

**Claimant
Gideon Benaim
Second
30 November 2017**

Claim no. HC-2016-002849

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

B E T W E E N:

SIR CLIFF RICHARD, OBE

Claimant

-and-

(1) THE BRITISH BROADCASTING CORPORATION

(2) THE CHIEF CONSTABLE OF SOUTH YORKSHIRE POLICE

Defendants

SECOND WITNESS STATEMENT OF GIDEON BENAIM

I, **GIDEON BENAIM**, of Simkins LLP, Lynton House, 7-12 Tavistock Square, London WC1H 9LT

WILL SAY as follows:-

- 1 I am a solicitor and a Partner at the law firm, Simkins LLP, which has acted for the Claimant for many years and which is representing the Claimant in these proceedings. I have responsibility for the overall conduct of this matter on behalf of the Claimant.
- 2 I make this statement from matters within my own knowledge or on the basis of information provided to me as indicated in this statement. Insofar as the matters set out in this statement derive from my own knowledge, they are true. Where matters are not within my personal knowledge they are true to the best of my information and belief.

3 So far as concerns legal professional privilege, I refer to p.6 of this firm's letter to the BBC dated 19 October 2017, where we stated the extent to which privilege was being waived for the purpose of the First Trial. Nothing in this statement is intended or should be taken as any further waiver.

4 I consider I should also say at the outset that the matters to which I speak in this statement are set out without prejudice (a) to any submissions that may be made on the Claimant's behalf as to the proper, and limited, scope of the issues that fall to be determined at the First Trial, and as to the nature of the evidence that is or may be relevant to those issues, and (b) to the burden of proof that may rest upon the Defendants in respect of any issue that has been raised or may hereafter be raised in these proceedings.

History of representation of the Claimant

5 The Claimant has been a client of Simkins LLP (formerly Michael Simkins LLP and, before that, The Simkins Partnership) for approximately 50 years. The Simkins Partnership was initially instructed to provide commercial legal advice and assistance to him on the development of his musical career. Over the years, however, the firm has also provided extensive advice to the Claimant in respect of his commercial and corporate affairs, his property interests, his philanthropic work and more recently, his reputation.

Events leading up to the BBC's broadcasts of 14 August 2014

6 On 14 August 2014 at approximately 10:05am I received a telephone call from Malcolm Smith, the Claimant's business manager, to tell me that he had spoken with the property manager at the Claimant's apartment in Sunningdale, and that that person had informed him that the police were at the apartment complex with a search warrant. Mr Smith said that he had also been informed that there was a media presence outside the property.

7 Mr Smith and I discussed the situation briefly, and shortly after I called BCL Burton Copeland ('BCL'), who are a specialist criminal law firm and who had previously given some advice to the Claimant. I asked to speak to (one of the BCL partners) Paul Morris, who was the person who had given the prior advice, but I was told that he was unavailable at that particular

moment. I was therefore put through to Omar Khan, who at the time was one of the solicitors at BCL and was also someone who I had worked with previously. I informed him about the situation in Sunningdale. At that point neither I nor Mr Smith had any information at all about the reasons for the police search.

8 Whether on that initial call, or possibly on a call very shortly afterwards, I spoke to Paul Morris in addition to Mr Khan and asked them if they would be prepared to travel to the Claimant's apartment urgently to find out what was happening and why. Naturally, I wanted to understand what was going on at the Claimant's apartment so that the Claimant and Mr Smith could be informed, but also I realised that without additional information it would be very difficult to advise the Claimant further from a legal point of view. Mr Morris agreed that he and Mr Khan would go there immediately

9 It was not until Mr Phil Hall of PHA Media, the Claimant's PR firm, spoke to a Ms Bernadette Kitterick of the BBC at around 11:15am that I found out some limited further information. For example, although I was aware there was a media presence outside the Claimant's apartment, I did not know who was there or what they might intend to publish, nor why the police searching. All I learned as a result of Ms Kitterick's call with Mr Hall was that the BBC knew that the police were searching an apartment in Sunningdale and that they were planning to broadcast some kind of story at an unspecified time later in the day.

10 The next thing I learned materially was what was set out in Ms Kitterick's email to Mr Hall at 12:24pm. Mr Hall sent me a copy of this email not long after he had received it. In this email Ms Kitterick stated that the South Yorkshire Police ("the SYP") had informed the BBC that officers from the SYP had gained entry to a property in Sunningdale, that officers were searching the property, that a search warrant had been issued to the police arising out of an allegation of a sexual nature dating back to the 1980s involving a boy under the age of 16 at the time, and that the owner of the property was not present. This was the first time that I became aware of the involvement of the SYP and the nature of the allegation that they were apparently investigating in relation to the Claimant. For the avoidance of doubt, I had received no further information from Paul Morris or Omar Khan by this time. They did not

manage to gain entry to the Claimant's apartment and obtain information from the police about what was going on until about 12:50pm, whereupon they promptly relayed it to me.

11 At around this time Mr Hall also informed me that he had recently spoken to Ms Kitterick again. So far as I can recall, the only further information which he gleaned from her in the course of this call in addition to that which she had set out in her 12:24pm email was that the BBC intended to break the story "within the hour".

12 Even at this stage, Ms Kitterick did not inform Mr Hall that the BBC had a whole team of reporters on standby ready to report live, that they planned to lead with the story on the 1 o'clock news as an exclusive, that they planned to broadcast aerial footage of the property, or anything else of that nature of significance. She hadn't even expressly confirmed that they would be naming the Claimant. In this connection, I should say that I have read the witness statement made by Mr Hall for the purpose of the First Trial, and I agree with everything he says there about the inadequacy of the information that was provided to the Claimant by the BBC about what they intended in the lead-up to 1pm that day.

13 When I think of this today, I still find the BBC's failure to give the Claimant advance warning of these things simply staggering. I would have expected any responsible major media organisation in the country, especially the BBC, to have given the Claimant proper notice of what they proposed to broadcast, both in terms of its informational content and its scale, well before doing so, that is to say, sufficient notice to afford him a meaningful opportunity to exercise his Article 8 ECHR right to respect for private life, including if so advised by applying to the Court for an interim injunction to prevent broadcast. The BBC did not do so, and there was no good reason for them not to do so. Furthermore, there was no reason for them to go ahead with broadcasting as they did at 1pm, as opposed to later on that afternoon, other than, so it would appear, to protect what they regarded as an 'exclusive'. To this end, they apparently had no respect for the Claimant's rights and interests at all.

Events after the BBC's broadcasts of 14 August 2014

14 From the afternoon of 14 August 2014 onwards, I and other solicitors at Simkins did our best to mitigate the damage that was being done to the Claimant, entirely foreseeably, as a direct

consequence of the BBC's broadcasts, including by taking such reasonable and appropriate steps as we could to prevent any such consequential damage being caused. This, in essence, is what the Claimant asked us to do, and what we endeavoured to achieve.

15 Quite clearly, but for the BBC actions on that day there would have been no need for the vast majority of the work we did for the Claimant over the next 22 months (nor this litigation). In all likelihood we would have just carried on advising the client on the same low level and intermittent basis we had been advising him on before 14 August 2014.

16 Certain information about what this firm did for the Claimant following the BBC's broadcast is set out at paragraph 2.2 of the Claimant's Response to the Defendant's Request for Further Information. The detailed narratives that accompanied the invoices (which have been disclosed) also describe the work undertaken.

17 In particular, during the period from 14 August 2014 until 26 October 2016, members of my team (myself included) found themselves spending a significant proportion of their working lives, regularly including significant time during evenings and weekends, occupied in relation to the activities such as the following on behalf of the Claimant:

17.1 *reacting to defamatory material posted online*

Prior to the BBC's decision to broadcast, the Claimant was aware that there were a number of (anonymous) individuals who had taken it upon themselves to make false allegations about the Claimant. It is not appropriate to repeat the false allegations in this statement, but suffice to say they often – entirely falsely - accused the Claimant of being involved in serious criminality, including in relation to sexual offences. The BBC's broadcasts granted an air of legitimacy to these false allegations, and it appeared that not only were the allegations in question being viewed in greater numbers than before, given the suspicion which the Claimant had been publicly placed under by the BBC, but it also fuelled people's confidence that they could make further (false) allegations with impunity.

Trying to deal with online platforms is rarely straightforward, and often it becomes difficult and elongated. For instance, my firm liaised with Facebook to try to close a particularly distressing Facebook page which was created on 14 August 2014 called "Christians Against

Cliff". This is but one example of a much wider phenomenon in which individuals published particularly nasty and damaging comments about the Claimant, apparently with little concern about the possibility of ever being held to account. It was clearly no coincidence that the Facebook page mentioned above was created on the day the BBC had broadcast the search, and the BBC's actions led to other extremely unpleasant, offensive, and seriously damaging comments about the Claimant.

There were many other videos and defamatory posts uploaded to YouTube, Facebook and Twitter, as well as comments published on blogs and websites. These had to be considered from a legal perspective so that advice could be given to the Claimant.

17.2 *respond to mainstream print, online and broadcasters' enquiries or reacting, or providing comments in relation to articles or broadcasts if we were not contacted pre-publication or prior to the broadcast*

Throughout the period of the police investigation, there were multiple requests from mainstream national media – online, print and broadcast – for information in relation to the investigation into the Claimant. I believe that this was a direct, foreseeable, and unavoidable consequence of the BBC's broadcast. It was as a result of the BBC coverage that such media attention was focused on the Claimant throughout the 22 months of the investigation, and which continued more or less unabated throughout.

The result of this was that there were a number of instances in which we, or PHA Media in the first instance, were contacted prior to publication about a story that a particular media organisation intended to publish. The topics deemed 'newsworthy' ranged from supposed facts connected to the allegation and/or investigation, the number of complainants, the progress of the investigation, the health of the Claimant, or, anything else that was apparently of interest. This firm therefore had to scrutinise the media to ensure insofar as was possible that inaccuracies were not published and if they were, that they were corrected as quickly as possible.

Sometimes our legal advice was given behind the scenes, and at other times we engaged directly with the media. For example, over the 22 month period we wrote numerous letters to

publishers and broadcasters including the Daily Mail, the Mail on Sunday, the Sunday Mirror, the Sunday Times and Sky, as well as the BBC.

17.3 *draft legal letters and notices*

The Claimant had effectively lost his right to privacy in respect of the investigation as a result of the BBC's broadcast and he was faced with the constant risk, or reality, of intrusion by the media. On one specific occasion we had to prepare and circulate a legal notice in relation to a photographer who was seen taking photographs of the Claimant in the grounds of his home in Portugal. On another occasion, we had to complain to the Press Complaints Commission (as it then was) to ask them to inform the media that the Claimant did not consent to door stepping or persistent questioning of his friends and family. The media (or at least, certain elements of it) clearly felt that the Claimant's privacy had been eroded to such a degree by the BBC's broadcast that they were entitled to obtain information in any way possible and from anyone with any connection – however remote – to the Claimant.

17.4 *advise in relation to the potential 'blackmailer'*

On 20 August 2014 an individual contacted Neil McLeod at PHA Media who said he was calling on behalf of his friend, whom he said he represented. He said that his friend had made allegations about the Claimant. The individual made it clear, either on that call or on a subsequent one in which the would-be 'blackmailer' was present, that his friend required a financial 'reward' or compensation in order to agree not to publicise his 'story', and, that the 'latest news' had affected him and he was very upset. The person posted comments on Facebook and Twitter on quite a regular basis. These were often offensive and outrageous. He also posted on the Claimant's Facebook page.

This firm liaised with the client and PHA about the 'blackmailer' and advised the Claimant on whether he should take action in relation to the allegations that had been posted online. We advised in relation to an article which was due to be published in the Sunday Mirror which purportedly featured an interview with the 'blackmailer' and also in relation to the claim that the 'blackmailer' had been interviewed by the BBC. We did this as well as liaising with BCL

given the Claimant had reported the matter to the police. This issue caused the Claimant significant distress and he had to be properly advised by us.

17.5 *advise in relation to the Defendants' attendance at the House of Commons Home Affairs Select Committee hearing*

The Home Affairs Select Committee (“HASC”) was called as a direct result of the collusion between the BBC and SYP, and was convened in order to address the issues of the police’s interaction with the media.

The Claimant needed to be legally advised of his rights. Furthermore, I was contacted directly by the Right Honourable Keith Vaz and had to consider how best to respond. Generally speaking, it was an unfortunate consequence for the Claimant that each time HASC said or did anything, it tended to create a round of unwanted publicity. It meant that careful advice was needed about how to deal with the situation.

17.6 *assist with potential immigration issues that the Claimant might have following the broadcast of the search and liaising with US immigration specialists*

As a result of the BBC’s broadcast the fact and nature of the allegation and investigation were known across the world. But for the BBC’s actions, the Claimant would have been under no obligation to disclose the fact of an investigation to the US immigration authorities (as he had not been arrested, charged or convicted), but the fact that it was so well known meant that the Claimant was understandably concerned that if he sought to travel into the United States (as was his intention given that he frequently visits or passes in transit) the issue of the police investigation would be raised and he may have encountered problems. We therefore had to instruct US immigration specialists to advise how best to avoid such a situation as well as how to deal with the media if the Claimant’s concerns became a reality.

17.7 *advise on the media interviews with ITV and the Daily Mail following the CPS decision.*

The Claimant’s decision to conduct media interviews following the CPS’s decision was made on the basis that it was likely the only way to reach as many people as possible to tell them that the investigation was over. He needed to do this because the BBC’s initial actions and

the foreseeable media furore that followed had reached such a massive audience, that he needed to try to do something that would at least go some way to try to reach the same people who had heard the original allegation.

It was wholly appropriate and foreseeable that he would need advice on the interviews and the terms of his agreements with those companies, and in respect of the questions he might be asked in the interviews and what he could or should not say from a legal perspective.

18 Put simply, it was an intense period of time which involved the need to be available at short notice at all times of the working day and sometimes at night, and to react to the media storm that had been created following the BBC's actions. But for the BBC's actions we would not have been required to undertake the vast majority of the work we did for the Claimant, certainly not at the level we did.

19 There were approximately 13,000 emails exchanged in relation to the matter between August 2014 and June 2016 which highlights the sheer volume of work that this firm undertook for the Claimant during the period. Furthermore, preparatory work was undertaken so that we could be in a position to react quickly should it be necessary (which it often was) which inevitably increased costs where draft statements or letters had to be prepared.

20 We worked throughout the period alongside the Claimant's PR advisers, which is an entirely normal practice and indeed necessary in crisis situations; which is clearly what the Claimant found himself in due the BBC's actions. PHA's role was distinct from ours as they fielded the enquiries from the media, often provided the first response (with input from us) and liaised with journalists on trying to establish if a publication or broadcaster was likely to publish a story and if so how so.

21 Fuller details of the work carried out by Simkins LLP throughout the period are contained in the invoices and activity summaries that have been provided to the Defendants through the disclosure process. I confirm that the activity summaries represent a true and accurate contemporaneous account of the work undertaken by Simkins LLP on the instruction of the Claimant. Furthermore, for the avoidance of doubt, if there is any about the matter, I am

personally satisfied that at all material times the Claimant has been under a liability to pay the fees for the work that my firm has done which is the subject of the disclosed invoices.

Statement of Truth

I believe the facts stated in this witness statement are true.

Signed 

Gideon Benaim

Dated: 30/11/17

Claimant
Gideon Benaim
First
30 November 2017

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**WITNESS STATEMENT OF
GIDEON BENAİM**

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