Neutral Citation Number: [2009] EWHC 1495 (QB)

Case No: HQ07X03342

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday 2nd July 2009

Before :

SIR CHARLES GRAY
Sitting as a Judge of the High Court

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Between :

MELVYN LEVI **Claimant**

- and -

KEN BATES **Defendant**

- -
- -

Simon Myerson QC (instructed by **Ford and Warren**) for the Claimant
Ronald Thwaites QC and **Jacob Dean** (instructed by **Carter-Ruck**) for the Defendant

Hearing dates: 2nd, 3rd, 4th, 5th, 8th, 9th, 10th, 11th & 18th June 2009

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Judgment

Sir Charles Gray :

Overview

1. This libel action arises out of events surrounding the acquisition by a consortium headed by Mr Ken Bates of Leeds United Football Club in 2005. I will hereafter refer to that club as "the Club". As I will explain later various companies have either controlled or been associated with the Club over the material period.

2. The Claimant in the action is Mr Melvyn Levi, who describes himself as an entrepreneur and business man. He has lived and worked in and around Leeds all his

life. He is now aged 65 years. The Defendant, Mr Bates, is also a business man. He has throughout his life had a passion for football. He now resides in Monaco.

3. It will be necessary for me to go in some detail into the background to the acquisition of the Club by Mr Bates's consortium, as well as into the convoluted transactions by which ownership of the Club was transferred.

Summary of the Issues

4. I will, however, start by summarising the issues which arise for decision.

5. Mr Levi complains as being libellous of him four publications, namely:

   i) An article published in the programme of the Club dated 17 October 2006 and entitled "Just to bring you up to speed";

   ii) An article published in the programme of the Club for 3 March 2007 entitled "The enemy within";

   iii) An article published in the programme of the Club dated 10 March 2007 entitled "Why, Mr Levi, Why?" and

   iv) A letter addressed to the Club members dated August 2007.

6. I will at a later stage set out the words complained of. It will suffice if I set out at this stage the defamatory meanings ascribed to the publications complained of on behalf of Mr Levi:

   i) The article dated 17th October 2006 is alleged to mean that Mr Levi was a shyster trying to blackmail the Club into paying him money to buy him off for not honouring his obligation;

   ii) The article dated 3 March 2007 is alleged to mean:

      a) that Mr Levi's demands to complete the transaction and transfer half of the shares in the Club were blackmail;

      b) that Mr Levi engaged in scurrilous telephone calls and conversations which deterred two would-be serious investors in the Club and were criminal and

      c) that Mr Levi was dishonourable and his unscrupulous attempts to obtain money deterred investors in the Club;

   iii) The article dated 10 March 2007 is alleged to mean

      a) that Mr Levi frightened off investors in the Club and tried to blackmail it into paying him money and excused his actions by accusing Mr Bates of being anti-Semitic;

      b) that Mr Levi deterred Alamo Rent-A-Car from investing in the Club and;

      c) that Mr Levi closed down Bramley Rugby League Club so as re-develop the pitch for housing;

iv) The letter dated August 2007 is alleged to mean that Mr Levi had frustrated efforts to strengthen the Club's finances by deterring participants in a rights issue and putting off would-be investors.

Mr Levi seeks awards of compensatory damages in respect of those four publications. He also claims aggravated damages but it is right to add that Mr Levi made clear in the course of his evidence that monetary compensation is not a major concern of his.

7. In his Defence Mr Bates admits that he was the author of the publications complained of. He also accepts that those passages would have been understood to refer to Mr Levi. Mr Bates advances various defences, namely common law qualified privilege; justification and fair comment. I will return later to the factual bases on which these defences are founded.

8. In the Reply served on his behalf Mr Levi does not contend that Mr Bates was actuated by malice in publishing the words complained of such as would disentitle Mr Bates from avoiding liability by reason of the defences of either qualified privilege or fair comment. However, Mr Levi denies that any of the four publications took place on an occasion protected by qualified privilege since the sale and distribution of the programmes necessarily involved publication to uninterested persons and/or unnecessarily wide or excessive dissemination. He further contends that no privilege attaches to any of the publications sued on. The Reply also contains a detailed refutation of the particulars of justification relied on by Mr Bates. In regard to the defence of fair comment, Mr Levi alleges that the words complained of are statements of fact and not comment or opinion. He further denies that there are facts and matters to support any such comment.

The factual matrix

9. Having summarised the issues, I will now attempt to set out, as simply and economically as the facts permit, the background to the case.

10. As is well known, Leeds United was in days gone by one of the most successful football clubs in the country. Sadly its fortunes have declined sharply in recent years. It is not necessary for me to go into the reasons for that decline. Suffice it to say that by 2004 the Club was at serious risk of being put into administration, if not liquidation. At that time the Club was owned by Leeds United Association Football Club Limited ("LUAFC").

11. A small group consisting of Leeds businessmen and professionals, all of them dedicated supporters of the Club, formed a consortium known as the Yorkshire Consortium ("YC") through which they hoped to be able to rescue the Club. The Chairman of YC was Mr Gerald Krasner, the senior partner of a well known firm of accountants based in Leeds. The other members of YC were Mr Levi; Mr Simon Morris; Mr Melvin Helme and Mr David Richmond.

12. As a vehicle for their purchase of the Club, the YC acquired the shares of Adulant Force Limited ("Adulant"). By an agreement dated 19 March 2004 Adulant acquired all the shares of LUAFC which was the company which at that time owned the Club. In order to enable Adulant to effect that acquisition, three of the trustees of YC, namely Mr Levi, Mr Morris and Mr Richmond, lent to Adulant approximately £4 million.

13. The remaining £2 million loan was unsecured. The unsecured loans were due to be repaid as to £1 million on 21 January 2007 and as the other £1 million on 31 August

in the first calendar year after the date of the Instrument in which the Club achieves membership of the Premier League.

14. Mr Levi gave evidence that in 2005 he was not a man of any great wealth and accordingly was not in a position to provide money from his own personal resources. His evidence is that he was at that time the owner of 25% of the shares in a company called Cope Industrial Holdings Limited ("Cope"). The balance of the shares in Cope (i.e. 75%) were and remain in the ownership of Mr Robert Weston, resident in Jersey, who gave evidence at the trial.

15. The evidence of both Mr Levi and Mr Weston is that they had owned their shares in Cope since September 1993. Since then they have participated together in a number of business ventures through Cope. According to their evidence, they had agreed that any financial investment by Mr Levi as a member of YC in relation to the acquisition of the Club through Adulant would be channelled through Cope. It was Cope which provided the funds. Mr Levi explained that the money invested by Cope in Adulant was raised by selling two properties owned by Cope or a subsidiary of Cope to Mr Richmond (who was also a member of YC). According to Mr Levi, his fellow members of YC did not want to have corporate trustees, so Mr Levi became a trustee in his personal capacity albeit that the beneficial ownership of his investment was vested in Cope. Cope acquired through Adulant a 26% share in LUFAC which was subsequently increased to 28%..

16. Mr Levi gave evidence that, either before or shortly after Adulant's acquisition of the shares in LUAFC, the other members of YC became aware that he was representing the interests of Cope.

17. It is common ground that the position prior to February 2005 was that the Club was owned and controlled by YC through its wholly owned subsidiary Adulant.

The arrival of Mr Bates in Leeds

18. The ambition of members of YC to turn around the fortunes of the Club was unhappily not realised. I do not need to go into any detail why that was so. The seriousness of the Club's financial position can be gauged by the fact that none of the major credit card companies were willing to do business with LUAFC. The Club's indebtedness, incurred during the previous regime, was huge. Substantial sums were owed to HMRC amongst other creditors. On 4 January 2005 HMRC demanded payment of £3.3 million unpaid taxes within 7 days if a winding up petition was not to be presented to the High Court.

19. The final blow came at the end of the 2003/2004 season when the Club was relegated from the Premiership League to the Championship League. That relegation meant that in the next season attendance at Leeds matches would fall sharply and Club revenues would suffer a corresponding reduction. The financial problems besetting the Club received wide publicity.

20. One of those who became aware of the financial turmoil affecting the Club was Mr Bates. He had previously in 1982 together with others purchased Chelsea Football Club shortly after that club had been relegated to the Second Division. Mr Bates had in 2004 sold his substantial interest in Chelsea to Mr Roman Abramovitch.

21. Having learned of the Club's acute financial difficulties, Mr Bates evidently saw an opportunity to form a consortium to acquire the Club from YC. On 13 January 2005 he attended a meeting with Krasner and Mr Levi. They discussed the Club's requirements which, according to Mr Bates, were effectively that it needed nearly

£1.2 million by the end of the following week if it was to avoid a winding up petition from HMRC. Mr Krasner and Mr Levi told him that they were prepared to sell the Club if an investor could be found who would guarantee the future of the Club by making up to £5 million available in a very short time.

22. In remarkably quick order it was agreed between Mr Bates and Mr Krasner and Mr Levi on behalf of YC that Mr Bates's consortium would buy from Adulant its shares in LUAFC, thereby effectively taking over ownership of LUAFC. According to Mr Levi and Mr Krasner, Mr Bates indicated in the course of the negotiations that he had £10 million to invest in the Club. Their evidence, disputed by Mr Bates, is that Mr Bates indicated that he did not intend to carry out due diligence before completing the purchase. The evidence of Mr Bates is that due diligence was carried out by him or on his behalf, albeit within a very short period of time. Be that as it may, completion took place at 2.00 a.m. on 25 January 2005 that is, about four days after the initial meeting.

The structure of the purchase of the club by the Bates consortium

23. Mr Bates left the documentation and such due diligence as time allowed to Mr Mark Taylor, a solicitor based in London. The vehicle through which the Bates consortium acquired Adulant's shares in LUAFC was a company called Leeds United Football Club Limited ("LUFC"). In the event LUFC did not purchase all the shares in LUAFC which were owned by Adulant on behalf of YC, as had been the original intention. The reason for this was that, if all the Adulant shares had been purchased by the Bates consortium, a payment of £5 million would have become due from Adulant to the former bond holders of Leeds United plc by virtue of a change of control clause (also known as an "anti-embarrassment clause") contained in an agreement dated 12 November 2004. Accordingly it was agreed that, in order to avoid triggering the change of control clause, LUFC would purchase 50% of the shares of Adulant with the remaining 50% of the shares being subject to a call option for which the consideration was a payment of £1. Mr Taylor described the call option as "a device to circumvent the change of control clause".

24. The call option in respect of 50% of Adulant shares was granted to a company named Bordeaux Services (Guernsey) Limited ("Bordeaux"). The call option was contained in the Share Purchase Agreement for the acquisition of Adulant. Its terms were:

> "5.1.2 The call option shall only be capable of exercise by Bordeaux if Bordeaux or the Transferee executes (i) a legal valid and binding guarantee in favour of the Secured Noteholders of the obligations of the Purchaser under the terms of the Secured Notes and (ii) a legal valid and binding charge over the Option Shares in favour of the Secured Noteholders to secure the obligations of the Transferee under such guarantee and procure a legal opinion from a firm of lawyers in the relevant jurisdiction reasonably satisfactory to the Sellers that the Transferee has power to enter into such guarantee and charge and that the guarantee and charge are legal valid and binding."

Clause 5.1.3 provided that, if the Call Option was not exercised by 31 May 2005 in accordance with Clause 5.1.2 quoted above, it should be deemed to have lapsed.

25. The Share Purchase Agreement also contained at Clause 5.4.2 an undertaking by LUFC given to the YC that they would not issue any shares in the capital of LUAFC until such time as the call option had been completed in accordance with the terms of

the agreement. ML, acting as he claims on behalf of Cope, had loaned to Adulant £1,746,000 pursuant to the loan agreement dated 19 March 2004 referred to at paragraph [12] above. Of that amount £1,647,184 remained outstanding on 21 January 2005. By a Debt Transfer Agreement of that date LUFC agreed to repay the outstanding balance of the loan made by ML to LUAFC. The Agreement contained similar provisions in respect of the loans made to LUAFC by Mr Morris and Mr Richmond. (Neither Mr Krasner nor Mr Helme had lent money to LUAFC). The repayments were agreed to be made in part by the payment of cash sums and in part by the issue by LUFC of Loan Notes. An immediate cash payment of £207,450.95 was agreed to be made to Mr Levi and LUFC agreed to issue to him secured loan note totalling £1,439,734. Those loans were repayable to Cope in four years' time and earned interest at the rate of 4% over base rate. Further loan notes totalling £2 million were issued to Mr Levi on behalf of Cope.. That loan was repayable as to £1 million in January 2007 and as to £1 million on 31 August in the first calendar year after the date of the Instrument in which the club becomes a member of the Premier League. No interest was payable on these loans.

26. Within days of the completion of the sale of the shares to LUFC Mr Morris and Mr Richmond had disposed of their secured loan notes and investments in Adulant by selling them to the Bates consortium at a substantial discount. The effect of these disposals was that Mr Morris and Mr Richmond were no longer financially involved with the Club. Mr Levi on the other hand did not dispose of his loan notes. He was the only member of the YC to retain a financial interest in the Club.

Mr Levi's ticketing privileges

27. As I have already said, Mr Levi has lived and worked in and around Leeds throughout his life. His evidence is that whilst a director of the Club he attended most Leeds matches both at home and away. On 20 January 2005, that is, shortly before the acquisition of the Club by the Bates consortium was concluded, Mr Taylor, in his capacity as a director of LUFC wrote to the trustees of YC:

> "We write to confirm our obligation to provide free of charge to Melvin Levi, Simon Morris and Bryan Morris, three Boardroom passes and Directors' Box Tickets each to every [Club] home game held at any time whilst the same persons are owed any sums (whether or not such debt is due) by LUFC or any company within the same group as that company.
>
> …
>
> Further, we confirm that the same persons will retain their car parking spaces at Eland Road for each home game played by [the Club].
>
> Also we confirm that in relation to away games the same persons will be provided free of charge with one ticket each to every [Club] away held whilst the same persons are owed any sums (whether or not such debt is due) by LUFC or any company within the same group of companies as that company…"

28. When the Share Purchase Agreement came to be signed the following day, it included at clause 6 the following:

> "**TICKET ALLOCATIONS**

> The Purchaser will comply with the terms of the letter of today's date (sic) addressed to Bryan Morris, Simon Morris, David Richmond and Melvin Levi in relation to, inter alia, tickets for Leeds United football matches."

29. Although he accepts that it was not mentioned in the letter of 20 January 2005 or in clause 6 of the Share Purchase Agreement, Mr Levi gave evidence that until April 2005 he had continued to enjoy Boardroom or Guest Lounge facilities when attending away matches.

Membership of the Bates Consortium

30. In describing the structure of the acquisition of the Club by the Bates Consortium I have thus far referred to the purchaser as either LUFC or the Bates consortium. The contemporaneous documents do not indicate who were the members of that consortium or who were the beneficial owners of the shares in LUFC.

31. There was no reason why the identity of any of them should be disclosed. However, Mr Bates provided some evidence on this topic. He explained that an acquaintance of his called Mr John Owen had suggested that a consortium consisting of Mr Owen, Mr Leslie Grayling and Mr Bates's investors should provide the funding in order to acquire the Club. Mr Taylor confirmed in his witness statement that LUFC was a consortium led by Mr Bates with the purpose of acquiring the Club. Mr Taylor explained that, following the sale of Chelsea Football Club to Mr Abramovitch, Mr Bates had been looking for another opportunity to become involved in football administration. According to Mr Taylor, Mr Bates was representing a Cayman Island registered fund called Forward Sports Fund ("FSF"), which controlled LUFC at the time when he first met Mr Krasner and Mr Levi on 17 January 2005.

Events following the acquisition by the Bates Consortium of the Club

32. On 10 February 2005, that is, about three weeks after the acquisition of the Club by the Bates Consortium, Mr Shaun Harvey, Chief Operating Officer of the Club, wrote to Mr Levi informing him that with effect from the following Saturday's home game for the remaining games of the season, the Club was going to relocate the Boardroom to the facility that had previously been known as the 'Platinum Lounge'. The letter also indicated that the Old Boardroom was to be re-named 'The Chairman's Suite' and would be used until the end of the season for entertaining guests and potential sponsors. On 13 April 2005 Mr Harvey wrote again to Mr Levi pointing out that the Share Purchase Agreement provided for ONE ticket to be made available to Mr Levi in the Directors' Box at each away game. Mr Harvey added that it was important that, when representing the Club (using the Club's tickets in the Directors' Box) Mr Levi should conduct himself in an appropriate and supportive manner of the Club at all times.

33. Mr Levi's evidence was that he was disappointed that Mr Harvey was down-grading the facilities available to him , thereby (as he saw it) in effect breaching the agreement that had been reached with him. However, he reluctantly accepted the decision.

34. In April 2005 Mr Levi drove nearly 200 miles to Watford to watch the Club team play an away game there. Up to that point Mr Levi and the other former directors of the Club had been permitted to continue to enjoy the Boardroom or Guest Lounge facilities when attending away matches. Anticipating being allowed into the Boardroom or Guest Lounge, he was dressed smartly and was wearing a tie. On arriving at the ground, he went to the Guest Lounge area but was directed to a much smaller room where everyone was wearing casual clothes and the refreshments were

limited. Mr Levi accepted in his evidence that he had become cross. He made his feelings known to Mr Harvey who was also present. A day or so later Mr Levi received the letter from Mr Harvey dated 13 April 2005 to which I have already referred.

35. At the start of the new season on 2 August 2005 Mr Levi travelled to Harrogate at the invitation of Mr Andrew Thirkill, Deputy Chairman of Harrogate Town, to watch the Club team play a friendly match there. At half time they were joined by the then Manager of the Club, Mr Kevin Blackwell. According to Mr Levi's evidence, the whole evening was enjoyable and passed without incident. He did not recall making any criticism of Mr Bates at any stage. I will revert later to the evidence given by Mr Blackwell about the day's events

36. On 17 August 2005 Mr Harvey wrote again to Mr Levi. His letter of 13 April 2005 asserted that Mr Levi had criticised Mr Bates at the friendly match against Harrogate Town and had made clear his opposition to him and to the current Board. The letter continued that those remarks were only examples of Mr Levi's conduct and were calculated to damage Mr Bates and the current ownership of the Club. The letter concluded that in the circumstances the Board was left with no alternative but to withdraw Mr Levi's entitlement to tickets to both home and away games together with any ancillary benefits such as car parking. Mr Harvey added that he was "compelled" to inform Mr Levi that he would not be welcome at Club matches either home or away and that Mr Levi might consider himself "banned" from the stadium and the surrounding area controlled by the Club.

37. Mr Levi's evidence was that Mr Harvey's letter came as a complete and utter shock to him since he had made no criticism of Mr Bates nor insulted him or the Club. Mr Thirkill, who had been Mr Levi's host at the Harrogate game, wrote a letter to Mr Bates making clear that at no time had Mr Levi made derogatory remarks about Mr Bates or the Club generally. Mr Blackwell, who was also present at the match, was called to give evidence on behalf of Mr Levi. In his witness statement he said that he was not able to recall Mr Levi making specific comments about Mr Bates and that the majority of his comments were directed at the Club. However, in cross-examination he agreed that on 8 September 2005, when still Manager of the Club, he had provided Mr Bates with a statement in which he said that during the second half of the Harrogate game Mr Levi had made many derogatory remarks towards the Club and had said that he was going to make it as hard as he could for Mr Bates. In his evidence Mr Blackwell reiterated that he had no recall of Mr Levi making any personal statements against Mr Bates.

38. Mr Levi gave evidence that, as a result of his "ban", he has not attended any football match at Elland Road. He further testified that, bearing in mind that Cope was still owed in excess of £2 million, he was extremely distressed by Mr Bates's actions. Nearly four years later, Mr Levi remains extremely upset at his treatment.

The exercise by Bordeaux of the call option

39. I have recited at paragraph 23 above the terms of the call option granted to Bordeaux in respect of the 50% of Adulant shares which were not acquired by the Bates Consortium for fear that their purchase would trigger the change of control clause referred to at paragraph 22 above. Mr Taylor explained in his second witness statement that, whilst the call option could in theory have been exercised at any time after 21 January 2005 until the lapse of the option on 31 May 2005, in practice it would not have been exercised until after the change of control clause expired on 12

May 2005. According to Mr Taylor, the exercise and completion of the call option was a mere formality, the deal having already been done.

40. Before serving notice of the exercise by Bordeaux of its option, it was necessary to nominate a purchaser. Bordeaux nominated a British Virgin Islands company named Silkley Holdings Limited ("Silkley"). Mr Taylor informed Bordeaux that the legal opinion referred to in clause 5.1.2 of the Share Purchase Agreement was required. He was told that one could be procured once Bordeaux had received the charge and guarantee also required by clause 5.1.2.

41. Under cover of a letter dated 19 May 2005 Mr Taylor, acting on behalf of Bordeaux, sent to Mr Krasner a notice of exercise in respect of the call option and asked him to provide drafts of the guarantee and charge required pursuant to clause 5.1.2. No mention was made by Mr Taylor of the requisite legal opinion either in his letter of 19 May 2005 or in the notice. Mr Krasner referred the notice to Mr Simon Concannon of Walker Morris ("WM"), solicitors acting for the trustees of the YC. A draft guarantee and a draft charge were sent by WM to Mr Taylor on 27 May 2005. Those documents were approved and sent to Guernsey for execution.

42. Although Mr Taylor had confirmed that a draft opinion would be available and had asked that the requisite opinion be given by suitably qualified BVI lawyers, it was not until 5 July 2005 that he sent to WM the draft opinion letter that he had received from Hunte & Co., a firm of lawyers in the BVI together with the executed charge and guarantee. The opinion is marked "Draft" and so is unsurprisingly not signed. There is no indication of the identity of the individual who prepared the draft or of the individual, if different, intending to sign any final version of the opinion.

43. Having received the draft legal opinion from Bordeaux, Mr Taylor forwarded it to Mr Concannon at WM. Mr Taylor accepts in his second Witness Statement that page 5 of the opinion may have been omitted from the copy which he sent to Mr Concannon. Mr Taylor accepted that, whilst the opinion was in a fairly standard form, WM needed to approve its contents in order to enable them to advise their clients that the legal charge and guarantee were in proper form and legally binding. Mr Taylor's evidence was that on 14 July 2005 he received a signed version of the opinion from Hunte & Co. but did not send it to WM at that time since there was little point in doing so until WM confirmed that the draft was acceptable to their clients. The signature at the end of the opinion is in manuscript and reads "Hunte & Co. Law Chambers". There is no indication as to the identity of the individual who is providing the opinion.

44. It is common ground that the purpose for which the legal opinion was required to be supplied by Bordeaux was to ensure that the guarantee and charge required by the call option would be enforceable against Silkley. Paragraph 4 of the opinion states that the charge and guarantee would be treated by the courts of the British Virgin Islands as the legally binding, valid and enforceable obligations of Silkley. However, that is by virtue of paragraph 6 subject to several qualifications which are to be found on page 5 of the opinion including the qualification that the enforceability of the rights and remedies provided for in the guarantee and charge may be limited by bankruptcy, insolvency, liquidation, arrangement and other similar laws of the BVI of general application affecting the rights of creditors.

The issue as to whether the call option had lapsed or expired

45. WM did not immediately respond to Mr Taylor's letter enclosing the draft opinion. Messrs Cooper and Concannon of WM discussed the draft opinion and other issues with Mr Levi in early August. A note of that discussion makes reference to there

being "a strong argument" that the call option had lapsed. By e-mail dated 4 August 2005 WM informed Mr Taylor that, due to the complexity of the matter, counsel was to be asked to advise.

46. Meanwhile on 26 July 2005 WM had informed Mr Levi that the security for his outstanding entitlement was to be offered by Silkley, a BVI company, and that the security offered was in the form of a deed of guarantee and a charge over shares to be held by Silkley in Adulant. WM enclosed a copy of the draft opinion of Hunte & Co. The letter warned Mr Levi that "there are risks associated with a transaction of this nature". A meeting was suggested.

47. The date by which, according to clause 5.1.3 of the Share Purchase Agreement the call option was to be exercised was 31 May 2005. That date was long past and no indication had been given by the trustees of the YC or by WM on behalf of any of them that the opinion was satisfactory to them.

48. Mr Levi gave evidence that he had been concerned when he discovered that the guarantee had apparently been signed on behalf of two companies, namely International Directors Limited and by Charlestown Management Limited, by two individuals said respectively to be a director and a secretary presumably acting on behalf of Silkley. The same signatures appear on the charge which is undated. In his witness statement Mr Levi expressed the belief that there are serious defects not only in the guarantee and charge but also in the legal opinion.

49. Mr Levi sought legal advice as to whether the call option had "lapsed" within the meaning of clause 5.1.3 of the Share Purchase Agreement. By letter dated 22 August 2005 WM instructed Jonathan Crystal of Cloisters Chambers in London to advise in conference at 3.30 p.m. on 23 August. The letter records the writer's understanding that Mr Crystal had been provided with a "Bible of Completion Documents" in relation to "Project Houdini". In his evidence on behalf of Mr Levi, Mr Crystal confirmed that he had received the "Bible". His understanding was that "Project Houdini" related to the circumstances of the trustees' acquisition of shares in LUFC and not to the terms of the transfer of the Club to Mr Bates's consortium. Mr Crystal was unable to recall what documents he had in relation to the call option. He did not consider that he would have had either the guarantee or the charge or the legal opinion. Nor did he think he would have seen the notice of the exercise of the option referred to at paragraph [40] above.

50. Mr Crystal did not advise in writing in relation to the call option and the question whether it had lapsed; he had not been instructed to do so. The unfortunate consequence is that the only documentary record of his advice is to be found in a virtually indecipherable attendance note made by one of the representatives of WM who attended the conference. Much of the manuscript is illegible. Even after transcription it remains for the most part obscure as to what advice was given. However it does conclude with these words: "My view option lapsed". That accords with the evidence given by Mr Crystal, namely that at the conference he repeated advice given earlier over the telephone to Mr Levi that he considered that the call option had lapsed.

Further advice from Michael Crystal QC

51. According to the evidence of both Mr Krasner and Mr Levi, a meeting took place at WM's offices on 1 September 2005 when a discussion took place as to the best way to achieve adequate security for Cope's loan to Adulant. WM's note of the meeting records Mr Nick Bates of WM as having agreed with Jonathan Crystal that there was a good argument that the call option had lapsed. The note also records Mr Levi as

having said that "under no circumstances would he sign anything that gave [YC's] shares in [Adulant] to [LUFC or a Ken Bates related company]". Mr Levi gave evidence that he still felt extremely upset with the decision of Mr Bates to remove his ticket allocation.

52. In the light of the concerns expressed at the meeting on 1 September 2005 about the exercise of the call option, it was decided that advice should be taken from Mr Michael Crystal QC before making a final decision on whether or not to transfer the 50% shareholding in Adulant to LUFC. Accordingly WM on 6 September 2005 sent a fax to Mr Crystal QC in anticipation of a telephone consultation taking place at 3pm that afternoon asking him to provide a written opinion whether the call option had lapsed and whether YC was obliged to complete the option. Enclosed with the letter of instruction was the Share Purchase Agreement and related correspondence between the parties since 21 January 2005.

53. WM's attendance note of the telephone consultation records Mr Crystal QC having advised that the courts would take a commercial, purposive view of the notice and, on that basis, his view was that there was no argument that the option had lapsed. Such a claim had no prospect of success.

54. Mr Bates of WM informed Mr Levi of the advice of Mr Crystal QC and his attendance note records the unhappiness of Mr Levi with that advice. Mr Levi is further recorded as having understood his obligations to the trust but is said to have seen a window of opportunity to try to do a deal. On 7 September 2005 WM wrote to Mr Taylor confirming that the trustees "are obtaining advice" from Mr Crystal QC. Since WM had already obtained advice from Mr Crystal QC, albeit oral, WM's letter was evidently designed to give Mr Levi the opportunity to negotiate with Mr Taylor (see paragraph [56] – [60] below).

55. Mr Crystal QC signed the note which had been prepared of the telephone consultation and returned it to WM on 20 September 2005. Paragraph 3 of that note correctly records the fact the guarantee and charge referred to in the option agreement had been provided by Silkley. The note then states that the requisite legal opinion had been produced six weeks later. That was incorrect: the true position was that Mr Taylor had sent to WM the draft opinion received from Hunte & Co. on 5 July 2005 (see paragraph [42] above). Acccording to the evidence of Mr Taylor, the signed opinion was not provided by Hunte & Co. until 14 July 2005 (although the papers do not include any covering letter from Hunte & Co). It may well be that the explanation for this mistake on the part of Mr Crystal QC was that, as is stated in paragraph 5 of the Note of his advice, he had not seen the legal opinion whether in draft or signed. Mr Crystal's opinion remained that the Court would find that the Consortium had impliedly agreed to a reasonable extension of the option period so that, provided Bordeaux had complied with its obligations, the option had been validly exercised. Mr Crystal QC provided the caveat that this was on the basis that the charge and guarantee prepared by WM had been agreed. There is no reference in the note to the obligation of Bordeaux stipulated in the Share Purchase Agreement to provide a legal opinion "reasonably satisfactory" to Mr Levi and his fellow trustees.

Mr Levi and Mr Taylor discuss settlement

56. In paragraphs 188 to 195 of his witness statement Mr Levi refers to settlement proposals put to him by Mr Taylor shortly after advice had been obtained from Mr Jonathan Crystal that the call option had lapsed and before an opinion was obtained from Mr Michael Crystal QC. According to Mr Levi, the initiative came from Mr Taylor. Mr Taylor's evidence was that he cannot now remember whether it was he

who contacted Mr Levi or whether Mr Levi contacted him. Mr Taylor's evidence was that Mr Levi's primary concern appeared to him to be to obtain the reinstatement of his ticket entitlement. After some discussion, agreement in principle was reached between the two of them on that issue.

57. The next day, 7 September 2005, Mr Taylor wrote to WM setting out the terms which, subject to final confirmation from the YC, had been agreed between himself and Mr Levi. The terms were in summary as follows:

    i) that the YC would transfer the remaining shares in Adulant to Silkley pursuant to the call option without further delay;

    ii) that the monies due to LUAFC from Admatch would be set off against the sums owed to Mr Levi under the secured loan notes;

    iii) that Mr Levi's entitlement to tickets to Club matches would be reinstated;

    iv) that a joint press statement would be released stating amongst other things that all disputes had been resolved and

    v) that no proceedings would be issued against the YC.

    The letter concludes by recording that Mr Levi was endeavouring to speak to his fellow trustees and to Mr Weston.

58. Mr Levi's evidence is that he subsequently telephoned Mr Weston to tell him of the terms which had been provisionally agreed. According to Mr Levi, Mr Weston pointed out that the proposed terms might be attractive to him (Mr Levi) but were not satisfactory to Cope since no proposals were being made regarding repayment of the secured loans. Mr Weston in his evidence confirmed that he was concerned about the ongoing lack of security for Cope's loan to the Club. He said that his primary aim was to oblige the Club to comply with its obligations in the sale documents, but he agreed that a secondary purpose was to take "modest financial advantage" of the situation if possible. Mr Weston told Mr Levi that he was going to take over the negotiations with Mr Taylor.

59. Mr Levi's evidence in his first witness statement was that he did not know how Mr Weston was going to conduct those further discussions with Mr Taylor. Mr Weston said in his witness statement that he had discussed with Mr Levi a number of possible alternative ideas that he might reasonably propose to Mr Taylor. In his second witness statement dated 20 May 2009 Mr Levi accepted that Mr Weston's recollection was accurate but said that his memory of their conversation was vague.

60. Mr Weston telephoned Mr Taylor on 9 September 2005. His memorandum to Mr Bates concerning that conversation said that Mr Weston had told him that it could take six months to enforce the call option. Mr Weston had then said that he would transfer the shares immediately if the Bates consortium:

    i) gave Levi his tickets;

    ii) gave set-off on Admatch;

    iii) repaid the loan notes forthwith; and

    iv) gave him 10% of Leeds.

Mr Taylor's memorandum records his having told Mr Weston that those terms were unacceptable and greedy, whereupon Mr Weston had said that he was open to a counter-offer. Mr Weston gave evidence that the conversation was an amicable one and that Mr Taylor had undertaken to talk through his proposals with Mr Bates and to let him or Mr Levi know what they decided.

Mr Taylor takes advice from Leading Counsel

61. Mr Taylor was insistent in his evidence, as was Mr Bates, that the inclusion of the call option in the Share Purchase Agreement was a mere formality. However, it was apparent to both of them that, until the call option was exercised, it was simply not possible for any rights issue to take place as nobody would be prepared to invest in a football club over which there was an argument about its ownership. It was in these circumstances that Mr Taylor sought advice from Mr David Phillips QC as to the construction of the call option contained in clause 5. Mr Phillips expressed the preliminary view that he was not optimistic that, even on a purposive construction of the clause, Mr Taylor's clients would get the construction they needed. Mr Phillips put the prospects of success at well below 50%. He did not think that YC's conduct amounted to an explicit acceptance of the validity of the notice of the exercise of the option. He did add that there appeared to be an arguable case based on estoppel by convention.

62. According to a WM attendance note dated 6 September 2005, Mr Taylor felt able to tell Mr Bates of WM that he believed that the option had been exercised and so did his counsel, Mr Phillips QC. The note added that Mr Taylor had said that they had been waiting to complete since June and had not heard from WM. Mr Bates pointed out that WM had informed Mr Taylor on 4 August that they were seeking the assistance of counsel.

LUFC Rights Issue

63. In the course of the hearing Mr Bates disclosed an undated document entitled "LUFC Ltd – Rights Issue". According to that document, it was proposed that the Board of LUFC should raise up to £5 million by way of a rights issue to the existing shareholders on a pro rata basis at 5p per share. Of that £5 million, £3.3 million was to come from FSF and £1.7 million from a company controlled by Mr Leslie Grayling called Sports Investment (Leeds) Limited and Ms Tamara Owen who was representing her father, Mr John Owen. This meant that if and when implemented FSF would be the owner of 66.24% of the shares in LUFC in consideration of a payment by FSF of £3,312,000.

64. On 7 September 2005 the solicitor acting for Mr Grayling e-mailed Mr Taylor to tell him that his client was intending to take up his rights (ie to participate in the rights issue). He added that the issue that will generate concern is what he called "the Melvyn Levi dispute" and added that he knew that Mr Levi was keen to resolve matters. The solicitor concluded by asking that Mr Taylor update him once he (Mr Taylor) had spoken to Mr Bates. There is no documentary evidence that Mr Taylor did update Mr Grayling or his solicitor.

65. It was on 8 September 2005 that Mr Blackwell provided Mr Bates with a witness statement dealing with the events at the Harrogate match (see paragraphs [35] and [37] above).

66. As I have said in paragraph 31 above, FSF was a Cayman Island fund controlled by Mr Bates. On 12 September 2005 Mr Patrick Murrin on behalf of FSF wrote to Mr Taylor thanking him for updating him with regard to the status of the LUFC rights

issue and the Adulant call option. (There does not appear to be any documentary record of Mr Taylor's update). Mr Murrin stated that he could see why the other shareholders were reticent to proceed whilst the uncertainty concerning the call option remained. He confirmed that FSF were prepared to release LUFC from its obligation to issue new shares to FSF on the basis that LUFC release FSF from its obligation to take up additional shares in LUFC. In his reply dated 16 September 2005 Mr Taylor informed Mr Murrin that the board of LUFC had decided not to proceed with the rights issue and that the matter should be discontinued on the basis set out in Mr Murrin's letter of 12 September. In his oral evidence Mr Taylor agreed that there was no document recording the fact that Mr Grayling and Ms Owen had changed their minds about taking up the rights issue.

67. Mr Taylor's evidence was that he appreciated that the Club was in an extremely desperate position. His evidence was that Mr Grayling and Ms Tamara Owen (neither of whom gave evidence at the trial) would not be prepared to proceed with the rights issue which had been contemplated until such time as the call option issue had been resolved. He said that he therefore began to look for ways to raise funds without the need for completion of the call option. He discovered that the LUAFC Articles of Association did not include pre-emption rights and expressly excluded statutory pre-emption rights. This meant that LUAFC could issue new shares without giving Adulant a right to subscribe. This would enable the Club to secure the much needed injection of capital even if the call option issue had not been resolved. Mr Taylor does not say in any of his witness statements when it was that he made the discovery about the absence of pre-emption rights. Mr Taylor sought to cancel the Grayling/Owen shares on the ground that (as he told Mr Philipps QC on 12 September 2005) a call had been made on 8 August. But a letter from Ms Owen dated 5 September 2005 indicates that Ms Owen had not received the call letter and that there had been a agreed postponement.

68. Mr Taylor explained the position to Mr Bates and the two of them agreed that the Club should approach FSF and invite them to subscribe in new shares. According to Mr Taylor, discussions took place between him and representatives of FSF on 16 September 2005. Five days later he wrote to FSF formally inviting them to subscribe to 2.5 million new ordinary shares of £1m each and invited FSF to agree to convert £2m of their debt into equity. The next day, 22 September 2005, FSF responded, agreeing to purchase the shares and to convert the debt into equity. On the same day at meetings attended by Ms. McGuiness, Ms Todd and Mr Taylor on the telephone on behalf of all three companies, board resolutions of LUFC, LUAFC and Adulant were passed approving the increase in the authorised share capital of LUAFC. The effect of the issue of the shares to FSF was that it became the owner of 94% of LUAFC; LUFC would own 3% and the remaining 3% would be owned by Adulant (which was itself owned 50% by LUFC and 50% by YC).

69. Before entering into a formal agreement with FSF, Mr Taylor took the precaution of consulting Mr Phillips QC again. His written instructions are dated 27 September 2005. Mr Taylor informed counsel that Mr Grayling and Ms Owen had indicated that they would not support the rights issue because of the failure of YC to complete the call option. Mr Taylor asked counsel to advise whether a liquidator of LUFC would have any grounds to seek to set aside the share issue made by LUAFC to FSF. He provided Mr Phillips with a copy of Mr Crystal QC's advice, which was obtained by Mr Bates in the circumstances described in paragraphs [72]-[74] below. Mr Taylor also asked counsel to advise whether or not Mr Levi's loan notes could be set aside on the ground that they had been obtained by him by deception.

70. The consultation took place on 29 September 2005. According to the note of that consultation Mr Phillips QC advised that, given that there was a stark choice between insolvency for LUAFC and accepting FSF's offer, it was unlikely that the share issue would be set aside (and also unlikely that the directors would have any personal liability). In relation to the Levi debt he considered that there was an arguable case to set it aside.

71. Mr Taylor consulted Mr Phillips QC again on 29 September 2005. Amongst other things the LUAFC share issue was discussed. Mr Phillips advised that it might be that, if the whole corporate structure were to be exposed, a judge might be interested in ulterior motive but he thought that was a small risk.

Mr David Richmond passes the signed note of the advice of Mr Crystal QC to the Club

72. As I have said, one of the trustees of the YC was Mr David Richmond. He had already disposed of his loan notes and investments in Adulant (see paragraph [26] above). He was sent a copy of the note of the advice given by Mr Crystal QC, signed by him, under cover of a letter of 22 September 2005. Mr Richmond provided a witness statement to Mr Bates. He was called to give evidence. In the course of his cross-examination he admitted that he had shown the note of Mr Crystal's advice to Mr Shaun Harvey, the Chief Operating Officer of the Club. Mr Richmond said that he thought Mr Harvey was the best man to act as an honest broker between Mr Bates and Mr Levi. He agreed that it had crossed his mind that Mr Harvey would give the note of Mr Crystal's advice to Mr Bates. In hindsight Mr Richmond agreed that he should not have given the document to Mr Harvey.

73. In the course of his evidence Mr Bates confirmed that he had been provided by Mr Harvey with a copy of the note of Mr Crystal's advice. He said he was happy to have received it and did not accept that there was anything dishonourable about it, given that Mr Levi was, as Mr Bates put it, "blackmailing" FSF.

74. Mr Taylor made use of the advice passed by Mr Richmond to Mr Harvey by providing a copy of it to Mr Phillips QC (see above). He also included a reference to it in a letter addressed to LUFC noteholders (who included Mr Levi) dated 30 September 2005 and signed off by Mr Taylor in his capacity as a director. The letter included the following:

> "The Trustees have been advised by Leading Counsel that their failure to comply with the Call Option is a breach of contract. The Company has received similar advice."

Mr Taylor announces a share issue to FSF

75. The primary purpose of Mr Taylor's letter referred to in the previous paragraph was to inform Variable Rate Secured Loan Noteholders about an issue of LUFC shares to FSF. Mr Taylor wrote that the only available source of funds that LUAFC had been able to find was FSF, who had offered to provide an equity investment into LUAFC in the sum of £4.5m. Mr Taylor wrote that, "given the unavailability of any other source of finance, the board of LUAFC had resolved to proceed with a share issue to FSF". The placing was completed on 22 September 2005. In his letter Mr Taylor said that the issue by LUAFC of new shares was "an event of default" under the conditions to the instrument that created the notes, with the consequence that the notes had become immediately repayable. He said that the directors of LUAFC regretted having to take actions that triggered a default but felt they had no alternative.

76. The issue of new shares meant that FSF now controlled LUAFC. Mr Taylor accepted in his letter that LUFC's percentage shareholding in LUAFC had been substantially diluted as a result of the issue. The consequence of the rights issue in LUAFC was that with effect from 22 September 2005 the ownership of LUAFC was as follows: FSF 94%; LUFC 3% and Adulant 3%. Since Adulant was owned 50% by LUFC and 50% by YC, it follows that YC's interest in LUAFC was from 22 September 2005 1.5%. Before that date YC's ownership of LUFC through Adulant had been 25%.

Winding up of Roman Heavies Limited

77. To complete the chronological history prior to the first publication complained of, on 26 April 2006 a winding-up petition was served on behalf of Cope on Roman Heavies Limited. LUFC had previously changed its name to Roman Heavies. That company was wound up on 6 June 2006.

The Publications Complained of by Mr Levi

78. Having set out at what I fear is undue length the somewhat complex factual background, I am now in a position to return to the publications complained of. Three of the publications are articles contained in programmes produced for Club matches and the fourth is a letter to Club members. Mr Bates gave evidence that in his view the most sensible way of communicating with the whole fan base of the Club is through match day programmes. His evidence is that he personally has written nearly every one of the Club programme notes, as he had previously done when Chairman of other football clubs.

79. Although Mr Levi sues on only three articles in the programme, Mr Bates had previously written and published articles featuring Mr Levi. One such was published on 24 September 2005 when Mr Bates published an account of the circumstances in which he says that, with the "honourable exception" of David Richmond, the trustees of the YC had failed to honour the call option. His account included the following reference to Mr Levi and Mr Weston:

> "I am a simple man. I do not understand their devious, dishonourable behaviour. Perhaps you can help me find out whether they are a pair of money grabbing spivs or not by emailing your questions to leviweston@leedsunited.com..."

There were other unflattering references to Mr Levi in the Club programmes. Since, as I have said, Mr Levi sued on none of those publications, they are relevant as background only.

The First Alleged Libel

80. The first publication of which Mr Levi does complain appeared in the programme for 17 October 2006. It was headed "**Just to bring you up to speed …**". The passage complained of reads as follows:

> "Here is the latest on the Melvyn Levi/Gerald Krasner situation. Romans Heavies Ltd, the company originally set up to buy Leeds United from Levi/Krasner was liquidated and an official appointed to do the deed. They failed to appoint their chosen liquidator and were refused a committee of inspection to oversee the proceedings. The company's only asset is about three per cent of Leeds United which Levi claims as security for his alleged debt. Regular readers of this column will recall

that he refused to transfer the shares to me claiming that I had not exercised the option to acquire them, despite both his solicitors and barrister telling him that I had. Typically, he changed both his solicitors and his barrister.

Meanwhile we have put Adulant Force Ltd (the company which he used to buy Leeds originally) into liquidation and in due course will obtain the balance of the shares outstanding. Here we are working night and day to make Leeds United a creditable club once again and we are distracted by this shyster (no, that is not anti-Semitic) trying to blackmail us into paying him money to buy him off for not honouring his obligation."

81. The meaning attributed on behalf of Mr Levi to that passage is set out at paragraph [6(1)] above.

The second alleged libel

82. Some months later in the programme for 3 March 2007 Mr Bates wrote an article entitled "**The Enemy Within**". The text of the article was as follows:

"At this difficult time we should all be pulling together, however we have an enemy within. His name is Melvyn Levi. You may recall that Levi was a member of the Yorkshire Consortium (YC) who owned Leeds before I came on the scene. The method of takeover was planned by his lawyers, Messrs Walker Morris, a well-known Leeds firm. The consortium which I represented went along with the scheme which basically required Forward Sports Foundation (FSF) to acquire half of the football club immediately (January 2005) and the balance by way of an option before June 30, 2005. FSF complied with all the requirements and duly exercised the option on the due date. Levi claimed that the option had not been validly exercised and refused to transfer the shares. The other partners in YC were prepared to transfer the shares but since all YC's decisions have to be unanimous, Levi's refusal effectively frustrated completion. At this stage I have to say that the behaviour of Messrs Simon and Bryan Morris, David Richmond and Melvin Helme have been totally honourable throughout. Gerald Krasner has been equivocal owing to his promise to Levi's father that he would look after Levi. I understand that Levi Senior was highly respected and a pillar of the local community. He must be turning in his grave at the antics of his offspring.

Leeds United need further investment and FSF are quite happy to welcome further participants. However, for some time Melvyn Levi has been making demands which are little short of blackmail. Basically, he has demanded £250,000 cash and ten per cent of the Company to complete the transaction and transfer the other half of the shares, boasting that he will get back Leeds United in due course. His behaviour, including telephone calls and conversations, some of which are totally scurrilous, have deterred at least two would-be serious

investors from proceeding. Some of his remarks are so serious that they have been reported to the police.

When both Levi's lawyer and QC told him to complete the takeover he promptly changed his lawyer and barrister. This unpleasant and dishonourable man will not succeed in his attempt to obtain money in an unscrupulous way, he is simply deterring would-be investors. Perhaps you would like to ask Mr Levi some questions and ask him to justify his behaviour which is damaging Leeds' prospects of advancement. Mr Levi lives at Wike Ridge House, 3 Wike Ridge Gardens, Leeds, LS17 9NJ."

83. I have set out the meaning attributed on behalf of Mr Levi to those words at paragraph [6(ii)] above.

The third alleged libel

84. A week later on 10 March 2007 Mr Bates returned to the same topic in an article in the programme entitled "**Why, Mr Levi, Why?**". Mr Levi complains of these words in that article:

> "I certainly touched a raw nerve when I took the lid off the Melvyn Levi scandal. He promptly rang his pet columnist who writes in a national newspaper and followed it up with a TV interview in the spacious gardens of his magnificent house. Apart from a lot of hot air he avoided the whole central issue and never was he asked any questions by the interviewer, Harry Gration, who is certainly no Jeremy Paxman. Harry also introduced him as a life-long Leeds fan, although I have never met anybody who can confirm that. Come on Mr Levi, why won't you answer the questions…
>
> 1. **Why did you refuse to complete the share option in 2005?**
>
> 2. **Why are you trying to frighten off would-be investors?**
>
> 3. **Are you trying to blackmail me into paying you money to go away?**
>
> 4. **Why won't your wife's first husband pay Leeds United the £190,000 he admits he owes?**
>
> 5. **Why do you keep telling the few people who still listen to you that I am anti-Semitic?**
>
> 6. **What did I write in my column that you thought was written in 'Nazi' language?**
>
> You are just playing the race card again. Everybody knows that I am not anti-Semitic, just anti-Levi!
>
> Three weeks ago, the CEO of Alamo Rentacar introduced me, at his request, to a man with £100 million cash in the bank. The man flew down to see me in Monte Carlo. We had a

> pleasant lunch which was repeated last Sunday with detailed discussions about the way forward. All very enthusiastic. Wednesday morning he rang, apologised, but said he would not be proceeding because of the 'Levi factor'. …
>
> The Members Club renewals have started coming in. First form to be returned was by Duncan Edge from Bramley who handed his form in on Monday March 5.
>
> Funny thing, mentioning Bramley. Wasn't Bramley Rugby League Club the one that life-long Leeds fan Melvyn Levi was involved in when it closed down and the pitch was redeveloped for housing?"

Within that passage Mr Bates had included a sentence telling readers that, if they wanted to know Mr Levi's telephone number, they only had to look in the phone book. Mr Levi applied for an injunction to restrain publication of the programme. No injunction was granted. However, the sentence was blacked out in the copies of the programme which went on sale. It is nevertheless still possible to read the sentence.

85. The meaning attributed to this article by Mr Levi is set out at paragraph [6(iii)] above.

The fourth publication complained of

86. I come finally to the fourth publication complained of, namely the letter written by Mr Bates dated August 2007 and circulated to the membership of Leeds Club. The letter commences with an expression of regret on the part of Mr Bates at the lack of information coming out of the Club. He then summarises the financial tribulations which the Club had been facing. Readers of the letter are told that no purchaser of the Club had emerged. There then follows the passage complained of:

> "Melvyn Levy (*sic*)
>
> Levy was a member of the Yorkshire Consortium (YC) who briefly owned Leeds United until it was sold to the Forward Sports Fund (FSF) in January 2005.
>
> For technical reasons, FSF acquired 50% of the Club at the time and had an option to buy the other 50% in June 2005. FSF exercised the option but Levy refused to sign over the shares.
>
> All decisions by YC had to be unanimous, consequently Levy's actions blocked the deal. From that day to this Levy has worked in the background attempting to frustrate every effort to strengthen the Club's finances. We planned a rights issue to raise a further £5 million for the club but Levy frightened off the participants. Last October we agreed a deal with an Irish consortium who would put £10 million of new capital into the Club and lend us the money to buy back Eland Road and the training ground. Levy found out and rang the would-be investors and put them off. This is well documented.
>
> Then Weston (see later) got in on the act with Levy and they demanded ten per cent of the Club, £200,000 in cash and Directors' Box tickets for life in return for honouring the

option. Levi has denied this but we have witness statements on file.

This is a brief summary of what has occurred but suffice to say that Levi has been actively trying to frustrate all our efforts to strengthen the Club's financial position. He even went to court and obtained an injunction against Leeds printing a match programme. The Judge threw out his case after 40 minutes.

Robert Weston is the first husband of Levy's wife. Levy arranged with Weston (who lives in Jersey) to handle Leeds season ticket credit card transactions. For two years we have been trying to recover the £190,000 which Weston owes Leeds. He has used every possible delaying tactic to avoid repaying the money which he has acknowledged he owes. We have at last obtained judgment and should get the money this month. Weston has been in jail for trying to pervert the course of justice.

Levy is a disgrace."

87. The meaning attributed to that passage is set out at paragraph [6(iv)] above, is that the words meant and were understood to mean that Mr Levi had frustrated efforts to strengthen Leeds United's finances by deterring participants in a rights issue and putting off would-be investors.

Findings as to the first issue namely the meanings of the words complained of

88. Mr Ronald Thwaites QC, on behalf of Mr Bates, did not dispute that each of the publications complained of was defamatory of Mr Levi. I have to determine what readers of the publications would have understood them to bear. The approach to be adopted when determining this issue has been summarised in *Skuse v Granada Television Limited* [1996] EMLR 278 per Sir Thomas Bingham MR at 285-7 and *Jaynes v News Magazines Limited* [2008] EWCA Civ 130 at [14]. In the latter case Sir Anthony Clarke MR said that the principles may be summarised in this way:

(1) The governing principle is reasonableness.

(2) The hypothetical reasonable reader is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking. but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.

(3) Over-elaborate analysis is best avoided.

(4) The intention of the publisher is irrelevant.

(5) The article must be read as a whole, and any 'beane and antidote' taken together.

(6) The hypothetical reader is taken to be representative of those who would read the publication in question.

> (7) Indeed limiting the range of permissible defamatory meanings, the court should rule out any meaning which 'can only emerge as the product of some strained or forced, or utterly unreasonable interpretation…'…
>
> (8) It follows that 'it is not enough to say that by some personal another the words *might* be understood in a defamatory sense'.

89. That is the approach which I will adopt when determining the meanings borne by the four publications complained of. I will take them in turn.

90. ***The first article complained of dated 17 October 2006****:* the first of the two paragraphs complained of refers to an "alleged" debt owed to Mr Levi. This would in my view have been understood by readers of the programme to mean that there was some doubt as to whether any debt was owed to him. The next sentence suggests to readers that Mr Levi had wrongfully refused to transfer shares to Mr Bates and had falsely claimed that Mr Bates had not exercised his option to acquire those shares.

    But the sting of this publication lies in my judgment in the second paragraph complained of, where Mr Bates refers to Levi as a "shyster". That term would in my judgment have been understood to mean that Mr Levi is someone who engages in sharp, disreputable and dishonest practices. The allegation that Mr Levi had been trying to "blackmail" the Club into paying him money to buy him off for not honouring his obligation would have been understood to mean that he had been using threats to obtain money from the Club. I accept that these words would have been understood to bear the meaning alleged in paragraph 4 of the Particulars of Claim.

91. ***The programme dated 3 March 2007****:* in the course of the hearing there was a debate whether the phrase "The Enemy Within" would have been understood to hark back to the use of that phrase by the Nazis to describe the Jews. I do not accept that the ordinary reasonable member of the Club reading the programme would have understood Mr Bates' words to be anti-semitic. 'The Enemy Within' is an age-old phrase used by those in power to describe dissidents.

92. I accept that the words complained of in this article bear the meanings pleaded in the Particulars of Claim. Readers would in my judgment have understood the passage complained of to mean that Mr Levi had frustrated or sought to frustrate the efforts of FSF to acquire half of the Club by falsely claiming that FSF had not validly exercised its option. In my view the passage contains the defamatory imputation that Mr Levi had behaved in a thoroughly dishonest manner and that his conduct had been so dishonourable that his father would be turning in his grave. Although Mr Levi's actions are described in the second and third paragraphs of this publication as being "little short" of blackmail, I am satisfied that the meaning conveyed to readers of the programme would have been Mr Levi had in fact been attempting to blackmail the Club by imposing extravagant and unscrupulous demands as a condition of his permitting the intended acquisition by FSF to go ahead. The second paragraph complained of bears the further defamatory meaning that by his scurrilous behaviour Mr Levi had deterred at least two would-be serious investors from proceeding with their plans to invest in the Club. I accept the submission advanced on behalf of Mr Bates that the reference to the remarks of Mr Levi having been so serious that they were reported to the police would not of itself convey to readers that Mr Levi's conduct was criminal.

93. ***The article entitled "Why Mr Levi, why?" published in the programme for 10 March 2007****:* although the second and third questions listed by Mr Bates are expressed in the form of questions, it seems to me that ordinary reasonable readers

would understand this article to be accusing Mr Levi both of having tried to frighten off would-be investors and trying to blackmail Mr Bates into paying him money to go away. I think such readers would draw that conclusion because of the introductory words "Come on Mr Levi, why won't you answer the questions…" which would have been understood to mean that in the case of each question posed Mr Levi had no credible answer.

94. Mr Thwaites submits that the article would not have been understood to bear the meanings alleged at paragraph 8.2 or 8.3 of the Particulars of Claim. As to the former, I accept that the would-be investor who was deterred was an unidentified man introduced to Mr Bates by the Chief Executive Officer of Alamo Rentacar and not Alamo itself. The pleader of the Particulars made a slip in paragraph 8.2 of the Particulars. I also accept that the article does not allege in terms that it was Mr Levi who did the deterring. But I am satisfied that the reasonable reader, reading between the lines, would have concluded that it was as a result of Mr Levi's intervention that this would-be investor was deterred. Many readers would have recalled the programme one week earlier which made a similar imputation against Mr Levi.

95. I also accept that, for what it is worth, that the reference to Bramley Rugby Football Club would have conveyed to readers that Mr Levi had played some part in the closing down of that Club in order that the pitch might be redeveloped. I say "for what it is worth" because it does not seem to me that this is one of the more serious defamatory imputations with which this action is concerned. I am, however, persuaded that Leeds Club Members, concerned about developments within that Club, would have thought the worse of Mr Levi for reading that he had been responsible for another sports ground, albeit a rugby league sports ground, being shut down.

96. ***The letter to Leeds Club and Members dated August 2007****:* it seems to me to be plain beyond argument that the passage complained of from this letter would have been understood to bear the meanings pleaded in paragraph 10 of the Particulars of Claim. That meaning is taken directly from the wording of the third paragraph in the passage complained of.

The second issue, namely whether the publications or any of them took place on occasions of qualified privilege.

97. Contrary to the submission of Mr Simon Myerson QC for Mr Levi, the species of qualified privilege relied on by Mr Bates is what is sometimes called traditional common law privilege rather than responsible journalism or "Reynolds" privilege.

98. Each publication has to be considered separately. Although it is the last in order of time, I will start with the fourth publication complained of, namely the letter to Club members dated August 2007. At the time when he wrote that letter, Mr Bates was Chairman of the Club. It seems to me that the Chairman of a football club has a legitimate interest in keeping the members of the club informed of matters affecting the club. I note that it is admitted on behalf of Mr Levi in paragraph 13.9 of the defence that "members of the club are particularly committed supporters of the club." In my view members had a corresponding and legitimate interest in being informed about the financial affairs of their Club.

99. I reject the submission of Mr Myerson on this point. It is pleaded in paragraph 5 of the Reply that no privilege attaches to irrelevant statements made by Mr Bates. The consequence, according to Mr Levi, is that no privilege attaches to Mr Bates's subjective descriptions of him as a shyster, blackmailer and so on since public policy does not require the privilege be accorded to them. It appears to me that this contention overlooks the fact that the question I have to decide is whether the

occasion of the publication to the members of the club was one attracting qualified privilege at common law. The inclusion of an attack on the character of the claimant will not have the effect of destroying the privilege unless that attack can be said to be actuated by malice: see *Horrocks v Lowe* [1975] AC 135 Per Lord Diplock at 151. There is no plea of malice in the present case. It is therefore nothing to the point that it contains the subjective views of Mr Bates or that it is materially inaccurate or incomplete. Such considerations would be relevant, if anything, to malice but malice is not alleged by Mr Levi. It is true that the August 2007 letter refers, particularly in connection with Mr Levi, to events which had taken place long before. But since Mr Bates's letter is stated to be intended to inform members of the many aspects of the recent past, I do not accept that time considerations prevent privilege arising. Mr Bates is entitled to rely as a factor supporting his claim to privilege in relation to this publication on the fact that, according to his case, the Club still has to live what he calls the consequences of the Krasner, Levi and Morris actions.

100. I come next to the question whether the defence of qualified privilege is available to Mr Bates in respect of the match programmes. It is alleged in paragraph 13 of the Defence that "the vast majority" of programmes are published to "supporters", a large proportion of whom will be neither members of the Club nor season ticket holders. Mr Bates's case is that his group has a legitimate interest in the Club's affairs and particularly in the financial health of the Club. He says that, since neither he nor the Club has a record of the contact details for such supporters, the most reasonable and responsible way of communicating information of legitimate interest to them is through the match programmes.

101. The question which I have to decide is whether non-members of the Club had the requisite legitimate interest in the contents of the articles complained of. The evidence as to the number of readers of the programme who fall within this category as well as to their composition is to be found in the witness statement of Mr Harvey. The total number of programmes sold is said to be about seven thousand. The number of tickets sold to away supporters ranges between 800 odd and 4,500 odd. In the absence of detailed evidence as to the number of away supporters who would have bought programmes, my assumption is that about half would buy programmes. These purchasers would in my judgment have no legitimate interest in being informed about financial affairs of the Club over recent years, still less in being informed of the misconduct in which Mr Levi is alleged to have engaged over that period. Moreover there is evidence that the media are keen to get their hands on information about the Club. As Mr Bates himself wrote in his letter to Club members: "I can understand if you feel frustrated at the lack of information n coming out of the Club but negotiations on many fronts have been both delicate and confidential. Unfortunately information given to fans is picked up by the media". Furthermore it is said by Mr Harvey that complimentary copies are given to press representatives and corporate guests. Mr Harvey does not say how many copies come within this category. Moreover it does not appear to me that the use of match programmes was a reasonable or proportionate way for Mr Bates to communicate with supporters of the Club. As his letter of August 2007 demonstrates, there was, as Mr Bates well knew, another means of communicating with those supporters (who included season ticket holders) whose addresses were known to the Club, namely by letter.

102. I am not persuaded that the publication of the programmes to non-members of the Club was protected by qualified privilege. I cannot accept the contention advanced by Mr Bates that "the best and most sensible way of communicating information of legitimate interest to the whole fan base is through match day programmes".

103. There being no plea of malice, it must follow that Mr Levi's claim in respect of the publication of the letter to Club members fails. The defence of privilege is, however, not in my judgment available in respect of what Mr Bates wrote in the match programmes.

The third issue: were the publications complained of substantially true

104. Before addressing the plea of justification as originally formulated in the Defence, I will deal with an unusual feature of this case.

105. The Defence, as originally formulated, included detailed Particulars of Justification skilfully drafted by Mr Jacob Dean and served on 23 November 2007. Mr Levi's first witness statement, dated 29 April 2009, ran to 342 paragraphs occupying 70 pages. The paragraphs which are for present purposes material are [85 – 187] and [199 – 238]. Those passages principally concern the time when Mr Levi became aware of the advice given by Mr Crystal QC (see paragraphs [51 – 53] above) and the circumstances in which in the first week of September 2005 Mr Weston took over the negotiations which Mr Levi had started with Mr Taylor, including Mr Levi's knowledge of the terms which Mr Weston intended to put to Mr Taylor.

106. The statement of Mr Weston is dated 1 May 2009, that is, two days after Mr Levi's statement was signed. At paragraphs [27 – 31] Mr Weston says he suggested to Mr Levi that some renegotiation of YC's contracts with Mr Bates and his associates should be sought. Mr Weston further says that he suggested various alternative ideas that might be proposed to Mr Taylor, including that Cope should seek 10% of Adulant's shares or in the alternative that the Club should write off the debt of £190,000 odd due by Admatch to the Club. If the latter was not acceptable, Mr Weston would propose that the debt be set off against one of the unsecured Loan Notes. Mr Weston says in his witness statement that Mr Levi was aware of "the broad nature" of the approach he was going to take towards these negotiations.

107. Following service of those witness statements, Mr Alasdair Pepper of Carter Ruck, solicitors acting for Mr Bates, wrote to the solicitors then acting for Mr Levi asserting that he (Mr Levi) had advanced a fundamentally dishonest case in Further Information served on 9 May 2008, which was supported by a statement of truth signed by him, and that his action was "infected with dishonesty". The dishonesty alleged on the part of Mr Levi was that he had claimed not to have known of the advice given by Mr Crystal QC until the signed note was distributed and that that the terms put to Mr Weston to Mr were nothing to do with him. Initially Mr Levi did not make a supplemental witness statement but it appears that he subsequently had second thoughts and a second statement was served on 20 May 2009. Mr Levi denied any dishonesty in his Further Information and denied that he had attempted to mislead the court. He acknowledged that there were discrepancies between his pleaded cases and his first statement but had at the time thought it would be inappropriate to make another statement. Mr Levi also said in his second statement that he had forgotten that he had been given any information about Mr Crystal QC's advice prior to receiving his written note. It was a genuine mistake on his part. As to the discussion between himself and Mr Weston about possible counter-proposals to be put to Mr Taylor, Mr Levi accepts the accuracy of Mr Weston's recollection; his memory of that part of the conversation is vague.

108. When opening the case for his client, Mr Thwaites said that Mr Levi's case had been based on a lie from the outset and that his attempted cover-up had been exposed. Mr Thwaites accused Mr Levi of attempting to conceal his knowledge of the advice of Mr Crystal QC by advancing a spurious claim to privilege.

109. In his oral evidence Mr Levi accepted that he must have been told about the advice of Mr Crystal QC by Mr Krasner at about 3pm on 6 September 2005. Mr Levi said he had not wanted Mr Crystal's advice circulated because he feared a leak to Mr Bates (as in the event occurred). It had been a mistake on his part to have said that he had not seen the telephone note of Mr Crystal's advice until 23 September 2005.

110. I have carefully considered the submission of Mr Thwaites that Mr Levi's dishonesty infects the whole of his case. I accept that in his Further information Mr Levi failed to provide the court with an accurate account of his conversation with Mr Weston and that he sought to conceal the date when he first came to know of the advice which Mr Crystal had given. The evidence of a witness who has behaved in that way has to be carefully scrutinised not just in relation to those parts of his evidence but also more broadly in relation to his case as a whole. In assessing the credibility of Mr Levi on this and other parts of the case, I have to bear in mind that Mr Levi's Further Information was dated 9 April 2008, that is, some two and a half years after many of the events with which he was dealing. As I have said, the events with which this action has been concerned took place over a prolonged period and are themselves of some complexity. I believe that Mr Levi was throughout preoccupied with regaining his ticketing privileges. That in my view explains why he did not raise the question of security for Cope's loan in his discussions with Mr Taylor and why he did not take in what Mr Weston told him about the proposals he was going to make to Mr Taylor. It is in my view understandable that, when he came to sign the Further Information in April 2008, Mr Levi should have forgotten the telephone call made to him by Mr Krasner in September (referred to at paragraph 52 of his witness statement).

111. My overall impression of Mr Levi was he gave his evidence, much of it dealing with events about which he feels very strongly, in a credible and reliable way. I accordingly reject the notion that Mr Levi's case in relation to the plea of justification is so fundamentally infected that it should be rejected out of hand.

The plea of justication

112. There are four publications sued on. Although several of the imputations which I have found to be defamatory of Mr Levi are repeated by Mr Bates in more than one of them, the four publications require separate consideration. In each case the question which I have to decide is whether, in the meaning that I have found, Mr Bates has proved on the balance of probabilities that what he wrote is substantially true. The burden of proof is upon Mr Bates, although he is entitled to rely on the provisions of section 5 of the Defamation Act, 1952 which provides that the failure of a defendant to prove the truth of every imputation against the claimant will not be fatal to the plea of justification if the imputations not proved to be true do not materially injure the claimant's reputation when regard is had to those imputations which have been proved against the claimant.

The first article complained of dated 17 October 2006

113. The text of the passage complained of is set out at paragraph [80] above. The meaning which I have found that passage to bear is set out at paragraph [6(i)] above. I have to decide whether on the evidence Mr Bates has shown that the article is substantially true in that meaning.

114. The meanings which Mr Bates seeks to justify (the so-called "*Lucas-Box* meanings") are set out at [6(i)] above:.

> "i. [Mr Levi] refused to honour his obligation to transfer the remaining shares in the company which used to control

Leeds United to the consortium headed by [Mr Bates], despite being advised by his solicitors and QC that he was obliged in law to do so;

ii. [Mr Levi] demanded unwarranted collateral benefits in return for honouring his said legal obligation, conduct which was, or can fairly be described as, blackmail; and

iii. [Mr Levi] can fairly be described as a shyster, that is a person who uses unscrupulous methods."

115. Turning to the wording of the publication dated 17 October 2006, nothing turns on the first three sentences which deal with the winding up of Roman Heavies Ltd. It is correct that the company's only asset was three per cent of Leeds United and that Mr Levi claimed that holding as security for his (or rather Cope's) debt. Contrary to what Mr Bates wrote, it was an actual debt owing to Cope and not merely an "alleged debt": see paragraph [24] above. The article was also correct in its assertion that Mr Levi refused to transfer the shares to Mr Bates (or rather to LUFC) and that Mr Levi took this stance because Mr Bates (or LUFC) had not complied with the conditions contained in the Share Purchase Agreement in relation to the call option (see paragraph [23] above).

116. However, the article then asserts that Mr Levi maintained his refusal to transfer the shares notwithstanding that his solicitors and barrister were telling him that the option had been validly exercised. (Mr Bates was able to make that assertion because Mr Richmond had provided him, through the agency of Mr Harvey, with a copy of the note of Mr Crystal QC's advice in the circumstances described above at paragraphs [72] – [74]. In my judgment it was improper for Mr Richmond to have revealed the advice which the YC had obtained from Mr Crystal QC to Mr Harvey and no less improper for Mr Harvey and thereafter Mr Bates to make use of that advice in the way that they did).

117. The first issue which I have to determine is whether the assertion in the article that Mr Levi refused to honour his obligation to transfer the shares despite legal advice that he was bound to do so is substantially justified. Mr Bates's case at paragraphs [34] to [43] of the Defence is that the call option had been validly exercised and that the refusal of Mr Levi to transfer the shares was a breach of the letter and the spirit of the Share Purchase Agreement. Mr Bates alleges that the conduct of Mr Levi in this regard was dishonest, unscrupulous and disgraceful and that his actions were contrary to the advice given in clear and unequivocal terms by Mr Crystal QC, as well as by Mr Malcolm Simpson of YC's solicitors (WM) that it was extremely likely that a court would find that the delay in obtaining the requisite legal opinion had not caused the call option to lapse.

118. It is true that (as I have recorded at paragraph [53] above) Mr Crystal QC advised that there was no argument that the option had lapsed. However, that is far from being the complete picture so far as the advice which Mr Levi received in relation to the call option. In the first place Mr Jonathan Crystal had previously advised in the circumstances described at paragraph [50] above that the call option had lapsed and in his evidence in this case Mr Crystal adhered to that opinion. Whilst it is correct that Mr Michael Crystal QC had taken a contrary view, it is in my view important to note that he appears to have been unaware, when he advised, of the fact that the legal opinion from the BVI lawyers, Hunte & Co, had not been approved as being reasonably satisfactory by the trustees of YC (as was required by the contract) and that it had still not been signed by the lawyers (see paragraph [55] above).

119. Moreover, whilst it is correct that WM appear subsequently to have concurred with the advice of Mr Crystal QC, Mr Bates of WM had previously agreed with the view that the call option had lapsed (see paragraph [50] above). Mr Jonathan Crystal and Mr Bates were not the only lawyers who took the view that the call option had lapsed. I have related earlier at paragraph [60] the advice given by Mr Phillips QC on 11 September 2005 that he was "not optimistic" that the option clause would be construed in such a way as to enable LUFC to contend successfully that it had been validly exercised. Mr Phillips remained of that view: see his e-mail to Mr Taylor dated 13 September 2005 at paragraph [12]. In those circumstances it is difficult to understand how Mr Taylor came to tell Mr Bates that Mr Phillips QC believed that the call option had been exercised: see paragraph [70] above. Mr Phillips did not advise until 11 September and, when he did so, his advice had been that he was not optimistic that a court would so find.

120. As it appears to me, the fact is that one of the conditions in the call option clause, namely the provision of the legal opinion satisfactory to the YC, had not been fulfilled by September 2005 and that in consequence the call option had not become exercisable. I reiterate that this information appears not to have been known to Mr Crystal QC when he advised by telephone or when he signed the written note of his advice.

121. The second *Lucas-Box* meaning sought to be justified by Mr Bates is that Mr Levi demanded "unwarranted collateral benefits" in return for honouring his legal obligation and that his conduct amounted to blackmail.

122. In his first witness statement Mr Levi referred to the proposals which had been put to him by Mr Taylor (itemised at paragraph [57] above). He described his discussions with Mr Taylor as having been amicable (as Mr Taylor subsequently confirmed). Mr Levi consulted Mr Weston about those proposals. It is clear from the evidence of both Mr Levi and Mr Weston that the latter was so angry that he instructed Mr Levi that he (Mr Weston) would take over future negotiations with Mr Taylor. As I have described earlier at paragraph [59], Mr Levi's evidence in his first witness statement was that he and Mr Weston "discussed generally" what would be put forward in further discussions with Mr Taylor. I think, however, that Mr Weston (whose recollection of events was clear and accurate) was right in his evidence that he discussed with Mr Levi in greater detail the possible alternative ideas that might be put to Mr Taylor. As I have said in paragraph [107] above, Mr Levi accepted that Mr Weston's recollection was accurate, although his own memory of the conversation was vague. What is clear from the evidence of both Mr Weston and Mr Taylor is that in his subsequent discussions with Mr Taylor, Mr Weston did seek what Mr Bates describes as "collateral benefits" from Mr Taylor.

123. The questions which I have resolve in relation to this part of the case are, firstly, whether it is true that Mr Levi demanded collateral benefits which were unwarranted and, secondly, whether his conduct amounted to blackmail. (It is not in my judgment sufficient for Mr Bates to establish no more than that Mr Levi's conduct could "fairly be described" as blackmail).

124. My findings on this part of the case are as follows: I am satisfied that at the time when he was discussing possible terms of settlement with Mr Taylor, the paramount concern of Mr Levi was to obtain for himself the reinstatement of his ticketing and related privileges. As I have said, that seems to me to explain why he neglected to seek from Mr Taylor his agreement to perfect the Noteholders' security in respect of Cope's loan of £1.44million, thereby incurring the wrath of Mr Weston. It was Mr Weston who then took it upon himself to seek from Mr Taylor the additional

concessions to which he refers in paragraph 31 of his witness statement. I accept the evidence of Mr Weston that those concessions included Cope retaining 10% of the shares in Adulant or in the alternative that the Club should either write off the debt of £190,400 owed by Admatch to the Club or that the Admatch debt should be set off against one of the LUFC unsecured loan notes. I do not accept the evidence of Mr Taylor that these were cumulative demands.

125. Do these events justify the assertion of Mr Bates that Mr Levi was blackmailing the Club? I do not think so. In the first place the proposals previously discussed between Mr Levi and Mr Taylor had been significantly different. Secondly, it was Mr Weston and not Mr Levi who sought the concessions from Mr Taylor. I accept that Mr Weston had, as Mr Weston testified, told Mr Levi in broad terms what he would be seeking from Taylor. As a minority shareholder in Cope, Mr Levi had little option but to go along with what Mr Weston told him he was going to seek. Moreover, I not accept that Mr Weston's conduct can justifiably be termed "blackmail". Mr Bates wanted the shares transferred; there was an issue as whether the call option had lapsed and Mr Weston was stating the terms on which he was prepared to let the shares be transferred. He made clear to Mr Taylor that he was open to a counter-proposal. in respect of the loan notes. I do not accept that Mr Levi uttered or was party to the uttering of any threats to Mr Taylor or that his conduct (or for that matter the conduct of Mr Weston) could justifiably be said to have amounted to blackmailing Mr Bates.

126. I can deal more briefly with the third *Lucas-Box* meaning relied on, namely that Mr Levi can fairly be described as a shyster or as someone who uses unscrupulous methods. I am prepared to read "fairly" as meaning "accurately". For the same reasons as those already already given for rejecting the description of Mr Levi as a blackmailer, I reject as being substantially unjustified the description of him as a shyster. Nor do I consider that it is true that Mr Levi used unscrupulous methods.

My conclusion on this part of the case is that Mr Bates has failed to prove the truth of any of the three Lucas-Box meanings pleaded in paragraph [14] of the Defence. The plea of justification in relation to this article fails.

The second publication complained of dated 3 March 2007 and entitled "The Enemy Within"

127. The *Lucas-Box* meanings which Mr Bates seeks to justify in respect of this article, set out at paragraph [6(ii)] above, bear a close resemblance to the meanings which he sought to justify in relation to the first article. In relation to the second publication Mr Bates seeks to justify the following additional meanings:

i) that [Mr Levi] has made scurrilous remarks, some of which were so serious that they merited reporting to the police and

ii) that at a difficult time for the club [Mr Levi] acted contrary to its best interests and deterred would-be investors.

128. Since I have already concluded that Mr Bates is unable to justify the three *Lucas-Box* meanings sought to be justified in respect of the first article dated 17 October 2006, by parity of reasoning it must follow that the second article cannot be justified in the meaning either that Mr Levi refused to honour his obligations to transfer shares in the teeth of legal advice that he was bound to do so or in the meaning that his conduct amounted or fell little short of amounting to blackmail.

129. I turn therefore to the additional meanings sought to be justified starting with the meaning that Mr Levi has made scurrilous remarks. The words complained of in respect of the article dated 3 March 2007 include the following:

> "[Mr Levi's] behaviour, including telephone calls and conversations, some of which are totally scurrilous, have deterred at least two would-be serious investors from proceeding. Some of his remarks are so serious that they have been reported to the police"

130. The scurrilous remarks relied on by Mr Bates include Mr Levi's alleged statement to Mr Harvey that his treatment at Leeds's away game against Watford on 9 April 2005 was an insult and a deliberate act by Mr Bates against him; Mr Levi's repeated assertions that his treatment by Mr Bates was appalling; some unspecified other derogatory comments about Mr Bates; Mr Levi's statements at the pre-season friendly game against Harrogate on 2 August 2005 that "I am going to make it as hard as I can for Ken Bates"; "we own half the club and we will be back" and that, if Leeds did not meet certain payment deadlines, "he and his associates would get the club back".

131. The first question I have to decide in whether it is established as a matter of probability that Mr Levi did make the above statements or any of them. I have dealt with the evidence bearing on these various alleged remarks at paragraphs [34] – [37] above. A number of witnesses gave evidence as to what happened at the Watford and Harrogate game, including Mr Levi himself, Mr Thirkill, Mr Blackwell and Mr Harvey.

132. It is not necessary for me, in a judgment which is already very long, to deal in detail with the material parts of the evidence given by these witnesses. It is sufficient for me to say that I have no doubt that there were occasions when Mr Levi did not conceal his extreme distress and resentment about his treatment both in relation to Club facilities and in relation to tickets. What I do not accept is that such remarks as were made by Mr Levi were as derogatory or as loud as Mr Harvey suggested. I find myself unable to accept Mr Harvey's denial that he had exaggerated the problems being caused by Mr Levi at the bidding of Mr Bates in order to construct a case for withdrawing his entitlement to tickets and banning him from the stadium and surrounding area, as was done by Mr Harvey in his letter of 17 August 2005 referred to at paragraph [36] above.

133. Whether the description of the behaviour of Mr Levi, or his telephone calls and conversations or any of them was "totally scurrilous" is to an extent a question of degree, the answer to which must entail my taking account of the background as well as all the surrounding circumstances. I do not accept that the use of the words "totally scurrilous" to describe Mr Levi's conduct is justified. Mr Levi's alleged statements to Mr Canning were reported to the police. There is no evidence that a report was made to the police by Mr Bates, although Mr Taylor informed Mr Buck of Chelsea that a report to the police was under consideration. If such a complaint had been made, I have no doubt that it would not have led to any action being taken.

134. I turn to the second additional *Lucas-Box* meaning sought to be justified by Mr Bates, namely that Mr Levi deterred would-be investors in the Club. The investors said to have been deterred were, firstly, a syndicate of Irish investors represented by Mr George Canning and Mr Paul Gregg of Apollo Leisure.

135. So far as Mr Canning is concerned, he did not give oral evidence but his written statement was adduced in evidence. According to that statement, Mr Canning starting acting as agent for Mr Bates to introduce possible investors in October 2006. Mr

Canning's evidence was that he put together a consortium of fifteen people who were interested in investing in Leeds United. An agreement was made with the consortium to purchase Elland Road and a training ground as well as fifty per cent of Leeds United.

136. Mr Canning deposed that on 13 December 2006 he received a telephone call from Mr Levi. Mr Levi accepts he telephoned Mr Canning, having been requested to do so by Mr Barry Leaver. Mr Canning subsequently sent an email to Mr Taylor on 7 January 2007, which he said reflected his "then memory" of what Mr Levi had told him. According to Mr Canning, Mr Levi had said the following: that the sale to the Irish consortium would not go ahead as Mr Bates owed him money; that Mr Abramovitch was "out to get Ken" because he would not sell him an apartment which was vital to the rebuilding of Chelsea stadium and that "people can get shot over matters like this". Mr Canning said he had no doubt that Mr Levi had been trying to deter the consortium members from investing in the Club.

137. Mr Levi gave evidence that he had no knowledge of the dealings between Mr Bates and Mr Abramovitch and that he did not say anything about him to Mr Canning. Mr Levi denies having said to Mr Canning that he would stop the deal by any means possible.

138. But Mr Canning said that he had not told Mr Levi that his consortium would not be proceeding with its investment in the Club. That was not true at that time (ie on 13 December 2006). The evidence of Mr Canning is that, subsequent to his conversation with Mr Levi, further negotiations and meetings took place between some members of the Irish consortium and representatives of the Club. As a sign of good faith, £500,000 was transferred into the Club's bank account. The negotiations ultimately failed. Mr Canning describes the activities of Mr Levi as having been "a factor amongst a number of other factors". The case for Mr Levi is that the decision by Mr Canning not to proceed had nothing to do with him or their conversation in December 2006.

139. It is true that Mr Levi approached Mr Canning at a time when the latter was attempting to put together a bid for the Club or part of it. I do not, however, accept that Mr Levi said everything which Mr Canning claims he said. In particular I accept the denials of Mr Levi to which I have referred at paragraph [137] above. That said, I think it likely that the purpose of Mr Levi's call was to discourage Mr Canning from proceeding. To that extent Mr Bates was justified in what he wrote. But there was no contact between Mr Levi and Mr Canning after the initial approach; Mr Levi did not inform the media. The libel of which Mr Levi complains is the charge that he did in fact deter the Canning investors. That allegation is not justified by the evidence.

140. As regards Mr Gregg of Apollo Leisure, he did not give oral evidence either; nor was any witness statement from him adduced in evidence. I am unaware of any documents having been disclosed in relation to the circumstances under which Mr Gregg decided to proceed. The only evidence on the point comes in a very short section of Mr Bates witness statement, in which he says that, following publication of some comments of Mr Levi in the Daily Mail on 7 March 2007, Mr Gregg rang him and said he would not be proceeding "because of Mr Levi". According to the evidence of Mr Bates, Mr Gregg had on some previous occasion told him that Mr Levi had called him (Mr Bates) a crook. That evidence was not corroborated by Mr Gregg.

141. What appears to me to undermine the attempt by Mr Bates to present Mr Gregg as one of the would-be investors who was deterred by Mr Levi is the fact that documents were adduced in evidence which show that Mr Gregg was still negotiating for the

purchase of a stake in the Club seven days after the telephone call to Mr Bates. Furthermore on 16 March 2007 Mr Taylor e-mailed Mr Gregg with certain information about the Club's financial position. Mr Gregg had replied on the same day saying "Leave it with me over the weekend and I will let you know early next week". I reject the contention that Mr Levi who deterred Mr Gregg from investing in the Club.

142. My conclusion is that Mr Bates has failed to justify the meaning that Mr Levi acted contrary to the best interests of the Club or that he deterred would-be investors. It follows that the plea of justification in relation to the second article also fails.

The third publication complained of dated 10 March 2007 and entitled "Why Mr Levi, Why?"

143. Mr Bates contends that the passage complained of (see paragraph 84 above) is true or substantially so. The first three of the *Lucas-Box* meanings pleaded at paragraph 16 of the Defence broadly correspond with meanings sought to be justified in relation to the first and second publications complained of, namely that Mr Levi dishonoured his obligation to transfer shares in the Club; that he attempted to blackmail the Club and that he deterred and/or frightened off would-be investors in the Club. I need say no more about those meanings; Mr Bates has in my judgment failed to establish their substantial truth.

144. The new *Lucas-Box* meaning is that Mr Levi falsely (and without reasonable grounds) accused Mr Bates of being anti-Semitic and of using the language of a Nazi. The charge against Mr Levi is therefore that he makes false accusations of anti-semitism. Mr Bates relies on a quotation attributed to Mr Levi and published in the issue of Daily Mail on 20 October 2006 in the following terms:

> "For a Jewish person like myself, to be called a shyster is particularly offensive".

That, according to Mr Bates, is an accusation against him of anti-semitism. Reliance is further placed on another quotation contained in the issue for the same newspaper 5 March 2007 as well as on the Leeds United website:

> "[Mr Bates] should concentrate on sorting out the many problems within the club, rather then persecute me in language that the Nazis would have used".

Mr Bates says he is not anti-semitic and that he would never use language such as the Nazis would have used.

145. In my judgment this part of the plea of justification is misconceived. I do not believe that Mr Levi would have been understood by readers of the Daily Mail to be accusing Mr Bates anti-semitism. Mr Levi was telling the readers of the Daily Mail in his first quotation that, as a Jew, he found it particularly distressing to be referred by Mr Bates as a "shyster". As it appears to me, the allegation which Mr Bates was levelling against Mr Levi in the third publication complained of was that he [Mr Levi] was "playing the race card again".

146. Similarly in relation to the second quotation published in the Daily Mail, the thrust or gist of what Mr Levi told the newspaper was that the use of the phrase "The Enemy Within" was particularly hurtful because it was was a phrase used by Nazis to describe Jews. I have my doubts whether Mr Levi is right is associating the title of that publication with the Jewish regime in particular. Be that as it may, for Mr Levi to

say that Mr Bates used language that the Nazis would have used is a far cry from accusing him of anti-semitism.

147. In my judgment Mr Bates has failed to justify the fourth Lucas-Box meaning pleaded. For the reasons already given in relation to the earlier publications complained of, I reject the contention that the third publication complained of was justified in any of the meanings ascribed to it. It follows that the plea of justification fails in respect of this publication also.

The fourth publication complained of namely the letter to Leeds Club Members dated August 2007

148. The passage is set out at paragraph [85] above and the meaning attributed to it is at paragraph [6(iv)]. Mr Bates's *Lucas-Box* meanings are that:

> "[Mr Levi] had disgracefully acted so as to frustrate Mr Bates's attempts to strengthen the financial position of the Club by
>
> i) refusing to honour his contractual obligation to transfer the remaining shares in the company which he used to control Leeds United to the consortium headed by Mr Bates;
>
> ii) making, with his associate Robert Weston, unwarranted collateral demands for honouring his said obligations;
>
> iii) deterring would-be participants in a planned rights issue to raise five million pounds for the Club; and
>
> iv) contacting and putting off an Irish consortium interested in the Club".

149. I have already dealt at paragraphs [116]-[124] and [134]-[138] above with (i), (ii) and (iv) and I do not need to repeat myself in the context of the letter to Club members. The additional meaning ascribed by Mr Bates to that letter and sought to be justified by him is at (iv), namely that Mr Bates deterred would-be participants in a planned rights issue to raise £5million for the Club. The particulars supporting that further meaning can be found in two short paragraphs, namely 66 and 67, of the Particulars of Justification. This issue was the subject of further discovery during the hearing and a fair amount of evidence was called about it. Since, however, I have held at paragraph 98 above that the letter to Club members was published on an occasion of qualified privilege, I can deal with this topic relatively shortly.

150. The case for Mr Bates is that, as Mr Levi anticipated, his refusal to transfer the shares meant that the rights issue failed. As a consequence Mr Bates's consortium, FSF, was "forced" to invest directly into LUAFC. FSF is accepted by Mr Bates as having had the dire consequence for the loanholders, including Mr Levi and Mr Weston, that the loan notes issued in their favour by LUFC became worthless. In addition, as I have set out in paragraph [75] above, FSF's investment had the effect that the shareholding of Adulant (of which company YC owned 50% of the shares) was reduced from 25% to 6%. FSF became the owner of 94% of LUAFC.

151. I have described the ill-fated rights issue at paragraphs [63]-[71] above. Mr Levi's case is that, far from his having prevented the rights issue going ahead, it was Mr Bates who, with the assistance of advice from Mr Taylor, changed his mind about having a rights issue and instead decided to use the company he controlled, FSF, to effectively take over LUAFC whilst at the same time blaming Mr Levi for the change

of plan. The result was very satisfactory for Mr Bates and FSF: they gained total control of LUAFC and avoided having to pay the £1.4 million owed to Cope, as well as the sums which would have been required required to redeem loan notes issued to Mr Morris and Mr Richmond.

152. The issue which arises is whether the evidence supports the case of Mr Bates that it was Mr Levi's refusal transfer the shares which caused Mr Grayling and Ms Owen to withdraw from participating in the issue. Neither Mr Grayling nor Ms Owen gave evidence at the trial. Ms Owen indicated that she intended to go ahead in her solicitor's letters of 2 and 5 September 2005. As I have said at paragraph [64] above, Mr Grayling also indicated through his solicitor that he was going ahead as late as 7 September. Although there is mention in that letter of Mr Levi "causing concern", neither Mr Grayling nor Ms Owen ever stipulated that their subscribing for shares was conditional on the issue with Mr Levi being resolved. Mr Taylor recalled when he was in the witness box that he had had a conversation with Mr Grayling who had refused to go ahead. It is striking that there is no documentary confirmation of this having happened. I cannot accept that the evidence of Mr Taylor on this point is accurate.

153. The claim that the rights issue failed because of Mr Levi's continuing refusal to transfer the shares in accordance with the call option appears to me to rest upon assertions by Mr Bates and Mr Taylor which are unsupported by any contemporary documentation. It is noteworthy that the document entitled "LUFC Rights Issue", referred to in paragraph [63] above, is undated. I have already remarked on the absence of evidence supporting the contention of Mr Bates and Mr Taylor that Mr Grayling and Ms Owen decided not to proceed with the rights issue because of the Levi issue. Such documents as do exist which support the notion that the rights issue was abandoned because of the dispute with Mr Levi came into existence well after the event and after Mr Taylor on behalf of Mr Bates sought advice from Mr Phillips QC on 12 September 2005. I have in mind the company resolutions dated 22 September 2005 (see paragraph [68] above) and the instructions to counsel dated 27 September 2007 (see paragraph [69] above).

154. In the circumstances which I have described, I am not persuaded that Mr Bates has established that it was the dispute with Mr Levi which caused the rights issue to be abandoned. Rather it was the decision of Mr Bates, assisted by advice from Mr Taylor, that FSF should purchase shares in LUAFC instead. Blaming Mr Levi was a convenient strategy for them. Although the evidence does not enable me to be precise about the date when Mr Bates and Mr Taylor decided to abandon the rights issue, I am satisfied that it happened earlier than they thought. I am wholly unpersuaded that the reason for the abandonment was the refusal of Mr Levi to transfer the shares which were the subject of the call option.

155. It must follow that Mr Bates has failed to prove the truth of the fourth publication in the meaning asserted in paragraph 146 at (iii).

Conclusion on the justification issue

156. For the reasons I have given, the pleas of justification advanced by Mr Bates in relation to the four publications all fail.

Fair comment

157. I must next consider the alternative defence of fair comment on a matter of public interest which is relied by Mr Bates. The conditions which must be satisfied in order

for the defence of fair comment to be available to a defendant were summarised by Lord Nicholls in *Tse Wai Chun Paul v Albert Cheng* [2001] EMLR 77 at [16] to [21]:

> "In order to identify the point in issue I must first set out some non-controversial matters about the ingredients of this defence. These are well established. They are fivefold. First, the comment must be on a matter of public interest. Public interest is not to be confined within narrow limits today….
>
> Second, the comment must be recognisable as comment, as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere, for example, justification or privilege. Much learning has grown up around the distinction between fact and comment. For present purposes it is sufficient to note that a statement may be one or the other, depending on the context. Ferguson J gave a simple example in the New South Wales case of *Myerson v Smith's Weekly* [1923] 24 SR (NSW) 20 at 26:
>
> > 'To say that a man's conduct was dishonourable is not comment, it is a statement of fact. To say that he did certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment.'
>
> Third, the comment must be based on facts which are true or protected by privilege … If the facts on which the comment purports to be founded are not proved to be true or published on a privilege occasion, the defence of fair comment is not available.
>
> Next, the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded.
>
> Finally, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views … It must be germane to the subject-matter criticised. Dislike of an artist's style would not justify an attack upon his morals or manners. But a critic need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism…".

158. I accept that the subject matter of the publications complained of was a matter of public interest, relating as they did to the conduct of companies and individuals in relation to a well-known football club. I also accept that the publications are liberally littered with statements which qualify as comment: see, for example, the ironic comment at the end of the publication dated 17 October 2006 "what lovely people they all must be"; the epithets "unpleasant", "dishonourable" and "unscrupulous" in the article dated 3 March 2007 and so on. I accept that these remarks by Mr Bates could reasonably be inferred by readers to be a deduction or inference on his part: see *Branson v Bower* [2001] EWCA Civ 791 at [12]. I further accept that these comments do explicitly or implicitly indicate the facts on which the comments were being made. I am further prepared to accept that the comments are ones which could

have been made by an honest person (which is the fifth condition referred to by Lord Nicholls in *Tse Wai Chen Paul*). I further bear in mind that there is no plea of malice in this case.

159. All of that said, I cannot accept that any of the four publications complained of are defensible as being fair comment. I say that because what Mr Bates wrote in those articles was riddled with material inaccuracies. There is no need for me in this section of the judgment to set out those inaccuracies; I have dealt with them at length above in the context of the plea of justification.

160. In coming to that conclusion, I have borne in mind the provisions of section 6 of Defamation Act, 1952. In my view such facts as have been proved by Mr Bates to be true fall well short of amounting to a sufficient sub-stratum for the comments made by Mr Bates. To give but two examples: firstly, in my judgment, Mr Bates materially mis-stated the circumstances under which Mr Levi declined to transfer the shares which were the subject of the call option and, secondly, it was not true to say (as Mr Bates did in three of the four publications complained of) that Mr Levi had deterred would-be investors in the Club.

161. Accordingly, the defence of fair comment fails.

Damages

162. For understandable reasons, very little time was spent in the course of the hearing on the issue of damages. Mr Levi deals comparatively shortly with the issue of damages at paragraphs 306 to 330 of his witness statement. The reason for this is, I think, that the recovery of substantial sum in damages was not the reason why Mr Levi brought this action.

163. The basis on which awards of general damages are calculated is clearly set out in the judgment of Sir Thomas Bingham MR (as he then was) in *John v MGN Limited* [1997] QB 586 at 607. The purpose is to compensate the claimant for the damage to his reputation; to vindicate his good name (especially where there has been a plea of justification) and to take account of the distress, hurt and humiliation which the defamatory publication has caused.

164. The factors which appear to me to be relevant in the present case when calculating the appropriate level of the damages are as follows:

(i) the gravity of the libels: the allegation of blackmail is particularly serious;

(ii) the fact that the libels were repeated on several occasions over a period of ten months;

(iii) the fact that the publishees, principally supporters of the Club, were persons whose esteem Mr Levi valued;

(iv) the fact that Mr Bates sought unsuccessfully to justify his statements about Mr Levi and continued to do so in a public trial lasting many days; and

(v) perhaps most important of all, the obvious distress and injury to Mr Levi's feelings caused by the libels. In this regard, I take account of the gratuitous inclusion in the second publication complained of dated 3 March 2007 of Mr Levi's home address in Leeds and the reference in the third publication complained of dated 10 March 2007 to his home telephone number being in

the telephone book which was in effect an invitation to Leeds fans to pester Mr Levi.

165. The mitigating factors are less obvious. One such factor is the relatively limited number of match programmes sold or given away, as detailed in paragraph 48 of Mr Harvey's witness statement. He does, however, confirm that complimentary copies are distributed to, amongst others, press representatives and corporate guests. Damages are not recoverable in respect of the privileged publication of the letter to Club members: see *Trumm v Norman* [2008] EWHC 116.

166. Doing the best that I can to reflect the various factors which I have listed, I have come to the conclusion that the appropriate total award of damages should come at the higher end of the bracket put forward by Mr Myerson on behalf of Mr Levi, which was £35,000 to £75,000. The total sum I award in damages is £50,000 in respect of the three match programmes where the defences failed. If it is necessary to allocate that figure between the three publications, I award £11,000 in respect of the match programme dated 17 October 2006; £16,500 in respect of the programme dated 3 March 2007 and £22,500 for the programme dated 10 March 2007.