

IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

B E T W E E N:-

MR MATTHEW GARRETT

Claimant

-and-

(1) MR ROY SCHESTOWITZ
(2) MRS RIANNE SCHESTOWITZ
(aka RIANNE DIOLA)

Defendants

CLAIMANT’S REPLY AND DEFENCE TO COUNTERCLAIM

1. References to paragraph numbers are to those in the Amended Defence and Counterclaim unless otherwise indicated.
2. The Claimant joins issue with the Counterclaim save where the same is consistent with the Particulars of Claim, consists of admissions, or where the content is expressly admitted in this Reply and Defence to Counterclaim.

Reply

3. Paragraph 5 is denied, save that: the Claimant is unable to admit or deny the Defendants’ belief set out in the sixth sentence, as it is outside his knowledge; and as to the final two sentences of the paragraph it is admitted that the Defendants are active proponents of free and open-source software and they write about such matters on their websites. It is denied that the Claimant conducted a campaign of harassment against the First Defendant, because it is untrue: paragraphs 10 to 12.13 below are repeated. Insofar as the “*campaign*” refers to something other than the alleged campaign of harassment (set out in the Amended Schedule

of Harassment) it is unparticularised and not possible to plead to it. It is denied that the Claimant has engaged in a campaign of harassment at the behest of or in the interests of ‘big tech’, including Microsoft, or at all. The Claimant is a leading free software activist and any such alleged motivation attributed to the Claimant is denied.

4. As to paragraph 6 (and paragraph 32.5), it is denied that any of the Claimant’s legal actions towards the First Defendant amount to harassment, which are in any event not properly particularised in that paragraph. Without prejudice to this position:

- 4.1. It is denied that the Claimant sent “*some three or four Letters of Claim*” to the First Defendant. The true position is set out below.

- 4.2. The Claimant’s solicitors sent each of the Defendants a letter of claim on 8 February 2024 by post and email, setting out the claim now brought against each of them in accordance with the pre-action protocol. Neither of the Defendants responded. The Claimant then issued the present claim.

- 4.3. The Claimant’s former solicitors, Judge Sykes Frixou, sent the First Defendant a letter of claim for defamation on 23 November 2021 by post and email relating to a blog post on joindiaspora.com and a tweet linking to it. The blog post was taken down shortly after and is no longer available online. The Claimant did not bring a claim in respect of these publications in the circumstances.

- 4.4. The Claimant did not send a letter of claim to the Second Defendant “*When the First Defendant ignored the threats from the Claimant*”. In that regard, the only letter of claim sent to the Second Defendant is that described at paragraph 4.2, above, and was sent at the same time as the letter to the First Defendant.

- 4.5. It is denied that the Claimant’s solicitors sending these letters could amount to part of a course of conduct of harassment complained of in the Counterclaim. These letters were legitimate legal letters sent by the Claimant’s solicitors.

5. Paragraph 7 is not properly particularised, and impossible to plead to. It is entirely unclear what the “*attacks*” referred to are. Without prejudice to that position, it is denied that the Claimant made attacks against the First Defendant’s siblings, mother, or grandparents. It is outside the knowledge of the Claimant if the First Defendant’s siblings, mother, or grandparents were the subject of attacks and whether such matters were referred to the police.

6. As to paragraph 8, paragraph 19 below is repeated.

Reply to Lucas-Box Meanings

7. As to paragraph 15.18 and 15.18.1, the *Lucas-Box* meaning pleaded is defective as it not defamatory of the Claimant and on the Defendants' case does not refer to the Claimant at all (the meaning pleaded by the Defendants is "*the Claimant's partner has exposed herself indecently*") and so a truth defence is not sustainable. It is liable to be struck out unless it is withdrawn.

Reply to Defence of Truth

8. As to paragraph 15.20, it is admitted that the Claimant posted on the Defendant's IRC network using the username mjpg59_ from about 2020.
9. Paragraph 15.21 is denied, save that it is admitted that his username mjpg59_ was temporarily muted by a moderator in around 2021, and the Claimant is unable to admit or deny the basis or rationale of the moderator's subjective reasoning as to him being muted as this is outside his knowledge. The Claimant was subsequently unmuted. A number of other users have been 'muted' (i.e. by being selectively not given 'voice' on IRC or being set to 'quiet') prior to 2021, including the following connection addresses: Diablo-D3!*@*, abeNd-org!*@* and *!*@@89.194.29.165.
10. Paragraphs 15.22, 15.23, 15.25 and 15.26 are denied. The Claimant operated an account using the username mjpg59_ and did not covertly operate the other accounts identified in the Amended Schedule of Harassment to the Defence and Counterclaim ("**the sock puppet accounts**") and did not post any messages associated with them.
11. Paragraph 15.24 is denied. The Claimant has not falsely represented complaints to the First Defendant's webhost. The Claimant emailed the Defendants' webhost on 30 September 2023 to complain about articles referring to him which included some of those the subject of the present action.
12. Paragraph 15.27 is denied. The Claimant did not operate the accounts identified:
 - 12.1. There is no demonstrated continuity of account usage by the Claimant with any of the sock puppet accounts, nor have the Defendants demonstrated the use of the same IP address or any other technical means to link the Claimant to the sock puppet accounts, in circumstances where it can be inferred this information was and is available to the

Defendants. This is because the Claimant did not and does not operate the sock puppet accounts, as he has long made clear.

- 12.2. On occasions, the Claimant was demonstrably engaged elsewhere carrying out work-related duties and tasks when messages by sock puppet accounts were being sent on the IRC channel. Such activities rendered it practically and physically impossible for him simultaneously to have engaged in IRC communications under the sock puppet accounts, as alleged.
- 12.3. Paragraph 15.27.1 is denied. There was no simultaneous dropped connection to the mlg59_ (the Claimant's account) and elusive_woman accounts. On 28 April 2023, the user elusive_woman quit the Techrights IRC channel at 09:52; the Claimant (mlg59_) quit the Techrights IRC channel at 09:53. The gap between both users timing out was 11 seconds. The Claimant will refer to a number of other users' connections timing out within seconds of elusive_woman, including the First Defendant (schestowitz[TR]), to rebut any suggestion this links the Claimant to the account.
- 12.4. Paragraphs 15.27.2 and 15.27.3 are denied. The Claimant did not switch between the names of 'sock puppet' accounts as he did not operate any of them.
- 12.5. Paragraph 15.27.4 is denied. The number of messages by sock puppet accounts significantly reduced before 10 August 2023, and it is the Defendants' case that the First Defendant emailed Tor administrators on 21 August 2023 per the Response to the Part 18 Request dated 6 January 2025.
- 12.6. Paragraph 15.27.5 is denied. The Defendants' Response to the Part 18 Request dated 6 January 2025 states that the similar language of mlg59_ and whitenigga relied upon is set out in the (Amended) Schedule of Harassment. The schedule refers to the user whitenigga at messages 206 and 207. The words set out there are not similar to any published by mlg59_ in the schedule.
- 12.7. As to paragraph 15.27.6, it is admitted that the Claimant was raised, until the age of 5, in the Republic of Ireland, but he does not speak Irish. The Claimant is unable to admit or deny whether the Irish language has otherwise been seen on the First Defendant's IRC network.

- 12.8. As to paragraph 15.27.7, the post referred to is not identified, but it is denied that the Claimant used the sock puppet account elusive_woman.
- 12.9. As to paragraph 15.27.8, it is admitted that the Claimant stated on 1 January 2023, after messaging “*happy new year*”, that “*maybe 2023 is the year where I’ll finally suffer the consequences of my actions*”, it is denied that this was an admission of using sock puppet accounts. It was a humorous comment that should be understood in the context of the IRC channel discussion. This was plainly not any admission of wrongdoing, nor could it be rationally understood as such. Further, this statement was before the alleged course of conduct amounting to harassment, on the Defendants’ case, even began, the first message complained of by the Defendants being sent on 23 April 2023.
- 12.10. As to paragraph 15.27.9, the Claimant does use more than one computer, depending on his location, which has the control (ctrl) key in a different location on the keyboard, but he does not use multiple computers simultaneously on the IRC network and it is denied he made an admission of doing so, if that is what is alleged.
- 12.11. As to paragraph 15.27.10, further to the Defendants’ clarification in the Response to the Part 18 Request dated 6 January 2025, it is admitted that the Claimant changed his IRC username to that of another longstanding user on 5 July 2023, but he made clear he was doing so and it is clear from the IRC logs that he had done so as the IRC logs recorded the change of name from mjpg59_ to the other name. IRC lets you select any nickname that is not currently in use or “NickServ”-registered. The Claimant joined in after other users changed their usernames to those of other users, as part of humorous impersonation of the same. The Claimant will rely upon the full context of the exchanges if necessary. It is denied that changing an IRC username is similar to the use of the sock puppet accounts by person(s) unknown. On no occasion have the IRC logs recorded the Claimant’s username of mjpg59_ being changed to one of the sock puppet accounts.
- 12.12. Paragraph 15.27.11 is not understood and the Claimant is unable to plead to it. It is entirely unclear what this particular post by a sock puppet account does to link the operation of the account to the Claimant.

12.13. Paragraph 15.27.12 is wholly unparticularised. Without prejudice to this, it is denied that there is any sufficient similarity of language between sock puppet accounts and the Claimant's use of language to draw the inference that he is behind them.

Reply to Defence of Honest Opinion

13. As to paragraph 16, it is denied that the Defendants are entitled to rely on a defence of honest opinion. The statements complained of are factual. In the alternative, any opinions held are based on false facts contrary to section 3(4) of the Defamation Act 2013: paragraphs 10 to 12.13 above are repeated. This defence adds nothing to the defence of truth, the reply to which is set out above.

Reply to Defence of Public Interest

14. As to paragraph 17, it is denied that the Defendants are entitled to rely on a defence of public interest under section 4 of the Defamation Act 2013. Paragraph 17 discloses no reasonable grounds for defending the claim.

15. Further, the plea at paragraph 17 is defective. The Defendants' "*careful*" investigation and when it took place in relation to each publication is entirely unparticularised, save for a wholesale incorporation of paragraphs 15.20 to 15.27. The reasonable belief of the Defendants and each of them must be held at the time of publication, and it is unclear which elements of the defence of truth were relied upon as part of the assessment the Defendants contend they undertook before publication. Impermissibly a number of the particulars pleaded in support are clearly matters arising after publication, including:

15.1. The email to the Tor administrators pleaded at 15.27.4 as clarified in the Response to the Part 18 Request dated 6 January 2025, was sent at 11.16 am on 21 August 2023. Publications 1 to 11 were published before this message was sent and so any reduction in the alleged sock puppet harassment (which is denied, paragraph 12.5 above is repeated), could not have been known.

15.2. The similarities in themes and language pleaded at 15.27.5, as clarified in the Response to the Part 18 Request dated 6 January 2025, relates to two IRC messages on 15 October

2023 (at 206 and 207 of the Schedule of Harassment). Save for Publication 23, the other publications were published before 15 October 2023.

15.3. Accordingly, the Defendants and each of them are put to proof that they each considered the matters at paragraphs 15.20 to 15.27 before publication of each of the publications complained of.

16. The Claimant pleads to paragraph 17 without prejudice to the contentions above. There was no public interest in the Defendants publishing false allegations about the Claimant to substantial followers in the circumstances of this case and the Defendants and each of them could not have reasonably believed that there was any such public interest:

16.1. It is denied that the words complained of were each statements on a matter of public interest.

16.2. It is not admitted that the Defendants and each of them believed that publishing each of the publications complained of was in the public interest. The Defendants and each of them are put to proof that this is something each considered before each publication for which they are responsible. It is denied that each Defendant had a reasonable belief that publishing and continuing to publish each of the publications was in the public interest pursuant to section 4(1) of the Defamation Act 2013. In particular:

16.2.1. given the seriousness of the meanings of each of the publications, there was a high burden on the Defendants and each of them to verify the information;

16.2.2. the Defendants and each of them failed to contact the Claimant to seek his explanation before each publication, nor was the Claimant's position properly included or any comment on his behalf;

16.2.3. the evidence that the Claimant is behind the sock puppet accounts is weak and circumstantial and/or impermissible for the purposes of a public interest defence: paragraphs 10 to 12.13 above are repeated, and contrary to what the Defendants must have known to be the true position. For instance, the Defendants and each of them must have been aware that the dropped connection pleaded at paragraph 15.27.1 was not simultaneous, that the alleged 'admission' at 15.27.8 was before the alleged course of conduct amounting to harassment, on the Defendants' case, even began. To the extent that the

Defendants engaged in any independent fact checking at all, which is not admitted, they failed to uncover this large number of factual inaccuracies, and so were not merely negligent but positively reckless;

16.2.4. the Defendants continued to publish each of the publications complained of despite the Claimant having made it clear that they are untrue and he is not behind sock puppet accounts. It is to be inferred that the Defendants and each of them carried out no further investigation following contact from the Claimant and the Claimant's solicitors; and

16.2.5. the Claimant will rely on the nature and frequency of the publications and each of them. The publications are sensationalist and lurid, designed to make maximum impact and cause maximum damage to the Claimant. They represent a personal campaign against the Claimant, and exceed any reasonable scope of journalistic activity.

16.3. For the reasons set out above, the publication of each set of the words complained of are not protected by section 4 of the Defamation Act 2013.

17. As to paragraph 19, in the interest of proportionality, the Claimant will restrict his claim in libel to publication in England and Wales.

Reply to Journalistic Exemption Defence

18. As to paragraphs 29 to 29.4, the plea fails to identify specifically which parts of the Claimant's pleaded case fall within the exemption, lacks proper particulars demonstrating why compliance with each relevant provision of UK GDPR would be incompatible with journalism. Without prejudice to this, it is denied that the Journalistic Exemption is applicable in the circumstances. Paragraphs 16 to 16.2.5 above are repeated. The Defendants' case that the Claimant is an "*abuser and harasser*" for the reasons set out at paragraph 15 and its sub-paragraphs is denied: paragraphs 10 to 12.13 above are repeated. The Defendants, *qua* data controller(s), could not have reasonably believed that the publication of the material was in the public interest. The processing of the Claimant's data exceeded any reasonable scope of journalistic activity. The processing and publication of the Claimant's sensitive personal data were not necessary for legitimate reporting on any genuine public interest matter. Instead, the processing of the data

represents a personal campaign against the Claimant. In the circumstances, the Journalistic Exemption is not applicable.

Reply to Bad Reputation

19. Paragraph 33.2 is unparticularised, in that it does not identify what the bad reputation alleged in fact is. The Defendants have not identified any widespread or specific perception held by the readership regarding the Claimant at the time of publication, nor have they provided particulars demonstrating how or why the alleged experiences of these named individuals meant there was a general negative reputation among readers. Without prejudice to this, it is denied that the Claimant has a general bad reputation in the eyes of readers of the Websites at the time of publication, and specifically denies that he harassed and abused the individuals identified at 33.2.1 to 33.2.6

Counterclaim

20. The Defendants have not complied with the Pre-Action Protocol for Media and Communications Claims.
21. Paragraphs 38 to 43.6 are denied. The Claimant has not engaged in a course of conduct amounting to harassment and is not responsible for any of the publications in the Amended Schedule of Harassment, save for the publications under his username mlg59_, (message 1 (which was quoting an earlier message in the IRC channel), and messages 9, 19 and 21). Paragraphs 10 to 12.13 above are repeated. The four messages by mlg59_ in the Amended Schedule of Harassment do not amount to a course of conduct amounting to harassment, as they were not oppressive or unacceptable on any view, do not target either Defendant and were in all the circumstances reasonable for the purposes of s.1 Protection from Harassment Act 1997.
22. Further, notwithstanding the fact that the Claimant did not and does not operate the sock puppet accounts the messages complained of in the Amended Schedule of Harassment are, even in their totality, not sufficient to amount to a course of conduct, especially where the Defendants have deliberately chosen not to block the sock puppet accounts, and many of the messages sent by the sock puppet accounts do not target and are not directed at the Defendants.

23. It is denied that the Defendants and each of them are entitled to damages or relief as alleged or at all.

BEN HAMER

5RB

STATEMENT OF TRUTH

I believe that the facts stated in this Reply and Defence to Counterclaim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:



Name: Matthew Garrett

Dated this 20th day of March 2025