Case No: HC09C01992

Neutral Citation Number: [2015] EWHC 2195 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 16th July 2015

Before :

Mr Justice Peter Smith

- -

Between :

JANAN GEORGE HARB	**Claimant**
- and -	
HRH PRINCE ABDUL AZIZ BIN FAHD BIN ABDUL AZIZ	**Defendant**

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- -

Romie Tager QC, Ian Clarke (instructed by **Hughmans Solicitors**) for the **Claimant**
Ian Mill QC, Ms Shaheed Fatima (instructed by **Howard Kennedy LLP**) for the **Defendant**

Hearing dates: 16th July 2015

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JUDGMENT

APPROVED RULINGS

Thursday, 16th July 2015

Mr Justice Peter Smith

Ruling 1 by MR JUSTICE PETER SMITH

1. MR JUSTICE PETER SMITH: Thank you. I will give a short ruling on this.
2. This is the first day of a trial where the claimant claims that a contractual agreement was entered into between her and the defendant in June 2003, whereby he agreed to pay her the sum of £12 million to procure that two properties in this country be transferred to her.
3. The defendant is a member of the royal family of Saudi Arabia, and is the son of the late King Fahd of Saudi Arabia. The claimant, as is required, has served a witness statement in support of her case. The defendant has served a document which might or might not satisfy the requirements for a hearsay notice. That does not matter at the moment nor, probably, will it matter if it proceeds, he it is said is not proposing to give evidence in the case.
4. He has advanced a number of reasons, one being that it would be distasteful because of the media circus. The latest one, which was received yesterday, is a statement signed by the director of the administrative office of the Embassy of Saudi Arabia, which says as follows:

   "The Embassy of the Kingdom of Saudi Arabia in London presents its compliments to the court and it wishes to convey the following note from the Ministry of Foreign Affairs to Saudi Arabia. With reference to the litigation entitled Harb v HRH Prince Abdul Aziz which is due to be heard on 16 July 2015, the Government of the Kingdom of Saudi Arabia wishes to inform the court that it is not permissible for a member of the royal family of Saudi Arabia to provide oral evidence in foreign court proceedings concerning matters relating to HM the late King Fahd. The Royal Court of Saudi Arabia forbids HRH Prince Abdul Aziz from doing so in this matter. No discourtesy is intended to the judge hearing this case. By providing this letter, and with all due respect to the court of the United Kingdom, the government of the Kingdom of Saudi Arabia does not submit to the jurisdiction of the English court, nor does the Kingdom waive the applicable immunity and privilege to which its officials are entitled."
5. Mr Mill QC, who with Ms Shaheed Fatima appears for the defendant, relies on that now as the sole reason as to why his client is not going to come and give evidence.

6. The document, in my view, is completely unsatisfactory for a number of reasons. The first is that it is simply asserted that it is not permissible for a member of the royal family of Saudi Arabia to provide oral evidence in a foreign court.
7. That presents, to my mind, as a statement, insurmountable difficulties, unless some expert evidence of a credible nature was produced to substantiate that.
8. There are two cases which are relevant to that. The first one is a case called Sharab v Al-Waheed which I tried, [2013] EWHC 2324 where the defendant there, also a member of the Saudi royal family, actually gave evidence in front of me. Now, he had been trying to avoid giving evidence in that case, and he had wished to give his evidence by video link. That decision is referred to in the judgment of Lady Justice Arden in Prince Abdulaziz v Apex Global Management [2014] EWCA 1106, paragraph 37. I will come back to that in a moment because there is an error in her Ladyship's paragraph.
9. He did not apply for him to be relieved from giving oral evidence because of his connection with the royal family. The reason he did not want to comply was that it necessitated him coming into this jurisdiction, and he was fearful that if he came in the jurisdiction, the claimant would serve more proceedings on him, and what actually happened was that the claimant gave an undertaking that she would not serve any such proceedings on him when he came within the jurisdiction, and he consequently attended and gave evidence.
10. Now, had there been a rule of law which prohibited that, I would have thought he would have said so, but he did not.
11. Second, in the Apex case, apparently an expert, a Mr Ghatani, came and gave evidence that it was not permissible for a member of the royal family to give evidence, but as paragraph 37 shows, it actually cannot be more graphically stated:

"Moreover, Mr Ghatani failed satisfactorily to explain how HRH Prince Al-Waheed had come to give evidence in the recent case of Sharab before Peter Smith J without any apparent sanction

even though he is also a member of the Saudi royal family. Peter Smith J declined an application for him to give evidence via video link, so he attended in person."

12. That, as I have said, is erroneous. That is not what happened. He came voluntarily.

"The trial was well-publicised and took place about a month before the hearing before Vos J".

13. Nevertheless, that is another case where the point that it was contrary to Saudi law has not been deployed, so without any further explanation or clarification, and there is none, I do not accept that there is any case that has been shown to me that it is contrary to Saudi law for the defendant to attend.

14. Equally, without any more detail, I would not accept that merely because His Highness has apparently forbidden him to attend that that, too, is acceptable, because if that were the case, an order would have been made in both those cases and that would have been the end: Prince Al-Waheed would not have attended and certainly Prince Abdulaziz in the Apex Global who was anxious not to give evidence, would have deployed it.

15. Now, even if he has made such an order, the question is whether or not I should accept it. Let me deal first with the question of jurisdiction: having heard the submissions of Mr Tager QC and Mr Mill QC, I am satisfied that I have power to issue an order that the defendant attend court for cross-examination. I have considered the extensive citations to me of the decision in Polanski, and for shortness, the citations given to me of the Court of Appeal and the Supreme Court decisions by both parties should be read in this judgment.

16. If I had no power to order the defendant to attend, the whole of those two decisions proceed on a fundamentally flawed premise, because in that case Mr Polanski was outwith the jurisdiction; he was declining to give evidence; and the Court of Appeal graphically said that if he did not attend, then his witness statement would be excluded as well.

17. If somebody had told them and they would have accepted there was no jurisdiction to make an order, the result in the case would have been somewhat different.

18. I have been referred by Mr Mill QC to the decision of Mr Justice Walker in National Crime Agency v Azam 2014 EWHC 4742, but with respect to Mr Justice Walker, I am afraid I do not agree with his judgment and I decline to follow it, I cannot reconcile this decision with that of Polanski. I do not accept that in the light of the Polanski case I have no jurisdiction to make an order under CPR 33.4. In any event, I have a discretion, further, in my view, under CPR 32.1 to exercise an order for his attendance and, finally, under the overriding objective under CPR 3, to ensure that cases are disposed of justly, I have a discretion to make any order that is appropriate to facilitate that overriding objective.
19. The question now under those three heads: should I issue the order? The first point that is essential to explain is the nature of trials in this jurisdiction. It needs to be explained because in the common law jurisdiction, which has been enshrined in this court since the time of Henry II, with great success, in my view, we have had an accusatorial system. It is not like the Napoleonic code, I suspect it is not like the procedures in courts in Saudi Arabia which might be inquisitional, but litigation in this country is conducted by claimant versus defendant, each side calls the evidence, and the evidence is tested.
20. In our system, it is undoubtedly the case, as Baroness Hale set out in her review in the Polanski case, that the primary way of proving a case is by oral testimony. That is invariably the best evidence. I say it is the best evidence for three reasons: first, it gives a party who wishes to give evidence an opportunity to go in the witness box and present his or her case to the judge, and to confront the other party. That gives the judge the best opportunity to decide whether or not a witness is truthful.
21. Second, it gives the other party, who is anxious to challenge that case, an opportunity to confront that person in the witness box in front of the judge.
22. Third, it gives the best evidence available to the judge to decide who is being truthful.

23. This case turns entirely on one meeting and an oral discussion that took place between the claimant and the defendant. That is going to be the linchpin of the case, and who is to be believed on that date is probably going to be determinative of the case.
24. It is, therefore, essential that the judge, as far as possible, has the best evidence of ensuring that he can come to a correct decision in the light of that evidence.
25. I have no doubt, therefore, that it is in the interests of justice that the defendant should attend court to give evidence. I can say -- and I hope this will be communicated to his Royal Highness and King Salman -- that his concerns can be allayed. It is fair to say that we have, in our jurisdiction, a system of open justice. That does not, however, mean that the courts allow its procedures to be abused.
26. Mr Tager QC has already indicated that there is unlikely to be any cross-examination on the matters which led up to the disputed agreement. That might or might not be the case. There are ways of cross-examination and ways of the judge controlling the cross-examination so as to ensure that matters are not dealt with in a salacious or pejorative way, and I will ensure that that will happen.
27. The second point is that there will be no media circus. It is true that, I am afraid, when people come to court it is possible they can be photographed -- although if necessary, arrangements can be made if required for that not to happen, see what happened, for example, in Douglas v Hello!, where somewhat unusually, I accept, the Attorney General's office was made available to Mr Douglas and his wife to sit in without having to contaminate their presence with the public outside the court, but that's neither here nor there.
28. But his Royal Highness can be assured that if he comes to give evidence, he will be treated with extreme courtesy. He might be questioned robustly by Mr Tager QC, I have no doubt, but he will be protected. That has happened in the Al-Waheed case where Prince Al-Waheed came and

gave evidence and was cross-examined for two days, and I have little doubt that he will be able to present his case.

29. I say this as well: that I have to decide the case on the evidence and if his evidence is by way of a Civil Evidence Act hearsay statement, he runs the risk -- and I say no more than that at the moment, because it all depends on how the evidence unravels during the course of the trial -- that a statement which is not substantiated by him going in the witness box does not fully do justice to his case.

30. Now, I suspect that he probably knows that, but nevertheless I do not accept at the moment that if I make an order, he will not necessarily attend. I would hope that their Royal Highnesses, in the light of what I have said, would realise that their fears about the way in which the case might be conducted are unfounded and that the best way in which he can present his case is to come and tell me in person, in the witness box, what he says his case is.

31. So, for all of those reasons, I am going to make an order that he attends on Monday at 10.00 am.

32. I said in the course of argument that I was minded to order that provision should have a penal notice on it, and that it should be served on the defendant's solicitors and personal service of it should be dispensed with. The reasons I gave for that are what happened in the Prince Jefri case. His Royal Highness should appreciate that if I make such an order and he does not comply, it is possible that he would be in contempt -- I say "possible" because there might be a reason why he might not attend, but if he is in contempt it is equally possible that an arrest warrant might be issued by me, either on the application of the claimants, or on my own initiative, and if that happens, it means that he is liable to arrest if he ever comes back within the jurisdiction. That's the order I propose to make for the reasons I have set out.

Mr Justice Peter Smith Thursday, 16th July 2015

Ruling 2 by MR JUSTICE PETER SMITH

1. Introduction.

1.1 This is the first day of the trial in this action. Accordingly, as is usual in cases I hear, I have an application to re-amend the defence. Issue is taken by the claimant to paragraph 24B of the proposed amendment which says:

> "In the alternative, in the event that the Alleged Agreement was formed as alleged (which is denied by reason of the matters aforesaid), it is void for illegality:
>
> "a. Mrs Harb's Affidavit dated 7 May 2003 describes her relationship with King Fahd and claims that she was married to him; she had three abortions at his request and that he was addicted to methadone and morphine.
>
> "b. By paragraph 7.2(2), she asserts that she agreed with the Prince to withdraw 'certain factual assertions'.
>
> "c. By the Statutory Declaration she accepts that she was 'wrong to make such allegations' and apologises unreservedly for the fact that she 'falsely accused' the King of 'misconduct and misbehaviour that I now accept to be untrue'. The Statutory Declaration was made before a Mr Feisal Sheikh who is described as 'A Solicitor duly empowered to administer Oaths'.
>
> "d. The Statutory Declaration was made pursuant to the Statutory Declarations Act 1835. Pursuant to section 15 of the Act, the Statutory Declaration has the same force and effect as if Mrs Harb had appeared and sworn or affirmed the matters in the declaration 'viva voce in open court'.
>
> "e. Pursuant to section 2 of the Perjury Act 1911 if a person is required or authorised by law to make any statement on oath for any purpose and if, being lawfully sworn, wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true then he shall be guilty of a misdemeanour.
>
> "f. In her Witness Statement dated 9 July 2015 Mrs Harb again describes her relationship with the King and claims that she was married to him; she had three abortions at his request and that he was addicted to methadone and morphine.
>
> "g. It is apparent from this Witness Statement that Mrs Harb's continuing and present position is that the allegations in her 2003 Affidavit are true. Those are the allegations which she purported to have withdrawn by the Statutory Declaration. In the premises, Mrs Harb's own evidence in these proceedings is that the satisfaction by her of her obligations under the Alleged Agreement required her to commit a misdemeanour contrary to section 2 of the Perjury Act 1911.
> "h. The Alleged Agreement was therefore illegal as to performance since the contract was prima facie legal but was performed, by Mrs Harb, in a manner which was and is illegal.

"i. The Alleged Agreement is therefore void for illegality and cannot be enforced; regardless of whether the parties (and Mrs Harb in particular) knew the law or not."

2. Background.

2.1 The details of the claim can be seen in the current pleadings. The claimant claims that the defendant agreed to pay her £12 million and cause two properties to be transferred to her. It is alleged that the agreement was made orally in June 2003 at the Dorchester Hotel. The consideration was said to include the provision of a declaration withdrawing allegations made about the conduct of the late King Fahd of Saudi Arabia, the defendant's father. The claimant says that she is the late King's second wife and that the defendant is thus her stepson, although he was born after the commencement of whatever relationship the claimant might have had with the late king.

3. Amendments.

3.1 The claimant says that she has provided the consideration by providing a statutory declaration, and in that statutory declaration she says in paragraph 2:

"I now realise and accept that I was wrong to make such allegations against the King and as a result of the passage of time, I may have become confused and have misinterpreted events and I wish to apologise unreservedly for the fact that I have falsely accused His Majesty of misconduct and misbehaviour that I now accept to be untrue."

3.2 In other words not only does she apparently withdraw what was said, she also apparently says that what was previously said was untrue. The claimant says the defendant did not comply with the terms of the agreement and, accordingly, she instituted divorce proceedings against the late King. Those were disputed on grounds of diplomatic immunity, and ultimately an appeal against the striking out of those proceedings on that basis was dismissed by the Court of Appeal, not because of that, but because of the death of the late King, and financial provision cases in this country -- I think the decision is Barder v Barder -- abate with the death of the respondent. In those proceedings she swore an

affidavit which repeated the allegations. She also referred to the statutory declaration in passing. The defendants had had that affidavit since January 2004.

4. The present proceedings.

4.1 The present proceedings commenced in June 2009 with only a few days of limitation left. They were commenced by the claimant's trustee in bankruptcy, she having been made bankrupt by that time. A number of procedural matters delayed the progress of the action. First, the defendants asserted sovereign immunity and, second, the trustee in bankruptcy tried to discontinue the proceedings. The claimant attempted to keep the proceedings alive, and ultimately she was successful in that she obtained an assignment of the cause of action and became substituted as claimant. Neither side blames the other for the fact that these proceedings, although commenced in 2009, had not proceeded very quickly.

4.2 In June 2014, Rose J heard an application which alleged that these proceedings would fail for the same reason; namely diplomatic immunity. She delivered a judgment on 25 June dismissing that application. On 14 July 2014, an appellant's notice was issued and the appeal was heard on 20 February 2015.

4.3 On 10 March 2015, Deputy Master Cousins gave the claimant permission to amend her particulars of claim, and gave other case management directions as regards service of evidence and trial, and I think it was as a result of that order that the present trial date was fixed.

4.4 On 17 March 2015, an order was made by consent by Asplin J varying those directions and, significantly ordering a stay of the procedural directions until 21 days after the judgment of the Court of Appeal was handed down. That judgment was handed down on 13 May. The timetable is was therefore compressed.

4.5 On 29 May 2015 there was an e-mail from the Supreme Court notifying the parties that the defendant had been refused permission to appeal. A subsequent letter from the Supreme Court indicated that the Supreme Court had not intended to refuse the permission to appeal application, but

adjourned it, somewhat intriguingly until after the trial of this action takes place, perhaps in the hope that it would all go away, but there we are.

4.6 On 3 June 2015 the defendant served his defence. Obviously there was no mention of the illegality defence. An amended defence was consensually served on 10 June to dovetail the pleadings in the defence to a witness statement. Witness statements by the claimant were served on 8 July. That was by exchange.

5. Present amendment.

5.1 I am quite satisfied that Mr Mill QC, the leader for the defendant, gave a reasonably broad outline to Mr Tager, who represents the claimant, of the outline of the proposed amendment on Sunday evening. There was then an application to amend issued on the 11th.

5.2 I do not think anything turns on whether or not Mr Mill QC communicated fully the position as opposed to the pleading, because the time frame for the claimants was really very short, bearing in mind that the Sunday was only three days before the trial and the parties' counsel on both sides were no doubt reading into the preparation of the trial. As I say, the trial was fixed earlier in this year.

6. Claimant's objections.

6.1 Mr Tager QC says it is too late. He submits that the defendants have been aware of this possible defence, if it was, because of the apparent inconsistency of the claimant's evidence as early as 2004, long before the witness statement. I say "apparent" because as yet, as I understand it, Mr Tager QC and his solicitors have not had an opportunity to take detailed instructions on the proposed amendment. Those matters will not merely be confined to the claimant because the documents in question, which are the subject matter of the plea, namely the statutory declaration, were drafted by leading counsel with the claimant's then solicitors. Both of those are witnesses in this action. Both, too, in view of the plea, would be consulted, and their evidence taken, in relation to what is proposed to be alleged in this amendment.

6.2 Equally, I accept what Mr Tager QC says, namely that the background documents will have to be gone into and a decision might have to be made as to whether or not privilege should be waived. The reason being is that, of course, an inconsistency between the two statements does not necessarily mean that the claimant has perjured herself, because there might be reasons as to why they are inconsistent which are yet to be revealed, if they are to be revealed at all.

6.3 Next, Mr Tager QC, with some embarrassment, bearing in mind his long experience, says that illegality law is very difficult. Well, it was certainly difficult when I was a student, and I remember all the articles about it being an unruly horse and the like, and he refers me by way of example to the observations of Sir Robin Jacob in ParkingEye Limited v Somerfield Stores [2013] QBD 840.

6.4 It is, he says, unfair for the legal team to be put to the pressure of researching, or re-researching, the law of illegality, especially when it is in relation to illegality by performance, as opposed to overriding illegality, a matter of days before this trial. It is also inevitable, he submits, that there will be a requirement to consider authorities. There might well be legal submissions on illegality, if the amendment is allowed, which will have an impact on the length of the hearing.

6.5 Further, the claimant is due to give evidence later today and, as I have said, there are two other witnesses who will need to be proofed on this. One of those was proposed to give evidence tomorrow afternoon.

6.6 He submits that he will not have a proper amount of time to deal with this and, given the seriousness of the allegation, it is unfair to put that pressure on him, experienced as he is, but even more so, it is unfair to put that kind of pressure on his client to face an allegation of illegality and deal with it a matter of hours before she is due to go into the witness box.

6.7 The act in question, even if proven as alleged by the defendants, Mr Tager QC says, is not an illegal act anyway. I reject that submission because, in my view, the argument put forward by Mr Mill QC is at least arguable that when you look at the current witness statement and the statutory declaration, there is an arguable case that there has been a criminal offence, but it is only arguable and it is

always very dangerous to make assumptions as to illegality, especially when you have not heard what the person who was accused of the illegality has said.

7. The defendant's response.

7.1 The defendant, through Mr Mill QC, submits that they only really became aware of this potential claim when the claimant's witness statement was served on 8 July, which made it clear that the statutory declaration was false when she said that the allegations were false. I observe that it is a little unusual to complain about a statement that says other allegations are false was itself false when they were true when, in fact, the defendant's case, if this is gone into, which I remain sceptical about at the moment, is that the allegations were actually false.

7.2 So, in reality, the defendants, if we are going to go into this, are going to be putting to the claimant, when she goes into the witness box, not that her statutory declaration is false, but that it is true and that the allegations are false and that her present evidence in her present witness statement is untrue, which is a judicial nightmare, I would say, and no more than that.

7.3 Mr Mill QC also submits it would be wrong to deprive the defendant of an arguable case, and there is no serious prejudice. Mr Mill QC, with that frankness for which he is well known, acknowledged that it only occurred to him to be a possible defence when he saw the evidence that was served on 8 July.

7.4 That leads me to the following conclusions: first, as I do in these frequent applications for amendment, I refer to the principles. I only now refer to two cases: Mills & Reeves in the Court of Appeal, and my case of Spear v Zynga where I reviewed all the cases as I saw them on applications to amend at trial. My decision on Spear v Zynga was upheld by the Court of Appeal, without going into the collision that I see between Mills & Reeves, and Spear v Zynga, and all the other cases which I have reviewed. The principle is this: before Mills & Reeves in the Court of Appeal, the long established principle, summarised by a case called Cobbold, and set out in the White Book without challenge for a decade, was that an amendment, however late to be made, would always be

invariably granted unless there was severe prejudice to the other side which could not be accommodated.

7.5 That was overturned in Mills & Reeves when they managed to find an unreported decision, not under the CPR, which Cobbold was, but under the RSC, also delivered by Peter Gibson LJ. He apparently, on this analysis, overlooked a decision he had made a few months earlier, a proposition which I continue to find astonishing, given the meticulous way in which Peter Gibson LJ used to approach these matters, but nevertheless, that is what the Court of Appeal found.

7.6 The Court of Appeal found and determined that for an application at trial there was a heavy onus on someone to justify the amendment without, of course, assisting anybody as to what "heavy onus" meant, and that an amendment would be refused, as it was in the Mills & Reeves case, despite the fact that it was capable of being dealt with and caused no prejudice to the other side. I point out the consequences that happened in Mills & Reeves. The amendment was disallowed. The case was transferred to Arnold J. He heard the trial, he dismissed the claim on the pleadings as eviscerated by the Court of Appeal, and dismissed the claimant's case. In so doing he said had he been allowed to try it on the basis of the amendment which was allowed, the claimant would have won. An appeal against that decision was dismissed, with great regret. The then Master of the Rolls Lord Neuberger prefacing his judgment by saying:

> "It is undoubtedly the case the claimants will not think that justice was being done."

7.7 Their hands however were tied by the previous Court of Appeal decision.

7.8 It seems to me, and has seemed to me ever since it was delivered, that Mills & Reeves is wrong, and ultimately, I hope that two things might happen: the White Book will actually address this issue, which the editors have not yet; and even better, perhaps the Court of Appeal will address it.

7.9 Mr Tager QC did not, perhaps by silence, seem to support the Mills & Reeves decision, but I will approach it on first the test as I see it, which is on the basis of the Cobbold test.

7.10 It seems to me that the following facts are relevant: I accept Mr Tager QC's submission that raising this new plea at this stage is oppressive. It is quite wrong that the claimant should face an allegation of illegality a matter of hours before she is due to give evidence; second, the case would have to be adjourned. It will have to be adjourned because further instructions will have to be taken, evidence will have to be considered. If documents are going to be disclosed by a way of privilege, they would have to be dealt with. The closings will inevitably be longer, because they almost always in a case of illegality attract significant authorities because of the difficulties to find any principles in the illegality cases.

7.11 If the case is adjourned, it cannot, given the fact that the proceedings were commenced in 2009, be said to be urgent to justify jumping the list. If the case overruns the current time frame it will have to be stood out because I am, for the rest of the term, hearing an application where I am the assigned judge in a competition case where there are 350-odd claimants, and that's listed for three days, so this case cannot overrun.

7.12 Third, it is not right to foist on Mr Tager and his team, however experienced he is, the pressure of dealing with a highly technical and complex issue such as illegality, both factually and legally. It will not, in my view, be resolved by a short adjournment to, say, tomorrow, or Monday. It is quite wrong that the claimants are put in having to deal with this in this way.

7.13 Next, it seems to me, and I accept that this is with the wonderful advantage of hindsight, that a possible defence on these grounds could have been found before now. I emphasise the word "possible". It is, of course, easy for a judge looking at everything in the round to see things and by saying that, I am not intending to criticise anybody, because it has not been raised before. Things like this happen in life, and one of the great pleasures in being a judge in litigation is the unpredictability of it; not quite so pleasurable for the parties and their lawyers. But sometimes these things are not there to be had, but I think they could possibly have been found.

7.14 I have to weigh up the consequences to the claimant of allowing the amendment as opposed to the consequences of disallowing it, and it seems to me when I put the two in the respective balance, it overwhelmingly leads me to the conclusion that I should refuse the amendment.

7.15 That means that this case will not pass the Spear v Zynga threshold. It follows by definition that the defendant would fail to establish the heavy onus, whatever that might be, required of the Court of Appeal in Mills & Reeves.

7.16 So, for all of those reasons, it hasn't been an easy decision to make, but it seems to me that the decision ought to be in favour of the claimant, and I refuse the application in respect of paragraph 24B.