Court of Appeal Reference: A2/2005/1093(A)

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Lower Court Reference:
Claim No. HQ03X03360

ALIN TURCU

Claimant/ Appellant

- and -

NEWS GROUP NEWSPAPERS LIMITED

Defendant/ Respondent

CLAIMANT'S THIRD SKELETON ARGUMENT FOR PERMISSION TO APPEAL

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1. C seeks permission to appeal the judgment of Eady J of 4 May 2005, dismissing his claim for libel. One of the proposed grounds of appeal is the emergence of evidence from Florim Gashi ("FG")[1], D's sole source for the articles complained of. C refers to the two skeleton arguments that have already been served on his behalf, in particular the second, dated 30 September 2005[2], which deals specifically with FG's evidence. By order of Rix LJ of 18 November 2005, C's application for permission to appeal was postponed until the outcome of a pre-trial application in *R v Martins & Others*. The order was made at D's request; C adopted a neutral stance as to whether the permission application should be delayed.

2. The judgment of the Recorder of London in *Martins* was delivered orally on 22 December 2005. Despite C's best endeavours, a transcript was not obtainable until recently.[3] The Court of Appeal has asked whether C wishes to make any further written submissions in the light of the judgment, an offer which C now accepts. In short, C's submits that, insofar as the judgment in *Martins* is relevant to his application, it bolsters his case, for the reasons set out below.

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[1] His witness statement is at tab 2 of the Appeal Bundle file 1.
[2] Tab 8 Appeal Bundle file 1.
[3] The Judgment has been supplied to the Court.

3. *R v Martins* is a prosecution of three defendants for conspiracy to import "red mercury" for terrorist purposes.[4] The uncontradicted evidence is that red mercury does not exist, however, it appears that what is relevant for the purposes of the law of conspiracy is the Defendants' belief as to its existence and potential use.[5] The prosecuton arises from a *News of the World* investigation led by Mazher Mahmood ("MM"), who was also responsible for the articles complained of in this appeal. Although FG was not involved in the Martins' investigation, he did give evidence in the Martins application, as did MM. Hence the application to delay C's application for permission to appeal. It is understood that both FG and MM will give evidence at the trial, which started on 24 April 2006 and is listed for 3 months.

4. The Martins' application was for a stay of the prosecution on a variety of grounds. These appear to be:[6]
   a) The conduct of MM and B (MM's source) amounted to entrapment;
   b) B's motivation has distorted his evidence;
   c) MM has acted in bad faith and dishonestly as a journalist for many years and it would be unconsciable to allow a prosecution to proceed that depended on evidence from him;
   d) The police investigation wrongly left MM unsupervised, amounting to entrapment by the police and unworthy conduct by an agency of the State.

5. In summary, the outcome of the application was that the Defendants did not persuade the Recorder that they were entrapped or that the conduct of the police and/or MM was such as to justify the stay of the prosecution.[7] Any concerns about the veracity of MM's evidence – and it is clear that the Recorder did have substantial concerns – could be examined within the trial process.[8]

6. As previously stated FG was not involved in the Martins' investigation. His evidence apparently came to the Defendants' attention as a result of a police investigation into his claims against MM, the existence of which was disclosed by the Prosecution. FG's evidence was directed to the general attack on MM's credibility that formed part of the application. In particular, it was alleged that MM

[4] See 8A-E of the judgment.
[5] 8E-H.
[6] 2C-3C.
[7] 21F-24E.
[8] 22H-23G.

had been *"untruthful about Gashi's role in the other News of the World stories which have been the subject of scrutiny in this hearing – both as to source, as to how in truth the story was worked up for the story's sake, setting up the subjects of the investigation, concealing payments and the recipients of payments".*[9] For example, FG alleged that following the collapse of the Beckham kidnap prosecution, MM invented a non-existent source called Artan to conceal FG's involvement in further investigations and that payments to Artan were, in reality, to FG.[10] This involved a direct conflict of evidence with MM who alleged that Artan was a real person.

7. Since the Recorder decided that issues as to MM's general credibility could be addressed at trial, it was not necessary for him to resolve any conflict of evidence between FG and MM. Furthermore, he did not make any observations in relation to the Beckham kidnap story, which was only mentioned in passing in the judgment.[11] He did however, comment on the credibility of FG and MM at pages 22E-23G:

"3) That much of the material that the defence have deployed comes from Florin Gashi. The prosecution detail on page 31 of their written submissions 12 reasons why in outline alone they submit that his evidence to the court in this hearing is unreliable and unworthy of belief. They are compelling reasons. Gashi, himself, accepts that he has lied to the Police. When taxed as to why he told some of those lies – in part, lies which touch upon his accusation against Mazher Mahmood, he simply could not give the Court any explanation at all.

4) However, the prosecution accept and I find that, in certain respects, his allegations against Mazher Mahmood are supported by other evidence. I have already drawn attention to the transcription of the Exhibit MM/4 demonstrating that Mazher Mahmood's explanation about his source for that story cannot be right. The Artan payments explanation given by Mazher Mahmood simply does not make sense and the News of the World payment system in failing to distinguish between recipients provides him with no comfort in this part of his account. It is very difficult to see why Dominique Morris is untruthful or inaccurate in the evidence that she gave to the Court about the extent of her work with Mazher Mahmood being limited to one unsuccessful encounter at Victoria Station which is in flat contradiction of Mazher Mahmood's explanations in this area where there is little or no room for failing memory as being the explanation for the difference - - It is, however, noteworthy that Gashi does not touch the subject matter of this indictment except in a passing reference to an overheard conversation which he recounts in terms consistent with a set up. It is part of his evidence which does not have support elsewhere. I also note that Dominique Morris, herself, provides no support for the Artan side of Gashi's evidence."

[9] 16F-G.
[10] 15G-17C.
[11] 14F.

8. It is evident that the Recorder found that there were "compelling reasons" for doubting FG's credibility as a witness. Indeed, C has accepted in his second skeleton argument to this Court that FG's general credibility is open to obvious attack. It goes without saying that skill at deception was a necessary part of the work that FG did for MM in relation to the Beckham kidnap and the other stories in which he was involved. However, what is significant about the Recorder's approach, is that notwithstanding the attacks that could be made on FG's general credibility, the Recorder was prepared to accept the apparent credibility of his evidence in certain respects. FG's evidence could not be dismissed as untruthful simply because he had lied on other occasions. The Recorder was clearly seeking to evaluate FG's evidence in the context of the other available evidence. In particular, the Recorder appeared to prefer FG's evidence to that of MM in relation to the Artan payments.

9. If there is any conclusion to be drawn from the Recorder's judgment it is that, depending on the facts of the particular case, the evidence of FG is capable of belief. One cannot simply dismiss his evidence because of his previous lies. As with any witness, it is necessary to evaluate the evidence in the context of the available corroborating or conflicting evidence and the inherent plausibility of the evidence itself.

10. C does not intend to repeat his second skeleton argument, which sets out the basis on which it is contended that FG's evidence in this case is apparently credible (or at least arguably so). However, it is worth highlighting the similarities and contrasts between this case and *Martins* both of which assist C's application for permission to appeal.

11. FG's witness statement in the instant case can be divided into two distinct allegations: First, that the Beckham kidnap story was a set-up and second, that MM was party to this. The first allegation is relevant to justification (and therefore liability) and the second only to damages. A material difference between this case and *Martins* is that it is not a necessary part of C's rebuttal of the justification defence that MM lied or was party to any set-up. As far as rebutting the justification defence is concerned, what matters is whether the "kidnap plot" was a non-existent set-up, not whether FG or MM came up with the idea.

12. The corollorary is that, in contrast to his evidence in *Martins*, FG's evidence in relation to justification cannot be contradicted by MM or indeed any other witness evidence. D's case rests entirely on the recordings and no other witness can give evidence for D about what was said by Gashi to prompt the events that were recorded. Furthermore, in common with at least part of FG's evidence in *Martins*, FG's witness statement in the instant case is supported by all the other available evidence and is inherently plausible.

13. For ease of reference, attached to this skeleton is a version of FG's witness statement that is limited to evidence relevant to justification; all of which is either admitted by D or cannot be contradicted by any other witness evidence adduced by D. The footnotes contain references to the corroborating evidence and factors rendering the statement inherently plausible.

14. Notwithstanding what is said above, there may be conflicts of evidence between FG and MM that are relevant to certain aspects of the proposed appeal. In particular, the ongoing financial relationship between MM and FG following the Beckham kidnap story provides an obvious motivation for FG not to tell the truth sooner. The suggestion that MM actively sought to prevent FG giving evidence at trial may be relevant in explaining why his evidence was not available. It would appear that the judgment in *Martins* effectively accepts the apparent credibility of FG's evidence that MM continued employing FG while trying to hide the fact through the creation of "Artan". The Recorder stated in terms that "*the Artan payments explanation given by MM simply does not make sense*".[12] It is apparent that he reached such a conclusion with the benefit of disclosure of relevant accounting documentation. Since September 2005 when FG emerged as a witness for C, C's solicitors have requested, without success, disclosure of payment documentation and mobile phone records. On 17 November 2002, D's solicitors stated that "it is our client's intention to disclose these [the payments] as part of wider rebuttal evidence". They also stated that it was anticipated that the telephone records would form part of such wider response. No evidence has been served by D. The Defendants' solicitors in *Martins* are unable to provide C's solicitors with any of the documentation disclosed to them through the criminal proceedings. In consequence, C's solicitors remain in the dark as to what documentation persuaded the Recorder to conclude that MM's Artan

[12] 23B.

explanation made no sense. In the absence of disclosure by D, the Court will be invited to infer that such disclosure would bolster the credibility of FG's account.

15. Finally, in answer to the concerns raised by D when seeking a postponement of this appeal, there is nothing in the judgment in *Martins*, which would be inconsistent with permission to appeal being granted. After all, the grant of permission is merely a recognition that there is a real prospect of the full Court finding that a witness' evidence could be believed in any material respect at a retrial. It is two steps away from an acceptance that the evidence is truthful. More fundamentally, it would be perfectly open for FG's evidence to be accepted as truthful in this case, without any possible inconsistency with the judgment in *Martins*.

16. In all the circumstances, it is submitted that C has conclusively demonstrated that the credibility of FG's evidence in these proceedings, is at least worthy of investigation on a substantive appeal.

DAVID PRICE
Solicitor-Advocate for the Claimant
27 April 2006