

**BETWEEN**

**PETER JOHN REYNOLDS**

**Claimant/Appellant**

**- and -**

**CHRISTOPHER BOVEY**

**Defendant/Respondent**

---

**DEFENDANT'S SKELETON ARGUMENT**  
**Claimant's Application for Permission to Appeal**  
**Renewal Hearing 29 September 2015**

---

1. The Claimant has sought an oral hearing to renew his application for permission to appeal the order of Master Eastman (23 January 2014) striking out his claim in defamation. Permission to appeal was refused on the papers by Holroyde J on 20 November 2014. A chronology of proceedings is attached to assist the Court.
2. The Defendant submits that both the Claimant's Grounds of Appeal are totally without merit, and that this application for permission to appeal should be dismissed. As the Claimant lacks legal representation, this Skeleton Argument has been prepared to assist the Court, per paragraph 8.3(b) of Practice Direction 52B.
3. This Skeleton Argument is regretfully being filed late, and not within 7 days of the hearing. This is because the Defendant was unaware of the renewal application, as – contrary to the final sentence of the order of Holroyde J – such application was not served by the Claimant on the Defendant's solicitors. The Defendant only learned of this hearing through correspondence with the High Court.

**Ground 1:      Infringement of Article 6 ECHR**

4. It is now settled law that the striking-out/summary judgment procedure under the Civil Procedure Rules ("CPR") is not itself contrary to Article 6(1). The Strasbourg Court has confirmed as much in *Z v United Kingdom (App No 29392/95)* [2001] 2 FLR 612 at [97] where it said:

*“That decision did end the case, without the factual matters being determined on the evidence. However, if as a matter of law, there was no basis for the claim, the hearing of evidence would have been an expensive and time-consuming process which would not have provided the applicants with any remedy at its conclusion. There is no reason to consider the striking out procedure which rules on the existence of sustainable causes of action as per se offending the principle of access to court. In such a procedure, the plaintiff is generally able to submit to the court the arguments supporting his or her claims on the law and the court will rule on those issues at the conclusion of an adversarial procedure.”*

5. In the context of the striking-out of libel claim, in *Barnett v Nigel Hall Menswear* [2013] EWHC 91 (QB), Eady J was confronted with this very question in the context of a claim struck out for abuse of process. He said, at [14]:

*“It is true that the merits of the Claimants' cause of action, stale though it may now be, are unlikely to be determined unless this appeal is allowed. A litigant's rights under Article 6, however, cannot possibly mean that he is immune from the disciplines of civil procedure, whether arising out of the CPR or under well established common law principles. A litigant is not necessarily entitled to have his claim determined at a trial come what may...”*

6. Article 6(1) does require proportionality in decisions to strike-out claims. Had the pleading deficiencies been minor, or immaterial, there might have been a basis for this ground of appeal. But in the present case, the pleading was so deficient that it failed to particularise a viable claim in defamation, in breach of the mandatory requirements set out in CPR Practice Direction 53.
7. Master Eastman correctly identified the relevant factors to consider, and had regard to the relevant authorities. He correctly reflected upon the opportunities the Claimant had already been given to better particularise his claim, and the right of the Defendant to know the scope of the case against him. There is no legal basis in Article 6(1) for interfering in the Master’s evaluative and fact-specific decision.

## **Ground 2: Infringement of Article 17 ECHR**

8. Article 17 ECHR is not itself a freestanding ‘Convention Right’ for the purposes of domestic law. Section 1(1) of the Human Rights Act provides that:

*“In this Act, ‘Convention Rights’ means the rights and fundamental freedoms set out in –*  
(a) *Articles 2 to 12 and 14 of the Convention;*  
(b) *Articles 1 to 3 of the First Protocol; and*  
(c) *Article 1 of the Thirteenth Protocol;*  
*as read with Articles 16 to 18 of the Convention”*

9. Article 17 therefore requires other Convention Rights (in Articles 2-12 and 14) to be construed in such a way as to not permit the destruction or limitation of those rights by any party, except as permitted by the Convention.

10. The Claimant's second ground of appeal appears to suggest that by construing Article 6 in light of Article 17, that three factors mean his Article 6 rights have been infringed by the order striking-out his claim:
  - (a) that the tort of libel requires 'esoteric and specialist expertise';
  - (b) that he requires access to legal authorities and references; and
  - (c) that no legal aid or public funding is available for libel claims.
  
11. The Defendant submits that the European and domestic case law on the compliance with Article 6 already reflects Article 17, and so this second ground of appeal adds nothing to the first. In any event, both parties have Article 6 rights, and the balance of fairness between the parties, to prevent the destruction or unlawful limitation of each of their rights to a fair trial, is achieved by compliance with the CPR.
  
12. The first factor certainly adds nothing to this analysis, because it has been long established by the Strasbourg Court that Article 6(1) does not itself guarantee any particular content for civil rights and obligations in the substantive law of member states (*Z v United Kingdom* at [87]). The complexity of the substantive law cannot itself be a breach of Article 6(1), even if read with Article 17.
  
13. The other two factors suggested in the second ground of appeal were rightly rejected by Holroyde J. The Claimant provided no evidence of his attempts to obtain free representation or representation on a Conditional Fee Agreement (which are still commonly available in publication cases). The defamation pleading requirements of CPR Practice Direction 53 are available for free online. Furthermore, the Claimant has been assisted in this matter by his son who has recently been called to the Bar. In all the circumstances, the second ground fails on its facts as well as the law.

## **Conclusion**

14. There was no error of law by Master Eastman, who applied the correct authorities to the facts of the case without error. He rightly considered all the circumstances, including the Article 6 rights of both the Claimant and Defendant, and determined that striking-out the claim was a proportionate use of his powers under CPR r.3.4(2). Holroyde J considered it "*impossible to argue*" that the Master's decision was a breach of the Claimant's Article 6 rights. The Defendant therefore submits that this application for renewal at an oral hearing is totally without merit, and that permission to appeal should be refused in terms, per CPR r.52.10(6)(a).

**Greg Callus**

**5RB**

**28 September 2015**

---

## CHRONOLOGY

---

21 January 2013	Claim Form issued, and subsequently served
8 March 2013	Defence filed and served
1 July 2013	Reply filed and served
23 January 2014	Order of Master Eastman striking out the claim on the Defendant's application, after an oral hearing
17 March 2014	Appellant's Notice filed by the Claimant, seeking permission to appeal the Order of Master Eastman, and an extension of time to make that application
22 April 2014	Males J orders the provision of a transcript of the hearing before Master Eastman
19 November 2014	Final costs certificate assessed at £20,482.04
20 November 2014	Order of Holroyde J granting the extension of time, but refusing permission to appeal
25 November 2014	Application by the Claimant for a renewal of his application for permission to appeal at an oral hearing (not served on the Defendant)
29 April 2015	Claimant's application for stay of enforcement,
23 June 2015	Master Howarth refuses the Claimant's application for a stay, and grants the Defendant's application under CPR Part 71 for the Claimant to provide information as to his means, and to attend court for examination on 25 August 2015
25 August 2015	Claimant fails to attend the Oral Exam in Court 64 (Defendant informed of such by letter from Bailey Reed, Court Examiner, QBD, on 27 August 2015)