

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

Claim Form issued 19 December 2012

Claim No.HQ12D05474

BETWEEN:

MS AYODELE ADELE VAUGHAN

Claimant

-and-

(1) LONDON BOROUGH OF LEWISHAM

(2) RALPH WILKINSON

(3) CHRISTINE GRICE

(4) ELAINE SMITH

(5) VALERIE GONSALVES

(6) ELAINE HATTAM

(7) KATE PARSLEY

(8) DR ANTHONY WILLIAMS

Defendant

SKELETON ARGUMENT FOR THE CLAIMANT
CLAIMANT’S AMENDMENT APPLICATION & HER
RESPONSE TO THE D’S APPLICATION FOR A ‘STAY’ OF
PROCEEDINGS: 25 MARCH 2013

PREMAMBLE

References in this Skeleton Argument to C and D are the Claimant and the Defendants’ and to the Claimant’s Bundles- B1, B2 & B3, are in the format [B?. xx . x] in this skeleton are to [bundle. page. paragraph] in bundles 1- 3: The Court is recommended to read the following documents in advance, together with this skeleton and the references contained within it:

- (1) Chronology **[B1.38]**;
- (2) C’s Application Notice dated 27 February 2013- amendment **[B1.30]**;
- (3) C’s supporting letter dated 27 February 2013- amendment **[B3.1406]**;
- (4) C’s Application Notice dated 27 February 2013- interim injunction **[B1.28]**;
- (5) C’s supporting letter dated 27 February 2013- interim injunction **[B3.1394]**;
- (6) C’s Particulars of Claim **[B1.268]**;
- (7) C’s witness statement (2) **[B1.62]**;
- (8) C’s witness statement (1) **[B1.41]**;
- (9) C’s Employment Tribunal application regarding her request for a ‘stay of proceedings’ dated 23 February 2013 **[B3.1372]**;
- (10) C’s Employment Tribunal application dated 12 February 2013 regarding her request for the Employment Tribunal to reconsider the tribunal’s decision regarding the admissibility of covert recordings and transcripts and her ‘strike out’ of the D’s Tribunal defence/response **[B1. 321 – 335n]**;
- (10) Extracts of C’s covert recordings and transcripts highlighted in paragraphs 9a- t, 22a – c & 23 a-f of her witness statement 1 **[B1.41]**, (regarding her application for an interim injunction).

Introduction

- 1 On diverse occasions between January 2011 and May 2012 the D’s have published/uttered and/or caused and/or permitted to be uttered and/or published and/or been party to or procured the distribution and publication within the jurisdiction of this Honourable Court and engaged in and intend

to continue to engage in a course of conduct which amounts to harassment. The C has therefore made an application for an interim injunction in libel and slander to restrain the publication and utterances of defamatory allegations under the Protection from Harassment Act 1997 to prevent harassment by defamatory publications and utterances.

- 2 If the D's application for a 'stay' is granted they will be free to publish and say further defamatory matters calculated to injure her health and exacerbate her medical condition and harass her, which include the false allegations which the D's intend to reinforce at the Employment Tribunal during the full hearing over the course of more than 20 days in October 2013 and any time between now and October 2013.
- 3 The D's are effectively asking the Court to allow them to continue to harass and defame a vulnerable and disabled Claimant, with impunity and under cover of a Court order permitting a 'stay' of proceedings.

The Applications

C's Application to amend her claim form and particulars of claim

- 4 Between 22 and 27 February 2013 the C and the D's engage in correspondence with each other and the Court regarding their intentions to make applications to the Court **[B1.62. 9 -10, 12 & 14]**. It is submitted that the application discloses a reasonable cause of action. The Court may permit an application permit a new cause of action to be added to an

existing claim after the relevant period of limitation has expired, where the new cause of action arises out of the same facts or similar facts as are already in issue in the original claim (LA 1980, s.35 (5), also see CPR, r.17.4 (2)).

5 The court should give effect to the overriding objective. Amendments should normally be allowed, if what is proposed is arguable and important to the determination of the issues between the parties, and if the other side would not suffer undue prejudice. The more serious the allegation the more clearly satisfied the court should be that no prejudice is being caused.

6 ***Spring v Guardian Assurance Plc*** [1995] 2 AC 296 **[A5.311]**

demonstrates that the mere fact that there is a cause of action in defamation does not necessarily exclude some other form of cause of action if the ingredients of that other form of cause of action are present.

7 In her letter to the Court dated 27 February 2013 **[B3.1406]**, the C set out the narrative that she is seeking permission to add in her pleadings, which included two introductory paragraphs and paragraphs detailing the particulars of falsity and the particulars of damage. The C's draft order can be found at **[B1.36]**. The C's claim form was lodged on 19 December 2012 **[B1.262]**. The Claim was 'stayed' by Master Leslie until 13 February 2013 **[B1.293]**, **[B1.41.8]** and **[B1.62. 7 – 8]**.

The D's Application for a 'stay' of High Court defamation proceedings

8 The C' has set out the basis of her response to the D's application in her witness statement (2) [B1.62]. The pre-action protocol correspondence can be found at [B1. 251 - 261] and [B1.226].

9 It is submitted that the D's application for a stay, the related requests for orders and the mere fact that the Defendants' have indicated in point 3 of their draft order that they would even seek to defend the action [B1.1411.2], (which flies in the face of justice and the damning evidence), constitutes an abuse of the process of the Court or otherwise likely to obstruct the just disposal of proceedings. 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...'***

The relevant Law and General Principles

10 In addition to the relevant case law set out in the C's skeleton argument for an interim junction, (the authorities relating to the issue of the D's potential defence being bound to fail), the C also relies on ***Mindimaxnox LLP v Gover*** [2010] EAT/0225 [A.17. 24, 31 – 33, 37, 41 – 42, 44 – 45 – 47 & 51], in which the principles governing a stay of proceedings were laid down by the Employment Appeal Tribunal- that a stay of the tribunal proceedings should be applied:

- a) where there is a very substantial factual dispute about complex matters;
- b) where there is considerable overlap in relation to the facts of the dispute;
- c) so as not to embarrass the High Court (***First Castle Electronics Limited v West*** [1989] ICR 72 [A.4. 72 - 73]) or to put it in a straightjacket by limiting it to considering findings of fact made by the tribunal (***Automatic Switching Limited v Brunet*** [1986] ICR 542 [A.4. 545]).

11 In ***First Castle Electronics Ltd v West*** [1989] ICR 72 the EAT identified a number of issues which ought to be considered by employment tribunals when exercising their discretion to stay proceedings pending determination of other proceedings. At first instance, the employment tribunal refused to order a stay of proceedings. An appeal was granted by the EAT (Ward J presiding). The following factors were identified as being significant:

- (a) the degree of overlap between the issues in the different jurisdictions;
- (b) the complexity of the issues and the evidence;
- (c) the amounts at stake in the respective proceedings;
- (d) the risk of there being findings of fact by an Employment Tribunal which could embarrass the High Court and on the contrary, the possibility of findings made by the High Court being helpful to an Employment Tribunal;
- (e) the procedural complexity of the case;
- (f) the rules of evidence (which may in the High Court be more suitable for the determination of particular issues);
- (g) any prejudice which will be caused by the delay of a stay.

12 It is generally desirable to dispose of proceedings in the High Court first where the sets of proceedings are substantially similar: see also **GFI**

Holdings Limited v Camm UKEAT 0321/08 [A.13. 16]:

'It is generally desirable to dispose of High Court actions first where there are issues in both sets of proceedings which are substantially the same, see Automatic Switching Ltd v Brunet [1986] ICR 542. Cases such as Carter v Credit Change Limited [1979] IRLR 361, Bowater Plc v Charlwood [1991] ICR 798 and First Class Electronics Limited v West [1989] ICR 72 set out the factors to be taken into account when determining whether a stay is appropriate, including a similarity of issues between the two sets of proceedings, the complexity of those issues, the technicality of the evidence and the amount of damages claimed.'

13 Proceedings should not, generally, be permitted to continue concurrently.

That is so, particularly where there are unfair dismissal proceedings in the employment tribunal and other causes of action relating to aspects of the dismissal in the High Court because the factual issues raised will be the same. It is not in accordance with the overriding objective to have concurrent proceedings dealing with the same factual issues: see paragraph **[A.13. 18, 22, 24 & 26]**.

14 In line with the above judgment, it is submitted that if the Tribunal proceedings were to precede the High Court proceedings, it follows that the High Court would find itself bound by findings made by the Tribunal as to the nature of the C's dismissal and the reasons for that termination, (which would be to the C's prejudice, considering the fact that the Tribunal has prevented the C from admitting the covert recordings and transcripts into evidence **[B1.182.1 & B3.1382]**), thereby limiting the High Court's freedom to make findings in respect of the same factual issues.

15 More recently, in **Paymentshield Group Holdings Limited v Halstead**

UKEAT/0470/11DM [A.20] the EAT has granted a stay of Employment Tribunal proceedings even though no concurrent High Court proceedings had been issued by the employee. The position was that:

(a) the claimant had been dismissed and had issued a claim for unfair dismissal in the Employment Tribunal and (b) the claimant has also sent a letter before action in relation to a contract claim in the High Court in which wrongful dismissal was alleged as was breach of contract. There was, therefore an overlap of factual and legal issues as between the Tribunal claim and the claim which had been intimated in the High Court.

16 The C also refers the Court to the Court of Appeal's decision in **Noorani v**

Merseyside TEC [1999] IRLR 184 [A.18] in which **Mindmaxnox** was approved, the section in Gatley at 32.47 to 32.48 and in the notes to section 49(3) of the Senior Courts Act 1981 [White Book 2011, p2488-2490] which deal with stay of proceedings.

17 The C's Article 6 rights entitle her to have the claim tried within a

reasonable period, see **Johnson v Gore Wood & Co** [2002] 2 AC 1, which was endorsed by Judge Eady J in **Wakefield v Channel Four Television & Others** [2005] EWHC 2410 (QB) [A10.29].

18 The defamation case is primarily about achieving vindication of reputation.

In Wakefield Judge Eady stated at [A10.2]:

'In As it was put by Glidewell LJ in Grovit v Doctor, 28th October 1993 (unreported), CA: "The purpose of a libel action is to enable the plaintiff to clear his name of the libel, to vindicate his character. In an action for defamation in which the plaintiff wishes to achieve this end, he will also wish the action to be heard as soon as possible".'

19 It is clear that a Court has power to intervene to prevent injustice where the continuation of one set of proceedings may prejudice the fairness of the trial of other proceedings and it should exercise that power where there is a real risk of serious prejudice which may lead to injustice.

20 The D's are clearly seeking to unnecessarily delay the C's case because any defence run by them is bound to fail. Under CPR rule 3.4, the court may strike out a statement of case on the ground, among others, that it discloses 'no reasonable grounds for bringing or defending the claim'. This is a case where it is instantly demonstrable that the central facts in the D's case are untrue and where the C's allegation of malice is conclusively proved by the productions, (covert recordings and transcripts). The D's do not have a credible alternative factual case to put forward.

21 Any defence run by the D's would be tainted by dishonesty and amount to an abuse of process, which would make the trial unfair. It would constitute an improper, unreasonable and dishonest violation of the court's directions and rules as well as the law and that the Court is therefore could strike out the defence on the grounds of the deliberate abuse of process and falsification of evidence and the publication of matters calculated to prejudice a fair trial.

22 The allegations contained in the D's Tribunal defence [B3.1245- dismissal letter] go to undermine fundamentally the C's professional integrity and honesty in relation to the words complained of in this action – matters which can be more appropriately be determined by the defamation proceedings. This approach is supported by Judge Eady in *Wakefield*

[A10.5]:

'Even without a reply having been served, I can reasonably infer that the trial will turn upon fundamentally serious issues going to the heart of the Claimant's honesty and professional integrity. That in itself is a very powerful reason for trying to achieve as early a resolution of the real issues between the parties as is reasonably possible.'

Conclusion

23 The C has already had to live with the damage to her reputation since August 2011 when she was suspended by the 1st Defendant [B1.131] and subsequently dismissed in April 2012 [B1. 1258]- 2nd to last paragraph. It is submitted that C has a right to speedy vindication- see *Glidewell LJ said in Grovit v Doctor*, 28th October 1993 (unreported). In this case it was held that a delay in the prosecution of a libel case can be interpreted as an abuse of process and that a claimant must pursue his case with vigour, which all the C is trying to do. Also see Henry LJ observed in *Oyston v Blaker* [1996] 2 All ER 106, 118, "***The essence of a genuine complaint in libel is prompt action***", which was cited by Judge Eady in *Wakefield* [A10.2 & 5].

24 The C cannot recover from her illness or find employment until she has vindicated herself. It is submitted that the D's application is without merit and oppressive and a serious infringement of a citizen's right of access to the courts. The C accordingly respectfully requests that the Court to expedite the defamation trial.

25 It is submitted that the C's approach is in line with the overriding objective, ensuring that the parties are on an equal footing; dealing with the case in ways which are proportionate - to the amount of money involved, (the C's reputation, future job prospects and mental health are on the line); to the complexity of the issues; and ensuring that it is dealt with expeditiously and fairly; and allotting to it an appropriate share of the court's resources. The issue of proportionality is dependant on the nature and gravity of what is at stake and the duty of the Court to protect Convention rights. In order to expedite the case in a fair and just way, the C urges the Court refuse the D's application for a 'stay' and the related orders.

STATEMENT OF TRUTH

The Claimant believes that the facts stated in the statement of case are true.

Signed

Ms Ayodele Adele Vaughan

13 March 2013