

Between:

manner alleged above.

128. This is an unsatisfactory plea of justification for at least two reasons. First, it focuses on the Claimant's motive; and motive alone is not sufficient to support a plea of torture and murder. Secondly, the only overt act relied on is the Claimant's involvement in the arrest and imprisonment of Sergei Magnitsky. The link which is made between the arrest and imprisonment on the one hand, and Sergei Magnitsky's death on the other hand, is that the latter was the 'reasonably foreseeable' consequence of the former, 'not least' because of high mortality rates in Russian prisons. The causal link which one would expect from such a serious charge is wholly lacking; and nothing is said about torture or murder.
129. In my view these are inadequate particulars to justify the charge that the Claimant was a primary or secondary party to Sergei Magnitsky's torture and murder, and that he would continue to commit or 'cause' murder, as pleaded in §60 of the Defence. The Defendants have not come close to pleading facts which, if proved, would justify the sting of the libel.

000 X 2202 - 0.01 0000 , 010 ND J [1 / 2] 2170

MR JUSTICE SIMON
Amended Judgment

Karpov v. Brouder and others

138. In the light of the evidence I have seen, the submissions I have heard and the views that I have already expressed on some of the issues, I have reached the following overall conclusions.
139. First, the Claimant cannot establish a reputation within this jurisdiction sufficient to establish a real and substantial tort. His connection with this country is exiguous and, although he can point to the continuing publication in this country, there is 'a degree of artificiality' about his seeking to protect his reputation in this country. This is an important, but not determinative, consideration on the Defendants' application to strike out the claim.
140. Secondly, if the case were to proceed and the Claimant achieved a judgment in his favour, it would provide a degree of vindication and, if an injunction were granted, it would prevent further dissemination of the libel by the Defendants. This again is a relevant factor. However, there are countervailing considerations. The impact of any such judgment and order would be unlikely to assist (let alone achieve) the most important of the Claimant's stated objectives: his removal from the Magnitsky list. This is because the libel action is necessarily directed to the confined pleaded issues and the trial will be based on material disclosed by the parties. The issues which would be determined at trial would not deal with other damaging allegations that have been made against the Claimant, let alone significantly affect views based on different material, which led to legislation enacted by the United States Congress.
141. Thirdly, the Claimant has achieved a measure of vindication as a result of the views I have expressed on his application. The Defendants are not in a position to justify the allegations that he caused, or was party to, the torture and death of Sergei Magnitsky, or would continue to commit, or be party to, covering up crimes. To use the expression in Olswang's letter of 1 August 2012, the record, at least in so far as it is presently set out in the pleadings, has been 'set straight'. I recognise that this will not prevent a repetition of the libel, which an order of the Court would do, at least in this jurisdiction; however, nothing in this judgment is intended to suggest that, if the Defendants were to continue to publish unjustified defamatory material about the Claimant, the Court would be powerless to act. I have used the expression 'presently set out in the pleadings' because I have not overlooked the possibility of an application to amend the particulars of the plea of justification to rely on participation in a broad conspiracy and/or joint enterprise.
142. Fourthly, I take into account the fact that the Claimant tried to bring proceedings to