The Claimant's application was not on 14 days' notice as it should have been. I grant permission to abridge time for notice.

7. On 29 November 2019, the Defendant served a separate application dated 29 November 2019, which is not the subject of this judgment but which I note because it was supported by a witness statement from the Defendant's solicitor Mr Christopher Marks of the same date, that statement exhibiting extensive documentation running to thousands of pages.
8. I am grateful to all counsel and their solicitors for marshalling their arguments for this hearing. There has been a great deal of recent activity in this case, which now rests on very extensive amounts of case papers and files.
9. At the start of the hearing, the parties agreed that a decision needed to be reached on the application before any of the other matters before the Court on the PTR could be addressed. After hearing argument over 1½ days on the application (following a full day of pre-reading), I indicated that I would dismiss the application and allow the truth defence to proceed to trial. I said I would give reasons in writing. These are my reasons. The PTR currently stands adjourned with a time estimate of one hour to deal with the few outstanding trial issues.
10. In circumstances where I have already indicated my view that this matter should go forward to trial, it is not appropriate to comment on the merits of any aspect of the truth defence or the Claimant's reply to it, beyond explaining why the defence gets over the hurdles presented by the application itself. These reasons will therefore be brief.

## **Law**

11. I have been referred to and taken note of the leading authorities on the pleading and evidential requirements of a defence of truth. Mr Adam Wolanski QC and Ms Felicity McMahon, who act for the Claimant, have drawn my attention in particular to *Ashcroft v Foley* [2012] EWCA Civ 423 at 43], [49], [55]-[59]. Specifically, I am reminded of the need for precision in the pleading of the facts and acts relied on to justify the meaning. They rely on *Miller v Associated Newspapers Ltd* [2012] EWGC 3721 (QB) at [12-16] and [20] (upheld on appeal to the Court of Appeal at [2014] EWCA Civ 39). I am reminded that it is not sufficient merely to prove reasonable grounds to suspect the existing of primary facts to support the meaning; rather it is necessary to prove the primary facts which support the defence of truth. Further, I am reminded that the burden remains on the defendant at all times and should not be in effect transferred to the claimant. I was also shown *Radu v Houston* [2009] EWHC 398 (QB) ([5] and [14] in particular, to make the point that the Defendant cannot rely on newspaper articles simply to show that others have made defamatory allegations about the claimant in the past) and *Miah v BBC* [2018] EWHC 1054 (QB) ([34] in particular, to emphasise the difficulty of relying on circumstantial evidence alone).
12. For the Defendant, Mr Price and Miss Robinson have taken me to *Shah v Standard Chartered* [1999] QB 241 at 261C to make the point that the defence must focus on the claimant's conduct as giving rise to the reasonable suspicion, and p 265C where the Court accepted that it may be necessary to plead some background.

13. I have also been reminded of the approach to an application to strike out under CPR Part 3.4 and an application for summary judgment under CPR Part 24. The principles to be applied on an application for summary judgment are set out in *AC Ward v Catlin* [2009] EWCA Civ 1089 at 24, approving earlier authority. It is important to highlight from that list, so far as this application is concerned, that the court must not on an application for summary judgment conduct a “mini-trial”, nor should it grant summary judgment where it is of the view that a fuller investigation of the facts at trial is warranted; but, on the other hand, the court should grasp the nettle where there are short points of law or construction which are determinative.
14. Finally, I have read the helpful judgment of Nicklin J in *Bokova v Associated Newspapers Ltd* [2018] EWHC 2032 (QB), in particular [47]-[88] where he refused an application to strike out a defence of truth. I note that he too was concerned with allegations of corruption connected with the Azerbaijan Laundromat, see [73]-[87]; I am told that case has since settled. (Allegations concerning Ms Bokova appear in this case also, see [54] of the defence.) I note Nicklin J’s concerns about the proportionality of the exercise he was asked to undertake ([47]), concerns which I share in the context of this case. I further note his emphasis on looking at the pleaded case “as a whole” [66].

### **The Application**

15. The Defendant’s defence of truth as summarised at [29] of the defence relies on three key factual assertions. I summarise these as follows:
  - i) That there was an Azerbaijani “Laundromat” in existence at all material times, which was engaged in money laundering and bribery of European politicians, journalists and businessmen on a vast scale;
  - ii) That Avromed – or companies in the Avromed group – was or were associated with the Laundromat;
  - iii) That the Claimant knew or ought to have known or was grossly negligent not to know that Avromed was so involved.
16. The Claimant has served a reply (dated 8 July 2019). That reply addresses the three elements.
17. Element i), the Laundromat, is pleaded at [30]-[56]. The Laundromat is said (at [29(a)]) to be a vast, illegal money laundering system connected to Azerbaijan. Mr Wolanski has subjected the Laundromat allegations to a root and branch attack. He says the allegations of its existence are unclear, the pleadings are defective, and the allegation depends on multiple separate allegations against third parties who are not present at Court. My short answer is that the allegations about the Laundromat are clear enough and sufficiently evidenced that they can and should proceed to trial. The Claimant knows the case he has to meet if he wishes to challenge the existence of the Laundromat.
18. The evidence to support the Laundromat allegations is various. Reliance is placed on a Report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly, published by the Council of Europe, dated 15 April 2018. The Executive Summary to that Report notes that this was a detailed independent

inquiry into these allegations of corruption against members of PACE (the Parliamentary Assembly of the Council of Europe). No individual, entity or country is identified in the terms of reference, but the Report noted that the focus of the inquiry's work was on allegations of "caviar diplomacy" by Azerbaijan, referring in turn to allegations made in several NGO reports. The Defendant also places reliance on a separate report by the European Stability Initiative (a "think tank") dated 17 December 2016, which carries similar accusations of corruption and caviar diplomacy by Azerbaijan. In addition, the Defendant relies on witness statements and journalistic findings following a long investigation. That investigation turned up other documents, which are relied on. All this material adds up to a "strong inferential case" (according to Mr Price) that the Laundromat existed and was involved in money laundering and bribery.

19. Against this, so far as money laundering is concerned, Mr Wolanski complains that nowhere does the defence allege that "dirty money" came into the Laundromat and "clean money" went out, those features being definitive of money laundering in domestic law. But in my judgment the defence is clear enough in its assertion of money laundering. The trial judge will determine whether the allegation is made out on the evidence.
20. Mr Wolanski further complains that the alleged involvement of third parties named in the defence (which he counts up to be 18 individuals and 22 corporates) makes it impossible for the Court to adjudicate the Laundromat, because those third parties are not going to be heard at trial. In this context, clear particulars are given of the alleged bribes and corrupt payments by the Laundromat to these individuals and corporates (see [40]-[56]). Mr Wolanski relies, so far as the individuals are concerned, on *In Re W (A Child) (Care Proceedings: Non Party Appeal)* [2016] EWCA Civ 1140 to suggest that each has Article 8 rights which would need to be protected by the Court. In my judgment this, again, will be a matter for the trial judge. He or she will have to decide whether it is *necessary* to make findings of criminal culpability in relation to those third parties in order to determine the existence (or not) of the Laundromat; and if that is necessary, then whether and if so how the interests of those third parties can be satisfactorily protected; alternatively, whether their lack of participation in the trial means that the Court is simply unable to make the findings sought by the Defendant. These matters emerged as a sidewind of the Claimant's application during the hearing and were met with assertions, largely unsupported by authority, from both sides. Mr Wolanski seized on the witness statement of Mr Marks to which I have already referred, characterising paragraphs [16] and [17] as a concession (that third party findings would or could not be made) fatal to large parts of the Defendant's case. I am not persuaded that Mr Marks has made the concession attributed to him by Mr Wolanski. Mr Price was, so it seemed, not sure of his position on whether findings against the third parties would, or would not, be required (adopting both positions at different stages). This is an important issue for trial. It remains at large.
21. In summary, the Laundromat allegations are complicated and depend on multiple sources of evidence. The court needs to have the full picture at trial before it can decide whether it can infer the existence of the Laundromat and its criminal activities.
22. Element ii), the involvement of Avromed in the Laundromat, is pleaded at [57]-[86]. Four Avromed companies are said to have been involved; the Claimant acknowledges links with three of them. The three are Avromed Company MMC, an Azerbairjani

company; Avromed Company, a company incorporated in the Seychelles; and Avromed Company LLP, a company registered in England and Wales. The Claimant says he does not have any connection with Avromed Company Ltd, incorporated in Belize. The Defendant does not accept the Claimant's denial of any connection with the Belizian company, alternatively he argues that the Claimant was grossly negligent if he did not know about that company (see [91A]).

23. The defence sets out the facts relied on in relation to each of these companies, namely the financial activities with each of them which are said to constitute involvement in the Laundromat. The case against the Avromed companies consists in the main of payments to and from shell companies said to be part of the Laundromat. If these payments are established as fact, it will be for the Court to decide whether it can draw the inference that they are payments as part of the Laundromat. I note that the reply sets out an alternative and innocent explanation for these payments. This, then, is an issue for trial.
24. The timespan for the various payments which are relied on as evidence of the Laundromat and Avromed's alleged involvement in it is August 2010 to December 2014 ([29(c)] of the defence). Element iii) therefore covers two periods:
  - (a) up to December 2010, when the Claimant was the general manager of Avromed Company MMC. As such, it is said that he knew or must have known about the payments. For this period, the defence relies on the fact that the Claimant was the driving force and public face of Avromed Company MMC ([91(a)]).
  - (b) From December 2010 onwards. For this period, the defence pleads at [87]-[88] and [91(a)-(c)] the facts relied on to support the proposition that the Claimant continued to be involved with Avromed and knew or was grossly negligent if he did not know about the payments. The evidence relied on is mostly hearsay in the form of internet or newspaper reports, together with the fact of an interview with the Claimant from "his" office at Avromed and the fact that he remained a 25% shareholder until 2016. The defence complains that there is a lack of information publicly accessible about Azerbaijani corporates. A suggestion that he retained an Avromed email address throughout this period is not pleaded (and it should be).
25. The facts pleaded are, again, plain enough. The Claimant cannot sensibly complain that he does not know the case he has to meet. In relation to the three Avromed companies which he acknowledges, and assuming the Court has rejected the Claimant's innocent explanation for their dealings, the key issue will be whether he knew of these dealings; in relation to the Belizian company, the court has a prior and additional issue to resolve, namely whether the Claimant is telling the truth when he says he had no knowledge of the company.
26. I am not at this stage able to say that element iii) has no reasonable prospect of succeeding at trial. There is evidence to support each of the pleaded facts. Each of the pleaded facts, if accepted, is capable of amounting to conduct of the Claimant himself, which it could reasonably be argued caused suspicion to fall on him.

27. There is an outstanding issue in relation to this aspect of the truth defence. The meaning of the Articles (per Warby J) is that there were grounds (reasonable or strong) to suspect that the Claimant “engaged or assisted” in illegal money laundering. It is common ground that actual knowledge of Avromed’s involvement in the Laundromat would be sufficient to amount to criminal conduct, in the form of engagement or assistance. It is also common ground that a reckless “turning of a blind eye” as to what was going on would also be sufficient. But in some places, the defence pleads constructive knowledge (should have known) and gross negligence (if in fact the Claimant did not know) as alternatives. There is a question about whether constructive knowledge or gross negligence would be sufficient to amount to criminal involvement. If the Defendant maintains these alternative ways of putting his case in relation to the state of the Claimant’s knowledge, that question must be added to the list for the trial judge. In one place, there is a further plea of breach of the Claimant’s duty owed to Avromed Company MMC ([91E]) – which I was told was a variant on the negligence theme. That too may require further consideration at trial if it is maintained.
28. For all these reasons, I conclude that the truth defence is, as a general proposition, adequately pleaded and sufficiently evidenced, so that it should proceed to trial. I have noted a number of issues along the way, which will have to be determined by the trial judge with the benefit of full argument and consideration of the evidence.

### **Delay**

29. Finally, there is the issue of delay. The Claimant has known the shape of the Defendant’s truth defence for many months. If there were pleading points to be taken against the Defendant, those points could and should have been taken much earlier. Instead of that, Mr Wolanski says that the Claimant has been trying to obtain further information of the defence; it was only when a re-amended defence was served recently, and witness statements were exchanged with supporting evidence (not the large disclosure on 29 November 2019, which post-dates the application), that the Claimant decided to make the application. That may be so. But the fact is that this application is made at the 11<sup>th</sup> hour when trial is in view. That is unsatisfactory. The Claimant’s delay in issuing this application adds support to the conclusion that this application must fail.

### **Conclusion**

30. I have not conducted a detailed review of the latest round of amendments to the defence, which are the subject of applications for permission to amend which I have yet to determine. I am willing to hear argument on those amendments if there are specific and detailed points of challenge remaining which do not cross over with matters already addressed above (including my signal for certain issues left for the trial judge).
31. There are other issues outstanding, and covered by other applications, which fall to be dealt with in the context of the adjourned PTR.
32. The Defendant is entitled to run his defence of truth to trial. The Claimant’s application of 19 November 2019 is dismissed.