



Neutral Citation Number: [2022] EWHC 1677 (QB)

Case No: QB-2021-003094

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

Royal Courts of Justice
Strand, London WC2A 2LL

31 March 2022

Before:

THE HONOURABLE MR. JUSTICE NICKLIN

Between:

(1) MBR ACRES LIMITED

(2) DEMETRIS MARKOU

(for and on behalf of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited pursuant to CPR 19.6)

(3) B & K UNIVERSAL LIMITED

(4) SUSAN PRESSICK

(for and on behalf of the officers and employees of B & K Universal Limited, and the officers and employees of third party suppliers and service providers to B & K Universal Limited pursuant to CPR 19.6)

Claimants

- and -

(1) FREE THE MBR BEAGLES

(formerly Stop Animal Cruelty Huntingdon)

(an unincorporated association by its representative Mel Broughton on behalf of the members of Free the MBR Beagles who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited)

(2) CAMP BEAGLE

(an unincorporated association by its representative Bethany Mayflower on behalf of the members of Camp Beagle who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited)

(3) MEL BROUGHTON

(4) RONAN FALSEY

(5) BETHANY MAYFLOWER

(also known as Bethany May and/or Alexandra Taylor)

(6) SCOTT PATERSON

(7) HELEN DURANT

(8) BERNADETTE GREEN

(9) SAM MORLEY

(10) PERSON(S) UNKNOWN

(who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited)

(11) JOHN CURTIN

(12) MICHAEL MAHER

(also known as John Thibeault)

(13) SAMMI LAIDLAW

(14) PAULINE HODSON

(15) PERSON(S) UNKNOWN

(who are entering or remaining without the consent of the First Claimant on the land and in buildings outlined in red on the plan at Annex 1 of the Amended Claim Form, that land known as MBR Acres Limited, Wyton, Huntingdon PE28 2DT)

(16) PERSON(S) UNKNOWN

(who are interfering with the rights of way enjoyed by the First Claimant over the access road on the land shown in purple at Annex 3 of the Amended Claim Form and enjoyed by the Second Claimant as an implied or express licensee of the First Claimant)

(17) PERSON(S) UNKNOWN

(who are obstructing vehicles of the Second Claimant entering or exiting the access road shown in purple Annex 3 of the Amended Claim Form and/or entering the First Claimant's land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT)

(18) LOU MARLEY

(also known as Louise Yvonne Firth)

(19) LUCY WINDLER

(also known as Lucy Lukins)

(20) LISA JAFFRAY

(21) JOANNE SHAW

(22) AMANDA JAMES 3

(23) VICTORIA ASPLIN

(24) AMANDEEP SINGH

(25) PERSON UNKNOWN 70

(26) PERSON UNKNOWN 74

(27) IAN GRACE

(28) PERSON(S) UNKNOWN

(who are, without the consent of the First Claimant, entering or remaining on land and in buildings outlined in red on the plans at Annex 1 to the Amended Claim Form, those being land and buildings owned by the First Claimant, at MBR Acres Limited, Wyton, Huntingdon PE28 2DT)

(29) PERSON(S) UNKNOWN

(who are interfering, without lawful excuse, with the First Claimant's staff and Second Claimants' right to pass and repass with or without vehicles, materials and equipment along the Highway known as the B1090)

(30) PERSON(S) UNKNOWN

(who are obstructing vehicles exiting the First Claimant's land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT and accessing the Highway known as the B1090)

(31) PERSON(S) UNKNOWN

(who are protesting outside the premises of the First Claimant and/or against the First Claimant's lawful business activities and pursuing a course of conduct causing alarm and/or distress to the Second Claimant and/or the staff of the First Claimant for the purpose of convincing the Second Claimant and/or the staff of the First Claimant not to: (a) work for the First Claimant; and/or (b) provide services to the First Claimant; and/or (c) supply goods to the First Claimant; and/or (d) to stop the First Claimants' lawful business activities at MBR Acres Limited, Wyton, Huntingdon PE28 2DT)

(32) PERSON(S) UNKNOWN

(who are photographing and/or videoing/recording the First Claimant's staff and members of the Second Claimant and/or their vehicles and vehicle registration numbers as they enter and exit and/or work on the First Claimant's land outlined in red at Annex 1 to the Amended Claim Form for the purpose of causing alarm and/or distress by threatening to use and/or in fact using the images and/or recordings to identify members of the Second Claimant, follow the Second Claimant or ascertain the home addresses of the Second Claimant for the purpose of convincing the Second Claimant not to: (a) work for the First Claimant; and/or (b) not to

provide services to the First Claimant; and/or (c) not to supply goods to the First Claimant)

(33) PERSON(S) UNKNOWN

(who are, without the consent of the First Claimant, trespassing on the First Claimant's land by flying drones over the First Claimant's land and buildings outlined in red on the plans at Annex 1 to the Amended Claim Form, that being land and buildings owned by MBR Acres Limited, Wyton, Huntingdon PE28 2DT) 4

(34) PERSON(S) UNKNOWN

(who are combining together and/or with other identified Defendants to commit the unlawful acts as specified in paragraphs 496 to 514 of the Amended Particulars of Claim)

Defendants

Caroline Bolton and Natalie Pratt (instructed by **Mills & Reeve LLP**) for the **Claimants**
James Nieto (instructed by **Cohen Cramer Ltd**) for the **Third, Fourth, Fifth, Sixth, Eighth, Ninth, Thirteenth and Fourteenth Defendants**
Adam Tear (of **Scott-Moncrieff & Associates Ltd**) for the **Seventh & Twenty-second Defendants**

The Eleventh, Twelfth, Nineteenth, Twenty-first & Twenty-fourth Defendants appeared In Person

APPROVED JUDGMENT

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MR. JUSTICE NICKLIN :

1. By this civil claim, the Claimants allege that the Defendants have committed, and threatened further to commit, various civil wrongs as part of an ongoing protest against the activities of the First and Third Claimants.
2. For the background to the events that have given rise to the protest and this claim, I can refer back to the judgment I gave on 10 November 2021 ([2021] EWHC 2996 (QB)) (“The injunction judgment”). An interim injunction was initially granted by Stacey J on 20 August 2021. On 4 October 2021, I heard the Claimants’ application to continue and extend that interim injunction order. In summary, I granted and extended the interim injunction but not in the extensive terms sought by the Claimants. Essentially, I imposed an exclusion zone around the entrance to the First Claimant’s premises and prohibited trespass on the First Claimant’s land, which included the land immediate outside the gates of the Wyton site. The terms of this injunction were clear and were, in my judgment, a proportionate way of preventing the incidents of alleged harassment and obstruction of the First Claimant’s employees (and others visiting the premises) that had arisen as a result of protestors surrounding the vehicles.
3. The Claim Form was issued on 13 August 2021. This is the second substantial case management hearing in the claim. The case has an unhappy history. Nearly nine months on from the commencement of proceedings the claim has not yet got to the stage of Particulars of Claim being finalised. In part, that was caused by the Claimants wrongly issuing the claim form using the Part 8 procedure. By order of 25 August 2021, the claim was transferred to Part 7 and directions were given requiring the Claimants to file and serve particulars of claim by 20 September 2021.
4. As set out in the injunction judgment (see [39]), although the evidence in support of the injunction application had identified other potential causes of action, the original Particulars of Claim relied upon:
 - i) harassment contrary to ss.1 and 1 (1)(a) Protection from Harassment Act;
 - ii) trespass; and
 - iii) alleged breaches of ss.145-146 Serious Organised Crime and Police Act 2005.At that stage the particulars did not include any claim for a conspiracy.
5. Those sections of the Serious Organised Crime and Police Act 2005 provided a criminal offence, not a tort. As explained in the injunction judgment ([45]), a civil claim to enforce the criminal law by way of civil injunction cannot be brought without the consent of the Attorney General.
6. Besides that fundamental defect, the original Particulars of Claim also provided substantial problems arising from extensive cross-referencing to witness evidence, making the Particulars of Claim particularly difficult to follow. As I noted ([49]): “*as a concise statement of facts alleged against each defendant the particulars of claim singularly fail*”. My conclusion was that the Claimants needed to return to the drawing board and re-plead the Particulars of Claim.

7. Originally, the Claimants were ordered to provide their revised Particulars of Claim by 6 January 2022. The Claimants were unable to comply with that deadline and, at a hearing on 18-19 January 2022, sought and obtained an extension of time until 21 March 2022. By that date, the Claimants were required to issue, file and serve an Application Notice seeking permission to amend their Particulars of Claim and permission to add any additional parties. In total, therefore, the Claimants have had some six months properly to formulate their claim.
8. Following that order, on 18 March 2022 the Claimants issued an Application Notice seeking to amend their Particulars of Claim. The draft amended Particulars of Claim completely re-pleaded the claim. Excluding schedules and accompanying documents, the Particulars of Claim now run to 370 pages. To some extent the length of this document reflects the fact that I had directed that it should ensure that the case against each named Defendant, many of whom are acting in person, should be clear and self-contained. Subject to one exception, which I will come to, the new pleading does that, but it means that where an incident involves several Defendants, as is quite common in the particulars, it is repeated in the section of the pleading for that individual Defendant. That has therefore increased the overall length of the statement of case.
9. Overall, although this has increased the length of the pleading, that is a price worth paying to obtain clarity for each Defendant as to what is being alleged against him or her. It should ensure that when defences come to be filed, the exercise for each Defendant to respond to the case against him or her should be straightforward. I would simply note that the current version of the Particulars of Claim more than demonstrates why this case was never suitable for the Part 8 procedure.
10. The structure of the draft amended Particulars of Claim is as follows. Paragraphs 1 to 26 set out the background to the claim. Paragraph 27 identifies the sections of the Particulars of Claim that apply to each individual Defendant, both existing Defendants and those in respect of whom the Claimants were seeking permission to add to the proceedings. Thereafter, from paragraphs 28 to 391, the pleading is divided into the sections which are Defendant-specific. Each section follows a standard format. Up to four causes of action are identified for each Defendant, consisting of trespass, public nuisance on the highway, obstructing access to the highway and harassment. Particulars are given of each alleged incident relied upon.
11. Not all claims are made against all Defendants. For example, the 4th Defendant does not face a harassment claim, and the 19th Defendant does not face a trespass claim. Each Defendant's specific section also contains particulars of the damage that the Claimants contend has been caused by the alleged wrongs.
12. Paragraphs 393 to 430 set out the claims made against the 25th and 26th Defendants, who are individuals who the Claimants cannot name but who can be identified by photograph.
13. Paragraphs 431 to 493 advance claims against seven new categories of persons unknown.
14. Finally, in paragraphs 494 to 522, there is a claim for unlawful means conspiracy made against the 3rd, 5th, 7th, 8th, 11th, 12th, 13th, 14th, 18th, 19th, 20th, 22nd, 23rd, 24th, 25th and 26th Defendants, and also against the 34th Defendant defined as: "*Persons unknown who*

are combining together and/or with other identified defendants to commit the unlawful acts specified in paragraphs 496 to 514 of the amended particulars of claim”.

15. It is perhaps unfortunate that the conspiracy claim, particularly given its potential importance and overall impact, has not been included in each Defendant specific section of the pleading, and is not identified, in paragraph 27, as a claim made against the relevant named Defendants. Importantly, therefore, each individual Defendant would have had to plead to the case-specific section of the Particulars of Claim relevant to him or her, but additionally, if s/he was an alleged conspirator, would also have to plead a defence to the conspiracy claim.
16. The Claimants’ intention potentially to include a claim for an economic tort was canvassed, or at least mentioned, at the October hearing, and there was further discussion about a potential conspiracy claim at the hearing in January. At that hearing, I indicated that one of the issues that would arise if the Claimants did seek to add a conspiracy claim by amendment would be the proportionality of adding such a claim. Put shortly, and as I expressed back in January, the question is: what more of benefit would the Claimants obtain in a conspiracy claim that was not already available and being sought from the other causes of action that were being relied upon? And what would be the likely cost of litigating the additional conspiracy claim? Answers to those questions would enable the Court to carry out an assessment of the proportionality of permitting such a claim to be added. So that issue, and issues of potential concern, were clearly flagged at the January hearing.
17. The application to amend is supported by the eighth witness statement of Susan Pressick. In terms of identifying what of value is sought to be obtained by adding the claim for the conspiracy, Ms. Pressick said this:

“Finally, there is a persons unknown claim covering the claim against persons unknown who were conspiring to injure the Claimants by unlawful means, Defendant 34. This is an important Defendant to join to the Claimants’ conspiracy claim which asserts a claim for an injunction to restrain breaches under sections 145 and 146 of the Serious Organised Crime and Police Act 2005 as well as seeking to restrain other unlawful means. These sections were enacted to protect businesses like MBR and offer important protection. Accordingly, as an animal research organisation we should not be denied the opportunity to seek this relief.

Further, it is necessary, if the court is going to consider other important claims, to consider the unlawful means conspiracy claim as it is plain that the protestors are organised, they have conspired to harm our business and they have used unlawful means as set out in the draft amended particulars of claim. Further, it is clear from the draft amended particulars of claim that this includes allegations that the named Defendants conspired with persons unknown.

At the hearing on 4th October 2001, the court indicated that it wanted a completely new particulars of claim and there is no reason why the Claimants should not be allowed to rely on a perfectly appropriate unlawful means conspiracy claim and join persons unknown conspiring with the named Defendants to use unlawful means to harm the Claimants; indeed the

claim brings into consideration offences which have been committed by the protestors which could not otherwise be considered by the court”.

18. Those paragraph raises several issues, some of which have been developed further in the hearing, that I will need to consider in more detail in this judgment in relation the application to add the conspiracy claim.

The Pleded Claim for Conspiracy

19. Before turning to the principles to be applied to an application to amend, and the particular pleading requirements for conspiracy, I should set out in more detail the amendments that are sought. Paragraph 494 of the draft Amended Particulars of Claim is in the following terms:

“494. Further, on or before 25th June 2021 the third, fifth, seven, eighth, eleven, twelfth, 13th, 14th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th and/or 34th Defendants respectively (or any two or more together) wrongfully and with intent to injure the first claimant by unlawful means, conspired and combined to:

494.1 Harm the first claimant’s business with the aim of shutting down the first claimant, as is evident from the matters particularised above.

494.2 Obtain the release of the first claimant’s beagles, as evident from the matters particularised above.

494.3 To bring an end to animal testing for medical and veterinary research in the United Kingdom as particularised above”.

20. That paragraph is the only place in the statement of case in which it is alleged that the identified Defendants have “*conspired and combined together*”. Paragraph 495 follows in the following terms:

“495. Pursuant to and in furtherance of the conspiracy pleaded in paragraph 494 above, the first claimant relies upon the unlawful acts and means particularised in paragraphs 496 to 514 below by which the first claimant was injured. Each of the acts particularised below in paragraphs 496 to 514 also included Defendant 34, persons unknown who are combining together and/or with other identified Defendants to commit the unlawful acts specified in paragraph 496 to 514 of the amended particulars of claim”.

21. There then follows, in respect of each Defendant, the alleged unlawful acts relied upon; they are acts of trespass, obstruction of the highway, interference with the right of access to the Wyton site and harassment. In other words, the same acts that are relied upon against the relevant Defendants as torts in their own right. In addition, each conspirator is also alleged to have: “*committed offences against the first and/or second claimant pursuant to section 145 and/or 146 of the Serious Organised Crime Act*”. However, the offences under ss.145-146 require the doing of a “*relevant act*”. For both sections the relevant act is (a) an act amounting to a criminal offence; or (b) a tortious act causing loss or damage of any description: see s.145(3) and s.146(5).

22. Save in respect of the 11th, 13th and 27th Defendants, the relevant acts identified against the conspirators, to support the contention that they have committed offences under the 2005 Act, are the same torts that are relied upon against that Defendant.
23. In respect of the 11th, 13th and 27th Defendants, they face a further allegation of unlawful means as part of the alleged conspiracy. This relies upon an allegation that, on or around 20th February 2022, “D22, with the assistance of D34 persons unknown and/or D11 and/or D13 erected outside the Wyton site two red and white masts...and/or has mounted a camera which are (sic) surveying the gates and access road of the first claimant’s Wyton site”. That is alleged to amount to a breach of s.241 Trade Union and Labour Relations Consolidation Act 1992 (so-called ‘watching and besetting’).
24. Section 241 provides:
- “(1) A person commits an offence who, with a view to compelling another person to abstain from doing or to do any act which that person has a legal right to do or abstain from doing, wrongfully and without legal authority—
- (a) uses violence to or intimidates that person or his spouse or civil partner or children, or injures his property,
 - (b) persistently follows that person about from place to place,
 - (c) hides any tools, clothes or other property owned or used by that person, or deprives him of or hinders him in the use thereof,
 - (d) watches or besets the house or other place where that person resides, works, carries on business or happens to be, or the approach to any such house or place, or
 - (e) follows that person with two or more other persons in a disorderly manner in or through any street or road.
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both...”
25. It is alleged, in paragraph 522 of the draft Amended Particulars of Claim, that the alleged conspirators are jointly and severally liable to the Claimants for damages for conspiracy.

Permission to Amend: the Relevant Principles

26. I take the following principles from *Elite Property Holdings -v- Barclays Bank* [2019] EWCA Civ 204 per Asplin LJ:

[40] There was no dispute about the test to be applied in the circumstances of this case... [It] is important to bear in mind that the overriding objective applies and the question of whether permission to amend should be given must be considered in the light of the need to conduct litigation fairly and justly and at proportionate cost.

[41] For the amendments to be allowed the Appellants need to show that they have a real as opposed to fanciful prospect of success which is one that is more than merely arguable and carries some degree of conviction: *ED&F Man Liquid Products Ltd -v- Patel* [2003] EWCA Civ 472. A claim does not have such a prospect where (a) it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without substance; (b) the claimant does not have material to support at least a *prima facie* case that the allegations are correct; and/or (c) the claim has pleaded insufficient facts in support of their case to entitle the Court to draw the necessary inferences: *Three Rivers District Council -v- Bank of England (No.3)* [2003] 2 AC 1.

[42] The court is entitled to reject a version of the facts which is implausible, self-contradictory or not supported by the contemporaneous documents and it is appropriate for the court to consider whether the proposed pleading is coherent and contains the properly particularised elements of the cause of action relied upon... (emphasis added)

27. In respect of the principle of proportionality, Mr Nieto referred me to the observations of Mann J in *Various Claimants -v- MGN Limited* [2020] EWHC 553 (Ch) [31]:

“A court is entitled to make a proportionality judgment in relation to its likely effect on the case in the light of the resources and effort which would have to be put into running or meeting and deciding it”.

The Judge was referring to the principle identified by the Court of Appeal in *Jameel -v- Dow Jones* [2005] QB 946 in which Lord Phillips MR, memorably noted [54]:

“It is no longer the role of the court simply to provide a level playing field and to referee whatever the game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice”.

28. These authorities indicate that, at the amendment stage and applying the overriding objective, the court must ask itself what of tangible benefit is sought to be achieved by the amendments and what is the likely impact of the amendments on the litigation and the consequent impact on the resources of the parties and the court.

29. Allegations of conspiracy made in a civil claim are serious. That is more than demonstrated by the fact that each of the conspirator Defendants is alleged, in terms, to have committed a criminal offence. As such, there are stricter rules as to the pleading requirements of what might be thought to be more routine allegations.

30. I take the following principles from *Ivy Technology -v- Martin* [2019] EWHC 2510 (Comm) per Andrew Henshaw QC:

[12] Conspiracy to injure must be pleaded to a high standard, particularly where the allegations include dishonesty:

- i) Allegations of conspiracy to injure “*must be clearly pleaded and clearly proved by convincing evidence*” (*Jarman & Platt Ltd -v- I Barget Ltd* [1977] FSR 260, 267).

- ii) The more serious the allegations made, the more important it is for the case to be set out clearly and with adequate particularity: *Secretary of State for Trade and Industry -v- Swan* [2003] EWHC 1780 (Ch) [22]-[24]; CPR PD 16 §8.2 in respect of the obligations on a party pleading dishonesty; *Mullarkey -v- Broad* [2007] EWHC 3400 (Ch); [2008] 1 BCLC 638 [40]-[47] on the burden and standard of proof for such claims and reiterating the well-established principle that an allegation of dishonesty must be pleaded clearly and with particularity (citing *Belmont Finance Corp -v- Williams Furniture* [1979] Ch 250, 268).
- iii) Unlawful means conspiracy is a grave allegation, which ought not to be lightly made, and like fraud must be clearly pleaded and requires a high standard of proof: *CEF Holdings -v- Munday* [2012] EWHC 1534 (QB); [2012] IRLR 912 [74].
- iv) Where a conspiracy claim alleges dishonesty, then “*all the strictures that apply to pleading fraud*” are directly engaged, i.e. it is necessary to plead all the specific facts and circumstances supporting the inference of dishonesty by the defendants: *ED&F Man Sugar -v- T&L Sugars* [2016] EWHC 272 (Comm).
- v) As to the substantive elements of the tort:

“To establish liability for assisting another person in the commission of a tort [common design], it is necessary to show that the defendant (i) acted in a way which furthered the commission of the tort by the other person and (ii) did so in pursuance of a common design to do, or secure the doing of, the acts which constituted the tort...

The elements of this tort [conspiracy] are a combination or agreement between the defendant and another person pursuant to which unlawful action is taken which causes loss or damage to the claimant and is intended or expected by the defendant to do so (whether or not this was the defendant’s predominant purpose).” (*Marathon Asset Management LLP -v- Seddon* [2017] IRLR 503 [132] and [135]).

- 31. As to the requirements of pleading fraud or other discreditable conduct, the approach was set out in *Portland Stone Firms Limited -v- Barclays Bank* [2018] EWHC 2341 (QB) *per* Stuart-Smith J:

[25] Where, as here, a Claimant wishes to amend to plead fraud and the application is opposed, it is material to bear in mind the approach that the Court routinely takes to proving fraud in civil litigation. A sufficient summary for present purposes is provided by *Fiona Trust & Holding Corp v Privalov* [2010] EWHC 3199 (Comm) [1438]-[1439] *per* Andrew Smith J:

‘It is well established that “*cogent evidence is required to justify a finding of fraud or other discreditable conduct*”: per Moore-Bick LJ in *Jafari-Fini -v- Skillglass Ltd* [2007] EWCA Civ 261 [73]. This principle reflects the court’s conventional perception that it is generally not likely that people will engage in such conduct: “*where a claimant seeks to prove a case of dishonesty, its inherent improbability means that, even on the civil burden of proof, the evidence needed to prove it must be all the stronger*”, per Rix LJ in *Markel -v- Higgins* [2009] EWCA 790 [50]. The question remains one of the balance of probability, although typically, as Unged-Thomas J put it in *In re Dellow’s Will Trusts* [1964] 1 WLR 415, 455 (cited by Lord Nicholls in *In re H* [1996] AC 563, 586H), “*The more serious the allegation the more cogent the evidence required to overcome the unlikelihood of what is alleged and thus to prove it*”...

...Thus in the *Jafari-Fini* [49], Carnwath LJ recognised an obvious qualification to the application of the principle, and said, “Unless it is dealing with known fraudsters, the court should start from a strong presumption that the innocent explanation is more likely to be correct.”

- [26] This summary is consistent with many other decisions of high authority which establish that pleadings of fraud should be subjected to close scrutiny and that it is not possible to infer dishonesty from facts that are equally consistent with honesty: see, for example, *Mukhtar -v- Saleem* [2018] EWHC 1729 (QB); *Elite Property Holdings Ltd -v- Barclays Bank* [2017] EWHC 2030 (QB); *Three Rivers DC -v- The Governor and Company of Barclays of England (No.3)* [2003] 2 AC 1 [186] per Lord Millett...
- [27] One of the features of claims involving fraud or deceit is the prospect that the Defendant will, if the underlying allegation is true, have tried to shroud his conduct in secrecy. This has routinely been addressed in cases involving allegations that a defendant has engaged in anti-competitive arrangements. In such cases, the Court adopts what is called a generous approach to pleadings. The approach was summarised by Flaux J in *Bord Na Mona Horticultural Ltd & Anr -v- British Polythene Industries Plc* [2012] EWHC 3346 (Comm) [29]ff. Flaux J set out the principles in play as described by Sales J in *Nokia Corporation -v- AU Optronics Corporation* [2012] EWHC 731 (Ch) [62]-[67], which included the existence of a tension between (a) the impulse to ensure that claims are fully and clearly pleaded, and (b) the impulse to ensure that justice is done and a claimant is not prevented by overly strict and demanding rules of pleading from introducing a claim which may prove to be properly made out at trial but may be shut out by the law of limitation if the claimant is to be forced to wait until he has full particulars before launching a claim. Sales J indicated that this tension was to be resolved by “*allowing a measure of generosity in favour of a claimant.*”

Unlawful Means Conspiracy

32. Leaving aside vicarious liability, the general position in tort is that an individual is only liable for the acts that s/he does. Liability can also be established if the Defendant aids, abets, procures and/or incites the relevant act. As to responsibility for damage caused by a tort, the position is as follows, taken from *Clerk & Lindsell*, paragraph 4-02:

“Where damage is caused as a result of torts committed by two or more tortfeasors, the tortfeasors may be: (1) joint tortfeasors, for example where D1 and D2 are each responsible for a joint tortious venture which injures C; (2) several tortfeasors causing the same damage; or (3) several tortfeasors causing different damage. If one of a number of joint tortfeasors or several tortfeasors causing the same damage is sued alone, he is liable for the whole damage though he did but a small part of it. In the case of several tortfeasors causing different damage, on the other hand, each is liable only for the damage which he has caused”.

33. A conspiracy to injure by unlawful means is actionable where a claimant proves that s/he has suffered loss or damage as a result of unlawful action taken pursuant to a combination, or agreement, between the defendant and another person or persons, to injure him or her by unlawful means whether or not it is the predominant purpose of the defendant to do so: *Kuwait Oil Tanker Co. -v- Al Bedar* [2000] 2 AllER (Comm) 271 [108].
34. The elements that a claimant must prove for unlawful means conspiracy can be broken down as follows:
- i) concerted actions between two or more persons (the “combination”);
 - ii) use of unlawful means;
 - iii) knowledge of the unlawfulness;
 - iv) intention to injure the claimant, whether or not it is the predominant purpose of the defendant to do so;
 - v) overt act in pursuance of the agreement or undertaking;
 - vi) loss or damage as a result.

Some controversy has attended the third of those, knowledge of unlawfulness, and there remain arguments as to how that particular element is to be interpreted in the context of the tort, but that does not matter for today’s purposes.

35. For the current amendment application, the argument has focused on the first of these, the alleged combination. In *Lonrho Limited -v- Shell Petroleum Co. Ltd.* [1982] AC 173, 188, Lord Diplock stated:

“The tort consists not of agreement but of concerted action taken pursuant to agreement”.

36. Whilst an express agreement between conspirators would obviously be sufficient for this element, it is often a feature of conspiracy that there will be no formal agreement between the conspirators. In this respect, Nourse LJ observed in *Kuwait Oil Tanker*:

[111] A further feature of the tort of conspiracy, which is also found in criminal conspiracies, is that, as the judge pointed out at page 124, it is not necessary to show that there is anything in the nature of an express agreement, whether formal or informal. It is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end. Although civil and criminal conspiracies have important differences, we agree with the judge that the following passage from the judgment of the Court of Appeal Criminal Division delivered by O'Connor LJ in *R -v- Siracusa* (1990) 90 Cr. App. R. 340, 349 is of assistance in this context:

“Secondly, the origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made or when or where other conspirators were recruited. The very existence of the agreement can only be inferred from overt acts. Participation in a conspiracy is infinitely variable: it can be active or passive. If the majority shareholder and director of a company consents to the company being used for drug smuggling carried out in the company’s name by a fellow director and minority shareholder, he is guilty of conspiracy. Consent, that is agreement or adherence to the agreement, can be inferred if it is proved that he knew what was going on and the intention to participate in the furtherance of the criminal purpose is also established by his failure to stop the unlawful activity.”

Thus it is not necessary for the conspirators all to join the conspiracy at the same time, but we agree with the judge that the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of. In a criminal case juries are often asked to decide whether the alleged conspirators were ‘in it together’. That may be a helpful question to ask, but we agree with Mr Brodie that it should not be used as a method of avoiding detailed consideration of the acts which are said to have been done in pursuance of the conspiracy.

[112] In most cases it will be necessary to scrutinise the acts relied upon in order to see what inferences can be drawn as to the existence or otherwise of the alleged conspiracy or combination. It will be the rare case in which there will be evidence of the agreement itself. Curiously this is such a case, although it appears to us that in crucial respects it is also necessary to draw inferences as to the extent of the agreement from what happened after it. Thus the essential nature of the agreement can be seen in part from the evidence of Mr Al Bader and Captain Stafford, although, especially in the case of Captain Stafford, the extent of the agreement will depend upon inferences to be drawn both from the surrounding circumstances and subsequent events.

37. Although, therefore, the agreement or combination may be formal or informal, express or tacit, there must be a meeting of minds amongst the conspirators in the sense that the parties knew the essential facts and entertained the same object: *Crofter Hand Woven Harris Tweed Co. Ltd. -v- Veitch* [1942] AC 435, 479.
38. It is that essential combination, or agreement, that makes the conspirators liable for the unlawful acts committed by the other conspirators, even if they were not committed personally by the relevant individual. If the conspirators all acted together in the commission of a tortious act, the conspiracy adds nothing because the conspirators will be liable as the joint tortfeasors. This serves to emphasise the fundamental importance of the combination or agreement.
39. For example, if conspirators A, B, C, D and E act together pursuant to a common design intending to cause damage to X and A and B trespass on X's land and cause damage on one day, C publishes a damaging libel against X on another day and D and E obstruct vehicles entering X's premises causing loss and damage on a further day, then the overt acts may on their face appear unconnected. But if X can show that they were done in fact in furtherance of the combination to harm him or her then he will have a claim for conspiracy, assuming that he can prove the necessary loss. In that instance, A will be liable for the acts of C, D and E as co-conspirator and therefore in terms of the conspiracy a joint tortfeasor, even though he or she did not do the act him or herself.
40. If a claimant relies on an inferential case that there was such an agreement or combination, then the basis on which this inference is to be maintained must be clearly pleaded. These are the essential facts upon which the case on combination depends.
41. Ms. Bolton has argued that conspiracy has been one of the causes of action that has been relied upon in other protestor cases. That may be so. But many of the cases that she has referred me to are interim injunction cases rather than decisions in which the court was considering whether the statement of case disclosed a proper cause of action. In so far as *Ineos Upstream Ltd -v- Persons Unknown* [2017] EWHC 2945 (Ch) sheds any light the principles relating to claims for conspiracy, I would merely observe that, the Court of Appeal discharged that part of the injunction order of Morgan J that was granted on the grounds of conspiracy. I have not found that the other cases relied upon assist me on the principles that should be applied when the court is considering whether to permit a conspiracy claim to be added by amendment.
42. In response to my asking Ms. Bolton to identify what benefit a conspiracy claim would add to the existing causes of action, she identified three things. Firstly, if the claim is successful, it will entitle the Claimants to seek an injunction to protect suppliers and other protective persons represented by the Second Claimant. Secondly, that there would be an advantage in terms of the conspiracy claim for the claim for damages. She contends that there may be possible difficulties or challenges to parts of the claim for damages that are being advanced against individual Defendants as part of what I will call conventional tortious claims. She says that those causation difficulties can be overcome with the claim for conspiracy because the joint and several nature of the liability for the totality of the harm caused by the conspiracy. Finally, and perhaps linked to the first of those identified benefits, she says that the conspiracy claim will more readily provide a basis on which the Claimants can seek an injunction to restrain watching and besetting.

Decision

43. In paragraph 494 of the Particulars of Claim, the Claimants allege that the 18 individual Defendants, “*conspired and combined together*” together with persons unknown, 34th Defendant, to damage the Claimants. No particulars are given of this alleged conspiracy and/or combination. It appears that the Claimants wish to advance an inferential case as to combination, but no such case is identified, or particulars given.
44. In her submissions, Ms. Bolton contended that the unlawful acts are the basis upon which the claimant will rely for this inference to be drawn. That will not do for two main reasons. First, the basis on which the inference will be invited must be properly pleaded and it is not. All the pleading presently contains is a bald assertion of a critical element of the tort of conspiracy. Provision of particulars is required to enable the court, at the amendment stage, to assess whether such an inference has a real prospect of success, applying the principles I have identified above, and thereafter for the relevant Defendants to know the case that s/he has to meet.
45. Second, on the facts of this case, reliance simply on the commission of the unlawful acts does not raise a case on “combination” with a real prospect of success. Proving that 18 named Defendants have committed torts against the Claimants, even if it can be also proved that they share the same broad objective of wishing to see the First Claimant cease supplying beagles for animal research, does not itself prove that they have acted in concert to cause damage to the Claimants by unlawful means. The particulars need to raise an inferential case which has a real prospect of showing not only that they committed the various torts in the course of demonstrating against the Claimants’ activities, but they did so in combination with the intention of harming the Claimants. Even allowing for the generosity of approach identified in *Portland Stone Firms Limited* [27], combination cannot be proved simply by proof of wrongdoing.
46. As the authorities that I have indicated and particularly the judgment of Nourse LJ show, the acts said to indicate the conspiracy are frequently relied on, but it is unlikely on their own that that will be sufficient. Ordinarily, a claimant will also rely on other factors: for example, timing, circumstances, individuals, connections, agenda, purpose. Matters which collectively provide the necessary support the inferential case that it is not a coincidence that the acts were done by several people, but proof that it was in execution of some combination.
47. A good example of this is the alleged unlawful act of erecting the CCTV camera. This is an act alleged, specifically, against the 11th, 13th and 27th Defendants. But is also an act of for which all the other conspirators are said to be liable. The wider the net is cast to catch alleged acts of wrongdoing, both in terms of timeframe and in terms of type of activity, correspondingly more onerous will be the burden to show that these acts fell within the alleged combination. If these proper strictures are not observed, people who have nothing to do with tortious acts of others will end up being held liable for them. Liability for conspiracy depends critically upon establishing the combination and its scope. At the pleading stage, it cannot be demonstrated by mere assertion.
48. I therefore refuse permission to add the unlawful means conspiracy on the grounds that, as currently pleaded, it does not disclose a properly particularised case that has a real prospect of success. In summary, it does not contain the necessary particulars to make

good what is, as I have said, presently only the bald allegation that the individual named Defendants “*conspired and combined together*”.

49. It may be that the Claimants can replead the case to address these deficiencies and then make a further application to amend, but the pleading in its current form cannot go forward. The precise scope of what is being alleged and particularly the facts relied upon to advance an inferential case as to the alleged “combination” are not properly pleaded. It is unfair for the Defendants to have to respond to what is a bald allegation that they are conspirators. This is an allegation of some seriousness, and the Court will require it to be pleaded properly.
50. I would also refuse permission to amend to add this claim, as an exercise of case management, on the grounds of disproportionality. I have been told today that the total costs that the Claimants have incurred thus far in this claim is £937,000. For a claim that has not yet reached the stage of defences being filed, that is a very substantial sum indeed. I recognise of course that there are many Defendants, but the claims made against the individual Defendants are straightforward and of relatively narrow compass. The complexities in the claim arise from the claims brought on a representative basis against the various categories of “persons unknown”. Nevertheless, the action is already a substantial piece of litigation. I must consider whether the Claimants have satisfied me that adding a claim for conspiracy will provide anything of substantial value to the existing claims and the likely impact it would have on the litigation in terms of cost and use of resources.
51. Against the named Defendants, who are sought to be made the subject of this conspiracy claim, I have had real difficulty identifying what of any real or substantial benefit can legitimately be achieved in a claim for conspiracy that cannot be achieved under the existing claims for the alleged torts. The conspiracy claim depends entirely, save in the limited respect I have identified in respect of the CCTV mast incident alleged against the 11th, 13th and 27th Defendants, on the existing pleaded torts.
52. One potential benefit of a conspiracy claim, if successful, is that the relevant Claimant would be able to claim for the total harm caused by the conspiracy against any or all of the conspirators. However, in my judgment that benefit is more illusory than real. Firstly, the claim is really about injunctive relief. The damages claim has been adopted later in the proceedings, at least in part as an essential ingredient of some of the causes of action now relied upon. Of course, the Claimants are entitled to pursue a claim for damages if they wish. However, the damage they seek under the conspiracy claim is the same damage that they claim has been caused by the other torts. There is no separate claim for damage which is exclusively attributed to the conspiracy.
53. There can be no question of double recovery. To the extent that the Claimants are successful with the non-conspiracy torts and prove the causation of loss, then they will be entitled to awards of damages against each individual Defendants for the harm that s/he has caused or is jointly liable with others. I recognise that, in theory, there could be a shortfall if damages were awarded on this basis rather than as an award for the total loss caused by the conspiracy. That is the principal benefit that I can identify with the conspiracy claim.
54. At this stage, it is very difficult to assess any such ‘shortfall’ as a sum of money and it is rather speculative. But the parameters can be broadly stated. The overall sum claimed

by way of damages at this stage is in the region of £400,000. That sum, as I have said, is claimed as damages for the other torts pleaded against the Defendants. The only tangible benefit of the conspiracy claim, in terms of damages, is potentially enabling a recovery against one Defendant for the damage caused by the tortious act of another Defendant. That 'shortfall' recovery is going to be a fraction of the total sum claimed. There is a very real risk, and probability, that the value of the 'shortfall' will be dwarfed by the costs of achieving it.

55. Against that, as I have said, must be weighed the costs and complexity of embarking upon a conspiracy claim against 18 named individuals and further persons unknown. In my judgment, these would be very substantial. The issues raised would widen considerably the ambit of disclosure and evidence. Determining whether a person has wilfully obstructed access to the Wyton site on one or more occasions is a straightforward exercise. It is limited to a factual investigation of the relevant incidents, Defendant by Defendant. In most cases, the incidents are captured by CCTV footage, so the scope for dispute as to what happened is very limited. Beyond this footage, there would be little or no disclosure and the scope for cross-examination limited. A conspiracy claim, by comparison, opens up the issues of combination and intention which would lead to potentially significant areas of disclosure and evidence.
56. The Defendants will be entitled to advance any evidence they have available of rebutting any inferential case on those issues. They may have documents that bear upon it, cross-examination on those issues would inevitably have to be detailed and lengthy and would range over the full extent of the alleged conspiracy and the acts alleged to have been carried out in furtherance of it. In fairness, it will be a relevant matter when cross-examining one of the conspirators as to his/her knowledge and acquiescence in the acts of other alleged conspirators.
57. The whole exercise expands exponentially in terms of cost and complexity. The Claimants have simply failed to demonstrate that there is a sufficient upside in doing so. Apart from the damages point, which I have dealt with, the only other potential benefits to the Claimants that Ms. Bolton identified were the terms of injunctions that may be available.
58. However, these benefits are also more illusory than real. Protection of suppliers is already something that is being pursued by the Claimants. The definition of the representative class of the Second Claimant includes suppliers. The harassment claim, particularly that under the expanded scope of harassment under s.1(1A) Protection from Harassment Act 1997, would support a claim for injunctive relief, if the claim is proved against the Defendant and the Court satisfied that it is an appropriate case for an injunction in such terms.
59. The suggestion in Ms. Pressick's witness statement that a conspiracy claim would permit the court to grant an injunction to restrain criminal offences, is to confuse the permissible ambit of unlawful acts that can prove the conspiracy tort from the relief that can be granted by the court once it has been established. The court would not impose an injunction in terms of prohibiting a criminal offence. Any injunction order would have to specify, clearly, the acts the relevant defendant was prohibited from doing. So, returning to the example of suppliers, the injunction that Ms. Bolton suggested would be one that she would be seeking, if the Claimants were successful in the conspiracy claim, would be one to prohibit any of the relevant Defendants from

attending at the home addresses, for example, of the directors or employees of any supplier of the Claimants. However, that is an injunction the terms of which could potentially be granted if the Claimants succeed with their harassment claim.

60. It may be that, if an unlawful act conspiracy were to be proved, then the acts that the court might restrain might potentially be wider, but they would not be expressed in terms of being criminal offences. A good example of that is the offence of watching and besetting under s.241 Trade Union and Labour Relations Consolidation Act 1992. Those rather archaic words would not be appropriate in any injunction. To the extent that such conduct is proved by the Claimants, it is likely also to form part of the harassment claim, particularly in the extended scope as I have identified. As such, the behaviour, if it is proved, and if it amounts to harassment, can be restrained under the civil tort in the existing claim, without the need for an unlawful act conspiracy to be pleaded and proved, with all the complexity and cost that that would entail.
61. In terms of cost and complexity, the burden on the parties' and the court's resources, I would also be very concerned at the prospect of conducting a trial of a conspiracy claim advanced against 18 individual Defendants almost half of whom are at present representing themselves. Of course, being a self-represented party does not mean that you can avoid facing a civil claim. However, when I come to consider whether to allow a party to add a claim and add significantly to the complexity of the proceedings, I am bound to consider very carefully the real impact that it is likely to have in terms of the resources of the parties and the court. The trial of the existing claims is likely to take some weeks. A trial of a complex conspiracy claim involving nine or so litigants in person will take much longer. This is properly a factor to consider when considering whether the Claimants can identify something of real benefit that would justify these costs and additional burdens. In my judgment, the Claimants have simply failed to demonstrate that there is any such real benefit, particularly having regard to the claims that they are already bringing and the relief that they seek under those claims.
62. As I am refusing permission to amend to add the conspiracy claim, I need not deal in any detail with any other issues that might arise on the pleading. However, in fairness, and in the event that the Claimants renew their application to amend to add a conspiracy claim, I should record that it does appear to me that, given its importance as an element of the tort, the pleading of the alleged intention to cause damage to the Claimants is equally unparticularised in the draft Amended Particulars of Claim, paragraph 494. If a conspiracy claim were to go ahead in this case, the issue of intention would be very important, and the particulars and evidence relied upon would need to be scrutinised with care. There may be a material difference between hoping to achieve a cessation of the breeding of beagles for animal research and intending to cause damage to the Claimants. Particulars of intention to harm would have to demonstrate clearly the latter, not just the former.
63. I should perhaps make clear that as I have refused permission to amend to add the conspiracy claim, the Claimants have no claim to advance against the 27th Defendant. Therefore, although he is identified in the heading to this judgment, permission has not been granted to add the 27th Defendant as a Defendant to the claim. He is not, therefore, Defendant to these proceedings.

For proceedings, see separate transcript

MR. JUSTICE NICKLIN:

64. I am not going to grant permission to appeal. This was a case management decision which has expressly left open the possibility that the Claimants, if advised, could try to reformulate the claim to meet some of the objections that the court has identified.
65. As to the specific grounds, I do not consider that I have misapplied the *Ivy* case. That case is clearly recognising what seems to be self-evident; a conspiracy claim is a serious allegation to make and requires a commensurate degree of particularity. It is not limited to conspiracy claims that are based on or include allegations of dishonesty.
66. As to the ground suggesting that wrongly concluded that the pleading as it stands is deficient, that ground has no real prospect of success for the reasons expressed in the judgment. In summary, there is nothing beyond a bald pleading of one of the essential ingredients of the cause of action. If the Claimants case is one of inference, then the facts relied upon to support that inference must be spelled out.
67. Finally on the issue of proportionality, it is not necessarily to do with the complexity of the litigation, as I explained in the judgment, it is more the question of what of value can be obtained additionally from the conspiracy claim that cannot be achieved in relation to the existing causes of action. I have explained why I have not been satisfied that the limited amount that could be achieved by the conspiracy claim cannot be achieved, it is said, by the existing causes of action. Measured against the cost and complexity that it would bring to permit a conspiracy claim to be pursued means that it is disproportionate.
68. None of the grounds has a real prospect of success and there are no other compelling reasons why I should grant permission to appeal. For these reasons, and principally because this is a case management decision, I refuse permission to appeal.

For proceedings, see separate transcript

This judgment has been approved by Nicklin J.

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