

JERSEY / JUDGMENT

Boschat -v- Chief of States of Jersey Police [2015] JRC 220A (03 November 2015)

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JUDGMENT

the MASTER:

Introduction

1. This judgment represents my detailed written reasons for striking out the claims in the order of justice brought by Mr Boschat ("the plaintiff") against the States of Jersey Police ("the defendant"). 2. The plaintiff's allegations as set out in his order of justice which was signed by Commissioner Pitchers on 3 rd August, 2015, read as follows:- "1. He was wrongfully accused of bribery, corruption and conspiracy to defraud;
2. He was subject to harassment by way of arrest and his property being searched;
3. The then Deputy Chief Officer of Police deliberately wrote to the Plaintiff's major clients advising them not to do business with the Plaintiff;
4. The Law Officers advised that there would be no proceedings against the Plaintiff;
5. The letter written by the Deputy Chief Officer was not rescinded;
6. When the Recovery Rota was put out to tender the Plaintiff was informed that he would not be allowed to tender;
7. A report into the States of Jersey Police vehicle recovery system was commissioned from Sussex Constabulary which recommended that the Plaintiff's business was restored to the recovery rota immediately but this was ignored for some time;
8. The Plaintiff was required to upgrade his recovery vehicles and equipment within a very short space of time to a standard which was not legally required in the Island;
9. As a consequence of the police actions and allegations the Plaintiff lost his States and Institutional work and his business was effectively terminated;

10. The Plaintiff complained to the Police Complaints Authority regarding the actions of the former Deputy Chief Officer but the report on the complaint was not completed until the former Deputy Chief Officer has retired and there was therefore no potential for misconduct proceedings;
11. The letter referred to under 3 above was not made available to the investigation by the Devon and Cornwall Police under 10 above;
12. There were delays in the supply of documents requested from the Police by the Plaintiff which resulted in a straightforward insurance claim being out of time;
13. The States of Jersey Police now acknowledge that the Plaintiff has clearly been wronged by the former Deputy Chief of Police, such admission being attached to this document." The relief sought was an apology and damages for loss of business and reputation in the sum of £600,000. 3. The order of justice was served on 4 th August, 2015. The defendant's strike out summons was issued on 9 th September, 2015, and sought to strike out the order of justice in its entirety on the basis it disclosed no reasonable cause of action, was scandalous, frivolous or vexatious and/or was an abuse of process. Background events 4. What has led to the present dispute started in 2005. At that time and for a number of years previously the plaintiff had provided recovery vehicle services to or to assist the defendant. 5. On 30 th November, 2005, the former Deputy Chief Police Officer of the defendant Mr Leonard Harper ("Mr Harper") wrote to the plaintiff giving him 14 days to bring his vehicles up to a standard known as PAS 43. 6. It appeared that this action led to complaints being filed by the plaintiff with the defendant about Mr Harper's conduct. This led to the defendant's then Chief Officer Mr Graham Power ("Mr Power") writing to the plaintiff on 30 th May, 2006, asking the plaintiff to agree to someone from the United Kingdom reviewing the recovery arrangements and to prepare a report with recommendations. 7. On 24 th May, 2006, a notice was served by the Professional Standards Department ("PSD") of the defendant, stating that some members of the defendant had been receiving gifts or services of persons contracted to supply services and advising any said person to contact PSD. 8. On 7 th June, 2006, a "force order", which is an internal order of the defendant, was issued by Mr Harper, which order stated that any gifts or services received from any person supplying services to the defendant should be declared by no later than 18 th June, 2006. 9. On 12 th June, 2006, an article appeared in the Jersey Evening Post ("JEP"). The story reported that the defendant had acted to make sure that the defendant was seen to be "squeaky clean" and made allegations about police officers giving breakdown recovery work to friends. The plaintiff was quoted in the article, as was Mr Harper. 10. On 16 th June, 2006, the JEP published a further article which stated that more than a dozen police officers had "admitted taken free holidays and other freebies from a local businessman who does vehicle recovery work for the force". The article further reported that Mr Harper saying that the plaintiff "was getting the majority of the police recovery work because of backhanders and favours". The article went on as follows:- "Mr Harper released information of his investigation into the corruption allegations after Mr Boschhat asked him to explain what he had meant when he said that

officers has 'what could appear to be an unhealthy relationship' with Mr Boschat. The deputy police chief said: 'He has asked me to publicly explain the term "unhealthy relationship". Okay, we have admissions from more than one dozen police officers that they have had free holidays in Boschat's Spanish villa, free towing services for vehicles, and other free services from him. 'None of these has ever been registered, and they are in complete breach of all polices and integrity guidelines. It should be added that these occurred during the period when Boschat was getting a hugely disproportionate portion of the towing work required by the States Police. In any police service, or even public service in the world, this would be seen as an unhealthy relationship...' 11. On 5 th September, 2006, the plaintiff was arrested and his home searched. 12. On 6 th September, 2006, Mr Harper wrote to the plaintiff confirming the plaintiff "will not be called upon by the States of Jersey Police in respect of towing or any other work until further notice". 13. On 12 th September, 2006, Mr Harper wrote to the Constables of the twelve Parishes regarding the plaintiff's breakdown recovery business. This letter stated as follows:- "First of all can I emphasise that the following information is extremely sensitive, relates to an ongoing criminal investigation and must not be copied, or disclosed to any other person without the written authority of the Deputy Chief Officer of the State of Jersey Police. Following an eighteen month investigation by the Force Professional Standards Unit, two men were arrested on Tuesday, 5th September, 2006. One of these men, a serving Police Officer, has been charged with forty two criminal offences under the Misuse of Computer Law. A report is also being sent to the Attorney General in respect of charging both men with offences of Bribery and Corruption to Defraud. Because of the nature and extent of the evidence gathered, this force has found it necessary to remove the Breakdown Company 'R. Boschat 24 Hour Recovery' from the authorised list of those we do business with. This is as a result of the direct connection with that company of the second man arrested. The evidence that we have shows a systematic and sustained attempt by at least one States of Jersey Police Officer and this Company to dishonestly acquire for 'R. Boschat', a disproportionate share of the business from the States of Jersey Police. This has entailed the falsification of official records, lying to members of the public, and the receipt by Police Officers of favours and gifts. It can be proved that the Police Officer who falsified official records to bring business to this company, received items such as cheap diesel, free breakdown services and use of a Spanish Villa in return. Evidence will show communications between the Officer and the company which detail the conspiracy. In addition. Over twenty police officers have admitted being in breach of Force Integrity Policies by receiving free gifts and favours from the company. It is clear from all of this, and from further intelligence, that other agencies using this company are themselves vulnerable to the same type of attack on their integrity. There are also issues of Public Protection and the use of Public Money. For those reason I see a clear need to disclose these matters to you under the conditions outlined at the start of this letter. Whilst the States of Jersey police have no wish, nor indeed right to seek to influence you internal decision making, I feel that it is our duty to make this information available to you to give you every opportunity to carry out your responsibilities in the way you think best." 14. This letter was not seen by the plaintiff in 2006 and was only provided to the plaintiff by the defendant in 2014. I address this delay

later in this

judgment.

15. On 8 th January, 2007, Mr Power wrote to the plaintiff and stated "if you think that the force is acting in any way which is unfairly damaging to your business you can of cause take action through the civil courts. You are welcome to do this if you so wish. Equally any person who thinks that you have circulated material against them which is defamatory is able to take legal measures against yourself should they wish to do so". 16. On 14 th September, 2007, Brodie & Company Solicitors in Scotland wrote to the defendant stating they were acting for the plaintiff. The letter complained about the remarks of Mr Harper reported in the JEP articles of 12 th June and 16 th June, 2006, and sought an apology and damages. The damages sought were compensation for the substantial loss of business the plaintiff suffered as a result of Mr Harper's statements. 17. The letter also indicated that the plaintiff's claims covered wrongful arrest and wrongful search and seizure. Disclosure was sought of the entire police investigation file. 18. At some point earlier in 2006 the plaintiff had also sought legal advice in Jersey from the late Advocate Christopher Lakeman, then a partner in Carey Olsen. On 7 th September, 2006, Advocate Lakeman received a letter from Mr Harper who stated "whilst you are correct in stating that States Departments must make their own decisions, I would inform you that so serious are the issues of integrity involved here, that I will be disclosing our reasons for not using him to States Departments and other Policing Agencies within the island." 19. The defendant's insurers, by a letter dated 27 th February, 2007, sent to Brodie & Company Solicitors stated that it was the plaintiff who first approached the JEP in June 2006 and that "it therefore appears that your client has no case against our insured and assume that the claim has been submitted in error." The insurers refused to make disclosure of any pre-action, communication or documentation that had been requested. 20. Brodie & Company Solicitors asked, by a letter dated 17 th May, 2007, whether insurers wished to nominate solicitors to accept service of proceedings or whether the defendant should be served direct. The insurers replied indicating that the defendant should be served direct. In fact no proceedings were commenced. 21. By March 2007, Advocate Lakeman was again dealing with the matter; by this time he was a partner at Sinels. His involvement led to a meeting with Chief Inspector Bates of the Devon and Cornwall Police to discuss the plaintiff's concerns. Advocate Lakeman in particular was seeking a review of a report prepared by the Sussex Police force in relation to the recovery scheme operated by the defendant. The Devon and Cornwall Police were involved to deal with the plaintiff's complaints about Mr Harper. 22. The Devon and Cornwall Police refused to provide disclosure of the report of the Sussex Police because it belonged to the defendant. 23. By a letter dated 5 th March, 2007, Advocate Lakeman complained to the then Minister for Home Affairs about the refusal of the defendant to allow the Devon and Cornwall Police to make a copy of the report of the Sussex Police available to the plaintiff. 24. On 6 th March, 2007, the plaintiff gave a statement to the Devon and Cornwall Police describing his arrest. He also stated "I later became aware that a letter had been sent to the twelve Parishes by

Deputy Chief Officer Harper of the States of Jersey Police. The gist of the letter I understand is that such of the seriousness of concerns relating to my integrity that organisations within the States of Jersey should not employ my business in the removal of vehicles. I was aware of the existence of the letter having been informed by Mr Harper inviting that it had been sent out. I have not seen the actual letter that was sent to the Parishes." In the same interview the plaintiff complained that Mr Harper had subjected him to unfair and disproportionate treatment in relation to his arrest, his removal from the defendant's breakdown and removal rota and the investigations in relation to bribery allegations generally. 25. On 7 th March, 2007, Sinels wrote to Mr Power asking for the Sussex report, all correspondence between the States of Jersey Police and third parties concerning the plaintiff, his business, his involvement in the police on call tow rota and all internal correspondence between Mr Harper and other officers relating to the plaintiff. In the absence of disclosure, pre-action disclosure proceedings were threatened. 26. Mr Power wrote to Advocate Lakeman on 12 th March, 2007, indicating that as soon as he could, Mr Power would provide as much of the Sussex Police report as could be publicly released under the code of practice on public access to information in force at that time. 27. On 15 th March, 2007, Mr Power wrote again to Sinels in which he stated had "since prepared a brief which fully addresses the issues raised by your client and they will be in possession of this soon". He also stated "please be sure that all of these issues have been fully addressed and that further information will be provided subject to legal advice". 28. Advocate Lakeman responded to this letter by a letter dated 22 nd March, 2007. 29. Mr Power replied to this letter on 26 th March, 2007, and stated "please be sure of the intention of the force to provide you with all the information to which you are entitled and to do everything possible to facilitate for airing for all the issues relating to your clients conduct in open court should he choose that course of action". 30. On 20 th August, 2007, a redacted copy of the review carried out by the Sussex Police was provided to Advocate Lakeman. No other information was provided in response to the request contained in Sinels letter of 7 th March, 2007. 31. On 7 th October, 2008, the plaintiff gave a further statement to the Devon and Cornwall Constabulary. At paragraph 3 he stated "I wish to complain that DCO Harper caused my unlawful arrest, detention and search of my house, thereby abusing his authority and that of the SOJP as a personal vendetta against me" (emphasis added). 32. He also said in this statement that, shortly after his arrest in 2006, "I became aware that a letter had been sent to the twelve Parishes of Jersey by DCO Harper stating that there were serious concerns about my integrity and organisations within the States of Jersey, should not be employed of removing of vehicles. I was informed by DCO Harper that the letter had been sent out. I wish to complain that this disadvantaged me." In paragraph 5 of his statement he complained about an investigation that began in December 2007 and stated "this is another example of DCO Harper abusing his authority through the SOJP." 33. At paragraph 6 of his statement, the plaintiff complained that Mr Harper and the defendant "have subjected me to a restraint on trade". He referred particularly to the fact that where other organisations were using his services, any request for a vehicle recovery through the plaintiff's business which went through the defendant's control room was blocked, on the orders of Mr Harper. 34. At paragraph 8 the plaintiff stated "due to this

personal vendetta perpetrated against me by DCO Harper I have incurred £21,000 in legal fees loss of income through restraint of trade. My personal life has been affected, my marriage has broken up because of the police actions and pressures I have been subjected to." 35. The plaintiff was provided with the report submitted by the Devon and Cornwall Police in relation to the plaintiff's complaints on 28 th July, 2009. The relevant complaints recorded in the report and the relevant part of the report's response are as follows:- "1. Mr Boschat was prevented from tendering for the SOJP recovery rota . "had he conducted proportionate enquiries into this matter it is suggested that the SOJP review their actions concerning Mr Boschat's application to be included in the tendering process, breaches and legislation policy could prove vulnerability for a civil action". 2. The unlawful arrest, detention and search of Mr Boschat's premises and an abuse of authority, personal vendetta of Mr Boschat by Mr Harper . "Given the intelligence the SOJP was justified in their actions by arresting Mr Boschat and searching his premises. With regard to the allegations of an abuse of authority and personal vendetta, as Mr Harper has retired from service and therefore cannot be subject to any disciplinary action, no further investigation will take place in respect of this matter. There is no evidence to suggest criminality in respect of this part of Mr Boschat's complaint." 3. Mr Harper communicated with the twelve Parishes telling them not to employ Mr Boschat and raising concerns regarding his integrity . "The SOJP may wish to review the actions of Mr Harper in terms of how this could have restricted Mr Boschat's trade and income." 4. Mr Harper instigated an unlawful prosecution against me . "the report concluded that Mr Harper was entitled to investigate matters in relation to the self-incriminating disclosure, to ascertain whether any criminal offences had been committed." 5. Restraint on Mr Boschat's trade by Mr Harper directing the SOJP should not call Boschat recovery service for members of the public or public bodies who actually used his services." The report noted that of the policy of the SOJP had now changed and stated:- "the SOJP may wish to review the actions of Mr Harper in terms of how this could have restricted Mr Boschat's trade and income." 36. The report concluded there was no criminality surrounding the plaintiff's complaints and that there was no potential for misconduct proceeding as Mr Harper had retired. 37. On 26 th April, 2010, the plaintiff wrote to the Acting Deputy Chief Officer of the defendant and asked for:- "(i) a full copy of the Sussex report; (ii) A full copy of the Devon & Cornwall report; (iii) A copy of letter sent out to States departments and Parishes about me; and (iv) All emails sent out to officers and Police Complaints about me." 38. The information requested was ultimately provided by the defendant in various letters written to the plaintiff between th July, 2014, and 3 rd November, 2014 . 39. In the intervening period the plaintiff tried to obtain material he had requested in 2010 on a number of occasions from Deputy Chief Officer Taylor and various employees of the defendant responsible for dealing with such requests. I comment later in this judgment on the response of the defendant. 40. On 13 th December, 2012, Le Gallais & Luce representing the plaintiff wrote to Deputy Chief Officer Taylor. This letter stated as follows having referred to the conduct of Mr Harper set out above, "it has been suggested that these allegations and subsequent investigations were made maliciously and without any basis." 41. The letter also stated "ultimately due to the actions of Mr Harper and those under his

command Mr Boschat has suffered irreparable damage, to his reputation, his business and also his marriage." 42. The letter further contended that "liability for loss that Mr Boschat suffered lay squarely with the defendant." The letter then invited the defendant to admit liability and stated that if this occurred, "then I am instructed by Mr Boschat not to issue proceedings against the SOJP and enter into discussions as how best to remedy the situation for all parties concerned." 43. The letter went on, "notwithstanding the above I am of the opinion there are any number of actions which might be available to Mr Boschat and as should your response to this letter fall short of full admission of liability in this matter, then it is likely that I shall be instructed to commence one or more proceedings against the SOJP to make the losses suffered as a consequence of its action towards Mr Boschat. This letter serves as a one off courtesy to allow you on behalf of SOJP to settle this matter in an amicable manner, acceptable to both parties and should a favourable response not be received by this letter by close of business on 10 th January, 2013, then no further courtesy will be extended". (emphasis added) 44. The response received from the insurers of the defendant was that any claim relating to these events was now time-barred. 45. As noted above, the plaintiff only received the information he had requested in 2010 between July and November 2014; proceedings were served following signature of the order of justice by Commissioner Pitchers on 3 rd August, 2015. An order of justice may only be signed by an advocate or a judge of the Royal Court not by a litigant personally. The nature of the claims the plaintiff might bring 46. It was not in dispute between the plaintiff and the defendant that the claims that the order of justice might cover were:- (i) Defamation (ii) The tort of unlawful interference in the contractual relations of others (iii) Breaches of statutory duty by a police officer (iv) The tort of misfeasance in public office 47. The tort of unlawful interference was summarised in *Pell Frischmann v Bow Valley*

[2008] JLR 311 at paragraph 48 and 49 and requires a wrongful interference with the actions of another:- "The essence of the tort therefore appears to be (a) a wrongful interference with the actions of a third party in which the claimant has an economic interest and (b) an intention thereby to cause loss to the claimant." 48. The tort of misfeasance in public office was considered in *Syvret v Chief Minister*

[2011] JLR 343 . Paragraph 4 of the head note states as follows:- "The plaintiff's order of justice did not disclose a cause of action for misfeasance in public office. Misfeasance in public office required targeted malice by a public officer, i.e. conduct specifically intended to injure a person or persons, committed by the officer in the knowledge that he had no power to do the act complained of and that the act would probably injure the plaintiff (it involved bad faith in that the officer did not have an honest belief that his act was lawful). The requirement that the officer should know that his act would probably injure the plaintiff was much more than a mere requirement of foreseeability; it was a form of intent, framed as a requirement that an officer should know of the probability of harm in order to accommodate the cases in which an officer had been reckless." 49. It was common ground that the applicable limitation period for all of these causes of action was three years from the date damage was suffered, unless this time period could be suspended. The legal test

for striking out a claim 50. The legal test on the defendant's application was also not in dispute. This is because it is clear that where a claim is clearly brought after an applicable time limit, then the proceedings can be struck out (see *Classic Herd Limited v JMMB*

[2014] JRC 217 upheld on appeal at

[2014] JRC 217 and *Ching v CI Trustee & Executors Limited*

[2015] JRC 014 at paragraph 5. 51. The real issue between the parties therefore was whether or not prescription had been suspended having regard to the well-known decision of the Court of Appeal in *Boyd v Pickersgill & Le Cornu*

[1999] JLR 284 . I considered Boyd in the case of Ching to which I have referred and set out the relevant extracts at paragraphs 28 to 33 in which I now repeat in full as follows:- "28. The leading judgment on *empêchement* is well known decision of the Court of Appeal of Boyd v Pickersgill & Le Cornu

[1999] JLR 284 which follows the earlier decision of *Public Services Committee v Maynard*

[1996] JLR 343 . At page 289 line 34, Beloff J. A. stated as follows:- "In *Maynard* (4), this Court recognised that the maxim upon which the Appellant relies (para. 21 above) was part of the customary law of Jersey. A comprehensive analysis was made of such classic commentators as Terrien: (*Commentaries du Droit Civil du Pays et Duché de Normandie*) and Poingdestre: (*Les Lois et Coustumes des l'Ile de Jersey*). Southwell JA. said at p.354: "We can summarise our conclusions so far on the application of the maxim in Jersey law in this way:- (a) it is common ground that the maxim can apply to the customary law of prescription of claims in contract up to 10 years, and is preserved by Article 2 of the 1960 law in relation to prescription of claims in tort up to 3 years; (b) the principle underlying the operation of the maxim in Jersey law was the practical impossibility of the Plaintiff being able to exercise his rights; (c) mere ignorance does not bring the maxim into operation; (d) where there is an impediment creating such a practical impossibility, of which ignorance is part, then the maxim may come into operation and prevent time running." In those circumstances I see no reason, even were it open to us to do so, to review the authorities further."

29. Beloff J. A. then continued at page 290, line 16 onwards to explore further what was meant by a practical impossibility. He stated:- "In my view, the epithet "practical" deployed in *Maynard* softens rather than strengthens the concept of impossibility. It requires a consideration of what is in fact, not in theory, possible. While ignorance of a cause of action does not per se trigger a suspension of the limitation period, it may, in appropriate circumstances, constitute or create a relevant impediment. The issue before us is of what those circumstances may consist. The test, as it seems to me, is whether the ignorance of the cause of action is reasonable in all the circumstances, reasonable that is both in respect of the facts giving rise to the cause of action and that a cause of action arises in such circumstances. While ordinary cases of professional negligence, as in this case, may be

against a lawyer for advice unconnected with court proceedings, it is difficult to see how it could ever be reasonable to assert that one was unaware that a lawyer owed obligations in contract. There may be cases, however, where the law is uncertain e.g. in respect of an advocate's conduct connected in some way with court proceedings, where ignorance even of the possibility of a cause of action may be reasonable."

30. Beloff J. A. also went on to explore the position where the lack of knowledge might be due to the defendant. At page 291, line 45 onwards he stated as follows:- "In *Cartledge -v- E Jopling & Sons Ltd*

[1963] AC 758 (a personal injury case) Lord Pearce said at p.782 "Past cases have been decided on the basis that the time runs from the accrual of the cause of action, whether known or unknown and no case has been cited in which the plaintiff's lack of knowledge has prevented the time from running where that lack of knowledge has not been induced by the defendant". This suggests that, at least where a defendant bears responsibility for a plaintiff's lack of knowledge, time may for limitation purposes stand still. It may well not be practically possible for a layman to evaluate legal advice given by a lawyer. It is certainly *prima facie* practically impossible for a layman to identify that he or she has not been given appropriate legal advice. Nor would it be reasonable, in ordinary circumstances, to expect him or her to do so. As a matter of policy it may indeed be asked, as the amicus put it, why a lawyer should be excluded from contractual liability for a hidden vice (i.e. failing to give advice) which manifests itself later? The lawyer would become the author of his own good fortune. As the Appellant observed, equally pithily: "if you take legal advice in relation to a dispute with another person, and your lawyer on whom you rely negligently fails to advise you on an aspect of that dispute and you suffer loss as a result of that negligent omission then you could lose your right of action against your lawyer by expiry of the limitation period without ever knowing you had such a right"."

31. On the facts *Beloff J. A.* included that there was no practical possibility of Mrs Boyd knowing of the failure of the respondents to advise her of the limitation procedure. He then went on to state at page 292, lines 18 to 23 as follows:- "Whether particular circumstances exist which dislodge that *prima facie* conclusion and show that the Appellant could reasonably have become aware (or even did become aware) of her right to sue the Respondents for breach of contract and the basis for such action more than 10 years before she instituted such proceedings will, I repeat, fall to be investigated, if at all, at any trial."
32. *Southwell J. A.* in describing the test to be applied in respect of *empêchement* stated:- "the test is to be applied objectively to a reasonable person in the particular circumstances in which the plaintiff was placed. It is not a subjective test."

33. Sumption J. A. stated:- "I am satisfied that the law regards ignorance as reasonable as a matter of legal policy where there was no means by which the particular plaintiff could reasonably have been expected to discover the facts on which her cause of action was based." 52. The question of suspension of prescription by an empêchement was also considered in *Nolan v Minerva Trust Co Limited & Ors*

[2014] JRC 078A at paragraphs 502 to 511. 53. In *Nolan* in relation to whether or not a claim of dishonest assistance was prescribed, the Royal Court held that it was only in 2010 that the plaintiffs acquired knowledge "of all the facts necessary to found an action in dishonest assistance". The Court in *Nolan* also considered the duty of an advocate or a barrister required to plead a case at paragraph 509 as follows:- "In addition, as Minerva's summary of this issue recognised, we also need to consider the position from the more formal point of view of pleading the Nolans' case. Para.704 of the Code of Conduct of the English Bar provides as follows:- "A barrister must not ... draft any statement of case, witness statement, affidavit, notice of appeal or other document containing: (c) any allegation of fraud unless he has clear instructions to make such allegation and has before him reasonably credible material which as it stands establishes a prima facie case of fraud." This statement reflects the decision of the House of Lords in *Medcalf v Mardell*

[2003] 1 AC 120 ,

[2002] UKHL 27 , the headnote to which reads:- "... the Code of Conduct of the Bar did not require that counsel should, when making allegations of fraud in pleadings and other documents, have before him 'reasonably credible material' in the form of evidence which was admissible in court to support the allegations; but that, at the preparatory stage, it was sufficient if the material before counsel was of such a character as to lead responsible counsel exercising an objective professional judgment to conclude that serious allegations could properly be based upon it." Finally, any pleading of fraud must be properly particularised in accordance with the principles set out by Lord Millett in the *Three Rivers* case to which we have already referred in para.143 above. Mr Preston accepted that the same rules of pleading applied in Jersey. This Court agrees." 54. The court then concluded at paragraph 510:- "we did not see how any Jersey advocate, even if instructed by the Nolans to do so, could have drafted an order of justice alleging dishonest assistance on the part of Minerva in the Buchannan Group Companies breaches of trust, unless and until he had a sight of the documents disclosed in response to the Jersey injunction." The parties' submissions 55. The submissions of the parties focused on empêchement and whether or not it was necessary for the plaintiff to have the documents disclosed in 2014 in order to plead his case, or whether sufficient was known to the plaintiff for case to be pleaded on his behalf more than 3 years before the order of justice was filed and served in August 2015. 56. Advocate White contended by reference to the fact that the plaintiff was told of the letter to Parishes in 2006 and complained about being subject to a personal vendetta in 2007 and 2008 to the Devon and Cornwall Police that he had sufficient information much earlier than 2015 to issue an order of justice which would not have been capable of being

struck out. It was not necessary for the plaintiff to see the letter sent to Parishes in order to plead either unlawful interference or misfeasance in public office. If a claim was time-barred as Advocate White now contended, the plaintiff's complaint was against his former legal advisers. The plaintiff had not been under a practical impossibility from commencing proceedings given the complaints he was making in 20007 and 2008 and the response he received from the Devon and Cornwall Police in July 2009. 57. The plaintiff complained that he needed documentation in order to commence proceedings. This is what he had been told by his advisers and until he received the documentation in 2014 he was not in a position to commence proceedings. He was clearly deeply unhappy at how long it took the police to respond to his requests for information and felt he had been fobbed off. Decision 58. Before I set out my decision, it is right to record that I regard the conduct of the defendant in not responding to the requests submitted by the plaintiff in 2010 for over four years as wholly unacceptable, if not deplorable. Advocate White quite properly did not seek to justify this delay or indeed any earlier periods of delay in responding (bearing in mind that requests were first made for the same documentation in 2007) and he was right not to do so. When proper requests for information are made to the defendant, unless it can justify not responding to requests for information on operational grounds, the defendant must respond within a reasonable timeframe. Where an individual is entitled to disclosure of documents, those documents should be provided as soon as reasonably practical. Even if there may have been concerns in 2007 about providing disclosure, there was no justification by 2010 to refuse to provide information, when, as far as I am aware, any investigations in relation to the plaintiff had long since concluded. I invite those with ultimate responsibility for how information requests made to the defendant were responded to in this case to review thoroughly what happened and to take steps to ensure that delays of this kind which I repeat, are wholly unacceptable, do not occur again. 59. Turning now to the claims brought by the plaintiff, in my view these are time-barred, and in some cases do not give rise to matters which it is appropriate for the Royal Court to resolve. To require the Royal Court to do so would be vexatious or an abuse of process. I will deal with each of the allegations in turn. (i) Complaints about wrongful arrest and related steps set out at paragraphs 1 and 2 of the order of justice, all occurred in 2006 and 2007. These were matters known to the plaintiff at the time. He was therefore fully entitled to issue proceedings inform the time of his arrest in September 2006 to challenge this conduct. (ii) In relation to the letter of Mr Harper of 12 th September, 2006, to the Parishes, by 2008 the plaintiff had complained twice to the Devon and Cornwall Police that he was subject to a personal vendetta which had caused damage to his business. He was able to illustrate examples of this personal vendetta. (iii) Brodie & Company Solicitors threatened to file proceedings for damage to the plaintiff's business or on the basis of defamation as early as 2007. (iv) By 2009, the report of the Devon and Cornwall Police indicated that the defendant might be vulnerable to civil action in respect of Mr Harper's conduct both are preventing from tendering for the vehicle recovery rota and in respect of Mr Harper's letter of 12 th September, 2006. The plaintiff received this report on 28 th July, 2009. (v) By 13 th December, 2012, Le Gallais & Luce were able to send

a letter before action to Deputy Chief Officer Taylor stating that Mr Harper's conduct of certain investigations were made maliciously which had caused damage to the plaintiff's reputation, business and his marriage and that proceedings would follow. In particular, Le Gallais & Luce indicated that there were any number of actions which might be available to the plaintiff. 60. Based on the material I have referred to, I consider it was open to Le Gallais & Luce or any other Jersey lawyer firm long before 2015 to be able to draft an order of justice alleging defamation and the various torts I have set out above and they had sufficient information to make such allegations against the defendant. I therefore do not consider it necessary for the letter of 12 th September, 2006, to have been produced in order for the relevant facts to have been pleaded. The plaintiff had sufficient information to commence proceedings at the latest when he received the report from the Devon and Cornwall Police on 28 th July, 2009, and therefore at the latest any claim became time-barred three years after that date i.e. by 28 th July, 2012. The extracts from the report from the Devon and Cornwall Police on 28 th July, 2009, I have set out above made it clear that if the plaintiff was unhappy with Mr Harper's conduct then he could issue proceedings. It may be that it can be said that the plaintiff had sufficient information in 2008 when he gave his statement to the Devon and Cornwall Police or even by 2007 when Brodie's sent a letter before action threatening proceedings but I do not have to reach a conclusion on that point because the proceedings were issued by the plaintiff more than three years after delivery of the Devon and Cornwall report to him, and in my view are therefore time barred by reference to this date. 61. By 28 th July, 2009, the plaintiff knew of the letter of 12 th September, 2006, knew it attacked his integrity and had other examples of how he said Mr Harper was pursuing a personal vendetta against him. While these matters may have been disputed, if such a pleading had been issued and a strike out application made on the basis that there was insufficient evidence of bad faith, as in *Ching*, in my judgment this would have been a matter for trial. This is consistent with the remarks of Beloff J. A. in *Boyd* cited at paragraph 31 of *Ching*. The fact that the letter of 12 th September, 2006, was never produced does not matter. The plaintiff had sufficient information in my judgment to plead a case complaining about this letter. This means that his claim was time-barred by the time Le Gallais & Luce wrote in November 2012. The position is not therefore the same as *Nolan*, where material information was missing and was only produced in 2010. Only then could a claim for dishonest assistance be properly pleaded. I find based on the material before me that nothing had changed between July 2009 and December 2012. The information that led Le Gallais and Luce to threaten proceedings in December 2012 was not based on any new information because none had been disclosed. Rather it can only have been based on information that had been available to the plaintiff since at least release of the report from the Devon and Cornwall Police on 28 th July, 2009. 62. The fact that the plaintiff was not restored to the rota and did not have a full copy of the report from the Sussex Police or that the Sussex report was not considered or implemented for some considerable time again does not help the plaintiff. Such issues go to loss and the amount of any loss, not whether or not the defendant has acted in a manner which gives rise to an arguable breach of duty owed to the plaintiff and a claim. 63. The plaintiff's

criticism of the defendant for not taking action against Mr Harper and that there was no potential for misconduct proceedings in 2009 because Mr Harper had retired is also not a basis upon which the plaintiff can claim damages from the defendant. Misconduct proceedings are a matter internal to the defendant and the plaintiff cannot claim damages for failing to hold such proceedings. 64. Likewise the unacceptable delays in the supply of documents does not give rise to a cause of action in itself and does not suspend the applicable limitation period in this case. 65. Finally, the fact that Deputy Chief Officer Taylor on 24 th July, 2014, wrote to Senator Ferguson (as she then was) and stated that the plaintiff had clearly been wronged as a result of actions by a former Deputy Chief Officer does not matter. In any event the email also makes it clear that the plaintiff had to find a legal basis for his claim at which point Deputy Chief Officer Taylor indicated that the claim could progress. Sadly, while there was a legal basis for a claim to be issued by the plaintiff in July 2009 (and possibly earlier) the claim had clearly become time-barred by 28 th July, 2012. 66. Accordingly the plaintiff's claims must be struck out. While this is an unhappy state of affairs for the plaintiff, and while I have expressed my displeasure at the length of time it took the police to respond to requests for information, a reasonable person in the position the plaintiff found himself could have issued proceedings. I do not know why the plaintiff did not take legal advice in 2009 when he had done so previously. However the fact that he had done so from two firms of lawyers between 2006 and 2008 means that it was open to him to do so again given the clear complaints he had made prior to 2009 and the recognition of those complaints in the Devon and Cornwall Police report released in July 2009 to the plaintiff. I therefore conclude that the plaintiff was not under a practical impossibility from commencing proceedings by 28 th July, 2009, and accordingly strike out the plaintiff's claim as being out of time. Authorities Pell Frischmann v Bow Valley

[2008] JLR 311 . Syvret v Chief Minister

[2011] JLR 343 . Classic Herd Limited v JMMB

[2014] JRC 217 . Ching v CI Trustee & Executors Limited

[2015] JRC 014 . Boyd v Pickersgill & Le Cornu

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