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Case No: KB-2022-004194

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/01/2024

Before:

MR JUSTICE CHAMBERLAIN

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Between:

SYED AHMED TARIQ MIR — **Claimant**

- and -

Defendants

(1) ALTAF HUSSAIN
(2) ATHER AZIZ
(3) HASHIM AZIZ
(4) MOEEN AHMED KHAN
(5) NADEEM PERVEZ SHEIKH
(6) NASIR ALI
(7) SUHAIL AHMED KHANZADA
(8) YASMEEN NOVEIN

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Claire Overman (instructed by **Stone White Solicitors**) for the **Claimant**
Gervase de Wilde (instructed by **Brett Wilson LLP**) for the **First Defendant**

Hearing dates: Thursday 16th November 2023

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Approved Judgment

This judgment was handed down remotely at 10:00am on 17th January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

1 The term "Mohajir" is used to describe Muslims who migrated from India to the newly independent state of Pakistan after partition. In 1978, the first defendant, Altaf Hussain, founded the All Pakistan Mohajir Students' Organisation to advocate for the rights of Mohajirs in Pakistan. In 1984, he founded a political party called the Mohajir Qaumi Movement, later known as the Muttahida Qaumi Movement ("MQM"). Mr Hussain describes himself as MQM's "founder, historic leader and figurehead", though he does not accept that he is involved in its day-to-day decision-making.

2 Since 1992, MQM's head office has been in London. It has overseas units in many different countries, including Pakistan. Syed Ahmed Tariq Mir, the claimant, was MQM's treasury head and a senior member of its controlling body, the Central Coordination Committee ("CCC"), from 1995 to 2014. He became a trustee of one of MQM's charitable arms, the Society for the Unwell and Needy ("SUN"). For many years he was a close colleague and supporter of Mr Hussain.

3 In 2016, senior leaders of MQM were arrested in Pakistan. When they were released, Farooq Sattar, the organiser of MQM's overseas unit in Pakistan, announced that the Pakistan unit would break away from the rest of the movement. It became known as MQM-P. In 2017, Mr Mir aligned himself with MQM-P.

4 Mr Mir's claim for libel relates to four publications, all of which made allegations of dishonesty against him: press releases published on MQM's website on 17 and 29 November 2022 (the first in English, the second in Urdu) and two videos of a demonstration which took place outside a SUN charity dinner hosted by Mr Mir in Wembley on 27 November 2022. The videos were livestreamed and subsequently made available to view on MQM's Facebook page. The words complained of in these videos were spoken by the second to eighth defendants.

5 There are two applications now before me: Mr Hussain's application for summary judgment, alternatively to strike out the claim against him; and Mr Mir's application for permission to amend the Particulars of Claim. It is common ground that the issue on which both these applications turn is whether Mr Mir has a reasonable prospect of demonstrating that Mr Hussain is responsible for these publications either because he authorised them or because those who authorised them did so as his agents.

Law

Tests for strike-out and summary judgment

6 Mr Hussain applies to strike out the claim against him under CPR 3.4(2)(a) on the ground that the Particulars of Claim disclose no reasonable grounds for bringing the claim. However, it was common ground that I should focus on the application for summary judgment under CPR 24.2(a), to which a slightly less exacting test applied. To succeed in that application, Mr Hussain must show that Mr Mir has no real prospect of succeeding in his claim against Mr Hussain. The applicable principles were summarised by Nicklin J in *Lawrence v Associated Newspapers Ltd* [2023] EWHC 2789 (KB), at [77]:

"(i) The burden of proof is on the applicant for summary judgment;

(ii) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success: *Swain v Hillman* [2001] 1 All ER 91;

(iii) The criterion 'real' within CPR 24.2 (a) is not one of probability, it is the absence of reality: Lord Hobhouse in *Three Rivers DC v Bank of England (No.3)* [2003] 2 AC 1 [158];

(iv) At the same time, a 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 [8];

(v) The court must be astute to avoid the perils of a mini-trial but is not precluded from analysing the statements made by the party resisting the application for summary judgment and weighing them against contemporaneous documents (ibid);

(vi) However disputed facts must generally be assumed in the claimant's favour: *James-Bowen v Commissioner of Police for the Metropolis* [2015] EWHC 1249 [3];

(vii) An application for summary judgment is not appropriate to resolve a complex question of law and fact, the determination of which necessitates a trial of the issue having regard to all the evidence: *Apovdedo NV v Collins* [2008] EWHC 775 (Ch);

(viii) If there is a short point of law or construction and, the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it: *ICI Chemicals & Polymers Ltd -v- TTE Training Ltd* [2007] EWCA Civ 725;

(ix) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial. The court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Royal Brompton Hospital NHS Trust -v- Hammond (No.5)* [2001] EWCA Civ 550; *Doncaster Pharmaceuticals Group Ltd -v- Bolton Pharmaceutical Co*. 100 Ltd [2007] FSR 63;

> (x) The same point applies to an extent to difficult questions of law, particularly those in developing areas, which tend to be better decided against actual rather than assumed facts: *TFL Management Services v Lloyds TSB Bank* [2014] 1 WLR 2006 [27]."

7 At [79]-[80], Nicklin J noted that the authorities emphasised that the court should not conduct a "mini-trial" and showed the importance of the distinction between the assessment or evaluation of evidence (either undisputed or taken at its highest) and fact-finding. A judge assessing a summary judgment application may carry out the former exercise (if satisfied that there is no real prospect that the available evidence will materially alter at trial), but not the latter. At [81], Nicklin J adopted the following summary of Cockerill J in *King v Stiefel* [2021] EWHC 1045 (Comm) at [21] (approved by the Court of Appeal in *Trafalgar Multi Asset Trading Company Limited v Hadley* [2022] EWCA Civ 1639 at [38]):

> "The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that – even bearing well in mind all of those points – it would be contrary to principle for a case to proceed to trial."

8 It is common ground that the court can determine the issue of responsibility for publication by way of summary jurisdiction under CPR Part 24. In *Campbell v Safra*: [2006] EWHC 819 (QB) at [21], Eady J said that, if asked to do so, the approach to be adopted was that which he had set out in *Bataille v Newland* [2002] EWHC 1692 (QB):

> "First it seems that I should address the primary facts relied upon by the claimant for establishing the defendant's responsibility for the publication of the 12th January letter. The burden is upon the claimant to establish those facts at trial. At this stage, I should make all assumptions in favour of the claimant so far as pleaded facts are concerned.
>
> Again, in so far as evidence has been introduced for the purpose of the present application, I should assume that those facts will be established, save in so far as it can be demonstrated on written evidence that any particular factual allegation is indisputably false.
>
> The next question is whether, on the facts assumed, a properly directed jury could draw the inference for which the claimant contends. In this case, of course, the inference is that the second defendant was, in some sense, a participant in the publication of the letter. I should only rule out the case against the second

> defendant if I am satisfied that a jury would be perverse to draw that inference…
>
> If the defendant's case is so clear that it cannot be disputed, there would be nothing left for a jury to determine. If, however, there is room for legitimate argument, either on any of the primary facts or as to the feasibility of the inference being drawn, then a judge should not prevent the claimant having the issue or issues resolved by a jury. I should not conduct a mini trial or attempt to decide the factual dispute on first appearances when there is the possibility that cross-examination might undermine the case that the defendant is putting forward."

Test for amendment

9 CPR 17.3 confers on the court a broad discretionary power to permit amendments to a statement of case. The principles were summarised by Nicklin J in *Amersi v Leslie* [2023] EWHC 1368 (KB) at [140]:

> "(1) The threshold test for permission to amend is the same as that applied in summary judgment applications: *Elite Property Holdings Ltd v Barclays Bank plc* [2019] EWCA Civ 204 [40]-[42] per Asplin LJ ('the merits test').
>
> (2) Amendments sought to be made to a statement of case must contain sufficient detail to enable the other party and the Court to understand the case that is being advanced, and they must disclose reasonable grounds upon which to bring or defend the claim: *Habibsons Bank Ltd v Standard Chartered Bank (HK) Ltd* [2011] QB 943 [12] per Moore-Bick LJ.
>
> (3) The court is entitled to reject a version of the facts which is implausible, self-contradictory, or not supported by the contemporaneous documents. It is appropriate for the court to consider whether the proposed pleading is coherent and contains the properly particularised elements of the cause of action or defence relied upon: *Elite Property Holdings Ltd* [42] per Asplin LJ.
>
> (4) In addition to being coherent and properly particularised, the pleading must be supported by evidence which establishes a proper factual basis which meets the merits test: *Zu Sayn-Wittgenstein v Borbón y Borbón* [2023] 1 WLR 1162 [65] per Simler LJ.
>
> (5) In an area of law which is developing, and where its boundaries are drawn incrementally based on decided cases, it is not normally appropriate summarily to dispose of the claim or defence. In such areas, development of the law should proceed on the basis of actual facts found at trial and not on the basis of

> hypothetical facts assumed to be true on an application to strike out: *Farah v British Airways plc* [1999] EWCA Civ 3052 [42]-[43] per Chadwick LJ."

Principles governing liability

10 At common law, the basic rule was that each person who knowingly participates in the publication of a libel, or causes or authorises or ratifies its publication, is jointly and severally liable: *Watts v Times Newspapers Ltd* [1997] QB 650, 670f-h; *Monir v Wood* [2018] EWHC 3525 (QB), [135]; *Turley v Unite The Union* [2019] EWHC 3547 (QB), [84].

11 However, s. 10 of the Defamation Act 2013 deprives the court of jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of unless the court is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher. In this case, Mr Mir pleads that Mr Hussain was an "editor" for the purposes of this provision.

12 A person can also be liable for the publications of his agent. In *Monir v Wood* [2018] EWHC 3525 (QB), the defendant was the branch chairman of a political party (UKIP). He was sued in respect of tweets on the UKIP branch's Twitter account, even though the tweet was composed and posted by another and he did not authorise it. Nicklin J found the defendant liable on the basis that the poster was his agent: publication of the tweet was part of the essential function delegated to him by the defendant; the defendant retained effective control of the platform; it was readily understood that the poster would use his own judgment in deciding what to tweet; and the tweet was posted in discharge of the poster's role as campaign manager in the course of and for the purpose of executing the task delegated to him. See [145]-[162].

Pleadings and evidence

Particulars of Claim

13 In his original Particulars of Claim, at para. 13, Mr Mir pleaded that Mr Hussain was responsible for all the words complained of because he was knowingly involved in, and/or knowingly authorised, their publication on the MQM website or MQM Facebook page. It was said that Mr Mir would rely on the facts that Mr Hussain was the founder and self-proclaimed leader of MQM and the content of the website and Facebook page, which are replete with images of and contact details for and/or information about Mr Hussain. Reliance was also to be placed on Mr Mir's own experience at MQM.

14 Mr Mir seeks to amend his Particulars of Claim to make the following alternative averment:

> "13.2 Further or alternatively, the First Defendant is responsible under the agency principle for all of the words complained of, published by his agents as follows:
>
> 13.2.1 In the case of the First and Second Press Releases, by Mustafa Ali to whom as a member of the International

> Secretariat the First Defendant delegated the control and operation of the MQM website and/or responsibility for MQM's media content and communications strategy (and, more specifically, the task of publishing material on the MQM website on behalf of MQM and/or the First Defendant)…"

Evidence for Mr Hussain

15 Mr Hussain has produced a witness statement which covers, relevantly, the structure of MQM. He describes himself as a "figurehead" who does not generally get involved in decision-making within MQM on a day-to-day basis. He says that he is not good with technology and does not email or make phone calls and rarely reads the many WhatsApp groups to which he is added. He has a popular Twitter account, but when he wants to post on this account he writes the post out in long hand, takes a photograph and sends it to a CCC member using WhatsApp. He also has a TikTok account. Videos posted to that account are filmed by Ghufran Hameed, who works on communications at MQM's International Secretariat, which is also responsible for MQM's website. Mr Hussain is not involved in deciding what to post on it. He does not know how to upload content to it and does not know who usually writes articles for it. He exerts no control over what is published by MQM or MQM-UK. He does not use Facebook. He was not present at the demonstration on 27 November 2021 and did not become aware of it until some time later.

16 Mustafa Ali is a senior member of MQM and the Convenor of the CCC. He has given a witness statement in which he says he was the author of both the press releases complained of. He wrote the first on 17 November 2021 on a shared computer at the office of the International Secretariat and asked Sufyan Yusuf to upload it to the website. He wrote the second on 29 November 2021 on his own computer at the same office, then emailed it to Sufyan Yusuf and asked him to upload it. Mr Ali says that, as far as he knows, Mr Hussain would have no idea what was on the website, took little interest in it and trusted those running it to publish relevant content. He does not remember Mr Hussain ever asking about it. He is not aware of any formal reporting process for complaints about the content on the website. He expects that any extremely serious complaint would be referred by the International Secretariat to the CCC.

17 Sufyan Yusuf has produced a witness statement. He says that, with Ghufran Hameed, it is his role to update MQM's website in accordance with the instructions of his superiors. Mr Yusuf confirms that he uploaded the two press releases to the MQM website.

18 There are also witness statements from Adham Harker, the solicitor representing the defendants, who sets out the basis for the strike-out and summary judgment applications and responds to the evidence served on behalf of Mr Mir.

Evidence for Mr Mir

19 Mr Mir's evidence includes a witness statement from his solicitor, Ushrat Sultana, which responds to Mr Hussain's strike-out and summary judgment applications and sets out the basis of Mr Mir's application to amend his pleadings. In it, she says on instructions that during his association with MQM (he was the treasury head of MQM from 1995 to 2014) he never witnessed any material being published on MQM's platforms without Mr

Hussain's approval, save for the occasional republication of public domain material. Mr Hussain gave standing instructions to members responsible for the operation of MQM's media platforms, which they followed faithfully. They were reprimanded if they did not follow these instructions. In the early years, Mr Hussain would ask Mr Mir to translate his (Mr Hussain's) speeches from Urdu into English, Mr Mir would do so and read the translation back to Mr Hussain, Mr Hussain would approve it and it would then be sent to the press or uploaded to the website by Mr Ali.

20 Ms Sultana makes the point that the evidence given by Mr Hussain in support of his strike-out and summary judgment applications appears to be contradicted by evidence given by Mr Hussain, Mr Ali and another individual (Qasim Ali) in other High Court proceedings *(Haque v Hussain)*. That evidence was to the effect that the CCC had to obtain Mr Hussain's approval for all political, policy and organisational decisions. In Mr Ali's statement in *Haque v Hussain*, he said this at para. 16:

> "…whenever any statement or letter to the public is being prepared, it is submitted to the CCC who read it and give suggestions to the First Defendant. The First Defendant includes any suggestions he deems appropriate and approves the documents."

This part of Ms Sultana's evidence has since been confirmed by Mr Mir in his own witness statement.

21 Ms Sultana notes that this is consistent with Mr Mir's own experience. She also draws attention to the content of the MQM website, which is presented to website visitors largely as an homage to Mr Hussain. Ms Sultana conducted a review of the articles carried on the "English News" page of the website. Ten out of 15 of the text articles are written in the first person, attributed to Mr Hussain as author, and appear with a photograph of him. A further four are written in the same first person form but not expressly attributed to Mr Hussain. The remaining article was not written in the first person but nonetheless appeared with a photograph of Mr Hussain. Of the 20 video articles, six were videos of speeches given by Mr Hussain, eight were briefings by the CCC (all but one of which start with 5-7 minutes of homage to Mr Hussain, with images of him superimposed with rose petals and hearts). Ms Sultana says that "the MQM website is largely a personal platform for, and/or homage to, [Mr Hussain]" and that the same is true of the MQM Facebook page. She also notes that the email address from which Mr Ali sent the second press release for to be uploaded is the same as the email address from which she received the response from Mr Hussain to Mr Mir's letter before action.

22 In addition to his own witness statement, Mr Mir relies on a witness statement from Mohammed Syed, who worked as a volunteer administrator at MQM's office in London from 1994 to 2016. Mr Syed says that, while Mr Hussain consulted others, he always had the final decision-making power. Everything had to be approved by him. This included all public campaigning and protests that MQM organised and any material that went on the MQM website or social media platforms.

Submissions

Submissions for Mr Hussain

23 Gervase de Wilde for Mr Hussain submits that the lack of reality underlying Mr Mir's case on publication is apparent from the application to amend. The original Particulars of Claim put forward a set of formulaic averments of knowing involvement in or editorial responsibility for the publications. Only later did Mr Mir attempt to advance the agency case. The two cases are inconsistent and should not have been pleaded in the same claim: it is impossible that Mr Hussain could have been knowingly involved in or could have knowingly authorised the publications (as pleaded originally) and at the same time "delegated control and operation of" the website and MQM UK Facebook page to those who did publish them.

24 In any event, the facts said to support the original case do not in fact support it. Being the "self-proclaimed leader" of MQM makes him less not more likely to be involved in the publication of material on the website or MQM Facebook page. The fact that the website and Facebook page contain material about Mr Hussain does not mean that they are controlled by him. Reliance was placed on an analogy drawn in Mr Harker's witness statement: "large sections of the website www.conservatives.com are dedicated to Rishi Sunak: that does not make the Prime Minister responsible as a matter of fact or law for the content of the website".

25 Mr Hussain's evidence on this point is clear and not contradicted by that given in *Haque v Hussain*. Mr Hussain's role as ideologue, founder, historic leader and figurehead is not consistent with day-to day responsibility for decision-making, much less for the content on the website or Facebook pages. It is the International Secretariat which is responsible for the website and MQM-UK which is responsible for its own online content. Mr Hussain is not technologically literate. He did not play any part in the publications complained of. His evidence is this regard is corroborated by that of Messrs Ali, Yusuf and Harker.

26 As to the content of the website, the majority of the articles referred to by Ms Sultana as having been written in the first person and attributed to Mr Hussain were in fact republications of Mr Hussain's tweets. The use of a shared email address shows nothing, especially as the evidence shows that Mr Hussain does not read or respond to email himself. Even taking Mr Mir's case at its highest, there is no evidence to rebut the clear evidence of Mr Hussain that he did not authorise the publications himself, since Mr Mir's experience of how MQM worked ended in 2014.

27 The agency case is also unsupported by evidence. The essential principle identified by Nicklin J in *Monir* is that the relevant conduct "must have been undertaken in the course of, and for the purpose of, executing the task that the principal had delegated to the agent". In *Monir*, the defendant had set up and continued to control the Twitter account from which the tweets had been sent and the words were published as part of a campaign to elect an MP.

28 It is not enough simply to plead that a defendant delegated control of the relevant medium or delegated the task of publication without identifying facts from which an inference of delegation can be drawn. None of Mr Hussain, Mr Ali or Mr Yusuf give any evidence

which indicates an agency relationship between Mr Hussain and those involved in the publications. Mr Harker's evidence confirms that nothing in his conversations with any of the key individuals indicates an agency relationship. Mr Hameed recorded and broadcast the videos as part of his role in dealing with MQM's media work, overseen by the International Secretariat. He was appointed to this role by Mr Ali, who has indicated that his authority to make such appointments, and to publish materials, comes from the CCC.

29 Mr de Wilde accepts that, on a strike out or summary judgment application, the court must consider whether the evidential picture may be different at trial. But Mr Mir has no evidence suggesting it might be different. His indication that he will apply to amend if and insofar as necessary expresses no more than a hope that "something will turn up", which is not good enough.

Submissions for Mr Mir

30 Claire Overman for Mr Mir places considerable reliance on the evidence given in *Haque v Hussain*, which she submits "paints [Mr Hussain] as an individual with full and close oversight of MQM and its activities, including – specifically – its public statements". She also draws attention to the judgment in that case ([2023] EWHC 502 (Ch)). ICC Judge Jones, sitting as a Judge of the High Court, found that Mr Ali was "absolutely committed to [Mr Hussain]", which meant that "caution must be exercised" when assessing his evidence. ICC Judge Jones was concerned that Mr Ali's dedication to Mr Hussain had prejudiced his recollection: see at [244].

31 Ms Overman accepts that no firm findings can be made at this stage, but submits that these comments are relevant when considering whether "a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case": *Lawrence* at [77](ix). She notes that it is permissible to take account of findings in another judgment for such a purpose at this stage: *Tulip Trading Limited v Bitcoin Association for BSV* [2023] EWHC 2437 (Ch).

32 Ms Overman submits that Mr Mir's and Mr Syed's evidence (albeit based on their experience up to 2014) is consistent with the evidence given by Mr Hussain, Mr Ali and Mr Qaseem Ali in *Haque v Hussain*. She notes that Ms Sultana's evidence (based on Mr Mir's instructions and now affirmed by Mr Mir in his own witness statement) is that Mr Hussain has in the past organised protests of the kind live-streamed in the videos, including providing slogans, dictating petitions and providing detailed instructions. Mr Hussain's evidence does not contest this and provides no explanation of how the protest was conceived, planned or signed off.

33 Ms Overman relies on Ms Sultana's analysis of the MQM website to show that Mr Hussain is (or is identified as) the author of a significant amount of the material on that site. This is consistent with Mr Qasim Ali's evidence in *Haque v Hussain* that he was provided with Mr Hussain's statements for publication.

34 Moreover, no evidence has been provided about who instructed Mr Ali to produce the press releases or who directed their removal following receipt of the letter before claim.

Discussion

35 In *Bataille v Newland*, Eady J had to consider an application by the second defendant for summary judgment on the issue of publication. The question was whether, on the facts alleged by the claimant, an inference could properly be drawn at trial that the second defendant had participated in the publication of the letter complained of: see [20]. At [24], Eady J said that if there was room for legitimate argument, either as to the primary facts or as to the feasibility of an inference being drawn, the issue should be determined at trial. At [28], it was said that the claimant could point to no "smoking gun". The judge held that, without more, it would inappropriate to close off the issue: [30].

36 The question, therefore, was whether there the claimant had a realistic prospect of success in the face of the defendants' clear denials that the second defendant had played any part in the publication. Given that the defendants were distinguished and respected figures in the world of medicine, it was unlikely that a jury would conclude that their evidence was deliberately untrue, so it was "tempting" to conclude that the relevant tests have been passed for CPR Part 24: [34]-[35]. On the facts, the judge nonetheless could not form a definitive view about what had happened without conducting a mini-trial. It was possible, even though unlikely, that a jury might disbelieve the defendants: see at [55]. The application for summary judgment failed.

37 Whilst every case must turn on its own facts, *Bataille* is an example of the difficulty inherent in any summary resolution of the issue of publication. In many cases – including this one – the question of who participated in a publication and in what way will lie exclusively within the defendants' knowledge. In such cases, the claimant is unlikely to be able to point to anything more than circumstantial evidence on the basis of which to invite the court to draw an inference as to the participation of a particular defendant. *Bataille* is an example of a case in which it was not possible to exclude the inference at the summary judgment stage, even in the face of clear evidence from apparently reliable defendants denying their participation.

38 In this case, there are five features of the evidence from which an inference might be drawn, even in the face of Mr Hussain's and Mr Ali's denials, that Mr Hussain participated as editor in the website and Facebook publications or that those who did so were acting as Mr Hussain's agents.

39 First, there is Mr Mir's and Mr Syed's evidence that, while they were involved with MQM, nothing was published on its platforms without Mr Hussain's personal authorisation, save for the occasional republication of public domain material. It is true that this evidence dated from 2014, but that did not mean that it was of no evidential value at all. If Mr Mir's and Mr Syed's evidence on this point is accepted, one issue for trial might be when and why the practice (which Mr Mir says had remained constant for 20 years) changed. If there was a change, the details of the later arrangements would be likely to be relevant to the question whether those who were responsible for the publication were acting as agents for Mr Hussain. The nature of these arrangements is an issue on which oral evidence is likely to be particularly important.

40 Second, the evidence given in *Haque v Hussain*, in particular by Mr Ali and Mr Qasim Ali, seems to me to be relevant to the question of publication. It may be that there is an explanation for the statement (by Mr Ali) that "whenever any statement or letter to the

public is being prepared, it is submitted to the CCC who read it and give suggestions to the First Defendant". It may be that the court will conclude that what was being referred to there were formal statements, rather than articles on the website, but again this is the kind of distinction on which oral evidence is likely to be important. ICC Judge Jones's observations about Mr Ali show that his commitment to Mr Hussain may be a factor in assessing the reliability of his evidence.

41 Third, although Mr Ali's evidence addresses the mechanics by which the articles were posted, it does not address how the articles came to be written. In my judgment, there is force in Ms Overman's submission that this may be a significant omission. On the evidence as it stands, I do not know whether Mr Ali decided himself to write them, or was asked to do so by someone else and if so by whom and for what purpose. I do not know how he obtained the information contained in them. These matters are all likely to be material to the issue of publication. They are all matters on which he is likely to be cross-examined at trial. The trial judge is likely to be considerably better informed as to the genesis of the articles and therefore in a better position than I am now to reach a view on the question of Mr Hussain's participation in their publication.

42 Fourth, I accept that the fact that a political organisation has a website which contains articles about its leader does not on its own mean that he must have participated in their publication or that those who did acted as his agents. However, the analogy which Mr de Wilde sought to draw with the Conservative Party website was not entirely apposite. The latter no doubt contains articles referring approvingly to things Rishi Sunak has done and said. The MQM website and Facebook page, however, contain almost nothing other than articles about Mr Hussain or expressing his views (many of them written in the first person). An objective observer might, as Ms Overman submitted, regard it as an homage to Mr Hussain. This fact, when taken with Mr Mir's evidence about the way in which website content was historically authorised, *could* support an inference *either* that Mr Hussain participated in these publications *or* that those who published the articles did so as his agent.

43 Fifth, Mr Mir's alternative case (based on agency) is not, in my view, inconsistent in any legally objectionable way with his primary case (based on participation in publication). Mr Mir does not know who authorised the publications or in what circumstances. He is entitled to plead a primary case, based on inference, that Mr Hussain participated as editor. If that fails, he is entitled to plead an alternative case, also based on inference, that those who did participate in the publication acted as Mr Hussain's agents, provided of course that there is a sufficient evidential foundation for both inferences: see *Binks v Securicor* [2003] EWCA Civ 993, [2003] 1 WLR 2557. In my view, there is such a foundation here. I have already explained why in relation to the primary case. As to the agency case, Mr Hussain advances evidence as to the decision-making structure of MQM, but the trial judge – after considering the content of the website and Facebook page, and in the light of all the evidence, including as to how publications were authorised in the 20 years up to 2014 – might conclude that Mr Hussain had delegated to the publishers the task of posting material which promoted his political ends (compare *Monir* at [157]) and were in reality doing Mr Hussain's work for him (compare *Monir* at [158]). In the circumstances, the precise nature of the relationship between Mr Hussain and the CCC and International Secretariat seems to me to be unsuitable for summary determination on the basis of written evidence alone.

44 For these reasons, Mr Hussain has not shown that either the case as originally pleaded (that he participated in the publications) or the new alternative case (that those who did so acted as his agents) has no real prospect of success. It follows that the applications for summary judgment and strike-out fail and, subject to three specific points which I shall deal with next, Mr Mir's application to amend the Particulars of Claim succeeds.

Remaining disputes on the amended pleadings

45 There are four separate objections to the amendments to the Particulars of Claim for which permission has been sought. In my judgment, none of these objections is well founded.

46 The first and second objections relate to para. 4. The amendments are shown underlined as follows:

> "The UK branch of MQM operates a website at www.mqm.org (the MQM website) and a Facebook page… (the MQM Facebook page). The First Defendant exercises close control over all content published on the MQM website and the MQM Facebook page (both of which are replete with images of, contact details for, material written by, and/or information about, the First Defendant). The Claimant will contend that the MQM website and the MQM Facebook page operate primarily as personal platforms for, and/or platforms operated for the benefit of, the First Defendant."

47 Insofar as objection is taken to the inclusion of the words "material written by", the answer is that the website includes material written in the first person singular and attributed to Mr Hussain. In other words, the material appears to be written by Mr Hussain. Mr de Wilde says that the mere fact of attribution to Mr Hussain does not establish that the material was written by him; and Mr Hussain's evidence is that the articles were not written or approved by him. That may be so, but this is a point which can be taken in the defence. Mr Mir is entitled at this stage to plead that the website is replete with "contact details for, material written by and/or information about" Mr Hussain. The provenance of the material is a matter which can be dealt with in the defence and, if necessary, fully investigated at trial.

48 The second objection is to the new final sentence of para. 4. Again, the content of the website itself seems to me to provide a more than adequate evidential basis for the averment that it operates as a personal platform for Mr Hussain. The trial judge may in due course accept Mr Hussain's case that there is a real distinction between him and MQM, but that is a matter which can be dealt with in the defence and, if necessary, at trial.

49 The third objection is to words sought to be added to para. 6.4, as follows:

> "It is to be inferred that a substantial number of readers and viewers of each of the Publications did so within the jurisdiction. The Claimant will rely in that regard on: (i) the fact that some of the words complained of, and many of the signs seen in the First and Second Videos, are in English; (ii) the fact that the First Defendant is a high-profile Pakistani exile in England; ~~and~~ (iii)

> the fact that the Claimant and the remaining Defendants also all reside in England, and the events the subject of each of the Publications took place in England, rendering the Publications of most immediate interest to individuals within the jurisdiction; and (iv) in the case of the First and Second Press Releases, the fact that at the time of their publication the MQM website was geo-blocked in Pakistan.

50 Mr Hussain does not take issue with the proposition that the website was geo-blocked in Pakistan. His point is that the non-availability of the website in Pakistan does not support substantial publication in this jurisdiction. In my judgment, it is not appropriate to use objections to amendments as a vehicle to raise arguments of this sort about the weight to be attached to evidence relied upon by an opponent. The probative value of this averment may depend upon the extent to which the website was available in, or of interest to people in countries other than the UK or Pakistan. This can be dealt with in the defence and, if necessary, at trial.

51 The complaint about the amendment sought to para. 13(iii) is again about the weight to be attached to an uncontroverted fact that Mr Hussain's holding response to Mr Mir's letter before action was sent from the same email address from which Mr Ali sent the second press release to be uploaded to the MQM website. Again, matters of weight are best determined at trial. For the time being Mr Hussain can respond to this point in his defence and the point can be determined at trial.

52 As I understand it, there is now no dispute about the amendment to para. 14, which simply tidies up an infelicity in the original formulation.

53 I accordingly grant permission for all the amendments sought.