Neutral Citation Number: [2013] EWHC 2202 (QB)

Case No: HQ13 D01664

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/07/2013

Before :

MRS JUSTICE NICOLA DAVIES DBE

- -

Between :

Christopher McGrath	**Claimant**
- and -	
Independent Print Limited	**Defendant**

- -
- -

Mr C McGrath appeared in person as the **Claimant**
Mr J Price and **Mr R Dougans** (instructed by **Bryan Cave Solicitors**) for the **Defendant**

Hearing dates: 9 July 2013

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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.

.....

MRS JUSTICE NICOLA DAVIES DBE

Mrs Justice Nicola Davies DBE:

1. The claimant sues for libel in respect of an article published by The Independent on the defendant's website on 4 April 2012. The headline "Author Chris McGrath faces six figure legal bill after unfavourable Amazon reviews case is struck out". A print version was published on 5 April 2012, the headline being "Amazon book review battle ends in costly defeat". The articles, written by Jerome Taylor, were subsequent to the judgment of HHJ Maloney QC (sitting as a Judge of the High Court) in the case of *McGrath and Dawkins and Others* [2012] EWHC 3(QB)("Dawkins Action"). The judgment related to strike out and meaning applications by the four defendants in a case brought by the claimant concerning what is described as an "online war of words" which took place on websites owned/operated by Richard Dawkins, the Richard Dawkins Foundation, the online retailer Amazon and an individual blogger, Mr Vaughan Jones.

2. The background to the Dawkins Action is set out in the judgment of HH Judge Maloney QC. In summary, it is that in 2010, the claimant published under the pseudonym "Scrooby", a book entitled "The Attempted Murder of God: Hidden Science You Really Need to Know". In the same year, Professor Stephen Hawking and Leonard Mlodinov published a book called "Grand Design: New Answers to the Ultimate Questions of Life". The book was offered for sale on Amazon, the page on which it was advertised included a facility for users to post reviews. The claimant, as Scrooby, posted a review of the Hawking book, the review is described by the defendant as "more or less a naked puff for the claimant's own book". The claimant's review attracted many critical comments. An online argument ensued with a number of contributors including several who were in fact, the claimant using other aliases. One contributor was Mr Vaughan Jones. It was he who outed the claimant as Scrooby, questioned the claimant's marketing tactics, belittled the claimant's book and publishing business and took issue with the claimant both as to his views and conduct. The war of words spilled over onto the website of the Richard Dawkins Foundation when Mr Vaughan Jones began a discussion on the site complaining that the claimant had threatened to sue him for libel comments made in the Amazon thread.

3. The claimant issued proceedings in the Dawkins Action on 1 April 2011. The Dawkins defendants subsequently applied to strike out the claim upon a number of bases, all of the defendants applied for rulings on meaning. The claim against Amazon was struck out in its entirety. The claims against Richard Dawkins and Mr Vaughan Jones were struck out as the only actionable aspects of the claims against them, which had survived the abuse of process and meaning applications, were disposed of by way of undertakings. The claimant was ordered to pay costs which remain unpaid.

4. The article upon which the claimant now sues reports the result of the Dawkins Action. It contains references to the Libel Reform campaign and includes quotes from Michael Harris of Index on Censorship. The print and online versions include quotes from the claimant, the online version ends with some words from Mr Vaughan Jones.

5. Proceedings were issued on 25 March 2013 by a Claim Form with Particulars of Claim attached. The Defence was filed and served on 23 April 2013. No application,

pursuant to CPR 26.11 for trial by jury was made within 28 days of service of the Defence. The claimant's Reply was filed and served on 20 May 2013.

6. At paragraphs 2 – 5 of the Particulars of Claim, the following is pleaded:

> "2. The Claimant acts as Litigant in Person and complains of an article by The Independent newspaper, owned by the Defendant, dated 4th April 2012 (Exhibit 1) which carried the headline: *"Author Chris McGrath faces six figure legal bill after unfavourable Amazon reviews case is struck out"*, in which, contrary to law, it stated falsely and with malice that Mr Chris McGrath raised a defamation suit over a book review (of *The Attempted Murder of God: Hidden Science You Really Need To Know*, in the matter of McGrath & Anor V Dawkins & Ors -- Neutral Citation Number: [2012] EWHC B3 (QB) Case No: IHJ/11/0537/30 March 2012).
>
> 3. The same falsehood was made in their article dated 9 November 2011 (Exhibit 2), which carried the headline *"Man faces libel allegations over Amazon book review"*, the day before the strike-out hearing in the above case; but the Claimant sues on the second article only, with the first used in evidence to support the claim in relation to the second.
>
> 4. In addition, the Claimant adds as evidence a tweet from Twitter.com, posted by the journalist, Jerome Taylor to his thousands of followers on April 2012, as follows: *"Author who tried to sue over Amazon Book Review/flame war has libel case thrown out"* (Exhibit 3), which linked to the main article sued upon. The intent to pitch it to the public as a book-review libel claim is clear.
>
> 5. A book review is a subjective response and is widely regarded as a matter of opinion, a legally framed objection to which clearly falls within the pejorative realm of stifling free speech, which is of course a Human Right protected in international law. Such a claim demonstrably engenders a lowering of opinion of a litigant by ordinary readers and is therefore defamatory."

7. In a letter, clarifying the matters contained in the Claim Form and the Particulars of Claim, the claimant confirmed that he sues in libel upon all the words in the article, including the headline. Further, the meaning he relies upon is that he sued in respect of a book review. By its Defence, the defendant relies upon meaning, justification, honest opinion and privilege.

8. By application dated 6 June 2013, the defendant applied for rulings on meaning pursuant to CPR Part 53 PD4.1(1) and/or (2) and/or (3) to include:

   a) whether the words complained of bear the meaning contended for by the claimant and, if so,

   b) whether that meaning is defamatory of the claimant;

   c) whether the words complained of are capable of bearing any meaning defamatory of the claimant.

9. By two applications dated 14 June 2013, the claimant applied for:

    a) an order pursuant to CPR 3.1(2) extending the time for making an application for a jury trial pursuant to CPR 26.11 and

    b) for a jury trial pursuant to s.69(1) of the Senior Courts Act 1981.

10. The applications made by the claimant and the defendant fall for determination. In addition, the claimant who represents himself, has made three further oral applications relating to disclosure of documentation, the admissibility of documentation and proof of the authenticity of the same.

The claimant's application for trial by jury

CPR 3.1(2)

> "(2) Except where these Rules provide otherwise, the court may –
>
> (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired); ....."

Section 69 of the Senior Courts Act 1981

> "69 – Trial by jury
>
> (1) Where, on the application of any party to an action to be tried in the Queen's Bench Division, the Court is satisfied that there is in issue - ...
>
> (b) a claim in respect of libel, slander, malicious prosecution or false imprisonment ...
>
> the action shall be tried with a jury unless the court is of the opinion that the trial requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury ...
>
> (2) An application under subsection (1) must be made not later than such time before the trial as may be prescribed.
>
> (3) An action to be tried in the Queen's Bench Division which does not by virtue of subsection (1) fall to be tried by the jury shall be tried without a jury unless the court in its discretion ordered it to be tried with a jury. "

CPR 26.11

> "An application for a claim to be made with the jury must be made within 28 days of service of the Defence."

11. The principles and/or factors of which the court should take account in exercising its discretion pursuant to section 69(3) of the 1981 Act were identified by Lord Neuberger MR in *Fiddes v Channel Four News Corporation and others* [2010] EWCA Civ 730 at [15]:

> "In this case, when considering the three section 69 questions, the Judge took the applicable principles from the judgment of Lord Bingham LCJ in *Aitken* [1997] EMLR 415, 421-422, where he said this:
>
> 12. "(i) The basic criterion, viz that the trial requires a prolonged examination of documents, must be strictly satisfied, and it is not enough merely to show that the trial will be long and complicated (*Rothermere v Times Newspapers Ltd* [1973] 1 WLR 448). However, the word 'examination' has a wide connotation, is not limited to the documents which contain the actual evidence in the case and includes, for example, documents which are likely to be introduced in cross-examination (*Goldsmith v Pressdram Ltd* [1988] 1 WLR 64).
>
> (ii) 'Conveniently' means without substantial difficulty in comparison with carrying out the same process with a judge alone. This may involve consideration of several factors, for example:
>
> 13. (a) the additional length of a jury trial as compared with a trial by judge alone;
>
> (b) the additional cost of a jury trial taking into account not only the length of the trial but also the cost of, for example, additional copies of documents;
>
> (c) any practical difficulties which a trial by jury would entail, such as the handling of particularly bulky or inconvenient files, the need to examine documents alongside each other, and the degree of minute scrutiny of individual documents which will be required;
>
> (d) any special difficulties or complexities in the documents themselves (*Beta Construction Ltd v Channel Four Television Co Ltd* [1990] 1 WLR 1042 especially per Stuart Smith LJ at page 1047C-D and per Neill LJ at page 1055H, referred to and applied in the recent case of *Taylor v Anderton* [1995] 1 WLR 447).
>
> (iii) The ultimate exercise of discretion will in each case depend substantially on the circumstances of each individual case, and it would be idle to attempt to enumerate all the factors which might arise.
>
> There are, however, four factors which have been identified in the earlier cases, which have some general application and which are presently relevant, as the judge recognised:

> (1) The emphasis now is against trial by juries, and this should be taken into account by the court when exercising its discretion (*Goldsmith v Pressdram* (supra) at page 68 per Lawton LJ with whom Slade LJ expressly agreed). This conclusion is based on section 69(3), which was a new section appearing for the first time in the 1981 Act to replace section 6(1) of the Administration of Justice (Miscellaneous Provisions) Act 1933, the provision in force at the date when *Rothermere v Times Newspapers* was decided.
>
> (2) An important consideration in favour of a jury arises where, as here, the case involves prominent figures in public life and questions of great national interest (*Rothermere v Times* (supra)).
>
> (3) The fact that the case involves issues of credibility, and that a party's honour and integrity are under attack is a factor which should properly be taken into account but is not an overriding factor in favour of trial by jury (*Goldsmith v Pressdram* (supra) at page 71H per Lawton LJ).
>
> (4) The advantage of a reasoned judgment is a factor properly to be taken into account (*Beta Construction v Channel Four Television* (supra))."

12. Illustrative of the approach of the court to the issue of a trial by judge alone is the decision of Tugendhat J in *Cooke and Telegraph Media Group* [2011] EWHC 763 (QB):

> "111. The disadvantages of trial with a jury in cases where the law is complicated were noted as long ago as *Richards and Naun* [1967] 1QB 620, 626 and 627. These disadvantages have increased in recent years with the increasing development and complexity of the law of defamation. ... where there is uncertainty as to the law, as there so often is, a judge can formulate his reasons on alternative bases, and the Court of Appeal can substitute one disposal for another, according to the correct view of the law. It is less likely to be necessary to order a retrial, as may be inevitable if a jury has been misdirected with the law.
>
> 112. There are very great case management advantages in trial by judge alone. Issues can be tried in a convenient order, for example in particular, the judge can rule on meaning in advance of the trial, and before much of the costs associated with a full trial have been incurred. If the judge rules on meaning shortly after the service of the defence, then there may be very large savings in cost indeed. If, as is commonly the case, and is the case here, the defence have justification or honest comment is to a meaning which is less serious than the meaning contended for by the Claimant, then if the judge upholds the Claimant's meaning, there may then be seen to be no defence at all. Correspondingly, if the judge were to uphold the Telegraph's meaning, then it may be argued that the claimant has no real prospect of defeating the defence.

> 113. A trial by judge alone is in general, and is in this case, much more likely to satisfy the overriding objective, in every element of it listed in the CPR.114.
>
> 114. I refer at this point to the observations of Lord Phillips in *Spiller* at para 67. Trials by jury in libel cases now commonly involve the arguing of the same point at least twice and sometimes several times over. …
>
> 115. This multiplicity of opportunities to argue the same point is one of the major reasons why the costs of libel actions have become so disproportionate as to risk condemnation as an interference with freedom of expression and the right of access to the court ….."

13. As to the fact that the claimant is a litigant in person who says he misunderstood the relevant provision of the CPR, the authority of *Tinkler and another v Elliott* [2012] EWCA Civ 1289 per Maurice Kay LJ at [32] is relevant:

> "I accept that there may be facts and circumstances in relation to a litigant in person which may go to an assessment of promptness but, in my judgment they will only operate close to the margins. An opponent to a litigant in person is entitled to assume finality without expecting excessive indulgence to be extended to the litigant in person. It seems to me that, on any view, the fact that a litigant in person "did not really understand" or "did not appreciate" the procedural courses open to him for months does not entitle him to extra indulgence."

The claimant's submissions upon trial by jury

14. The claimant told the court that he was unaware of the time requirement contained in CPR 26.11. It was his belief in making a claim as a litigant in person, which he said must be scrutinised by a Master who must be "satisfied" that there is "an issue … in respect of libel" prior to service he had made an application for trial by jury pursuant to s.69(1) of the 1981 Act. Further, that in issuing the Claim Form and serving the Particulars of Claim he had taken sufficient steps to apply for trial by jury. As soon as the claimant realised his mistake, he corrected the matter by making application for a trial by jury. Had the claimant believed otherwise, he would have made his application earlier.

15. As to why he requires a trial by jury, the claimant contends that he has been attacked and vilified, nationally and internationally, because people believe he has sued for libel in the Dawkins Action in respect of a book review. This had opened him to opprobrium because he was perceived as suing upon an issue of free speech. It was the view of those who commented negatively upon the claimant's actions that he was acting in a ridiculous fashion. The claimant stated that he would never have sued in respect of a book review.

16. Further, it is the claimant's belief that he has been used for political reasons by the Independent. In particular, by its proprietor Evgeny Lebedev, as part of his efforts to ensure that the Defamation Act 2013 was passed by Parliament. The claimant

believes that his case has been used to "shore up" this political cause which has raised his case to a matter of national importance such as would warrant a trial by jury. The claimant told the court that Mr Lebedev had sought repeated meetings with the Lord Chancellor and other senior officials to further the issue of libel reform as evidenced by one meeting, which took place in November 2012, between Mr Lebedev and Mr Kenneth Clarke MP. It is the claimant's belief that his case is important for national debate.

17. As to documentation, the claimant produced to the court a small bundle which he said would be sufficient for the purpose of trial. He does not accept the defence contention that the trial would entail the scrutiny of many documents.

The defendant's submissions upon trial by jury

18. The defendant summarised the law thus: where a party seeking jury trial in circumstances where that is permitted by s.69(1)(b) of the 1981 Act fails to make the application within the period prescribed then the right conferred by s.69(1) goes and the matter is within the discretion of the judge. That may be because it falls within s.69(3) of the 1981 Act or, alternatively, on an application to extend time pursuant to CPR 3.1(2)(a). In approaching the issue of discretion, the question for the court is "what is the right position now?" *Telegraph Media Group Ltd v Sarah Thornton* [2011] EWCA Civ 748. In exercising its discretion pursuant to s.69(3) of the 1981 Act the court must start with the predisposition in favour of a trial without a jury. The wishes of the parties are a factor to be considered but the court should not abstain from addressing its mind to all the relevant factors including, in particular, those of case management. Any application pursuant to CPR 3.1(2)(a) would be a matter for the court's discretion to be exercised judicially and in accordance with the overriding objective.

19. It is the defendant's contention that whether the discretion is exercised pursuant to s.69(3) of the 1981 Act or CPR 3.1(2)(a) in the context of this case it remains the same. Insofar as there could be any difference in the exercise of the court's discretion, it relates to the fact that the claimant is a litigant in person. As to the reason advanced by the claimant, namely that he misunderstood the relevant provision of the CPR, it is said that his reason is not a good one.

20. The defendant relies upon the following documents produced, or linked to by, the claimant which are said to demonstrate his knowledge of CPR 26.11 and s.69 of the 1981 Act:

    a) "Grounds For Appeal, Argument In Support Of Grounds for Appeal". These documents were before HH Judge Maloney QC in the claimant's application for permission to appeal his judgment. They are dated 26 April 2012. Within them is a reference to CPR 26.11, together with an extract from s.69 of the 1981 Act;

    b) A document produced in the course of the Dawkins claim entitled "Claimants Appeal Against The Decision To Deny Appeal Rights And Seek Leave To Appeal The Judgment Itself And Proceed To Trial". This also contains reference to CPR 26.11 together with an

extract from s.69 of the 1981 Act. The document is dated 26 April 2012;

c) An extract from the website www.mcgproductionsltd.com/JUDGMENTINLIBELCASE.html which was operated by the claimant. This refers to CPR 26.11 together with s.69 of the 1981 Act. It is dated 5 April 2012;

d) A document entitled "Argument In Support Of Grounds For Appeal" which was the skeleton argument put before the Court of Appeal in support of the claimant's application for permission to appeal the judgment of HH Judge Maloney QC. CPR 26.11 is quoted in its entirety. At paragraph 3 of the document reference is made to the decision of Tugendhat J in *Boyle v MGM* [2012] EWHC 2700 (QB). The judgment includes the provisions of s.69(1) and (3) of the 1981 Act. Further, Tugendhat J explicitly states that the application for a jury trial in a libel action must be made within a specified time period.

21. The point made by the defendant is that lack of knowledge by the claimant would provide him with a latitude on the part of the court operating only at the margins. In the circumstances of this case, no such latitude should be given by reason of the knowledge of the claimant of the relevant provisions and time limit as demonstrated by the documents.

22. The exercise of the court's discretion must also take account of the overriding objective identified in the CPR which the defendant contends is now stricter by reason of the new cost regime. It is the defence case that the general discretion to be exercised, operates against a trial by jury. No prominent figure in public life is involved in these proceedings. The attempt to involve Evgeny Lebedev is unlikely to succeed and would be struck out on an interlocutory application. No issue of credibility or integrity arises, there is no intention on the part of the defendant to seek to impugn the credibility of the claimant. The involvement of a jury would lead to a lengthier and more expensive trial.

23. Before the court is the witness statement of Robert Dougans, a solicitor instructed on behalf of the defendant. Exhibited to his witness statement are the many pleadings produced by the claimant in the Dawkins Action. At pages 252 – 388 are all the threads upon which the claimant originally sued. Aside from the quantity of the threads is the fact that they are not easy to follow. It is the defendant's case that at any hearing it would be necessary for all the threads to be read, together with the judgment of His Honour Judge Maloney QC.

Conclusion

24. I approach the claimant's application in the order identified in his two application notices, namely, consideration of CPR 3.1(2) and thereafter s.69 of the 1981 Act. In my view, the exercise of the court's discretion differs little whether exercised pursuant to CPR3.1(2) or s.69. I take account of the fact that the exercise of any discretion is subject to the overriding objective. The claimant has argued his case with courtesy and care. He is a litigant in person but, as the documents demonstrate,

by reason of the original trial he has considerable experience in litigating a case and is aware of the relevant provisions of the CPR and s.69 of the 1981 Act. I do allow the claimant a degree of latitude as to his understanding of the implication of s.69(1) and the time provisions relating to an application for a trial by jury. However, such latitude is of limited effect in respect of a claimant who has demonstrated his knowledge of the relevant provisions.

25. The disposition of the courts today is against trial by jury. Trial by judge alone provides real case management advantages. A ruling today that the matter is to be dealt with by a judge would mean that the court could then hear the defendant's application upon meaning. I accept the defence submission that consideration of the issues in this case would involve the production by the defence of a considerable volume of documentation, not least the many pages of threads which were the evidential source of the original action.

26. I do not accept the claimant's point that this is a matter of important national interest. His attempt to include the proprietor of The Independent is based upon little by way of good evidence and would be likely to be struck out. In my view, the trial of this action should be by a judge alone. Case management by the judge would provide an expeditious and proportionate means of handling the issues and documents in this trial in accordance with the overriding objective. I see no reason to exercise my discretion to order this action to be tried with a jury and every reason to order a trial by judge alone.

The defendant's application upon meaning

The law

27. The principles governing such an application were identified by Sir Anthony Clarke MR in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at [14] as follows:

> "(1) The governing principle is reasonableness.
>
> (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
>
> (3) Over-elaborate analysis is best avoided.
>
> (4) The intention of the publisher is irrelevant.
>
> (5) The article must be read as a whole, and any "bane and antidote" taken together.
>
> (6) The hypothetical reader is taken to be representative of those who would read the publication in question.

> (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation..." ...
>
> (8) It follows that "it is not enough to say that by some person or another the words *might* be understood in a defamatory sense." ..."

28. A claim for libel could not be founded on a headline or photograph in isolation from the related text. The question whether an article is defamatory has to be answered by reference to the response of the ordinary reasonable reader to the entire publication. *Charleston and another v News Group Newspapers Ltd and another* [1995] 2AC 65.

29. A statement should be taken to be defamatory if it would tend to lower the claimant in the estimation of right thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally. *Skuse v Granada Television Ltd* [1996] EMLR 278, Sir Thomas Bingham MR at 286. The law does not provide a remedy for inconsequential statements, that is of trivial content or import. It is necessary that there should be some threshold of seriousness to avoid normal social banter or discourtesy resulting in litigation and to avoid interfering with the right of freedom of expression conferred by Article 10 of the European Convention on Human Rights. *Cammish v Hughes* [2013] EMLR 13 at [38]. To be defamatory a statement must substantially affect, in an adverse manner, the attitude of other people towards a person or have a tendency to do so. *Thornton* above, Tugendhat J at [96].

The article

30. The claimant sues upon all the words in the article, including the headline. The meaning he relies upon is that he sued over a book review. Following the headline identified in paragraph 1 above, the article continues as follows:

> "An author who tried to sue a father of three from the West Midlands over comments made in a series of unfavourable reviews on Amazon is facing a six figure legal bill after a judge struck out his case.
>
> Chris McGrath, an online entrepreneur from Milton Keynes, tried to sue Vaughan Jones, 28, from Nuneaton, over a series of reviews and postings he made on the Amazon website about his self-published and little-known book "The Attempted Murder of God".
>
> Amazon, the prominent evolutionary biologist Richard Dawkins and his eponymous foundation also named as defendants because they either carried the review or discussion threads linked to it that Mr McGrath claimed were libellous."

31. The article thereafter records that the four defendants applied to have the case thrown out. Judge Maloney dismissed the case against Amazon, Richard Dawkins, his Foundation and the majority of the case against Mr Vaughan Jones, leaving Mr McGrath with legal bills of around £100,000. The judge ruled that although a small portion of Mr Vaughan Jones's words might be deemed to be libellous by a jury there

was little point pursuing the matter to a full trial because the potential damages would be slight as compared to court costs and time. It recorded the fact that the judge had questioned whether Mr McGrath might have trouble convincing a jury that he had been wronged because of his own online behaviour in that he had used a number of online pseudonyms to review his self published book and come to his own defence in the face of criticism from others. The article continued:

> "Mr Jones wrote a series of uncomplimentary reviews of "The Attempted Murder of God" and, after doing online research, outed Mr McGrath as the author. He also named Mr McGrath's two children, something Judge Maloney described as "nasty". Increasingly hostile replies went back and forth between Mr Jones, Mr McGrath and Mr McGrath's online pseudonyms – the content of which became subject to libel proceedings.
>
> Libel reform campaigners, who have expressed concern that Britain's defamation laws disproportionately favour claimants, said last night that the case should not have got to the preliminary hearing stage.
>
> Michael Harris, from Index on Censorship, said: "We want the government to ensure that libel actions cannot proceed unless the harm caused is both "serious" and "substantial". We're concerned that it cost Amazon £77,000 to have this case struck out by a judge, an amount of money that most ordinary libel defendants simply cannot afford. Change to our archaic libel laws cannot come soon enough."
>
> In a statement provided to The Independent, Mr McGrath said he intended to appeal against the strike out ruling and proceed to a full libel trial. "There are many legal bases for believing this judgment is deeply flawed and we have until 30 April 2012 to challenge the decision to ban us from appealing," he said.
>
> He rounded on libel reform campaigners, stating that British law had made it all but impossible for litigants in person such as himself to successfully bring a libel case. He also defended his use of online pseudonyms stating that he was "trying to pull off a complicated satire" at the time.
>
> "There are artistic reasons that are not unethical, to use fake review accounts and, in sudden defence of a serious attack, it seems eminently reasonable to reach for whatever resources there are available to protect family, name and reputation", he said.
>
> In an attempt to bring proceedings to a close, Mr Jones has agreed not to repeat any of the sentences that the judge ruled might be deemed libellous by a jury.
>
> "I did win my strike out application, no question," he said. "But when you consider the case as a whole, no-one has won here really. And that's why, I suspect, libel reform is needed more than ever."

32. The printed article, which was published the next day by the defendant is in substantially the same terms, save that it has a different headline. For the purpose of this action it is the defendant's case, and the claimant takes no point up on it, that there is no substantial difference between the two articles, certainly none that has any bearing on an application on meaning.

The claimant's case on meaning

33. The claimant is clear: he is not suing on any point in the article, save for the issue of the book review. In his Reply to Defence the claimant pleads "I do not take issue in this claim with any part of the article/s except insofar as it was falsely alleged that I sued over a book review, which has no justification since it was not based on fact and yet was written as if it were a fact".

34. As to the defamatory nature of such a meaning, the claimant asserts that a book review is "a subjective analysis that does not properly form the basis of any claim for libel and which runs counter to establish norms of free-speech, and which litigious act, if it were true, would rightly attract opprobrium in a democratic society". Notwithstanding the fact that, save in certain cases of a legal innuendo, no evidence is admissible as to the sense in which readers understood the defamatory publication the claimant seeks to rely upon material from American websites demonstrating how readers of the article have understood his original case before HH Judge Maloney QC. It is the claimant's case that the manner in which the article was received internationally demonstrated that people believed he had sued in respect of a book review and were highly critical of him for so doing.

The defendant's case on meaning

35. It is the defence contention that the meaning of the article is plain; it is identified in paragraph 8 of the online version and paragraph 9 of the printed edition and reads:

> "Mr Jones wrote a series of uncomplimentary reviews of "Attempted Murder of God" and after doing online research, outed Mr McGrath as the author. He also named Mr McGrath's two children, something Judge Maloney described as "nasty". Increasingly hostile replies went back and forth between Mr Jones, Mr McGrath and Mr McGrath's online pseudonyms – the content of which became subject to libel proceedings …"

36. It is accepted by the defendant that the headlines of both versions of the article may leave the casual reader with the impression that the claimant had sued simply because of negative reviews of his book. However, upon reading the article as a whole, it is clear that it was the ensuing increasingly nasty online conversations that became the subject of the libel proceedings and not the originating reviews. The distinction is drawn by the defendant between comments made in the original review and comments subsequently made in postings between the claimant and Mr Vaughan Jones.

37. Mr Price, on behalf of the defendant, limits his submissions upon the content of the article because the defendant's position is that the reading of the article is for the court and should not be the subject of detailed analysis.

38. As to the claimant's alleged meaning, the defendant does not accept it is defamatory. He does not accept the claimant's assertion that suing over a book review is contrary to "established norms of free speech" and liable to "rightly attract opprobrium in a democratic society". It is said that while certain members of society may scorn an author suing over a review, society in general would not. A book review is just as capable of defaming a writer as is a news feature.

Conclusion

39. I have read the entirety of the online article. Were this case to be based solely upon its headline, there would be force in the claimant's submission that what is referred to is a book review. However, in the second paragraph, reference is made to the fact that the claimant tried to sue Mr Vaughan Jones over "a series of reviews and postings he made on the Amazon website". In the next paragraph, the article identifies the fact that Amazon and Richard Dawkins and his Foundation were named as defendants because "they either carried the review or discussion threads linked to it that Mr McGrath claimed were libellous". Finally, there is the paragraph identified in paragraph 35 above:

40. In my view, these three paragraphs, in particular the paragraph set out in paragraph 35 above, clarify the fact that the subject of the libel proceedings was not the original book review but the subsequent discussion threads and increasingly hostile communications as between Mr Vaughan Jones and Mr McGrath. The assertion by the claimant that this article is based upon him suing upon a book review places too narrow a meaning upon its content. A straightforward reading of this article identifies the fact that subsequent to the original review were postings, discussion threads and hostile online conversation between the claimant and Mr Vaughan Jones. The content of their communications relate to matters beyond the original book review. Specifically, it is the "increasingly hostile replies … between Mr Jones, Mr McGrath and Mr McGrath's online pseudonyms …" which are identified as becoming the subject of the libel proceedings.

41. The meaning claimed for by the claimant is not only too narrow an interpretation of this article, it is inaccurate. I find that upon reading the article as a whole, it is clear that it was not the original review which was the subject matter of the libel proceedings but the unpleasant online conversation between the claimant, in one or more guises, and Mr Vaughan Jones. Accordingly, I accept the defendant's case upon meaning.

42. This determination could conclude the matter but for the sake of completeness I will deal with the issue of whether, on the claimant's meaning, there is a case in defamation. I am reminded of the fact that in order for words to be actionable as defamatory they must amount to disparagement of a person's reputation in the eyes of right thinking individuals generally. It is not enough for such words to disparage a person in the eyes of a section of the community. I accept that there may be certain members of society who view with disfavour or scorn an author suing over a book review, but I do not accept society in general would hold that view. Nor do I accept the claimant's assertion that suing over a book review is contrary to "established norms of free speech" which would "rightly attract opprobrium in a democratic society".

43. It is my view that the claimant is "pitching" his case too high. It may be that some would regard a person who sues on a book review as unduly sensitive, but no more than that. It is of note that in the comments contained in the article from the Libel Reform campaigners or Michael Harris from Index on Censorship, neither has suggested that the fact of suing on a book review alone is of itself a reason to support a change in the defamation laws. Moreover, it is of note, that in the original action, the judge allowed some of the claimant's claim against Mr Jones but stopped the case upon the grounds of proportionality and cost.

44. Further, the claimant's contention that the institution of libel proceedings in respect of a book review would, of itself, bring upon him ridicule and opprobrium ignores the fact that all libel proceedings impact upon the freedom of speech enshrined in Article 10. It cannot be defamatory to identify just one set of libel proceedings which would attract opprobrium on the grounds of running counter to the norms of free speech when the very fact of any libel proceedings impact upon such a right.

45. Had I found in the claimant's favour as to the meaning of the original article for the reasons identified, I would not have found that the same was defamatory.

46. The defendant takes the case still a stage further and asks for a ruling as to whether the words complained of are capable of bearing any meaning defamatory of the claimant. It is no part of the claimant's case that they do.

47. The defendant contends that there is nothing else in the article which is capable of being defamatory of the claimant. It is not defamatory to bring proceedings which fail. The claimant does not suggest it is defamatory to use pseudonyms to review one's own work. Reliance is placed upon paragraph 13 of the online version of the article where the claimant is quoted as defending his use of online pseudonyms saying that he was "trying to pull off a complicated satire" at the time. He states "There are artistic reasons that are not unethical, to use fake review accounts and, in sudden defence of a serious attack, it seems eminently reasonable to reach for whatever resources are available to protect family, name and reputation".

48. I accept the defendant's submissions and find that the article, as a whole, is not defamatory of the claimant. Accordingly, I strike out the claim and give judgment for the defendant.

The claimant's further applications

49. The claimant made further applications to the court, all were oral, the claimant contending that he had had insufficient time to submit and file written applications. The defendant took no point on procedure. My ruling as to meaning brings to an end this action but for the avoidance of doubt, I deal with the applications.

50. The claimant requires disclosure of any emails, texts or other means of communication between Jerome Taylor, the author of the articles, and Evengy Lebedev on libel reform. No order for disclosure has been made in this case. The claimant raised this matter in correspondence with the defendant who, in a letter dated 4 July 2013, stated that Mr Taylor did not receive any emails, text messages, twitter "DMs" or any analogous communication from Mr Lebedev during his employment by the defendant other than routine email communications sent to other members of staff.

None of these related to proposed reform of the libel laws. On occasion, Jerome Taylor has retweeted tweets sent by Mr Lebedev, all of these are publicly accessible. It is the defendant's case that in the event that the court would order the disclosure of any communications between Mr Taylor and Mr Lebedev, regarding discussion of reform to libel laws, the only documents that may exist would be tweets which are publicly accessible and which it is presumed have already been reviewed by the claimant. Accordingly, the claimant's request has been answered.

51. The claimant makes oral application to strike out the material submitted in reference to the Dawkins claim other than the judgment itself. Further, he asks that any documents to be produced by the defendant be strictly proved by them. In essence, this application relates to a lengthy exhibit to the witness statement of Robert Dougans. The exhibit is in three parts: the pleadings primarily related to the claimant's attempts to appeal the original Dawkins judgment, the many pages of threads and judgments in the case of *Boyle* above. As to the authenticity of the documents, they are appended to the witness statement which bears a Statement of Truth from the solicitor who swore it, there is no suggestion by the claimant that Mr Dougans has misled the court. The pleadings are the plaintiff's own, the threads were before the court in the original action, the *Boyle* judgment has been provided by the claimant and is relied upon by him. As to proof of authenticity, there is no merit in the claimant's application. As to whether all or some of these documents are relevant, that would have been an issue to be decided as part of case management had this case proceeded to trial.