

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

B E T W E E N:-

JOHN CHRISTOPHER DEPP II

Claimant

-and-

(1) NEWS GROUP NEWSPAPERS LIMITED  
(2) DAN WOOTTON

Defendants

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SKELETON ARGUMENT ON BEHALF OF THE DEFENDANTS  
For Trial, 7 – 27 July 2020

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*Bundle references are to **file number/tab/page number** of the trial bundle*

**INTRODUCTION**

1. This is a libel claim brought by the Claimant (“C”), a well-known actor, against the publisher of *The Sun* newspaper and its associated website (“D1”) and a journalist employed by D1, Mr Wootton, who wrote the articles complained of (“D2”).
2. The claim, for damages and an injunction, is brought in respect of:
  - a. an online article first published on D1’s website on 27 April 2018 [1/1]<sup>1</sup>; and
  - b. an article published in *The Sun* on 28 April 2018 [1/5] (“the Articles”).

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<sup>1</sup> The headline of the online article was updated on 28 April 2018 and the updated version can be found at [1/3].

3. C complains of the whole of the Articles. The claim form was issued on 1 June 2018 [1/12] and Particulars of Claim (“PoC”) were served on 13 June 2018 [1/13]. The rival meanings are set out below, although the differences are not significant and the outcome of the case will not turn on meaning. It is common ground that both articles bear a *Chase* level one meaning that C was violent towards Ms Heard, caused her to suffer significant injury, and caused her to fear for her life.
4. C and Ms Heard were married between 2015-2017. C has separately issued a defamation claim in the United States against Ms Heard in respect of an article by her published in the Washington Post entitled, *“I spoke up against sexual violence – and faced our culture’s wrath. That has to change.”* (“the US libel proceedings”) [5/187]. The US libel proceedings were commenced in March 2019 [4/117] and are ongoing. In 2016-2017 there were also divorce proceedings in the US between C and Ms Heard (“the US divorce proceedings”) in the course of which Ms Heard obtained a Domestic Violence Restraining Order (“DVRO”) against C [4/112].
5. The Defence was served on 11 July 2018 and the Reply on 20 July 2018. The latest versions of these documents are the Re-Amended Defence dated 6 March 2020 (“RAD”) [1/14] and Re-Amended Reply dated 25 February 2020 (“RAR”) [1/15].
6. Ds rely on a substantive defence of truth pursuant to section 2 of the Defamation Act 2013 (“the 2013 Act”). The Particulars of Truth are set out at RAD [8(a)-8(q)]. Ds rely on fourteen specifically alleged incidents of abuse from 2012-2016 (some of which took place over multiple days), and allege more generally that *“throughout their relationship the Claimant was controlling and verbally and physically abusive towards Ms Heard, particularly when he was under the influence of alcohol and/or drugs”* (RAD [8(a)]).
7. C denies that the words complained of in the meaning relied on by Ds is true. C’s overarching case is that he *“has never hit or committed any acts of physical violence against Ms Heard. He has never done more than grab her arms to prevent her punching him in the face”* (RAR [2.1]), and he denies each of the specific allegations of

violence as alleged in the RAD. The truth of the allegations that C was verbally and physically abusive towards Ms Heard will be a contested matter at trial.

8. C also claims that the only substance to which he was addicted during the period in question was Roxicodone. An important issue at trial will be what substances (prohibited drugs, prescription drugs and alcohol) C was using during the relationship with Ms Heard and what effect these had on him; and what his mental state was generally during that relationship. It is Ds' case that C frequently lost control of himself during the relationship, partly because of his heavy drug and alcohol use, and also that his memory has been impaired by his heavy use of drugs, including prescription drugs and alcohol, throughout that relationship.
9. The broad issues for trial are: (a) the meaning of the Articles complained of; (b) serious harm pursuant to s. 1 of the 2013 Act; (c) truth pursuant to s. 2 of the 2013 Act; and (d) if C is successful, remedies.

## **BUNDLES, EVIDENCE, PRE-READING AND TIMETABLE**

### **Bundles**

10. There are the following trial bundles:

File 1:	Articles complained of Case documents Statements of Case Judgments and Orders Disclosure lists and Listing Questionnaires
File 2:	C's trial witness statements and hearsay notices Ds' trial witness statements/summaries and hearsay notices Parties' relevant interlocutory witness statements
Files 3-9:	Chronological and category-based documents bundle
File 3:	Disclosure documents: declarations/deposition transcripts/Court documents relating to US libel proceedings, divorce proceedings and <i>Bloom Hergott</i> litigation

- File 4: Disclosure documents: Court documents relating to US court proceedings; some text messages; some medical records; some emails; some videos/recordings/stills; some press articles
- File 5: Some press articles; telephone records; CCTV footage; some journal entries; Tweets; documents relating to other Court proceedings; diagrams and floor plans; correspondence
- File 6: Disclosure documents: agreed schedule of some texts messages; some photographs with accompanying metadata
- File 7: Disclosure documents: text messages
- File 8: Disclosure documents: some emails; some medical records; some photographs
- File 9: Disclosure documents: some medical records; some documents from divorce proceedings including some audio recordings; some journal entries; miscellaneous.

At the time of drafting this skeleton argument the parties are seeking to agree the contents of additional bundle inserts. Where bundle references are not yet available this is indicated below as [XX/XX/XX].

11. As the court is aware, there have been protracted and hard-fought disputes over C's disclosure. Finally, on 13 and 14 March 2020, C disclosed five large lever arch files of additional disclosure pursuant to the Orders of 6 [1/25] and 10 March [1/26]. These contained numerous documents which damage C's case, in some cases very seriously, and which, obviously, should have been disclosed by C months earlier. Ds will contend that C made a decision to withhold damaging documents from Ds and thereby flagrantly breached his disclosure obligations. There followed further failures by C to disclose documents, notably the failure to disclose the 'Australia Drugs Texts', resulting in the court's ruling of 3 July 2020 that C had breached the unless order of 10 March 2020. Ds will also contend that C deliberately sought to suppress documents by threatening sanctions against Ms Heard for providing documents from the US libel proceedings to Ds.

## Evidence

### C's evidence

12. C relies on witness statement evidence from himself [2/38], [2/54], numerous current or former employees or others who worked for him, one friend, two of his former romantic partners, and two others.

#### *Current or former employees or agents*

- a. Sean Bett: C's security guard [2/40]
- b. Malcolm Connolly: C's security guard [2/53]
- c. Travis McGivern: C's security guard [2/52]
- d. Stephen Deuters: C's former personal assistant [2/44]
- e. Kevin Murphy: C's former estate manager [2/42]; [XX/XX/XX]
- f. Ben King: C's former house manager [2/46]
- g. Hilda Vargas: C's housekeeper [2/51]
- h. Edward White: C's accountant [2/45]
- i. Samantha McMillen: C's former stylist [2/41]
- j. Brandon Patterson: General Manager of C's apartments at the Eastern Columbia Building in Los Angeles ("the Eastern Columbia Building") [2/50]
- k. Trinity Esparza: concierge at the Eastern Columbia Building [2/43]
- l. Cornelius Harrell: concierge at the Eastern Columbia Building [2/49]
- m. Alejandro Romero: concierge at the Eastern Columbia Building [2/47]
- n. Tara Roberts: [2/59B]: C's estate manager on his Bahamian property
- o. Starling Jenkins: [2/59C]; C's security guard

#### *Friends and former romantic partners*

- p. Isaac Baruch: C's friend [2/48]
- q. Vanessa Paradis: C's former romantic partner [2/58]
- r. Winona Ryder: C's former romantic partner [2/59]

#### *Others*

- s. Kate James: Ms Heard's former personal assistant **[2/56]**
- t. Katherine Kendall: #MeToo advocate, quoted in the Articles **[2/39]**.

13. In addition, as set out in his Civil Evidence Act 1995 notice of 20 February 2020 **[2/55]**, C relies as hearsay evidence on previous statements made by the following in relation to the US libel proceedings or US divorce proceedings:

- a. Jerry Judge: C's former security guard **[3/82]** (draft declaration)
- b. Laura Divenere: C's and Ms Heard's former interior decorator **[3/86]** (declaration dated 28 June 2019)
- c. Officer Melissa Saenz: a police officer who attended the Eastern Columbia Building on 21 May 2016 **[3/87]** (deposition transcript dated 18 July 2016)
- d. Officer Tyler Hadden: a police officer who attended the Eastern Columbia Building on 21 May 2016 **[3/88]** (deposition transcript dated 18 July 2016).

14. C cannot call Mr Judge as a witness as he is now deceased. C has chosen not to call Ms Divenere or Officers Saenz or Hadden as witnesses on the basis that to do so would be disproportionate. At the Pre-Trial Review on 26 February 2020 ("PTR") and following a hearing on 10 March 2020, Ds obtained Orders permitting them to call Ms Divenere and Officers Saenz and Hadden to be cross-examined at trial via video-link **[1/22/C72], [1/26/C101]**.

15. In addition, as set out in his Civil Evidence Act 1995 notice of 12 May 2020 **[2/59A]**, C relies as hearsay evidence on previous statements made by the following in relation to the US libel proceedings or US divorce proceedings:

- a. Lisa Beane (receptionist / office manager for Dr Kipper, a doctor who treated C and Ms Heard) together with exhibits 2, 3, 4, 5, 6 and 9 **[3/108]**
- b. Gaylynn Summerlyn (conciierge at the Eastern Columbia Building) **[3/102A]**

Ds' evidence

16. Ds rely on trial witness statement evidence from:
- a. Ms Heard **[2/60]** (First Witness Statement), **[2/71]** (Third Witness Statement), **[X/XX]** (Fifth Witness Statement)
  - b. Whitney Henriquez: Ms Heard's sister **[2/61]**
  - c. iO Tillet Wright: a friend of Ms Heard and C **[2/62]**
  - d. Kristina Sexton: Ms Heard's former acting coach **[2/63]**
  - e. Joshua Drew: Ms Heard's former neighbour at the Eastern Columbia Building and former husband of Ms Heard's friend Raquel ("Rocky") Rose Pennington **[2/64]**
  - f. Raquel Rose Pennington, a friend of Ms Heard's **[X/XX]**.
17. On 11 December 2019 Ds obtained permission from Deputy Master Bard to serve a witness summary for Melanie Inglessis **[1/65]**. C has agreed that Ds be permitted to adduce the evidence of Ms Inglessis from her summary.
18. In addition, as set out in their Civil Evidence Act 1995 notices of 16 December 2019 **[2/68]** and 19 February 2020 **[2/69]**, Ds rely as hearsay evidence on previous statements made by Elizabeth Marz, a friend of Ms Heard's **[2/67]**. Ds' solicitor, Mr Charalambous, has addressed the reasons why Ms Marz is not being called to give evidence at trial at paragraphs 30-33 of his second witness statement **[2/71A/E614-615]** and paragraphs 95-97 of his third witness statement **[2/71B/E645-646]**.
19. Ds have also served notices under the Civil Evidence Act 1995 in relation to some of the material in the following tabs of the trial bundle. In File 3: tabs 96, 99, 101-106. In File 4: tabs 119, all medical records relating to C (tabs 123-138 and 140, plus C's medical records contained in files 7-9), 139, 141, 143, 148, 150, 156-7, 158-160. In File 5: tabs 178, 180, 184, 186-7, 191-3, 196-8. Generally, Ds will rely on CPR 32PD.27 which provides that documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents unless a party gives written notice of objection. C has given no such notice.

20. A large number of witnesses and others have given declarations or been deposed in relation to the US divorce proceedings or the US libel proceedings. Where these are exhibited to a witness statement or summary in these proceedings they can be found in File 2 (Tabs 64, 66 and 67 in respect of Mr Drew, Ms Marz and Ms Pennington). Otherwise, they are contained in File 3 and File 9.

21. Ds will rely on the previous statements of their witnesses as previous consistent statements to the extent necessary under s. 6(2) of the Civil Evidence Act 1995, which permits a party who calls a person as a witness to adduce evidence of a previous statement made by that person *“for the purpose of rebutting a suggestion that his evidence has been fabricated”*.

### **Pre-Reading**

22. The following pre-reading is recommended:

- The Articles complained of
- The Statements of Case
- The trial witness statements and summaries (including exhibited documents)
- The parties’ skeleton arguments (including the documents referred to).

### **Trial Timetable, Case Summary, Chronology**

23. The parties have agreed a proposed trial timetable [1/7].

24. There is an agreed chronology at [1/8] and case summary at [1/11].

### **SUBSTANTIVE ISSUES**

#### Meaning: legal principles

25. These are well known to the court. The court is required to determine the sole natural and ordinary meaning of the words. It is the effect of the publication overall that counts: *Hewson v Times and Others* [2019] EWHC 650 (QB) at [40]. The principles



applicable in carrying out this task are contained in the judgment of Sir Anthony Clarke MR in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at [14]:

- (1) The governing principle is reasonableness.
- (2) The hypothetical reasonable reader is not naive 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': *Nevill v Fine Art and General Insurance Co Ltd* [1897] AC 68, 73, per Lord Halsbury LC.

### Proving the sting of the libel

26. As Brooke LJ explained in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 at [38]:

“... At the trial the jury must undertake a two-stage process. They must first decide whether on the admissible evidence called by the parties the defendant has proved to their satisfaction, according to the appropriate standard of proof, all or at least some of the factual propositions asserted by the particulars of justification. They must then decide whether the whole of the facts which they have found to be proved are such as to establish the essential or substantial truth of the ‘sting of the libel’.”

27. A defendant need only prove the substantial truth of an article. It can succeed by proving “*the main charge, or gist, of the libel*”: *Sutherland v Stopes* [1925] A.C. 47, HL. When considering substantial truth it is important to “*isolate the essential core of the libel and not to be distracted by inaccuracies around the edge – however substantial*”: *Turcu v News Group Newspapers* [2005] EWHC 799 (QB) at [105]. “*The requirement*

*that the defendant need prove only the substantial truth of what has been published entails that a defence of truth may succeed even though the publication was inaccurate in a number of respects”: Gatley on Libel and Slander (12<sup>th</sup> edn) at 11.8.*

Meaning: the rival contentions

28. The online and print articles were in different terms, although the differences were not substantial. The most notable difference is that print article did not allege in terms that C was a ‘wife beater’, instead referring in its headline to an ‘assault claim’. However for the purpose of determining meaning the differences are not material.

29. C pleads that the meaning of both the articles was as follows **[1/13/C12]**:

“the Claimant was guilty, on overwhelming evidence, of serious domestic violence against his then wife, causing significant injury and leading to her fearing for her life, for which the Claimant was constrained to pay no less than £5 million to compensate her, and which resulted in him being subjected to a continuing court restraining order; and for that reason is not fit to work in the film industry.” (PoC [10])

30. Ds’ meaning in respect of both articles is that **[1/14/C17]**:

“the Claimant beat his wife Amber Heard causing her to suffer significant injury and on occasion leading to her fearing for her life.” (RAD [8])

31. It is therefore common ground that the words allege:

- a. That C committed physical violence towards Ms Heard;
- b. That C caused her to suffer significant injury; and
- c. That C caused Ms Heard on occasion to fear for her life.

32. The differences between the meanings are therefore:

- d. Whether the words impute that C was ‘guilty on overwhelming evidence’;

- e. Whether the words impute that C was constrained to pay no less than £5 million to compensate Ms Heard for the physical violence he had inflicted on her;
- f. Whether the words impute that C's physical violence against Ms Heard resulted in him being subjected to a continuing court restraining order; and
- g. Whether the words impute that, due to C's physical violence against Ms Heard, he is not fit to work in the film industry.

33. It is to be noted that (contrary to the suggestion advanced by C's counsel at the PTR<sup>2</sup>), it is not case that the article alleged that he was violent towards Ms Heard on a large number of occasions. If Ds can prove C committed just one such act of violence, this would be sufficient for the purpose of proving substantial truth.

34. As to (a), the words 'on overwhelming evidence' make no difference to the meaning. Ds accept that they must prove *Chase* level one guilt: the fact the articles describe the evidence against him as 'overwhelming' does not change the standard of proof that Ds are required to meet. It is to be noted that in his PTR skeleton C did not refer to this aspect of the meaning as being part of the 'clear accusation' in the articles.

35. As to (b), the articles do not state or suggest that C paid the \$5 million to compensate Ms Heard for violence. The articles do not even say that Ms Heard sued him for damages. It is obvious from both articles that the \$5 million was paid as part of a divorce settlement. In any event, the payment is irrelevant to the sting, which is, as is common ground, one of violence. Again, C made no reference to this aspect of the meaning in his PTR skeleton.

36. As to (c), again the reference to the restraining order makes no difference to the sting. The articles say nothing about whether or not the order is 'continuing'; but, again,

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<sup>2</sup> In paragraph 15(1) of C's skeleton argument for the PTR it was alleged that the words impute that C "*is clearly accused of having seriously physically assaulted his former wife on numerous occasions causing her significant injury and leading to her fearing for her life, and for that reason he is unfit to work in the film industry*". (emphasis added)

whether or not the articles allege this is neither here nor there. The sting is one of violence. Nothing was said of this in the PTR skeleton.

37. As to (d), the words do not bear such a comment: they do say that JK Rowling is a hypocrite for casting him in his role, given she presents herself as a 'leading light for women in the entertainment industry', but this is a comment about Ms Rowling not about C. If the court were to find that this is a comment about C's fitness to work in the film industry, Ds have informed C that they will rely on the statutory defence of Honest Opinion under s.3 of the Defamation Act 2013.

Serious harm

38. C must prove to the court that he suffered serious harm to his reputation as a result of the articles.

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5RB

3 July 2020