

ENGLAND AND WALES / JUDGMENT

# Briggs v Jordan & Ors

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Neutral Citation Number: [2013] EWHC 3205 (QB) IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION Case No: HQ13X02806 Royal Courts of Justice Strand, London, WC2A 2LL Date: 24/10/2013 Before : THE HONOURABLE MR JUSTICE TUGENDHAT

- ----- Between : ANDREW BRIGGS

- and -

(1) SIMON JORDAN (2) YELLOW JERSEY PRESS LIMITED (3) RANDOM HOUSE GROUP  
LIMITED Claimant Defendants

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- ----- Ronald Thwaites QC and David Mitchell (instructed by  
RadcliffesLeBrasseur) for the Claimant Adam Wolanski (instructed by Simons Muirhead &  
Burton) for the Defendants Hearing dates: 17th October 2013

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## Judgment

Mr Justice Tugendhat : 1. 2. 3. In this libel action the Claimant (“Mr Briggs”) applies for permission to amend his Particulars of Claim. The Defendants had applied for a ruling that the words complained of in the unamended Particulars of Claim were not capable of bearing the defamatory meanings attributed to them by the Claimant, and for an order that the claim be struck out in its entirety as an abuse of the process of the court. The Defendants now submit that the application for permission to amend should be refused for substantially the same reasons. Mr Briggs describes himself as a businessman, investor and philanthropist. He describes the First Defendant (“Mr Jordan”) as a businessman who was until 2010 the controversial and high-profile chairman of Crystal Palace Football Club. There is no dispute that, in 1994, Mr Briggs jointly with Mr Jordan founded The Pocket Phone Shop (‘the Business’), a business retailing mobile telephones and telephone contracts. They each owned 50% of the Business. The Business was highly successful, expanding to 160 retail outlets by 2000, when it was sold. In or around June 2012, Mr Jordan wrote and, with the publisher Defendants, published in hardback the book ‘Be Careful What You Wish For’ (‘the Book’), an autobiography of himself. All references to the Book in this judgment are to the hardback edition, unless otherwise stated. The Book achieved some prominence and significant media attention, after being shortlisted for the British Sports Book Award and selected as a finalist in the prestigious William Hill Sport Book of the Year Award. 4.

The paperback edition was published in May 2013, but is significantly different, in so far as the passages relevant to this action are concerned. Most of the passages complained of have been deleted, and there are no new passages of which complaint is made. It follows that unless Mr Briggs's application succeeds in respect of the hardback, it cannot succeed in relation to the paperback, and no separate consideration need be given to the paperback. The fact that most of the passages complained of in the hardback have been deleted does not assist me in deciding whether they give rise to a cause of action. Mr Jordan has not made any admissions. 5. The draft amended Particulars of Claim include claims in defamation and breach of confidence. THE CLAIM IN DEFAMATION 6. In defamation the words complained of are: 8.1 8.2 8.3 8.4 8.5 8.6 At pages 30-31: "Andrew was extremely upset...He sent Charles Dunstone, the MD of Carphone Warehouse, an email. Andrew did this all the time if he was unhappy with anything. Most of the emails began with , 'Frankly, I am astonished...' They pissed Dunstone off no end and would ultimately cost Andrew his job..." And at page 31: "Andrew continued to ping off his emails to Charles Dunstone on anything and everything that pissed him off..." And at page 32: "Meanwhile Andrew had sent off one too many 'Frankly, I am astonished' emails to Charles Dunstone and was fired..." At page 35: "...it took me less than a week to pull together a pretty good business plan, and Andrew came up with a great name, The PocketPhone Shop, or PPS as it was soon to be known" At page 38: "Savage insisted it was a deal breaker but, while Andrew panicked on the journey home, my gut told me different (sic). By that evening, Edward Eve called me and the deal was back on..." and "Opening day arrived, August 1994. We had most things in place, but Andrew and the shop fitters were panicking as our sign for the front of the shop hadn't arrived..." At pages 41-42: "The force behind the company's expansion and progression was my direction and drive. I negotiated the commercial deals and made all the key decisions. It was never planned that way; Andrew just wasn't as driven and confident as me... When we started the company we made ourselves joint MDs. But almost a year on, I felt that should change. A business invariably has one leader and that clearly was me... For me this change needed to be made so that I could get about running the business and making the decisions that would benefit us both..." 8.7 At page 48: "Martin Cox, my former boss at CPW [Carphone Warehouse], had left them and I took the decision to appoint him as the new sales director. This didn't go down well with Andrew. After all Martin had been the one that had sacked him at CPW." 7. In para 9 of the draft Mr Briggs attributes the following natural and ordinary meanings to the words complained of in sub-paragraphs 8.1, 8.2, 8.3, 8.5 and 8.7, namely that he: "was sacked by his previous employer in the mobile telephone business for repeatedly sending pompous and frivolous messages, was given to panic and was ineffective in the face of ordinary business challenges". 8. He attributes an innuendo meaning to the words complained of in sub-paragraphs 8.4 and 8.6, namely that he: "misrepresented himself to others and in newspaper interviews and articles as being a key figure in building the business from a start-up to a highly successful company, when in fact, he played only a limited and subsidiary role compared to Simon Jordan". The Applicable Law of Defamation 9. There is no dispute as to the applicable law. In an application for permission to amend the test that must be applied is the test that would be applicable if this were an application for a ruling as to the meanings which words complained of are capable of bearing. Since, if the case goes forward, the parties have a right to a trial with a jury, the court cannot at this stage make a ruling

on the actual meaning of any words complained of. That would be an issue for the jury to decide.

10. The principles governing a meaning application are as summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at [14]: "The legal principles relevant to meaning ... may be summarised in this way: (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.'" 11. Further, although there are a number of well-known definitions of the legal meaning of the word "defamatory", the case can proceed on the basis of the definition used by Sir Thomas Bingham, MR in *Skuse v Granada Television Limited* [1996] EMLR 278 at 286 where he said: "A statement should be taken to be defamatory if it would tend to lower the plaintiff 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." 12. It follows that it is not enough that the words should damage the claimant in the eyes of a section of the public only. See *Modi v Clarke* [2011] EWCA Civ 937. Moreover, it is not in dispute that to be counted as defamatory an allegation must pass a certain threshold of seriousness: *Thornton v Telegraph Media* [2010] EWHC; 1414 (QB);

[2010] EMLR 25 at para [16]. As Lord Atkin expressed it in *Sim v Stretch* [1936] TLR 669 at 672; [1936] 2 All ER 1237 at 1242: "That juries should be free to award damages for injuries to reputation is one of the safeguards of liberty. But the protection is undermined when exhibitions of bad manners or discourtesy are placed on the same level as attacks on character and are treated as actionable wrongs". The Natural and Ordinary Meaning 13. Both counsel invited me to read the most of the two chapters from which the words complained of are taken in order to judge them in their context as the law requires. Mr Wolanski emphasised a number of passages in which Mr Jordan wrote praising Mr Briggs. For example at page 35 he wrote: "I considered us to be two of the brightest, most experienced guys in the mobile phone industry not to own our own business... Andrew came up with the great name, The PocketPhone Shop..."

14. Mr Thwaites emphasised a number of passages, increasingly frequent as chapter 4 progressed, in which Mr Jordan wrote in terms which emphasised the importance of his own role at the expense of Mr Briggs. For example (at page 42) he wrote in the terms set out in para 8.6, and in similar terms. 15. 16. 17. There are five separate meanings pleaded in the

one sentence in para 9: that Mr Briggs was sacked, that he sent frivolous messages, that he sent pompous messages, that he was given to panic and that he was ineffective in the face of ordinary business challenges. The passages set out in paras 8.1, 8.2, 8.3 and 8.7 are the only ones relevant to the meaning “was sacked by his previous employer in the mobile telephone business for repeatedly sending pompous and frivolous messages”. It is plainly not defamatory of a person to say that he was sacked. In the draft amended pleading it is not said that the words meant that he was deservedly sacked 18. 19. 20. 21. 22. 23. 24. (that had been pleaded in the unamended version, which is not now relied on). No reasonable person could infer from a statement that a claimant has been sacked that the sacking was due the claimant’s fault. It is well known that employees can be sacked for raising legitimate issues. I accept that it could be defamatory of an employee to say that he had repeatedly sent frivolous messages to his Managing Director. So the question is whether the words complained of are capable of meaning that the messages which Mr Briggs sent were frivolous. The words complained of which relate to the content of the messages are: “Andrew did this all the time if he was unhappy with anything ... on anything and everything that pissed him off”. These words must be read in their context. The context includes the rest of chapter 3 and chapter 4. There is nothing in those chapters to suggest that Mr Briggs had acted in a frivolous manner. On the contrary, there is a reference at the bottom of page 36 of the Book to what is referred to as “one of his ‘Frankly, I am astonished letters’”. It is not a letter sent to the Managing Director of Carphone Warehouse, but a letter to a bank manager. In the preceding paragraph Mr Jordan wrote very critically about the bank manager. He goes on to write that as a result of Mr Briggs’s complaint “We got a written apology, a cheque for our parking expenses and an invitation to come back in for another meeting, which we never accepted”. It is as plain as could be that the Book cannot be understood as suggesting that Mr Briggs had written a frivolous message to the bank. In my judgment no reasonable reader could understand the Book to be alleging that Mr Briggs sent frivolous messages. Next to be considered is whether the words complained of meant that Mr Briggs sent pompous messages. I accept that the emphasis in the words complained of to the phrase “Frankly, I am astonished” is capable of meaning that the e-mails were in a pompous style. However, in my judgment that does not surmount the threshold of seriousness which is necessary if words are to be held to be defamatory. I note that that meaning would also clearly be comment or opinion, but I do not need to consider whether as such it would afford Mr Briggs a reasonable prospect of success. The passages in para 8.5 are the only ones relevant to the meaning that Mr Briggs was “given to panic”. The words complained of in para 8.5 are a part of an account of two particular incidents. The first passage relates to the time when Mr Briggs and Mr Jordan were engaged in one of the most important negotiations for the company. It needed an “airtime provider”. There was only one available at the time, and Mr Jordan was describing how he was refusing to agree to what the prospective provider had said was a deal breaking term. As described in the Book, the only possible deal was in danger of falling through as a result. In the second of the two passages the incident was the opening of the first shop in August 1994. Mr Briggs and Mr Jordan had booked the local mayor to open the shop officially, and had contacted the local

press to take pictures. But immediately before the mayor arrived the shop fitters had not come to fit the sign for the shop front. There was just an empty light box where the sign should be. Clearly these passages at page 38 both allege that Mr Briggs was in a state of fear. But in my judgment no reasonable reader could understand that what is attributed to Mr Briggs is unreasonable fear. In the first instance the reader would understand that Mr Jordan was boasting of his willingness to accept a high risk. In the second passage, the situation that is described was one that was not caused by, or under the control of, Mr Jordan. What is described is an obvious potential crisis for the Business which could give rise to strong feelings of fear in any responsible businessman. In that context I conclude that the words complained of are not capable of being defamatory of Mr Briggs. And the two incidents together are not capable of meaning that Mr Briggs was “given to panic”. They are two specific incidents, the circumstances of which are explained. There is no possible suggestion of a propensity to panic on the part of Mr Briggs. For the same reasons the words complained of are not capable of meaning that Mr Briggs was ineffective in the face of ordinary business challenges. This suggested meaning adds nothing to the “given to panic” meaning. 25. 26. The Innuendo Meaning 27. 28. 29. There can be no doubt that in the words complained of in paras 8.4 and 8.6 Mr Jordan is saying that it was his “direction and drive” which was the main force behind the company’s expansion, and that Mr Briggs’s role was limited and subsidiary. However, as Mr Briggs implicitly accepts by pleading this meaning as an innuendo, there is obviously nothing defamatory in such an allegation, taken in isolation. In order to support the innuendo pleaded it is therefore necessary for Mr Briggs to plead something more than that he played only a limited and subsidiary role compared to Mr Jordan. What he pleads is the meaning that he “misrepresented himself to others and in newspaper interviews and articles as being a key figure in building the business from a start-up to a highly successful company”. There are two difficulties with this pleading. The first is that he does not identify in the draft pleading any representation made by himself, or any newspaper interviews and articles. The second difficulty is that “being a key figure in building the business from a start-up to a highly successful company” is not necessarily inconsistent with having taken a role that was more limited than, or subsidiary to, that of Mr Jordan. The precise terms of any representation he may have made to others, and of any article or interview, must be critical to whether any representee, reader or viewer of an interview or article would understand an inconsistency. Unless the representee, viewer or listener (as the case may be) can understand an inconsistency, there can be no basis for their understanding that Mr Briggs has misrepresented his role. 30. In support of his case Mr Briggs pleads the uncontroversial matters set out in para above, and the following: 9.2 “The Claimant’s involvement with the First Defendant in the business was well-known to: (i) friends and acquaintances, employees in the Business, and its contractors and service providers; (ii) actual and potential business partners and investors, including Peter Worth, board member of IMG Sports Entertainment, who became the Claimant’s partner in the Superset Tennis venture, and Superset’s managing Director Edward Freeman, a former board member of Manchester United Football Club; and (iii) the Claimant’s professional advisers including his bank manager and accountants; and forms a prominent part of the

Claimant's CV and business track record; 9.3 By way of example, the Claimant has referred to his role in setting up and building the business, including co-writing the business plan, in numerous interviews, articles and reviews, and in business negotiations, such as those he conducted when creating the Superset Tennis tournament in 2003. The Claimant refers to himself as the joint founder of the Business on his website, [www.worldventures.co.uk](http://www.worldventures.co.uk). 9.4 In consequence, an unquantifiable but substantial number of readers of the Book were aware of the said facts and matters and reasonably understood them to bear the said innuendo meaning." 31. There was a substantial exchange of Requests for Further Information, and responses to these. But the responses added little to the substantive plea. On 24 June 2013 Mr Briggs responded that he: "would say to others, as is well known, that he was a key figure in building up the Pocket Phone Shop ... [which he had] jointly founded... and that he played a key role jointly with [Mr Jordan...]"

32. Mr Thwaites submits that Mr Briggs can rely on inference to make good his case, and upon a witness statement of Mr Freedman
33. Mr Freedman describes himself as a business associate of Mr Briggs. He was appointed by Mr Briggs as Managing Director of a company he refers to as "The Superstar Tennis Venture". He states: "From my dealings with [Mr Briggs] I knew that in the 1990s, at the outset of the mobile phone industry, he had been a joint founder and owner of the Pocket Phone Shop, alongside Mr Jordan. It had always been my understanding that [Mr Briggs] and Mr Jordan had jointly founded the Pocket Phone Shop, that they had been equal partners in the business and together they made a shared contribution to the company's formidable success. I also knew that the business had been jointly sold by [Mr Briggs] and Mr Jordan in 2000".
34. Mr Freedman then goes on to say that on reading the words complained of in para 8.6: "I specifically recall reading this passage and being shocked at how divergent it was from the account of [Mr Briggs] and Mr Jordan's relationship that I had understood to be the case... I distinctly remember wondering whether or not I had been furnished with the true facts by [Mr Briggs]..." 35. 36. The difficulty with this evidence is that the matters set out in para above are not contradicted by, or inconsistent with, the words complained of at paras 8.4 and 8.6. In the absence of any evidence of Mr Briggs having represented himself to others as having played a role in the business which was equal to or greater than the role played by Mr Jordan, there can be no arguable basis that there is any representee who could understand that Mr Briggs had misrepresented his position. Conclusion on the defamation claims 37. Accordingly in my judgment permission for the proposed amendment to the Particulars of Claim must be refused, in so far as those amendments related to the claim in defamation. The Book is disobliging in so far as it relates to Mr Briggs. But a complaint that a publication is disobliging is not enough to give rise to a claim in defamation. THE CLAIMS IN BREACH OF CONFIDENCE OR PRIVACY 38. The Claim Form contains no claim in breach of confidence or privacy. The Particulars of Claim included in the prayer (although not in the body of the pleading) a claim for damages for breach of confidence. So the proposed

amended claim for breach of confidence and misuse of private information is a new claim. That in itself is not fatal to the application for permission to amend. However, having held as I have that there is no arguable claim to go forward in libel, I would take the view that if there is now to be a claim in breach of confidence or misuse of private information, then it ought to be brought by a fresh action, and not by amendment to a claim form and particulars of claim that would otherwise be struck out. 39. Since I have heard argument on these new claims, I shall also give my decisions as to whether they advance a claim for which permission should be given. That is in effect the same question as whether they ought to have been struck out if they had been pleaded originally. The claim in breach of confidence 40. The claim in breach of confidence arises out of an agreement referred to as “the Share Sale Agreement” which was dated 16 March 2000. It was made between Mr Briggs and Mr Jordan pursuant to their joint decision to seek a buyer for their shares in the Business they jointly owned. The Share Sale Agreement includes a confidentiality clause as follows: “The provisions of this agreement are confidential and it is agreed that neither party shall disclose or divulge to any third party (other than his professional advisers) the subject matter hereof without the prior written consent of the other.” 41. The breaches of this term are alleged to be the following: “12B. In breach of confidence and in breach of contract the First Defendant published the following words which amounted to confidential disclosures: 12B. 1 At pages 55 – 56: “After I agreed a price with Andrew for his share in the company, his lawyers drafted up a formal agreement, stipulating the price for Andrew’s stock out of the proceeds. Other stipulations were made, notably that any offer over £30 million had to be accepted!” 12B.2 At page 61: “Briggs’ absence caused unnecessary concern with 121, who thought the deal would break down because he was not on board. I showed John Barton the confidential agreement between Andrew and myself so he understood there was no issue in the sale, just Andrew being tetchy about the differences in what we were both getting. John understood immediately and brought some order to the fraying nerves at both ends.” 12B.3 At page 298: “He said that it was a matter of public record that I had stated I had spent £30 million-plus on Palace to date and went on to conclude that, given I was a 50 per cent shareholder in The PocketPhone Shop which had been sold for £75 million, I would have got £37.5 million, thus I had spent the bulk of my money. What he didn’t know was I had a completely different deal with my ex-partner in that business and I was bound by a confidentiality document of non- disclosure and I was not going to divulge that to him! He demanded the judge order me to disclose, at which point I spoke directly to Judge Tugendhat, saying that I was not prepared to breach that legal agreement even if it risked contempt of court. Despite McParland’s blustering the judge upheld my position and ordered that we move on. Although I did quickly add that in fact I did get significantly more than £37.5 million!”

42. Mr Wolanski submits that the terms of the confidentiality clause relate only to the “provisions” and “the subject matter” of the Share Sale Agreement, not to the fact of its existence, nor to anything which is not a provision, or the subject matter, of it.

43. Mr Wolanski submits that none of the matters pleaded in paras 12B.1 to 12B.3 are disclosures of the provisions of the Share Sale Agreement, or the subject matter of it. The only matter which purports to be a provision (a stipulation that “any offer over £30 million had to be accepted”) was not in fact a provision. 44. There can be no answer to this submission.
45. Mr Thwaites submitted in argument that the words in para 12B.2, if not themselves a breach of the confidentiality agreement, were nevertheless an admission that in 2000 Mr Jordan had breached the Share Sale Agreement by showing it to Mr Barton, the representative of a prospective purchaser of the shares. This is not what the pleading alleges. The pleading is that “the following words [set out in para 12B.2] amounted to confidential disclosures”. 46. 47. 48. 49. Further, Mr Thwaites accepted in argument that Mr Briggs could establish no loss resulting from any alleged breach of confidence. In those circumstances, absent some special considerations (and none have been advanced in this case), Mr Wolanski submits that a claim based on the contents of para 12A of the draft amended Particulars of Claim would be struck out as an abuse of process, following *Jameel v Dow Jones & Co Inc* [2005] QB 946, and *Lait v Evening Standard Limited* [2011] EWCA Civ 859. This is not a case where injunctive relief could be expected. There is no continuing threat to publish, and the information is very old. I accept these submissions. There remains the claim for misuse of private information. At para 12D of the draft Mr Briggs pleads: “12D. Furthermore, at page 42 of the Book there appears the following disclosure of confidential and private information: “Additionally, Andrew’s health was not great. He suffered from the chronic fatigue disease ME, which I have to confess at the time I had little sympathy for;” The of diagnosis Claimant’s 12E. myalgic encephalomyelitis (chronic fatigue syndrome) was confidential and private information. It was only disclosed to the First Defendant in the course of the parties’ professional relationship. The First Defendant requested, and the Claimant confirmed, that he would treat this information as confidential and private. Therefore, the Claimant had a reasonable expectation that his diagnosis would remain private. Further or alternatively, the First Defendant was at all material times under an obligation of confidence to the Claimant not to disclose his medical information to any person without his consent. To confirm, at no point has the Claimant provided such consent. 12F. In spite of this assurance, in breach of the duty of confidence and in breach of the Claimant’s privacy the First Defendant proceeded to publish the words complained of at page 42. 12G. As a result of the said publication the Claimant has suffered damage and distress. This is not just a matter of personal upset and distress to the Claimant, the disclosure of his confidential and private information is injurious to his reputation as a businessman, investor and philanthropist”. 50. 51. Information about a person’s health is generally information in respect of which the subject of the information has a reasonable expectation of privacy. Damages awarded for distress are in most privacy cases not large, but that of itself is not a reason for striking out a claim: *Sullivan v Bristol Film Studios Ltd* [2012] EMLR 27 para [29]. If this claim had been pleaded in the original Particulars of Claim I would not have struck it out. But since it is the only part of the draft amended pleading

which falls into this category, in my judgment it should be advanced as a new claim (if it is to be advanced at all), and not allowed to go forward as part of the original claim, the rest of which has been struck out as being bound to fail.

## CONCLUSION

52. For these reasons Mr Briggs's application for permission to amend his Particulars of Claim will be dismissed, and the claim will be struck out.
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