Calliope Tardios, St John's Preparatory and Senior School Limited v Pammela Linton also known as Patricia Carpenter

Case No: QB/2014/0023

High Court of Justice Queen's Bench Division

21 May 2015

[2015] EWHC 1429 (QB)

2015 WL 3404764

Before: Mr Justice Dingemans

Date: 21/05/2015

On appeal from Master Eastman

Hearing dates: 6 and 7 May 2015

Representation

Justin Rushbrooke QC and David Hirst (instructed by Carter-Ruck) for the Claimants and Respondents.

The Defendant and Appellant appeared in person.

Approved Judgment

Mr Justice Dingemans:

1 This is an appeal from the order of Master Eastman dated 20th December 2013 by which he ordered that Pammela Linton ("Ms Linton") should be joined as " *the Defendant also known as Patricia Carpenter* " in place of the Defendant who was described on the Particulars of Claim as "Persons Unknown (Patricia Carpenter/patriciacarpenter.antibullying@gmail.com" ". The appeal was listed to be heard with fresh evidence over the course of 2 days. The appeal raises interesting procedural points about: (1) whether it is permissible to change the name of a party after default judgment has been obtained; and (2) the procedure to be adopted when the party to be joined disputes the factual basis on which that party is being joined.

2 The order dated 20th December 2013 was made on the basis that Master Eastman was satisfied that Ms Linton was in fact the person who had called herself Patricia Carpenter. Patricia Carpenter had published an online petition entitled " *St John's Prep School: Mrs Tardios resign as head of St John's Prep School …* " (" *the petition* ") from about 31st May 2013. The petition, the contents of which it is not necessary to repeat for the purposes of this judgment, made various allegations against Calliope Tardios ("Mrs Tardios"), the headmistress of St John's Preparatory Senior School Limited ("the school"). The petition was on a website hosted by "change.org", who removed the petition on about 2nd December 2013.

The procedural background up to the hearing before Master Eastman

3 After publication of the petition the school emailed Patricia Carpenter using an email address provided on the petition and complained about the publication. Patricia Carpenter responded by email dated 10th June 2013 stating that she believed that the petition was true. Breeze & Wyles Solicitors LLP, acting on behalf of the Claimants, wrote to Patricia Carpenter by emailed letter dated 18 June 2013 complaining about the online petition.

4 On 10th June 2013 a *Norwich Pharmacal* order was made by Collins J. against change.org to enable the Claimants to attempt to identify the person responsible for the publication of the petition. By Claim Form dated 10 June 2013 Mrs Tardios and the school brought a claim for damages for libel in respect of the publication of the petition. Permission to serve the Claim Form by email to patriciacarpenter.antibullying@gmail.com was granted on 1st July 2013. The Particulars of Claim were served in this manner on 9th July 2013.

5 On 22nd July 2013 an acknowledgment of service was served giving Patricia Carpenter's address for service as: Tariro Self Help Project, c/o Father Francis Connor, 414 22nd Crescent, Glenview 1, Harare, Zimbabwe. Judgment in default of defence was obtained on 21st August 2013. An application to set aside the default judgment was made by Patricia Carpenter on 4th October 2013. This was dismissed as totally without merit by Master Eastman at a hearing dated 22nd November 2013 at which Patricia Carpenter did not appear and at which she was not represented.

6 On 6th December 2013 Ms Linton received a letter by email from the Claimants' solicitors stating that they believed that Ms Linton was responsible for the publications and requiring this to be admitted failing which an application to add Ms Linton would be made. Ms Linton rejected the allegation, and Ms Linton was served with an application returnable on 20th December 2013. Ms Linton asked for the proceedings to be adjourned because she had not got legal representation. An adjournment was refused and the hearing went ahead.

The judgment of Master Eastman

7 Master Eastman identified two issues: first whether it was fair to join Ms Linton; and secondly whether he was satisfied on the balance of probabilities that Ms Linton was the person behind the Patricia Carpenter petition. Master Eastman then went on to find that he was satisfied, on the balance of probabilities, that Ms Linton was Patricia Carpenter.

8 Master Eastman was also concerned about evidence that he had been shown relating to a forged order, and he referred the papers to the Judge in charge of the jury list.

Procedural background leading to this appeal

9 Ms Linton appealed against the order made by Master Eastman. Ms Linton contended that Master Eastman's order was wrong because she had not created the petition, Master Eastman had been misled by the Claimants and her representatives, and Ms Linton had not had a fair trial. Ms Linton stated that she felt that she was being victimised because she was a litigation friend for her daughter who was bringing discrimination proceedings against the school.

10 In the grounds of appeal Ms Linton alleged that the Claimants' legal representatives had concealed or withheld vital evidence until after the Master had given judgment, which was handed over after judgment was given. Ms Linton asked for copies of the documents and was provided with them.

11 Ms Linton also complained that the Claimants had relied on the evidence of Mr Evans who was a hacker for hire who had criminal convictions and whose evidence had been preferred over a Catholic priest. Ms Linton also sought to rely on fresh evidence.

12 By order dated 10th February 2014 Simon J. directed that the Claimants should respond to Ms Linton's application to adduce fresh evidence and that the papers and response should be put before a Judge to consider on the papers. The Claimants put in further submissions responding to Ms Linton's further evidence.

13 By order dated 14 March 2014 Patterson J. refused permission to appeal on the papers. Ms Linton renewed her application for permission to appeal and on 7th April 2014 Christopher Ramsay, who is Ms Linton's husband, put in a witness statement and Ms Linton put in further submissions in support of her application dated 7th April 2014 which dealt with aspects of the evidence together with a Refutation to Claimant's Skeleton Argument dated 7th April 2014.

14 There was a renewed oral hearing on 8th April 2014 and Wilkie J. gave Ms Linton permission to appeal so that the totality of the evidence could be looked at during a longer hearing, given the

time limitations which had confronted Ms Linton before Master Eastman.

15 Wilkie J. gave permission to Ms Linton to serve a witness statement to deal with the points raised by the Claimants in their submissions dated 4th March 2014 within 21 days, and gave the Claimants permission to submit one tranche of evidence within 49 days of the order.

16 Although Wilkie J. had limited the parties to one further round of evidence, the Claimants applied for disclosure and inspection of documents referred to in witness statements by Ms Linton and Christopher Ramsay, and applications for third party disclosure against others including Google. The application against Google was made because Google hosted the Patricia Carpenter email account.

17 After a hearing and by order dated 17th June 2014 HHJ Parkes QC sitting as a High Court Judge granted orders requiring disclosure of the documents. An order for costs against Ms Linton was made in the sum of £17,500. The making of the order meant that the appeal, which had originally been listed for 24th June 2014 was adjourned to be heard at the end of July 2014.

18 However Ms Linton then appealed against the orders made by HHJ Parkes QC. On 25th July 2014 Warby J. adjourned the hearing of the appeal from Master Eastman to allow for the hearing of the appeal from HHJ Parkes QC and compliance with the order made by HHJ Parkes QC. Ms Linton had sought to set aside Warby J.'s order on various grounds but that order was simply part of the procedural history by the time of the hearing before me.

19 Ms Linton's appeal against the order made by HHJ Parkes QC was dismissed on the papers on 19th December 2014 by Longmore LJ who recorded that it was totally without merit. Longmore LJ also stayed enforcement of the costs order in favour of the Claimants in the sum of £17,500 to avoid Ms Linton being made bankrupt and therefore unable to pursue her appeal. Ms Linton complains that Longmore LJ was not provided with an accurate transcript of the proceedings below. Although there were two different formats of the transcript of the hearing before HHJ Parkes QC in the bundle before me, I was not directed to any details showing in what ways the transcript with which Longmore LJ was provided was inaccurate.

20 The order of Longmore LJ affirming the disclosure order made by HHJ Parkes QC was then drawn up on 6th January 2015 and served on Google. Google complied with the order, but the Claimants complained that Ms Linton had attempted to persuade Google not to comply.

21 Although Ms Linton had appeared in person before Master Eastman, made her application for permission to appeal in person, and had appeared in person before Wilkie J on the oral hearing of her renewed application for permission to appeal, Ms Linton had been represented by solicitors for a period when she was seeking permission to appeal from the order of HHJ Parkes QC. Although there was some correspondence, those solicitors did not take any substantive procedural steps and Ms Linton started acting in person again on 13th January 2015. In the interim the appeal had been listed for 6th and 7th May 2015. Ms Linton, acting in person, made an application dated 26th January 2015 to revoke Master Eastman's order dated 20th December 2013 and to set aside the order made by Warby J. dated 25th July 2015. The grounds of the application were that: the Claimants' claim was founded on deceit and tainted with fraud, Master Eastman had no jurisdiction and that Warby J. should not have made the order.

22 Ms Linton's application was listed to be heard on 10th February 2015 but by order dated 5th February 2015 Turner J. ordered that it should be adjourned to be heard with this appeal, to enable the appeal to proceed without further interlocutory issues.

23 By order dated 27th April 2015 Spencer J. granted the Claimants permission to rely on the evidence obtained as a result of the orders made by HHJ Parkes QC.

24 Ms Linton obtained legal representation from Seddons on 16th April 2015, who came onto the record on 17th April 2015 acting under a CFA. However on Friday 1st May 2015 Seddons came off the record.

Issues determined before the hearing of the appeal

25 Before I was able to deal with the merits of the appeal there were a number of procedural matters which required to be determined. These were: (1) whether the hearing should be

adjourned on the basis that Ms Linton's legal representatives withdrew from acting on behalf of Ms Linton on Friday 1st May 2015; (2) whether Ms Linton should not be permitted to be heard because she had failed to comply with orders dated 17th June 2014 made by HHJ Parkes QC and affirmed on appeal by Longmore LJ; (3) whether the appeal should be by way of rehearing or review; (4) whether Ms Linton should give evidence in chief or there should be cross examination of Ms Linton; (5) whether there should be amendment of the notice of appeal to permit Ms Linton to raise certain procedural objections to Master Eastman's order; (6) whether the Claimants should be permitted to rely on the seventh witness statement from Lawrence Northmore-Ball, who identified where the post office money order to provide the fee for the application issued by Patricia Carpenter had been purchased; and (7) whether Ms Linton should be permitted to rely on the witness statement of Elizabeth Hurley, a former pupil of the school.

26 I heard argument on these issues at the start of the main hearing and made some orders at the hearing and reserved other matters for this judgment.

No adjournment

27 I refused an adjournment of the hearing and gave oral reasons for that decision at the time. I refused the adjournment because: (1) the appeal had already been listed and adjourned in June 2014 and July 2014, there had been a long delay from the hearing before Master Eastman, and this hearing had been listed since January 2015. I accept Ms Linton's point that she had not caused the whole of the delays, as alleged by the Claimants, but the time had come to determine the appeal; (2) there was no evidence that an adjournment would enable Ms Linton to get legal representation. Although Ms Linton submitted that with a further delay she would be able to get new legal representatives there was no evidence to that effect (and the Claimants' legal representatives had asked for witness evidence to be provided) and although Ms Linton obviously hoped that she would get legal representatives for any new hearing, there was nothing to suggest that she would be more successful in the future than in the past: (3) there would be prejudice to the Claimants caused by further delay, and by the wasted costs of an adjournment which the Claimants estimated at about £30,000. The evidence showed that Ms Linton had not paid the costs order made by HHJ Parkes QC in the sum of £17,500, and although Ms Linton said that members of her family were now willing to help with her legal costs, there was nothing to suggest that sums would be available to pay the Claimants' wasted costs; and (4) Ms Linton had been acting in person throughout most of the proceedings. Ms Linton said that she found it difficult to act in person, and I understand and have personal sympathy for that difficulty, but that matter needs to be considered with the other factors.

Ms Linton can be heard on the appeal

28 I permitted Ms Linton to be heard on the hearing of the appeal and gave reasons for that ruling at the time. Ms Linton was, at the beginning of the appeal, in breach of the order made by HHJ Parkes QC because she had not provided disclosure which she had been ordered to provide, and she had failed to comply with an undertaking that she had provided to the Court to issue an application notice.

29 I accept that the Court may strike out proceedings for non-compliance with orders, but that usually follows a process which has included the making of an unless order. Such a process sets out in clear terms to the person in default what the Court orders, and the consequences of non-compliance. In this case it is right to say that the Claimants' legal representatives had made it plain to Ms Linton that they would seek orders preventing Ms Linton from participating in the appeal, but this was against a background where both sides had said that the other was abusing the Court process and in contempt and the Court had not made an unless order. When I asked Mr Rushbrooke QC why no unless order had been sought he made the point that the Claimants did not want to provoke another appeal. However that reasoning would also apply to any order barring Ms Linton from participating in her appeal.

30 In the event it seems to me that while it is plain that Ms Linton had acted in breach of orders made by the Court, it would not be proportionate or right to bar Ms Linton from appearing at the appeal. The proportionate response would be to take account of the effect of any non compliance when considering the merits of the appeal.

Rehearing

31 I asked both Mr Rushbrooke and Ms Linton whether this was an appeal by way of review, or by way of rehearing in the light of the order made by Wilkie J. which had provided for fresh evidence to be served. So far as is relevant to this appeal, CPR Part 52.11(1) provides that " *every appeal will be limited to a review of the decision of the lower court unless … (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing* ". In *Andergon v La Baguette Ltd [2002] EWCA Civ 10 the Court of Appeal* noted 5 general observations on whether there should be a rehearing.

32 It is relevant to note that CPR 52.11(2) provides that an appeal court will not receive either oral evidence or evidence not before the lower court unless it is otherwise ordered, but the effect of Wilkie J.'s order when granting permission to appeal, and the effect of the further orders made by HHJ Parkes QC and Spencer J is that the Court has already ordered that further evidence should be admitted on the appeal. It is apparent from the judgment of Wilkie J. giving permission to appeal that fresh evidence was permitted to be adduced because: Ms Linton had produced a considerable volume of material which she said cast doubt on the Claimants' case (paragraph 5 of the judgment); it appeared to Wilkie J. that the hearing before Master Eastman had been fraught with difficulties (paragraph 6 of the judgment); and because there was a compelling reason to grant permission to appeal so that the material could be considered (paragraph 7 of the judgment). It is established that fresh evidence can be received both on an appeal by way of review and an appeal by way of rehearing.

33 In my judgment in order to deal with this case in accordance with the overriding objective it is appropriate to hear this appeal by way of rehearing. This is because it has already been determined that a very considerable amount of fresh evidence should be admitted on the appeal. I also note that Ms Linton had complained that she had not had an opportunity to consider the bundle of evidence at the hearing before Master Eastman, and that this appears to have influenced Wilkie J.'s decision to grant permission to appeal and direct a consideration of the material. In my judgment a rehearing will give the parties a full and fair opportunity to have the material which they want considered taken into account by the Court.

No cross examination of Ms Linton

34 Mr Rushbrooke noted that in her grounds of appeal Ms Linton had complained that she had not had a trial, and indicated that he would be happy for Ms Linton to give evidence so that he could cross examine her, and he also offered to tender for cross examination Mrs Tardios and her daughter, who had both made statements, so that they could be cross examined by Ms Linton. Mr Rushbrooke said that, before Seddons had ceased acting for Ms Linton, the point had been raised in correspondence with them but the suggestion had been rejected. When the point was raised by Mr Rushbrooke at the commencement of the appeal, Ms Linton said that she wanted time to consider the point and wanted to contact legal representatives. I therefore adjourned this issue until after 2 pm on the first day of the hearing, adjourning after the procedural arguments in the morning at about 12.30 pm to give Ms Linton time to liaise with the legal representatives before the hearing commenced again at 2 pm. When Ms Linton came back at 2 pm she confirmed that she had spoken with her legal representatives but had not had time to come to a final view. I therefore adjourned this issue until 10.30 am for the second day of the hearing and in the interim both Ms Linton and Mr Rushbrooke made submissions on the merits of the appeal.

35 At 10.30 am on the 7th May Ms Linton said that she had now had time to consider the matter. She did not want to give evidence and be cross examined because although she would have been happy to give evidence and be cross examined, she did not feel able to cross examine Mrs Tardios and her daughter, and thought it would be better for there to be consideration of the matter by way of written witness statements.

36 CPR 32.7(1) provides that " *Where, at a hearing other than the trial, evidence is given in writing, any party may apply to the Court for permission to cross-examine the person giving the evidence.* " Where permission is provided and the person does not attend for cross examination, the evidence may not be used without permission in CPR Part 32.7(2) . Mr Rushbrooke

continued to ask for permission to cross examine but accepted that if I made an order, and Ms Linton did not attend to give evidence, reliance could still be placed on the witness statement.

37 I refused the application for cross examination of Ms Linton. This is because it would not have been just to permit cross examination of Ms Linton in circumstances where there had been no formal application made before the hearing of the appeal (even though the point had been raised in correspondence) and where Ms Linton, acting in person and without notice of the offer to cross examine Mrs Tardios and her daughter, would not have been in a position to cross examine. There was also, as appears below, sufficient evidence for me to come to a decision on the merits of the appeal without the need for cross examination of the witnesses.

Ms Linton entitled to raise the points of procedure

38 In her Appellant's Notice Ms Linton had raised procedural points in relation to the amendment of the name of the action as ground 5. The points raised by Ms Linton at the hearing were sufficiently covered by the Appellant's Notice to enable them to be raised by Ms Linton, and I will address those points when dealing with the merits of the appeal.

Both parties entitled to rely on further witness evidence

39 Both the Claimants and Ms Linton sought to rely on further witness evidence. The Claimants sought to rely on a seventh witness statement from Lawrence Northmore-Ball, who identified where the post office money order to provide the fee for the application issued by Patricia Carpenter had been purchased. The information had been obtained after an inquiry made by counsel. Ms Linton sought to rely on the witness statement of Elizabeth Hurley, a former pupil of the school who had attended the school from 1993 to 1995, showing that there was another person who had reason to be unhappy with the school. At the hearing I looked at both statements and stated that I would reserve the final decision about whether to admit them in this judgment.

40 Having *considered the guidance set out in Denton v TH White Ltd [2014] EWCA Civ 906; [2014] 1 WLR 3926* I have decided to admit the further statements. I admitted the statements because although the witness statements were served late, they did deal only with discrete issues and it was possible to take them into account without disruption to the hearing of the appeal. The statements had been served late on either side because the importance of certain issues, for example where the postal order was purchased, and whether another person might have a concern about the school, had not been appreciated until late in the day. In order to deal with the case justly in circumstances where the appeal was intended to allow the issue about whether Ms Linton was Patricia Carpenter to be looked at carefully, and where both sides were in default, it was appropriate to admit the evidence.

The procedural points raised by this appeal

41 Ms Linton's appeal raises procedural points about: (1) whether it is permissible to change the name of a party after default judgment has been obtained; and (2) the procedure to be adopted when the party to be joined disputes the factual basis on which that party is being joined.

Permissible to change name of a party after default judgment

42 The Claimants relied on the provisions of CPR Part 17.3 and Part 19.2(4)(b) as providing the Court with jurisdiction to amend the name of the Defendant. CPR 17.3 provides the court with power to give permission to a party to amend its statements of case. CPR 19.2(4) provides " *the Court may order a new party to be substituted for an existing one if … (b) it is desirable to substitute the new party so that the court can resolve the matters in dispute in the proceedings* ".

43 Mr Rushbrooke submitted that it was desirable to amend the claim form and identify or substitute Ms Linton for " *Persons Unknown (Patricia Carpenter/patriciacarpenter.antibullying@gmail.com")* in circumstances where it was now apparent that Patricia Carpenter was Ms Linton.

44 Ms Linton disputed that she was Patricia Carpenter but also submitted that once the judgment in default had been obtained the Court was not entitled to change the name of the party. In support of her submissions Ms Linton relied on two authorities being *Attorney General v Corporation of Birmingham (1880) 15 Ch D. 423* and *Kirby v Telegraph plc [1999] EMLR 303* .

45 In Attorney General v Corporation of Birmingham an injunction had been granted against the Corporation of Birmingham ("the Corporation") to prevent sewage flowing into a river, but it had been suspended for 5 years. After expiry of that period the Plaintiffs wanted to enforce the judgment, but the Birmingham Tame and Rea Main Sewerage District ("the District") had succeeded to the rights and liabilities of the Corporation. Bacon VC held that the Plaintiffs could amend their bill and make the District parties pursuant to the provisions of what was then Order XVI rule 13. The Court of Appeal allowed an appeal holding that such an amendment could not be made after final decree, and that the decree could only be enforced against the District by an action. In argument Jessel MR stated that it was never intended to allow an amendment of the pleadings to introduce fresh parties after final judgment and he also noted that the wording of the rule referred to the " *the proceedings in the action shall be carried on* " which could only refer to an existing action. The issue of what was meant by "final judgment" was addressed in Kirby v Telegraph .

46 In Kirby v Telegraph the Claimant in a libel action who was waiting for the jury's decision on liability was put on notice that he might lose his job. This was unexpected and the Claimant had not made a claim for special damages. The jury came back with a favourable award on liability, and made substantial awards of general damages for others complaining about the same article. The parties agreed a figure for general damages for which judgment was given with a caveat to the effect that if the Claimant did lose his job he would bring a claim, and a further caveat to the effect that the Defendant would contend that the Court did not have jurisdiction to make the award. The Claimant lost his job and sought to amend his pleadings to claim special damages. The application was refused on the basis that there had been a "final judgment" and the Court had no jurisdiction to make the award. In the judgment reference was made to Attorney General v Corporation of Birmingham . The Court of Appeal confirmed that when a final judgment had been given the Court had no jurisdiction to make any further orders. It was common ground that a final judgment " *is a judgment which determines all issues of which the court is seised, as opposed to an interlocutory or interim judgment which leaves the court seised of some issues that it has not yet determined* ", see page 315 and 316. It was on this basis that other cases, including *Midland Bank Trust Company Ltd v Green and others (No.2) [1979] 1 WLR 460, were distinguished* . In those other cases there had not been a final judgment, or any final judgment which had been obtained had been set aside.

47 In this case the judgment which was obtained by the Claimants was a judgment in default of defence. It did not determine all the issues between the parties, and made express provision for issues of remedy to be determined. The issue of remedy would include questions of damages and injunction. In these circumstances there was no " *final judgment"* . This means that the Court does have jurisdiction to amend the Claim Form because the amendment is being made before there is a final judgment. There is also a difference between adding in a new party who has had nothing to do with the litigation, and identifying the actual name of a party who has participated by making applications, albeit under a different name.

48 In these circumstances in my judgment it would be in accordance with the overriding objective to amend the claim form and identify Ms Linton as the Defendant also known as Patricia Carpenter in place of " *Persons Unknown (Patricia Carpenter/patriciacarpenter.antibullying@gmail.com")* if the evidence shows that Patricia Carpenter was Ms Linton and that there is no triable issue relating to that fact.

The procedure to be adopted when deciding whether Ms Linton is Patricia Carpenter

49 There does not appear to be any direct authority on the approach to be taken in a case such as this where the Claimants contend that the amendment or substitution should take place because a person (Ms Linton) is in fact the person unknown who has purported to be someone else (Patricia Carpenter). In my judgment in order to have regard to the overriding objective in CPR Part 1 " *to deal with cases justly and at proportionate cost* " I should adopt the following approach: (1) to permit the amendment to be made if the evidence shows that Ms Linton is

Patricia Carpenter, and there is no triable issue in relation to that point; (2) if there is a triable issue about whether Ms Linton is Patricia Carpenter I should add Ms Linton as a Second Defendant and give directions for the trial of the issue of whether Ms Linton is Patricia Carpenter; and (3) if there is no evidence capable of showing that Ms Linton is Patricia Carpenter I should dismiss the application.

50 When deciding whether there is a triable issue in my judgment I should have regard, by way of analogy, with the principles governing the grant of summary judgment in CPR Part 24 . In this respect I should be careful of conducting a mini trial. I should accept assertions in witness evidence unless there is an inherent improbability in what is being asserted or there is other extraneous evidence which demonstrates the falsity of what is asserted, see generally *Swain v Hillman [2001] 1 All ER 91* . The fact that allegations of bad faith are made is not by itself a compelling reason for trial if the allegations can be properly determined on a summary basis.

Ms Linton is Patricia Carpenter and no triable issue

51 In my judgment the evidence before me establishes that: Ms Linton is Patricia Carpenter; that there is no triable issue in relation to that because Ms Linton has no real prospect of showing that she is not Patricia Carpenter; and that there is no other reason why that issue should be tried in circumstances where Ms Linton has had every reasonable opportunity to show whether that issue is disputable. I make these findings because: (1) Patricia Carpenter referred to matters which would be known only to Ms Linton or her family; (2) Ms Linton and Christopher Ramsay had available to them an email which could only have come from Patricia Carpenter's email account; (3) Ms Linton's husband Christopher Ramsay has failed to provide disclosure as ordered by HHJ Parkes QC and it is proper to draw some limited inferences from that failure; (4) the disclosure from Change.org and Google proves that Patricia Carpenter was not in Zimbabwe and the evidence as a whole shows that there is no Patricia Carpenter based in Zimbabwe running the Petition website; (5) Patricia Carpenter knew about information which must have come from Ms Linton and her family; and (6) both Ms Linton and Patricia Carpenter in their documents refer to " *correspondences* " as opposed to " *correspondence* ", which is an unusual spelling and which on its own would prove nothing but which together with the other material, enables me to be satisfied that it is Ms Linton, and not other members of her family, who is Patricia Carpenter.

52 It is necessary to set out a bit of background to the proceedings which were being brought by and against Ms Linton and the school at the time of the publication of the petition. The evidence establishes that in July 2011 there were unpaid fees owing from Ms Linton and Christopher Ramsay in respect of their daughter which were required to be paid before 6 September 2011. It was hoped that monies could be found for the fees. The school had suggested that Ms Linton and Christopher Ramsay provide provisional notice for the next term to the school, to cover the situation in the event that the monies were not available and it was necessary to withdraw their daughter. On 8 September 2011 Ms Linton sent a letter complaining about a teacher and the treatment of her daughter. On 3 October 2011 the school brought proceedings against Ms Linton and Christopher Ramsay for outstanding fees.

53 On 17 January 2012 the daughter of Ms Linton and Christopher Ramsay, with Ms Linton acting as a litigation friend, brought County Court proceedings alleging discrimination on racial grounds against the school. On 3 September 2012 Ms Linton and Christopher Ramsay made a partial admission that some fees were due to the school, although I should record that Ms Linton said in submissions that the admission that fees were due had been made in error because there were deposits which had been paid. In any event on 14 January 2013 an interim charging order was made against Ms Linton and Christopher Ramsay's house.

Patricia Carpenter referred to matters known only to Ms Linton and her family

54 The petition was first published on about 30 May 2013. Evidence obtained from Change.org shows that the petition was created on 30 May 2013 and that the email address patriciamncnaulty.carpenter@gmail.com was associated with the petition. This email address has been used for communications with the Court.

55 At the start it was said to be a petition by "Patricia Carpenter United Kingdom" before that

changed to “Patricia Carpenter, London, United Kingdom” before becoming “Patricia Carpenter, Henderson, Zimbabwe”. The evidence showed that Henderson in Zimbabwe is a rural area some distance from Harare.

56 In the petition it was stated that “ *Mrs Tardios and one of her teachers are currently facing court action for breach of duty of care and race discrimination. The court action relates to the treatment of a nine year old pupil. The pupil involved is no longer at the school*” . The evidence shows that Mrs Tardios and the school were not facing any other claims of race discrimination. Mrs Tardios and the school rely on this fact as showing that Patricia Carpenter knew about matters known only to Ms Linton and her immediate family, or the Defendants in the claim. Ms Linton noted that the age for her daughter was wrong, but in circumstances where there are no other Court proceedings for discrimination it seems that this must have been an oblique reference to the proceedings in which Ms Linton was acting as litigation friend. Apart from the Defendants to the claim (the school and Mrs Tardios) this information was known only to Ms Linton and her family.

57 The school emailed via the Change.org website to complain about the petition. Patricia Carpenter replied by email dated 10 June 2013 from the email address patriciacarpenter.antibulling@gmail.com. In that email Patricia Carpenter referred to a letter said to have been written to the school in December 2012 (although the evidence shows no such letter was written) asking whether the school “ *had any objections to the sharing of his findings of the ongoing race discrimination proceedings* ”, with “his” being a reference to a Mr Bailey. The email referred to what was said to be serious bullying “ *of a child named Hugo* ”. The email went on to state “ *I have in my possession copies of transcripts relating to three court hearings* ” giving County Court details and the name of a District Judge and a comment about the teacher against whom the discrimination claim had been made. This again shows knowledge by Patricia Carpenter of the exact proceedings in which Ms Linton was a litigation friend. Later on in the email is a reference to correspondence with a black pupil in which Mrs Tardios had written the statement “ *in this country* ”. In fact Mrs Tardios had written to Christopher Ramsay and Ms Linton by letter dated 27 May 2011 reporting unacceptable attendance levels by the daughter of Christopher Ramsay and Ms Linton and saying “ *you may not be aware that there is a legal requirement for all children in this country to attend school regularly* ”. I can understand the feeling by Ms Linton and Christopher Ramsay that the use of the phrase “in this country” in the letter was not necessary. However the fact that Patricia Carpenter picked up the reference in her email dated 10 June 2013, and put it in the context of a letter written to parents of a black pupil part proves the relationship between Patricia Carpenter and Ms Linton. The final point to note from the email is the phrase “ *in a correspondence to parents* ” showing a confusion of the plural with the singular.

Ms Linton and Christopher Ramsay had available to them an email which could only have come from Patricia Carpenter's email account and Christopher Ramsay failed to comply with an order for disclosure

58 The email was exhibited to a witness statement made by Christopher Ramsay in support of Ms Linton's application for permission to appeal. Christopher Ramsay and Ms Linton are husband and wife and appeared together before me making common cause, as they had done before HHJ Parkes QC. Christopher Ramsay relied on this as proof of communications between Patricia Carpenter and the Claimants in relation to a child called Hugo which he said he had received and which he referred to at paragraph 24 of his witness statement.

59 Mrs Tardios and the school were particularly interested in the fact that Christopher Ramsay appeared to have an email from Patricia Carpenter's email account which did not appear to have been forwarded to him, and asked him how he had come to have it. This issue was pursued to the disclosure hearing before HHJ Parkes QC. Christopher Ramsay dealt with this matter at the hearing before HHJ Parkes QC and said that he had received the email from Francis Zhakata who had been in communication with Patricia Carpenter. He said it had not proved possible to forward the email to him for various reasons but it had then been faxed to him by Francis Zhakata. It was clarified that the email had been received by fax (page 51 of the transcript before HHJ Parkes QC) and HHJ Parkes QC ordered Christopher Ramsay to give disclosure of the fax header.

60 In the event there was no disclosure of the fax. Ms Linton said, in her closing submissions in reply, that this was because of concerns about the security of persons associated with the person who provided the fax. Mr Rushbrooke noted that Christopher Ramsay was in breach of the order, and that this explanation had not been provided in evidence, and had only been suggested in submissions at the hearing.

61 In my judgment the fact that Christopher Ramsay, Ms Linton's husband, had possession of an email from the account of Patricia Carpenter which had not been emailed to him and which showed no evidence of having been faxed to him, proves (together with the other information) that the Patricia Carpenter email account was being operated by the household of Ms Linton and Christopher Ramsay. Although Ms Linton and Christopher Ramsay had suggested that the document had been faxed to them, no documents showing that had been provided, and this was notwithstanding the order of HHJ Parkes QC.

Patricia Carpenter is not in Zimbabwe

62 On 22 July 2013 an acknowledgment of service was lodged by Patricia Carpenter. This challenged jurisdiction on the basis that Patricia Carpenter was domiciled in Zimbabwe and challenged service on the basis that the proceedings had been served outside the jurisdiction without permission. However *Norwich Pharmacal* evidence showed that the petition was administered from Grays Inn Road on 22 July 2013, proving that Patricia Carpenter was not in Zimbabwe on 22 July 2013. Further evidence proving this is the fact that Patricia Carpenter purported to send the Court fee of £80 for the application by way of postal order, which had been purchased in the United Kingdom, and which the last witness statement from Lawrence Northmore-Ball showed had been obtained from a post office in Lancaster Road in Enfield. Ms Linton's home is in London, and close to Lancaster Road in Enfield. As Ms Linton submitted, this would only show Patricia Carpenter was not in Zimbabwe, but it could not prove (without more) that Ms Linton was Patricia Carpenter.

63 There was a considerable volume of material from Zimbabwe showing that Patricia Carpenter was not at a named address given for her in Zimbabwe. There was evidence adduced on behalf of Ms Linton, particularly from Francis Zhakata, which purported to contradict that evidence. However the evidence before me proved that Patricia Carpenter could not have been in Zimbabwe as claimed by Francis Zhakata. This is because of the computer evidence obtained under *Norwich Pharmacal* orders showing that the petition, under the control of Patricia Carpenter, was being accessed from London at times when Patricia Carpenter was in Zimbabwe.

64 It is extraordinary that if Patricia Carpenter does exist as the person that she purports to be, now domiciled in Zimbabwe, there is nothing concrete to show of her existence particularly given the time that has expired since this issue was raised and the permission that has been given for further evidence. In the final event there is no triable issue about her existence. The Patricia Carpenter of Zimbabwe has no real existence.

Information known to Patricia Carpenter which must have come from Ms Linton and her family

65 On 21 August 2013 Master Eastman made an order. It was in two parts. The first part was dated 21 August 2013 and recorded in typing " *no defence having been filed, it is ordered that the defendants must pay the claimants an amount which the court will decide, and costs* " before it continued in typing " *Master Eastman orders that:* " with in handwriting " *see attached order* ". The second part of the order was on the next page and was dated 12 September 2013. It repeated in paragraph 1 the provision for the Defendants to pay an amount to be decided and costs, and provided for a case management conference on 22 November 2013. This judgment was served by email on Patricia Carpenter on 25 September 2013.

66 On 30 September 2013 Patricia Carpenter emailed Mr Pitts of Breeze & Wyles Solicitors LLP, who was acting for the school in the debt and discrimination claims and who was, at this time, acting in the defamation proceedings. The email asserted the truth of the contents of the petition.

67 At some time before 1 October 2013 Mrs Tardios or member of her family instructed Greg Evans of Hi-Tech Crimes Solutions Corp which operates a website called Hackers for Hire. They

are based in the United States (where Change.org was registered) to carry out inquiries. Greg Evans said that he had a person called Don Evans carrying out inquiries for him, but Ms Linton doubted that there was another person, and noted that Greg Evans had criminal convictions arising out of his activities as a hacker. The evidence shows that Greg Evans does have such convictions, and it is therefore important to consider very carefully any evidence from this source. However the main evidence on which reliance was placed was the telephone call referred to below, which was recorded and transcribed and there is no dispute about the contents of the conversation.

68 In the telephone conversation a person who purported to call himself Don Evans called Ms Linton's number. He spoke to a person who identified himself as Joseph Ramsay, Ms Linton's brother in law. The person calling himself Don Evans said he was from Change.org. That person then pretended that change.org had been served with a Court order to remove the petition and that the Court order was directed at Pamela, and not Patricia Carpenter. Joseph Ramsay asked if Don Evans wanted him to get Ms Linton's solicitors to call. Joseph Ramsay suggested that the petition was being taken seriously by a number of groups including government officials and police and also said " *a lot of people have actually been talking to Patricia* " and that " *Patricia has spoken to a local MP …* ". This suggests knowledge of Patricia Carpenter by Ms Linton's brother in law Joseph Ramsay, although towards the end of the telephone call Joseph Ramsay did say that Patricia Carpenter was " *not involved with us* ". 69. The evidence shows that Don Evans (if that was his name) was not calling on behalf of Change.org, and so he lied about his background. The evidence also shows that he lied about having a Court order. Mr Rushbrooke submitted that this was "blagging" which it was, but this does not make the behaviour of "Don Evans" any more acceptable. The exchange did lead on to further email exchanges which are relevant.

70 By an email dated 1 October 2013 at 9.04 pm "Ben" purported to send an email from "Change.org" to Patricia Carpenter saying that a Court order had been sent from the UK requiring the petition to be taken down unless Patricia Carpenter said that she wanted to appeal. Patricia Carpenter emailed stating that she wanted to appeal. Patricia Carpenter then emailed Change.org on 2 October 2013 asking them to verify the attached email message. Patricia Carpenter explained the reason for the request as being " *some of my supporters have been receiving messages from a "Dan" (telephone 678 243 0152 he was claiming to be from Charge.org office in Atlanta GA. I've traced the number to the www.hackerforhire.com" website* ". This email therefore proves that Patricia Carpenter had identified Joseph Ramsay, who had taken a call intended for Ms Linton, as a supporter. More relevantly it showed that Patricia Carpenter knew of matters which had occurred to Ms Linton and Joseph Ramsay within a very short period of time.

71 It was after this time that Ms Linton started to make applications to the High Court and County Court on the basis that a Court order had been forged. The Court order used was an adaptation of Master Eastman's order, but with different provisions. Mr Rushbrooke relied on Ms Linton's use of these forged Court orders as showing that she must have received the genuine order sent to Patricia Carpenter, adapted it, and then attempted to use it for her own ends. Ms Linton denied any wrongdoing and said that she had been sent or delivered the forged Court orders. Master Eastman referred this issue to the Judge in charge of the jury list for him to consider taking appropriate proceedings for contempt of court. In circumstances where the evidence has shown that Ms Linton and her husband Christopher Ramsay have had access to Patricia Carpenter's email by reason of the matters set out above, it is not necessary for me to make any findings about this matter and it is not appropriate for me to do so in circumstances where the matter has been referred for consideration of further proceedings.

Use of the word "correspondences"

72 Finally there is evidence that Ms Linton used the word "correspondences" in a number of communications, which is a word also used by Patricia Carpenter. Although Ms Linton handed me in a computer search suggesting that "correspondences" was a permissible plural of "correspondence", the use of the word "correspondences" is sufficiently unusual to be noted. Most importantly it allows me to identify that in circumstances where: Patricia Carpenter has no independent existence; and there is access to Patricia Carpenter's email from the household of Christopher Ramsay and Ms Linton; that it is Ms Linton (and not Christopher Ramsay) who is

Patricia Carpenter.

No revoking order of Master Eastman, no striking out claim and appeal dismissed

73 For all the reasons given above I do not revoke Master Eastman's order and I do not strike out the claim as requested by Ms Linton. There was no need for the application made by Ms Linton. Ms Linton had appealed against the order of Master Eastman and the points made by Ms Linton in support of her application to revoke were always going to be evaluated in the context of the appeal. Ms Linton has had a full opportunity to adduce evidence that she wanted. I dismiss Ms Linton's appeal.

Conclusion

74 Master Eastman did have jurisdiction to add Ms Linton as a Defendant in place of the Defendant " *Person(s) Unknown (Patricia Carpenter…)* ". For the detailed reasons given above the evidence shows that Ms Linton is Patricia Carpenter and there is no disputable issue about whether Ms Linton is Patricia Carpenter. Master Eastman was therefore right to make the order that he did and I dismiss the appeal.