England and Wales High Court (Queen's Bench Division) Decisions

Neutral Citation Number: [2017] EWHC 2992 (QB)
Case No: HQ16D00200

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

24/11/2017

B e f o r e :

MR JUSTICE JAY

Between:

JAN TOMASZ SERAFIN

Claimant

- and –

(1) GRZEGORZ MALKIEWICZ
(2) CZAS PUBLISHERS LTD
(3) TERESA BAZARNIK-MALKIEWICZ

Defendants

The Claimant in person
Anthony Metzer QC (instructed by Direct Access) for the Defendants

Hearing dates: 30th, 31st October, 1st - 3rd, 6th and 8th November 2017

HTML VERSION OF JUDGMENT APPROVED

MR JUSTICE JAY:

A. **Introduction**

1. Mr Jan Serafin ("the Claimant") claims damages and injunctive relief in the torts of libel and misuse of private information in connection with an article published in October 2015 in the Second Defendant's newspaper, *Nowy Czas* (meaning "new time"), a Polish language newspaper distributed in London. *Nowy Czas* is a serious, reflective publication covering issues of interest to the substantial Polish community living in the UK.

2. There are 8 issues of *Nowy Czas* each year and the print run is some 5,000 copies. According to the Amended Defence, in October 2015 there were 1,528 viewings of the article, 589 of these being unique.

3. Mr Grzegorz Malkiewicz ("the First Defendant") is the editor-in-chief of the newspaper and the author of the article. Mrs Teresa Bazarnik-Malkiewicz ("the Third Defendant") is a director of the Second Defendant, an editor of the newspaper and also the wife of the First Defendant. There is no dispute that all three Defendants were responsible for publishing the article.

4. The article has been described by the First Defendant as "a modern morality tale about how the Claimant, a well-known and prominent person within the Polish émigré community in London, had behaved since his arrival in this country and how he is likely to behave in future". Annexed to this judgment is a translation of the entire article albeit not all of it is subject to complaint. I have removed the photograph of the Claimant in relation to which he claims privacy rights, but I have retained the caption. I have added lettering in order more easily to identify specific paragraphs. The parties accept, indeed aver, that the English language version is imperfect because subtleties of style, tone and inflection are inevitably lost in translation. My initial observation is that the article is satirical, witty, allusive and intellectually sophisticated in style and tone. However, these approbative epithets should not be understood as veiling a number of serious imputations of the ethics of the Claimant, capable of significantly damaging his reputation.

5. The Defendants do not seek to defend the article by relying on the truth of matters beyond the words complained of or not specifically mentioned within it. I heard evidence which went beyond the four corners of the publication. This evidence was clearly relevant to the Claimant's credibility and no objection was taken by either side. Even so, I have to remind myself that the true focus of this trial has been the meaning of the words complained of, whether they are defamatory within the meaning of the Defamation Act 2013, and (if so) whether any or all of the pleaded defences are made out.

6. This has been a difficult trial to conduct, and the resolution of some of the issues has been far from straightforward. This has been so for a number of reasons. The Claimant has conducted his case in person with the assistance of a McKenzie Friend. The credibility and reliability of a large number of witnesses has been assailed, and – contrary to the suggestion in the Defendant's Skeleton Argument filed by predecessor counsel to Mr Anthony Metzer QC some weeks before the hearing – this is not a case where contemporaneous documentation provides clear answers. Much has turned on my assessment of the oral evidence and the inferences to be drawn from some of that evidence, as well as from the absence of documentation and relevant witnesses.

7. The Claimant did not always challenge witnesses on matters he disputed, and it was not always possible for me to remedy that omission. I make some allowance for the fact that he is unrepresented, but I must continue to bear in mind that it would be wrong and unfair for me to reject evidence of Defendants' witnesses on significant matters where the basis of challenge was not put by the Claimant. In the circumstances, it seems to me that I should resolve matters of witness credibility only where it is essential to do so, that I should pay particular attention to the evidence of the Claimant himself, and that I should seek to focus primarily on matters directly germane to the contents of the article and their truth or otherwise.

B. **Essential Factual Background**

8. I need to provide a brief narrative in order to set the scene.

9. The Claimant was born in Poland in 1952. He came to the UK in 1984, he says as a political refugee, although it emerged in cross-examination that he was not in Poland when Solidarity first became active in 1981 and when martial law was declared later that year; and he came here in September 1984 pursuant to a private invitation and did not claim asylum on arrival. At some stage he must have been given indefinite leave to remain, but it is unclear on what basis, and there is no documentary evidence to assist.

10. In 1984 the Claimant left his wife, Mrs Anna Serafin, in Poland. She is an architect. The Claimant did not visit Poland until 1989 when he obtained a passport. On 31st January 1989 he and his wife were divorced. She has not remarried and does not have a partner.

11. Since 1984 (his evidence in cross-examination) or 1987 (his chronology annexed to his opening Skeleton Argument) the Claimant has worked as a builder using the style "JTS Building Services". He is Corgi registered and also holds himself out as a surveyor. In 1989 or thereabouts he joined the Polish Social and Cultural Association ("POSK") based in Hammersmith. POSK was established in 1974 as a charitable organisation for Polish émigrés. The Claimant was a member of the General Council of POSK for 15 years (exactly when is unclear but it may have been between 1997-2012); between May 2003 and June 2007 he was director or chairman of the House Committee, a sub-committee of either the General Council (a 51 member entity) or the Executive Committee (a 12 member entity) with responsibility for all building, structural, renovation and housekeeping work at POSK. The extent of its responsibilities, and the nature of any oversight or approval of the House Committee's activities, is in dispute. In 2007 or 2008 the Claimant stood for election to the Executive Committee but was unsuccessful. In 2012 he was removed from the General Council, either owing to his bankruptcy or to complaints received by POSK in relation to some of the matters which have occupied this trial (in my view, I do not have to decide the reason).

12. Between 2005 and 2007 two major pieces of refurbishment work were carried out by POSK: the first to the entrance hall; the second to the basement, entailing the installation of what became known as the Jazz Café. The article does not differentiate between these two items. Issues arise in these proceedings as to the nature and extent of the Claimant's and Mrs Serafin's personal involvement, direct or indirect, in these works.

13. Between 2007 and 2012 the Claimant was joint manager of the Jazz Café. This comprises a bar where drink and food is provided. The article claims either that there was no cash register in the Jazz Café until 2012, or that it was by-passed, and that the Claimant made a secret profit out of this. Issues arise as to whether this was so.

14. In 2008 the Claimant's business interests diversified. He became convinced that large profits could be

made from the importation of Polish foods and their onward sale to niche suppliers in this market. The Claimant's lack of experience in this line of business was patent, but it is equally clear that potentially lucrative possibilities presented themselves to an astute entrepreneur. On 26th September 2008 Polfood (UK) Ltd ("Polfood") was incorporated with the Claimant as sole director. Between that date and her resignation on 7th February 2011 the company secretary was Ms Elizabeth Howard, a woman with whom the Claimant had an intimate relationship for about 10 years. It is unclear when that relationship ended but it was not before the summer of 2009, and probably not until the end of 2010 (there is a question-mark in my mind as to whether it continued, perhaps more off than on, until early 2011, but it matters not).

15. Polfood acquired the premises, assets and stock-in-trade of CCW Foods Ltd ("CCW"), a company owned by Mr Waldemar Wegrzynowski and Ms Renata Cyparska, who are long-term partners. They claim that the Claimant offered them a form of partnership with Ms Cyparska becoming a second director of Polfood. This did not happen and the Claimant retained control of the company.

16. The Claimant accepts that he told Mr Wegrzynowski that he would invest £200,000 into Polfood from the sale of his house in Lynmouth Road (the Claimant and Ms Cyparska were next door neighbours). It is the Claimant's case that he in fact invested some £279,000 although in his Further Information given in answer to the Defendant's Part 18 Request the figure given was £200,000 – half coming from the sale of his home, the other half from a re-mortgage entered into the following year. I will have to examine the detail, but at this stage I note that 25 Lynmouth Road was sold for £164,397.64 on 27th October 2008, and 25A Lynmouth Road (being a house built on the adjoining plot by the Claimant himself) was re-mortgaged for £89,209.15 on 26th November 2009.

17. It is clear from the available evidence that shareholdings were acquired in Polfood as a result of three separate investments. Specifically:

    (1) by dint of the transfer of CCW's stock-in-trade etc. it was agreed that Ms Cyparska should acquire a shareholding in Polfood. According to the Claimant's Further Information, the amount invested was £50,000 but I consider that it was £65,340, being the agreed value of CCW's stock-in-trade etc. (as per a document dated 19th November 2008) less the Claimant's loans to CCW totalling £32,500. (In March 2011 Mr Wegrzynowski obtained default judgment in the sum of £76,900 - £65,340 plus interest - against the Claimant personally. The Claimant then failed to set it aside. I doubt whether this was the Claimant's personal liability, but he is precluded from contending otherwise. However, for a number of reasons I have concluded that I should not draw inferences against either the Claimant or Mr Wegrzynowski in relation to this.)

    (2) in September 2008 Mr and Mrs Ligeza invested £40,000. One of the documents disclosed by the Claimant suggests that this was a loan, and that the Claimant has repaid £8,350 between 2010 and 2017, but Mr Ligeza's witness statement makes it clear that he had a shareholding. Mr Ligeza, who did not attend trial to be cross-examined, gives a different figure for repayments he has received.

    (3) In 2009 Mr and Mrs Paczesny invested £100,000 through a company.

18. Aside from these investments (I am making no findings at this stage as to whether the Claimant's capital injections, in whatever sums, were investments in the strict sense), it is also clear from the available evidence that a number of individuals either lent money to Polfood directly or to the Claimant personally for onward transmission to Polfood. Specifically, but not on this occasion in chronological order:

(1) on 21st May 2009 the Claimant or Polfood took a short-term loan from Mr Henryk Malczuk in the sum of £20,000. This was apparently repaid.

(2) on 25th March 2010 the Claimant or Polfood borrowed £40,000 from Mr Jan Dyrcz. The Claimant says that he has repaid £25,000.

(3) between October 2008 and December 2009 the Claimant or Polfood borrowed money interest-free from Ms Elizabeth Howard. The documentary evidence in this regard is conflicting. One document suggests that the total amount borrowed was £52,100 but is unclear whether the debtor was the Claimant or the company. Another document suggests that the total amount borrowed was £68,694.07 with £39,157.91 being an indebtedness of the company and £28,536.16 a personal loan from the Claimant. Finally, the repayment schedule produced by the Claimant suggests that the total sum was £47,017 with the final amount being repaid by him, and accepted by Ms Howard as being the final amount, on 30th March 2015.

(4) between January and July 2009 the Claimant or Polfood borrowed the total sum of £65,298.41 from Ms Henryka Wozniczka at rates of interest ranging from 10-20%. In my view, the evidence establishes that the Claimant and Ms Wozniczka started an intimate relationship in May 2009 (and not in July as the Claimant conveniently asserts). There is a dispute between the Claimant and Ms Wozniczka as to whether this was a personal or a company loan. It is unnecessary for me to resolve this issue because it does not matter for present purposes. As I will later make clear, the corporate veil was, for the Claimant's purposes, a garment of convenience, to be lifted up or drawn down fortuitously. What seems reasonably clear is that Ms Wozniczka was repaid interest by Polfood, although the repayment figures given in the documents vary: either the aggregate amount was £7,073.69 or £12,794.70.

19. I suspect that there were other loans which the Claimant has not mentioned.

20. Polfood's main supplier in Poland was Rofood Export-Import ("Rofood") which I take to be the trading name of Mr Ryszard Ogonowski. In due course the Claimant was constrained to broaden his supply base and in February 2010 he started doing business with another supplier, Bac-Pol S.A. ("Bac-Pol"). Initially, goods were supplied in exchange for cash on delivery, but cash-flow difficulties rendered this *modus operandi* unviable in the long-term. On 4th March 2010 three members of the Claimant's family, including Anna Serafin, and one friend, all of whom were in Poland, signed a "weksel" or bill of exchange (in effect, a personal guarantee) on the foot of which Bac-Pol agreed to extend a line of credit to Polfood. The Claimant told me that he would not have been personally liable under the "weksel"; the Official Receiver was in due course to believe otherwise. Ultimately, though, this is just one of the many factual intricacies of this case that I have been unable to unknot.

21. The business of Polfood was organised on lines which were chaotic, amateurish or dishonest, or maybe a combination of all three. As I will come to demonstrate, Polfood's accounts and returns were inadequate and contradictory. To my mind, there were significant cash payments and receipts which have not properly been accounted for. Although Polfood's turnover appears to have increased in the second year of trading, there came a time which it was trading insolvently. The date is difficult to fix, and the general manager's evidence was that Polfood was doomed from the start, but I can be confident that Polfood was probably insolvent by September 2010 and it ceased trading the following month.

22. The issues arising out of this segment of the case, in the context of the article, are principally whether (i) the Claimant made unethical promises to investors, in particular to Ms Howard and Ms Wozniczka with whom it is said that he was maintaining simultaneous intimate relationships, and (ii) investors' money was siphoned out of Polfood to his family in Poland and/or into a hotel project in Kroscienko

being run by his son.

23. On 17th August 2011 a Bankruptcy Order was made against the Claimant on the petition of HMRC. According to the Order itself, the Claimant's liabilities were £227,966. There is some doubt as to the accuracy of this figure but nothing turns on this for present purposes.

24. The Claimant's version was in effect that he had sunk all his assets into Polfood, save for his house – although it had been re-mortgaged to that end. Bankruptcy is not inherently reprehensible but matters came to light which aroused the attention of the Official Receiver, and an investigation into the Claimant's conduct commenced. It transpired that on 10th November 2010 25A Lynmouth Road was sold and the sum of £128,930.03 was transferred into the Claimant's personal account at NatWest. The purchaser was a friend, Mr Andrzej Szamfeber, whose company Vitpol Ltd had lent £32,000 to Polfood in 2009 and 2010. According to the Official Receiver, the property was sold for £233,000 and the re-mortgage had risen to slightly over £103,000. No estate agent was involved and the Claimant accepts that no market valuation was obtained.

25. On 17th November 2010 the sum of £91,743 was transferred from the Claimant's NatWest account to Bac-Pol and the security was discharged. £32,000 was paid to Mr Szambefer, and a further amount of £2,000 covered legal costs (the arithmetic does not wholly reconcile but this matters little in the overall context of the Claimant's misconduct).

26. The Claimant continued to live at 25A Lynmouth Road until 2016 when he moved into the flat of this partner since 2013, Ms Beata Parylak. The Claimant says that the arrangement with Mr Szambefer was that he would provide services for him or his company in lieu of rent.

27. Meanwhile, in November 2010 the Claimant travelled to Poland and transferred what he asserts to be two small apartments in Krakow and Nowy Sacz respectively into the names of his sons, for no consideration. According to paragraph 18.41 of the Amended Reply (which I believe contains a typographical error regarding the year), the Claimant had purchased the flats for approximately £10,000 and £5,000 respectively. However, the Claimant has been unable to supply any details of the dates of purchase or any documents which back up his assertions. He admitted in evidence that the property market in Krakow has been buoyant. He was to tell the Official Receiver, Mr Barry Gould, in September 2011 that he gifted *a* Krakow flat to his son who later sold it for a sum in the region of £40,000. There was no mention of the other flat. Nor have I seen any evidence that the Claimant provided the Official Receiver with any documents relating to the Krakow sale, as he had promised to do.

28. The Official Receiver found misconduct by the Claimant in that:

> "Between 17th and 23rd November 2010, whilst insolvent, [he] disposed of £123,743 to the detriment of his creditors. He used the money to pay the debts of a limited company of which he was a director, one of whose debts he and three family members and a friend had personally guaranteed."

29. On 16th August 2012 the Claimant signed a Bankruptcy Restrictions Undertaking ("BRU") for a period of 5 years. The terms of his BRU have not been provided. In the circumstances, it is right that I assume that the terms were the most stringent that they could have been. In other words, the Claimant was precluded from (i) acting as a director of a company, or forming, managing or promoting a company, without permission from the court, (ii) carrying on business under a different name without telling people he did business with the name (or trading style) in which he was made bankrupt, (iii) trying to

borrow more than £500 without saying he was subject to restrictions, and (iv) being a trustee of a charity.

30. Although the Claimant was automatically discharged from his bankruptcy on 17th August 2012, he remained subject to the BRU until 16th August 2017. It follows that he was not a bankrupt when the article was written, but he was subject to restrictions.

31. The final phase in this brief chronological narrative covers the Claimant's involvement in Kolbe House, a care home in Ealing Common principally for elderly Poles. This is a Victorian Building with capacity for 25 residents. It is funded principally by private donations and residents' fees. Witnesses are not agreed as to the precise sequence of events, but the better view is that in 2006 or thereabouts the Claimant started bringing bread to Kolbe House, free of charge, from the Polish bakery. The inference is that these were loaves, rolls or packaged bread that the bakery was unable to sell. Later, when Polfood was trading, it supplied Kolbe House with foodstuffs on a number of occasions. There seems to have been a point in time at which the bread supplies ceased, but pinpointing that moment and the reasons for the cessation is not straightforward. Then, probably in late 2012, the bread supplies re-started. The essential issue I may have to resolve, although it is at the margins of relevance given the terms of section 1 of the Defamation Act 2013, is whether these products were close to or beyond their sell-by date.

32. The manager at Kolbe House until 2012 was Ms Lidia Williams; the maintenance man was Mr Zen Szczech. It is clear from the evidence she gave that Ms Williams was not impressed by the Claimant. She left Kolbe House to continue her career elsewhere. The maintenance man left in the same year: apparently, he wanted to wind down. Ms Beata Parylak was promoted from deputy manager. In January 2013 the Claimant took over as the maintenance man and *factotum*. Later in that year the Claimant and Ms Parylak commenced a personal relationship which endures to this day.

33. The article claims that Kolbe House soon became the Claimant's second home, and that he was "everywhere" (perhaps a deft allusion to the *factotum* in Rossini's opera). Mindful of the threshold requirement of serious harm, much of the evidence relating to Kolbe House is of peripheral relevance. It seems clear that the Claimant took his meals in view of the residents (exactly where he was sitting, and their frequency, is disputed); he had access to Ms Parylak's computer (he says, for the sole purpose of ordering building supplies); and, he carved out for himself a workshop (he says that he simply occupied Mr Szczech's space). The overall tenor of the Defendants' evidence is that the Claimant acted well above his station and became, in effect, a shadow manager in partnership with Ms Parylak. The more serious imputations in the article are that the Claimant had access to confidential documents relating to residents, and undertook significant works of renovation which were unnecessary – all against the backdrop of being a bankrupt and failing to disclose that status to higher management at Kolbe House.

34. The extent and propriety of the renovation works is in issue. The Claimant has disclosed invoices in the name of JTS Building Services covering the period January 2013 to 14th December 2015 (plus two small invoices for 2016 relating, I apprehend, to the boiler). These total £54,321.09. At my request, Miss Anna Romiszowska, Chair of the Management Committee at Kolbe House, has provided copies of all the Claimant's invoices in her possession. This further documentation reveals significant gaps in the Claimant's disclosure for 2013, as well as further work done in 2016 (minor) and 2017. The Kolbe House total is £65,453.55 – to which should be added a further £1,615 to reflect two invoices the Claimant has disclosed but are not in their possession.

35. At this stage I am not implying that there is anything necessarily suspicious about the Claimant's

failure to disclose all relevant invoices. The omission could be attributed to chaos rather than deception. What should be noted is that all the invoices have been authorised for payment by Ms Parylak.

36. The Claimant's case is that the article was the spur for his dismissal from Kolbe House. Some support for that proposition is given by the dates of relevant invoices (very little work was done in 2016), but it has been called into question by Miss Romiszowska's evidence. In that regard I heard evidence relating to the Claimant's involvement with a 92 year old lady, Mrs Wieslawa Hadjuk, commencing in April 2015. Although not mentioned in the article, the saliency of this seam of evidence could not be doubted – to the Claimant's credibility; to his assertion that he was dismissed solely because of the article; and, perhaps, to the "common sting" of the Kolbe House allegations.

37. Finally, the article mentions that the Claimant supervised the construction of an extension at Ms Parylak's home (where he now lives, I would add) and submitted plans to Ealing Council: the assumption must be, the article continues, that he concealed the fact of his bankruptcy.

C. **Outline of the Issues**

38. I have already delineated the principal factual issues albeit in a non-exhaustive fashion. These are relevant to the Defendant's primary line of defence, which is truth. This is a case where significant issues arise in relation to the credibility of a number of witnesses on both sides. First and foremost, there is the credibility of the Claimant himself. On his side of the fence, the Defendants have seriously called into question the testimony of Mr Piotr Serafin (the Claimant's nephew and the general manager of Polfood), Mrs Halina Dobrowolska-Lanzman (head of the kitchen, and also the housekeeper, at Kolbe House), Ms Beata Parylak, Miss Anna Romiszowska, Dr Leslek Bojanowksi (involved at a high level both in POSK and Kolbe House) and Ms Maria Stenzel (book-keeper at POSK). As for the Defendants' witnesses, it was not always entirely clear which witnesses the Claimant was challenging as not credible, as opposed to unreliable, but I would include in this list Ms Henryka Woznickza, Ms Renata Cyparska (although the Claimant's cross-examination of her was unsatisfactory), Mr Waldemar Wegrzynowski, Mr Zygmunt Lozinski (a former member of the General Council of POSK) and Mr Ryszard Ogonowski. In his closing submission the Claimant characterised the First Defendant as a liar – I am not sure that he went that far in cross-examination, although his tone was hostile.

39. Ms Elizabeth Howard, who attended court on the third day of the trial pursuant to a witness summons, was questioned by Mr Metzer in relation to various pieces of hearsay evidence in the witness statements of three witnesses; and she was also asked questions by the Claimant. She is an important witness whose evidence requires careful consideration.

40. I am not overlooking the evidence of other witnesses who were cross-examined by the parties, or indeed the evidence of a limited group of witnesses whose evidence was effectively agreed, subject to redactions. Reliability issues arise in regard to the former group.

41. I propose to resolve most of the key credibility questions before I address the principal defence of truth. I will deal specifically with some of the witnesses I have named.

42. The remaining issues which arise fall under the following rubrics.

43. First, there are disputes between the parties as to the meaning of the words complained of. Under the umbrella of this issue, or group of issues, I will need to consider the Defendants' contention that this is a "common sting" case where the words complained of may be shepherded into a more general imputation. Further, and in the event that the "common sting" analysis is rejected, the Defendants do

not accept that all the words complained of meet the threshold of serious harm to reputation within the terms of section 1 of the Defamation Act 2013.

44. Secondly, the Defendants seek to defend the words complained of as substantially true – whether as individually atomised by the Claimant into 13 or 14 separate imputations, or as collectively garnered by the Defendants into one generic imputation.

45. Thirdly, the Defendants seek to defend two aspects of the article as honest opinion. These are: (1) the headline, "Bankruptcy need not be painful", and (2) the innuendo meaning in relation to the first caption [see paragraph [B] in the Annex], with the reference to Reymont's "The Promised Land". It is agreed that the innuendo meaning is along the lines that one would have to be mad to believe that the Claimant's creditors would ever be repaid.

46. Fourthly, the Defendants advance a public interest defence in relation to the whole of the article (or, at least, that part of it of which complaint is made). The Amended Defence covers the entirety of the article, although at one stage during oral exchanges with me before his final submissions Mr Metzer appeared to concede that the public interest defence could only apply to the Kolbe House matters and the issue of the Claimant's bankruptcy. Later, he reverted to the pleaded case.

47. Finally, and in relation to the photograph, the issue is whether in all the circumstances of the case the Claimant had a reasonable expectation of privacy.

D. **The Words Complained Of**

48. I agree with the Defendants that the test to apply is that of the ordinary reader of a Polish language newspaper published in London: see Jeynes v News Magazines [2008] EWCA Civ 130 (at paragraph 14); FlyMeNow Ltd v Quick Air Jet Charter GmbH [2016] EWHC 3197 (QB) (at paragraph 60); and Gatley on Libel and Slander (12th edn.) (at paragraph 30.5). During the course of preparing this judgment, I have considered a number of further authorities and have drawn particular benefit from the comprehensive exposition and analysis of Haddon-Cave J in Mir Shakil-Ur-Rahman v ARY Network Ltd and another [2015] EWHC 2917 (QB). In the circumstances, and given the nature of the issues which arise, it is unnecessary for me to deal with the law in much detail.

49. However, it is worth setting out paragraph 14 of the judgment of Sir Anthony Clarke MR in Jeynes:

> "(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve 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 "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation…""

50. According to paragraph 11 of the Amended Defence, the meaning of the article that the Defendants seek to defend is:

> "the Claimant was a bankrupt and a serially untrustworthy man who, in order to satisfy his

ambition and financially benefit himself and his family in Poland, took improper advantage of a number of people, including women."

51. Implicit in this averment is the proposition that this is a "common sting" case, a point developed in the Skeleton Argument of predecessor counsel, Mr Adam Speker, and then briefly elaborated by Mr Metzer. In essence, the proposition being advanced is that the article propounds a general theme and the various putatively separate imputations put forward by the Claimant are in truth variations on that theme.

52. There has been no close examination by counsel of the *leitmotiv* (it would have to be the singular, because more than one theme would not work for "common sting", at least on the Defendants' pleaded case) said to underscore the article, but let me attempt that exercise. Putting the Claimant's case at its highest, the article alleges the following:

    (1) The Claimant inveigled his way into and thereafter abused his position in POSK, a charity, by awarding contracts to himself and his family.

    (2) The Claimant stole money from the Jazz Café.

    (3) The Claimant acted unethically in securing investments and loans for his company, by exercising charm and persuasiveness beyond proper bounds and by deceiving women (in particular, by maintaining more than one intimate relationship at the same time).

    (4) The Claimant stole money from his company to the detriment of the investors and lenders: in particular, by diverting company monies to the account of himself or his family in Poland.

    (5) The Claimant charmed the current manager of Kolbe House, began an intimate relationship with her, leading to his attaining improper access to the premises and confidential documents and being awarded contracts for unnecessary work.

    (6) The Claimant failed to disclose his bankruptcy to Kolbe House and to Ealing Council, as he was obliged to do.

53. Breaking this down still further, the common themes are: worming his way into charitable institutions under the guise of altruism and then carrying out work for his own gain (POSK and Kolbe House); unethical conduct in relation to women, again for his own financial advantage (Polfood and Kolbe House); improper diversion of funds (Jazz Café; Polfood); availing his family in Poland (POSK and Polfood).

54. In my judgment, there is some superficial force in the contention that this is a *leitmotiv* case, but the "common sting" point breaks down, for two reasons.

55. First, the evidential and conceptual link between the various phases of this story is, in my view, insufficiently tight. The real point of the article concerns the Claimant's current status as a bankrupt, but the POSK and Polfood phases took place before the Bankruptcy Order was made. It is insufficient for these purposes to argue that the Polfood enterprise was the cause of the Claimant's bankruptcy: it may have been, but he was not bankrupted because he allegedly stole investors' money. Furthermore, Polfood was a private company and for obvious reasons did not entail any charitable or community-related activity. The Claimant's activities at POSK had nothing to do with Polfood or his later bankruptcy. The Defendants might have argued that this is a case with two or three "common stings", overlapping and intersecting at various places; but that is not their pleading.

56. Secondly, I do not accept that as a matter of law this is a "common sting" case. The *locus classicus* on this topic remains the judgment of O'Connor LJ in Polly Peck (Holdings) Plc v Trelford [1986] QB 1000, as discussed in Gatley at paragraph 11.12. In that case the Defendants sought to justify the words complained of with reference to assertions made *elsewhere* in the offending article, and about which no complaint was made by the Claimant. The Court of Appeal held that this was a permissible plea only if the defamatory statements elsewhere in the publication are part of a common sting, effectively amount to similar fact evidence and are not separate and distinct. The critical passage in O'Connor LJ's judgment is at 1032A/B-E:

> "In cases where the plaintiff selects words from a publication, pleads that in their natural ordinary meaning the words are defamatory of him, and pleads the meaning that he asserts they bear by way of false innuendo, the defendant is entitled to look at the whole publication in order to aver that in their context the words bear a meaning different from that alleged by the plaintiffs. The defendant is entitled to plead that in that meaning the words are true and to give particulars of the facts and matters upon which he relies in support of his plea as he is required to do by RSC Ord. 82. It is fortuitous that some or all of those facts and matters are culled from parts of the publication of which the plaintiff has not chosen to complain.
>
> Where a publication contained two or more separate distinct defamatory statements, the plaintiff is entitled to select one for complaint, and the defendant is not entitled to assert the truth of the other by way of justification.
>
> Whether a defamatory statement is separate and distinct from other defamatory statements contained in the publication is a question of fact and degree in each case. Several defamatory allegations in their context may have a common sting, in which event they are not to be regarded as separate and distinct allegations. The defendant is entitled to justify the sting, and once again it is for fortuitous that what is in fact similar fact evidence is found in the publication."

57. In the present case, the Claimant has not relied on the whole article, but the Defendants are not drawing any un-pleaded parts of it to my attention as similar fact evidence or as part of a "common sting". The Claimant could have pleaded as defamatory just the Polfood allegation in relation to the siphoning out of company monies to Poland (in my view, the most serious allegation by far), but he has cast his net more widely. Had he confined his case in this manner, I would have repudiated any attempt by the Defendants to prove this hypothetical singleton allegation as being substantially true by establishing the truth of allegations or imputations made elsewhere in the article. Indeed, the same observation may be made in relation to *any* hypothetical singleton allegation. Some similar fact evidence could well be admissible, depending on which hypothetical singleton allegation is notionally selected, but it would go no further than being relevant to the truth or falsity of any individual fact in issue. Further, such similar fact evidence would not be constituted by the 12 or 13 remaining imputations taken together. In my judgment, the correct analysis is that the various imputations made in the article are separate and distinct in law as a matter of fact and degree, and that the Defendants must establish the truth of each on an individual basis.

58. I have two further comments. First, I have said more than once that issues of credibility arise in relation to the Claimant's evidence. If I were to conclude that he is an untruthful witness in several important respects, that conclusion would avail the Defendants across the board. This would not be an instance of relying on similar fact evidence; it would be a familiar application of the common sense rule of thumb that a witness who is untruthful on items X, Y and Z may not be truthful or reliable on items A, B and C – and, all the more so, if there is some degree of commonalty between, for example, X and C. By a

similar reasoning process, if I were independently satisfied of the substantial truth of, say, the POSK allegations, that would render it more likely that the Claimant also abused his position in relation to Kolbe House. Secondly, in a case which is self-evidently all about the reputation of an individual, if the Defendants were to prove the truth of many but not all of the words complained of, particularly as regards the more serious allegations, it would necessarily follow that the Claimant's damages would be reduced and, depending on precisely what was proved and not proved, could dwindle to the nugatory or zero.

59. In case I am wrong about "common sting", I will briefly address the Defendants' case on the facts, under the rubric of "truth", on the premise that the substantial truth of the meaning set forth under paragraph 50 above is all that requires to be established.

60. I turn now to consider the 13 or 14 individual meanings relied on by the Claimant.

61. The first meaning (paragraph 13.1 of the Amended Particulars of Claim) is that the Claimant:

> "abused his position as house manager of POSK in order to award himself or his company profitable contracts for maintenance work at POSK, avoiding the proper procedure for obtaining approval for tenders for such contracts."

62. The article is not altogether clear about the Claimant's role as "house manager" and how he abused it (in fact, the Claimant was not the house manager, which is a separate paid position, but nothing turns on that). In my judgment, paragraph [A] does not state with sufficient clarity for the Claimant's purposes that he abused his position by obtaining contracts for himself without approval: it does not go that far. In any event, whatever imputation is made in paragraph [A] is wholly dwarfed by paragraph [D] which, it seems to me, alleges in terms that the renovation works were done by his own company and that he employed his wife from Poland to undertake unspecified services. Mr Metzer maintained that paragraph [D] contains no imputation of abuse of position, but I disagree. First, there would be a conflict of interest if the Chair of the House Committee was instrumental in appointing himself or a member of his family to undertake works for POSK on ordinary commercial terms. Secondly, in paragraphs 59-62 of his witness statement the First Defendant states in terms that the Claimant abused his position in relation to the appointment of Antec the Builder. Thirdly, the obvious implication here is that the Claimant's actions were actuated by self-interest, lack of transparency and nepotism.

63. The second meaning is that the Claimant:

> "corruptly tried to manipulate the voting process at POSK by buying voting positions for his placemen in an attempt to secure his own election as chairman of POSK."

64. Looking at paragraph [C] of the article, in my view the imputation being made is that the Claimant purchased memberships of POSK for those whom he could rely upon to support his electoral aspirations. The formulation – "corruptly tried to manipulate the voting process" – is overly loaded. The article does not quantify the degree of inappropriateness involved, leaving it to the reader to decide. In my view, a reasonable reader would raise his or her eyebrows slightly. I doubt whether the test of serious harm is met. In any event, nothing really turns on that because the second meaning is substantially true: see paragraphs 200-204 below.

65. The third meaning is that the Claimant:

> "dishonestly presented himself as a single man in order to further his London career and make sexual conquests over unsuspecting women."

66. In my view, paragraphs [D] and [F] would be understood by the reasonable reader to mean that the Claimant was not really single at all, or at the very least his personal circumstances in Poland were mysterious ("wife (non-wife?)") and that he exploited his supposed availability as a means of bringing him closer to women, over whom he exercised his charm. Again, I find the Claimant's formulation to be exaggerated and tendentious. Here, I make the same observations as under the rubric of the second meaning. I doubt whether the threshold of serious harm is met, but the third meaning is substantially true: see paragraphs 206-207 below.

67. The fourth meaning is that the Claimant:

> "in the course of supplying alcohol for retail sale in POSK's Jazz Café, dishonestly ensured that money taken from sales would by-pass the cash register, in order to obtain unlawful and fraudulent profit from those sales."

This meaning is admitted.

68. The fifth meaning is that the Claimant:

> "conned a number of women into investing their life savings into his food business by leading each woman to believe she was the only one and with promises of a good life together with him."

69. The Defendants' sole point here is quantitative. It is not accepted that paragraph [G] means or implies any particular number of women. In my view "a number of" means "two or more", because what is being said is that the women being referred to are investing money in ignorance of the other, or others. Ultimately, though, little turns on this because if the Defendants were able to prove that the Claimant's relationships with Ms Howard and Ms Wozniczka overlapped, and that the latter parted with some of her money in ignorance of the existence of the former, the substantial truth of the imputation would have been established.

70. The sixth meaning is that the Claimant:

> "having dishonestly persuaded investors in his food business to part with their life savings, stole their money for himself and transferred it to Poland to support a family construction project in Poland and to support his family there."

This meaning is admitted.

71. The seventh meaning is that the Claimant:

> "defrauded his creditors and dishonestly circumvented the normal consequences of bankruptcy in order to retain for himself personal wealth, in the form of a BMW X5 car and real property that he pretended to sell, that should have been made available to satisfy the claims of his creditors."

This meaning is admitted.

72. The eighth meaning is that the Claimant:

> "had profited or attempted to profit by selling out-of-date food to Kolbe House, a residential care home for elderly and vulnerable people, including those suffering from dementia."

73. The Defendant disputes this meaning without putting forward an alternative formulation. In paragraph [J] the article says in terms that the former manager questioned the out-of-date food he supplied. Paragraph [L] alleges that the Claimant delivered frozen milk and bread which was almost past its sell-by date. The real area of dispute in relation to paragraph [J], read in isolation or in conjunction with paragraph [L], is whether the imputation being made is that the Claimant supplied bread for reward or delivered it free of charge. The article does not specify which, and in the Amended Defence the Defendants seek to turn the point round by averring that this was a false charitable gesture. That may have some relevance to the Claimant's credibility and to the level of any award of damages, but in my judgment the reasonable reader would believe that the Claimant was delivering food to Kolbe House on a standard commercial basis, and not charitably. The latter meaning would require words of qualification. The Defendants do not seek to prove that the Claimant was paid for this produce, but in the event that they were able to prove that the Claimant *donated* food which was in fact out of date, the imputation would be substantially true. If they were unable to prove this, the fact that they have said that the Claimant supplied food for reward which was unfit to be consumed by elderly people (when in fact he donated it) would aggravate the libel.

74. The ninth meaning is that the Claimant:

> "by means of exploiting his charm and sway over the female manager of Kolbe House, inveigled himself into the highest levels of management at the home to the extent that he treated it as if it were his own personal property, including accessing at will the highly confidential records of the vulnerable residents despite having no legitimate reason to do so."

This is admitted in the Amended Defence, with no objection being taken to all the hyperbolic and rhetorical flourishes. The essential sting of this allegation is that the Claimant had full access to the confidential records of residents.

75. The tenth and eleventh meanings are that the Claimant:

> "abused his position of trust at Kolbe House and callously diverted to himself funds that are needed for the care of the home's elderly and sick residents by:
>
> securing for himself a contract for the major renovation of the bathrooms at the home, even though these renovations were completely unnecessary [the tenth meaning]; and
>
> supplying to the home frozen milk and bread of an unknown and dubious provenance that are [sic] almost past their sell-by date [eleventh meaning]"

76. The Defendants deny that the words complained of allege dishonesty. They admit that they bear a meaning that the Claimant has or may have concealed his bankruptcy.

77. I need to take this in stages. The first imputation, which I would draw from paragraphs [K] and [M], is that as a bankrupt the Claimant could not operate an independent business, and therefore should not have been doing any work for Kolbe House at all. The Claimant does not, however, plead this in the context of these particular meanings, and so I must move on. Secondly, what I draw from the second sentence of paragraph [L] is that the Claimant replaced bathroom equipment which was in good condition – and by necessary implication should not have been replaced. Accordingly, regardless of any issue arising from his bankruptcy and equally regardless of any position of trust he may have held at Kolbe House, he was acting unethically. The fact that a charity was involved serves to heighten the reprehensibility of the Claimant's conduct. Thirdly, the final sentence of paragraph [L] alleges, in my

view, that the Claimant supplied on commercial terms frozen milk and bread which was close to its sell-by date from a source which he did not disclose. The fact that this produce was close to its sell-by date, and the Claimant's supplier was not disclosed, would be relevant to the amount of profit he might be making out of this: produce of this nature would presumably be cheaper. However, contrary to the Claimant's pleaded case, the article does not begin to contend that the Claimant was making a secret or unauthorised profit, or was overcharging: on the contrary, it alleges that the Claimant was conniving in the economies ("also on …") that were being forced upon the residents at Kolbe House at the time. In my view, the Claimant's sole complaint in relation to the milk and food is the limited aspersion that it was close to it sell-by date. I am not persuaded that this imputation surmounts the serious harm test.

78. Overall, I would uphold the gravamen of the tenth meaning but reject the Claimant's case in relation to the eleventh. I heard a plethora of evidence about bread which was close to its sell-by date, but all of it falls by the wayside. I will, however, touch upon it in deference to the witnesses and the various aspersions that have been cast on both sides. Fortunately, I heard no evidence about frozen milk. Its inclusion in the article has arisen from a misunderstanding by the First Defendant as to what one of his "confidential sources" was saying.

79. The twelfth meaning is that the Claimant:

> "has dishonestly concealed from the manager and trustees of Kolbe House's [sic] his current status as an undischarged bankrupt in order to win their trust and also to obtain a building contract for the extension of the manager's personal house."

80. The Defendant denies this meaning insofar as the allegation is made that the words complained of allege dishonesty. Again, it is accepted that they bear the meaning that he has or may have concealed his bankruptcy.

81. In my judgment, paragraphs [J]-[N] need to be read of a piece. I note the wording of the penultimate sentence of paragraph [J] ("impervious to the whispers circulating in West London about the famous bankrupt"), which might suggest that the current manager must have heard from other sources that the Claimant might be a bankrupt, but simply ignored these rumours. The only express reference to concealment is in the final sentence of paragraph [N]. Overall, however, reasonable readers would interpret these paragraphs as alleging that the Claimant did withhold information as to his current bankrupt status from both the manager and the trustees of Kolbe House in circumstances where he was under some sort of obligation to disclose it; and that he did so for reasons of personal gain.

82. The Claimant does not separately allege that the words complained of mean that he concealed his status as a bankrupt in order to secure lucrative renovation contracts. Instead, there is the more general averment that he did so in order to "win their trust". I agree with the Claimant that the words complained of support that general averment. The impropriety of the renovation contracts is largely covered by the tenth meaning, and I have already addressed this.

83. The thirteenth meaning is that the Claimant:

> "also dishonestly and/or unlawfully concealed his status as an undischarged bankrupt in the plans for the extension submitted to Ealing Council, despite the fact that, as the head of construction, he ought to have disclosed it."

84. The Defendant's case on this issue is the same as it is as regards the tenth, eleventh and twelfth meanings. In my judgment, the meaning of the words complained of is that the Claimant concealed his bankrupt status from Ealing Council in circumstances where he was obliged to reveal it.

85. I need not deal specifically with the innuendo meaning, which the Claimant counts as the fourteenth meaning, because there is agreement about this: see paragraph 45 above.

E. **Credibility of the Claimant**

86. I am devoting separate chapters of this judgment to the credibility of the Claimant, and some of the key witnesses called by both parties, because of its importance. The outcome of this case cannot wholly depend on whom I believe and disbelieve, but in any litigation hinging on oral evidence an assessment of witness credibility is a sound point of departure.

87. Given that an allegation of forgery has been made against the Claimant, I should make clear that I am applying the civil standard of proof to that issue and all other issues in this case: see B (Children) (Care Proceedings: Standard of Proof) (CAFCASS Intervening) [2009] AC 11 and In re S-B (Children) (Care Proceedings: Standard of Proof) [2010] 1 AC 678. I note the decision of Sir David Eady in Ma v St Georges' Healthcare NHS Trust [2015] EWHC 1866 (QB) where he held that the more serious, or the less likely, an allegation of fact appears to be, the more cogent and persuasive the evidence in support will be requisite. This may be right as a rule of thumb. However, it should not be interpreted as heightening the standard of proof, which remains that of the balance of probabilities.

88. The Claimant is now 65 years of age and is very well presented. One of the senior female witnesses described him, without irony and with reason, as "a very elegant gentleman". The Claimant has a good command of the English language but he has not mastered it. He is not intellectually sophisticated but my assessment of him is that he is extremely bright and quick on the uptake. He has a way about him, a *mien* or manner, which I can only describe as plausible, charming, and easy to like – at least superficially. There is no doubt that he is what used to be described as a "ladies' man": not merely is he charming to women, he is successful too. His success is not limited to what is described in contemporary parlance as "serial monogamy". No moral judgment should be made about this *per se*, but I think that everyone would agree that a line is crossed if someone secures loans or investments from woman A at the same time as living a parallel romantic life with woman B.

89. The Claimant did not impress me when he was giving evidence. Mr Metzer conducted a skilful and patient cross-examination over approximately seven hours. The Claimant did not give direct answers to many questions; he was persistently evasive and prevaricating; he was often quite argumentative and combative. I warmed to the Claimant more as the trial progressed, and his closing address to me was in many ways a forensic *tour de force*. I should add that during his cross-examinations of the Defendant's witnesses and his closing speech the Claimant purported to give further evidence. As a self-represented litigant I do not criticise him for this, but I must point out that this came too late – particularly in the context of the closing speech.

90. I should comment further on the absence of legal representation. There have been two firms of solicitors on the record for the Claimant. According to the Claimant, he has paid the first some £70,000 out of fees billed in the region of £100,000. In the context of what the Claimant has disclosed as to his means, I note this large amount. In June 2017 the Claimant instructed Simon Burn Solicitors on a CFA basis, but they came off the record on 28th September 2017. The Claimant told me that he could not find a barrister prepared to act for him on that basis. Since that date, Mr David McGill at Simon Burn Solicitors has been doing some work for the Claimant behind the scenes: for example, his closing Skeleton Argument is a Word document whose "Properties" reveals Mr McGill as the author. I am not to be understood as saying that this is professionally inappropriate: unless, that is, Mr McGill expects to be paid for this recent work. Further, Mr McGill did not attend the trial, could not know what evidence was given orally, and in that respect the input in the closing Skeleton Argument must originate from the Claimant. The point I am making is that the Claimant has had some legal assistance.

91. Reflecting on the Claimant's evidence, both macroscopically and microscopically, I consider that I am presented with two competing, possible interpretations of him. The first is that the Claimant is, in the main, an honest and generous man, good-hearted, with genuine charitable and community-based instincts. On this interpretation, the Claimant has a quixotic streak, is overly optimistic, is chaotic and inexperienced in relation to financial affairs, and although may well be unreliable in many ways is not dishonest. The second interpretation is that the Claimant is a latter-day Don Juan figure who is only out for himself, and pursues his business and personal goals with a combination of tenacity and deceit. Furthermore, this interpretation would hold that the Claimant is boastful and self-promoting, has an element of the Walter Mitty about him, adapts what he tells people to the circumstances as he perceives them to be, is well aware of the hold he exercises over people because of his plausibility, charisma and personal charm, and – at root – is fundamentally untrustworthy.

92. Ultimately, I have come to the conclusion that the second interpretation of the Claimant largely prevails over the first. There are some refinements I should make which relate to aspects of his charitable work. This is my global assessment after hearing and reflecting upon all the evidence in the case, drawing adverse inferences on a limited basis where appropriate.

93. The Claimant has not fully discharged his disclosure obligations and he has failed to call highly relevant witnesses. The key documents which have not been disclosed at all, or are substantially incomplete, or have been disclosed too late to permit the Defendants to deal with them properly include: the Claimant's personal tax returns; all the financial records of Polford (if they do not exist, the Claimant as sole director of Polfood is at fault for failing to ensure that they did); all his Kolbe House invoices; all documents in his control relating to the construction project in Poland; evidence of the Claimant's shareholding in Polfood and the consideration for it; all receipts for Polfood's cash purchases of supplies (some were disclosed on the sixth day of the trial, far too late in the day and probably incomplete); and, all documents relating to his business activities, properties and bank accounts in Poland.

94. No explanation has been given by the Claimant as to why I have not heard from his son, Mr Jan Serafin, and his ex-wife, Mrs Anna Serafin. Whilst it is true that the Claimant shoulders no initial burden of proof, they could have given highly relevant evidence pertaining to, amongst other things, the architect's drawings for POSK and the construction project in Poland. Mr Jan Serafin could also have assisted me regarding the value of the flat that was sold by him after it had been put into his name by his father.

95. The absence of relevant evidence in this case without adequate explanation provides the springboard for my drawing adverse inferences where appropriate. However, I remind myself that very considerable caution is needed, particularly as regards the imputation that the Claimant channelled his investors' monies from Polfood, or bypassing Polfood, into Poland.

96. The principal considerations which have driven me to reach unfavourable conclusions as to the Claimant's credibility fall under the following headings.

97. First, there is the evidence relating to the Claimant's bankruptcy, much of which I have already covered. The "fire sale" of 25A Lynmouth Road to Mr Szambefer, and the transfer of the two Polish properties to his children, were clearly to the detriment of other creditors; and in my view the Claimant has not been honest about these matters. In the absence of relevant documentation, and/or any explanation as to why a proper open market valuation of 25A Lynmouth Road was not undertaken, it is a reasonable inference that the Claimant gave his friend a good price in exchange for being permitted to stay there rent-free for an indefinite period, subject to some vague understanding as to services being performed in lieu. I have already observed that the Claimant has not been forthcoming about the value

of the apartments transferred into his sons' names in November 2010.

98. Neither the Official Receiver, not I might add Mr Metzer, has undertaken a precise analysis of which provisions of the Insolvency Act 1986 were breached. Reference was made in the Amended Defence to sections 339 and 357. Mr Metzer did submit that, had the Claimant not submitted to a BRU, a Bankruptcy Restriction Order would have been made under section 281A read in conjunction with paragraph 2(2)(l) of Schedule 4A of the 1986 Act, i.e. fraud. My analysis of the position is that the Szambefer disposition was probably at an undervalue for the purposes of section 339; was, therefore, a preference for the purposes of sections 340 and 341 (the relevant period is two years before the filing of the Bankruptcy petition); that section 357 probably has no application to these facts (I would have required focused submissions on this provision before reaching the conclusion that the Claimant committed a criminal offence); that the transfer of the Polish apartments for nil consideration also amounted to a preference; and that, although the present case fell short of fraud for the purposes of paragraph 2(2)(l) of Schedule 4A, sub-paragraph (d) was applicable, and in any event the Claimant's conduct was sufficiently reprehensible overall to justify requiring him to submit to a BRU.

99. I give some weight to the Claimant's explanation by way of mitigation in relation to the Szambefer sale. He said that he did not know that what he was doing was wrong (I would interpolate the adverb "legally"); and, furthermore, the alternative was to leave his family in Poland at the mercy of Bac-Pol. On the other hand, I need hardly point out that the Claimant was morally remiss in inviting his family in Poland to sign the "wexsel" in favour of Bac-Pol at the time when Polfood was on the rocks. This betokens a cavalier attitude. Furthermore, the Claimant must have known that what he was doing was morally wrong, and placed the interests of his family over those of his other creditors. I do not believe that there is any mitigation in relation to the transfers of the two apartments.

100. This catalogue of low ethics and lack of candour is compounded, in my view, by the following additional considerations. First, the Claimant informed the Official Receiver that his monthly income in September 2011 was only £1,000. I cannot accept that he was giving full disclosure. I say this for a number of reasons, not least his repayments of the Howard loans. Secondly, the Claimant informed the Official Receiver that he did not have a postcode for Ms Wozniczka. Given that he stayed with her often enough and she never stayed with him, I consider that he was being obstructive. Thirdly, on 27th August 2011, being 10 days after the Bankruptcy Order was made, the Claimant repaid Ms Howard £3,500 on account of her loans. This was undoubtedly improper, and I cannot accept the Claimant's argument that any impropriety should be outweighed by his moral obligation to Ms Howard. He owed similar obligations to all his personal creditors. Fourthly, it was the Claimant's evidence, which I cannot accept in the light of what his own witnesses said, that he informed the manager and committee of Kolbe House about his bankruptcy. Although, as I will come to explain in due course, the Claimant was under no legal obligation to tell them, the fact that he has lied to me on this topic leads me to the conclusion that he considered himself to be under a moral obligation to do so.

101. Secondly, I need to refer to the evidence of Dr Tadeusz de Gromoboy Dabrowicki. He is now 84 years of age and is an extremely distinguished senior member of the Polish community in the UK, with a glittering academic career and noble charitable work in Brazil. I thought that he was an immensely impressive witness whose evidence I could accept with confidence. He told me that in October 2010 he received a telephone call from the Claimant asking for a £20,000 loan on the back of a high rate of interest. The Claimant told him that his company had cash-flow problems "because someone had cheated on him". Dr Dabrowicki agreed to help out, because he understood "that things like this happen in business", and the Claimant was the partner of Ms Wozniczka whom he treated like a daughter. Before Dr Dabrowicki could organise his affairs and obtain the requisite funds, he was warned off the Claimant by Ms Wozniczka, and refused to help any further.

102. The Claimant cross-examined this witness on the basis that he would not have been so disrespectful as to ask him for a loan over the telephone: he did so face-to-face. I accept Dr Dabrowicki's account, from which it must be inferred that the Claimant was so disrespectful as to telephone him. The Claimant also suggested to him that in business some investments are good and some are poor. I must say that I found that suggestion to be somewhat brazen and callous. The Claimant knew that Polfood was in a parlous state by October 2010 (Piotr Serafin's evidence was that it was insolvent), and that the loan, if made, would have disappeared down a black hole. I reject the case advanced under paragraph 18.35 of the Amended Reply as mealy-mouthed: namely the non-admission that the Claimant was aware of Polfood's insolvency. Furthermore, the Claimant lied to Dr Dabrowicki about the cause of the company's cash-flow problems.

103. Thirdly, there is the evidence relating to Mrs Anna Serafin in Poland. She has already featured in this judgment as being the architect who undertook some drawings for POSK and personally guaranteed the Bac-Pol line of credit. Some insight into the mind of Mrs Serafin is provided by the undated letter she wrote to Ms Wozniczka, which I have very carefully considered. Given its hearsay status, I have been careful to discount uncorroborated assertions of fact made in that letter, save where they are against her interest. It is clear that she was giving her personal guarantee when she did not have the wherewithal to satisfy it. I infer that she would only have done so had she been susceptible to the Claimant in some way.

104. The Claimant stays in his ex-wife's home in Nowy Sacz when he is in Poland. He regards this as his home in that country. The Claimant told me that Ms Howard knew of this arrangement; she told me that she did not. I prefer her evidence on this point. The Claimant and Ms Wozniczka travelled together to Poland in December 2009 but stayed in separate accommodation. The Claimant told her that he was staying with his mother. When Ms Wozniczka found out that the Claimant was in fact staying with his ex-wife, she was furious. The Claimant told me that he could not understand why this was so. In my view his apparent incomprehension was synthetic.

105. According to paragraph 9 of the witness statement of Mrs Teodora Paczesny, the Claimant told her that he had a wife in Poland whom he loved very much. She added, in terms which rather ring true:

> "He would often tell us about how many ladies were interested in him, but he would never say he was interested in them, he would just brag about it."

The Claimant agreed Mrs Paczesny's evidence, with some redactions. Either he overlooked this paragraph or he accepted that he could not really challenge it.

106. According to paragraph 35 of the witness statement of Ms Renata Cyparska, she was told by someone called Andrzej that the Claimant told him that he telephoned his wife every Sunday at 11am. This evidence is, of course, double hearsay. When cross-examined about it, the Claimant said that he could not remember saying that to Andrzej, not that he would not have said that because it was untrue.

107. I do not place any weight on Mrs Serafin's letter to Ms Wozniczka stating that as far as she was concerned she remained married to her husband in the eyes of God. A religious person might well think that, and it is not the Defendants' case that the Polish divorce papers are not genuine.

108. I do not go so far as to find that the Claimant maintains an intimate relationship with his ex-wife. It is also clear from the letter she wrote to Ms Wozniczka that she is aware of how he behaves in the UK. However, I do find that, at the very least, there is considerable ambiguity about his relationship with her, and that they remain emotionally close. The proximity he enjoys, on the emotional level I have described, is something that the Claimant considers to be sufficiently sensitive and delicate to conceal

from his partners in this country.

109. Fourthly, the Claimant was in my view unduly reticent in his evidence on the topic of simultaneous relationships with Ms Howard and Ms Wozniczka. Paragraph 18.18.4 of the Amended Reply, presumably drafted on his instructions, admits that he was seeing both women at the same time. In cross-examination the Claimant initially claimed that he could not remember when his personal relationship with Ms Howard ended. He then said that it was possible that he was having sex with two women at the same time. As he was giving this evidence, I felt that it was not authentic. Later in cross-examination the Claimant did finally accept the point, and added that "morally it was very wrong".

110. The Claimant then gave a very telling piece of evidence about Ms Wozniczka. He said that he did not know if she loved him but – I must say in rather a dismissive tone – he did not love her. Throughout his evidence the Claimant adhered to his denial that he encouraged either Ms Howard or Ms Woznizcka to lend him money and that he exercised charm in his dealings with them. I cannot accept this. I find that the Claimant knew perfectly well that Ms Wozniczka was in love with him, and that in and after May 2009 he cynically exploited that affection in order to extract money from her in order to keep his company afloat.

111. Fifthly, it is convenient to deal at this stage with some of the credibility issues relating to the Claimant's running and financing of Polfood. I will need to draw the strands together when I come to address the defence of truth in the context of the sixth meaning.

112. When Polfood absorbed the assets, stock-in-trade and premises of CCW, the three quasi-partners agreed that Ms Cyparska would be appointed a director. This never happened. The Claimant's reasons for not fulfilling his promise was that Ms Cyparska was in dispute with CCW's employees and she told him that she was in trouble with the "Ukrainian mafia". This was a ludicrous assertion, hotly denied by Ms Cyparska. The Claimant's case is directly contradicted by the minutes of the second investors' meeting held on 10th January 2010 which stated, under item 7:

> "It was agreed by all present that RC be appointed a director of Polfood. JTS added that this had always been his intention and confirmed that he had signed a document confirming this fact in 2008 [this document was dated 19th November] …"

Significantly, at the investors' meeting held in February 2010, the Claimant is recorded as saying, "and no one will control me what I do". That was his true reason for not appointing Ms Cyparska.

113. According to Mr Ogonowski, he travelled to London in September 2010 because Polfood owed his company an unprecedented sum: on my reckoning, based on Rofood's spreadsheet, approximately £90,000. Although the Claimant did not sign a personal guarantee, he told Mr Ogonowski that he had a house worth £250,000 which could be sold if the business did not go as expected. The Claimant denied that he gave Mr Ogonowski any such assurance. He cross-examined Mr Ogonwoski on the basis that the latter "took the risk" when he supplied further deliveries to Polfood in September (the spreadsheet shows that there were two deliveries on 24th and 28th September). This was a cynical line of cross-examination, as well as one being based on a false premise. In one sense Mr Ogonowski did take the risk because he had no binding contract. However, I unhesitatingly accept his evidence that he regarded the Claimant's word as his bond (my paraphrase) and made the further deliveries on the back of assurances given. I also reject the Claimant's assertion that he would not have given any such assurances because he was already personally obligated to Bac-Pol. The fact that the promise was an empty one merely compounds the Claimant's level of untrustworthiness.

114. It is clear that the Claimant picked and chose at his whim whether loans were personal to him or

company loans. I accept that the loan documents in relation to Ms Wozniczka, counter-signed by Ms Howard, tend to show that the majority of her loans were to Polfood, although I do not overlook her evidence that he gave her oral assurances. On the other hand, the Claimant has included her loans, or at least the majority of them, under his name in the director's loan account for which he was responsible. Another very unattractive part of the Claimant's evidence is that he has maintained in these proceedings that the director's loan account shows that he made a net contribution to the company of £279,410.18. The Claimant cannot have it both ways. If the Wozniczka monies were loans to the company, they should not have been accounted for as credits to *his* loan account; they should have been accounted for separately. On the other hand, the £279,410.18 figure in the director's loan account clearly does reflect the Wozniczka loans. This means that the Claimant's real net contribution to the company was lower than £279,410.18. Further, according to the Amended Reply, Ms Wozniczka was repaid by Polfood the aggregate sum of £12,794.70. Yet, some of these amounts appear as debits or withdrawals in the director's loan account, and so were notionally repaid to her the Claimant, not by Polfood.

115. At an investors' meeting In September 2010 the Claimant was taxed by some of the shareholders about the Wozniczka loans. The Claimant told them that these were personal loans. He admitted to me that he lied to them about this. One way or another, he is caught on Morton's Fork.

116. The position in relation to Ms Elizabeth Howard is unclear as to the *minutiae*, and I have commented on the various documents. The Claimant's explanation in cross-examination was as follows:

> "I say that she transferred monies to [the] Polfood account but in truth it was a personal loan. It was quicker to do that than to transfer to my account, and then for me to transfer the money to Polfood."

On this version, the Howard loans were all earmarked for Polfood although in reality they were personal as between him and the company secretary.

117. The difficulties with the Claimant's version are almost too numerous to list. He told the Official Receiver that most of the Howard loans went towards the building of 25A Lynmouth Road, with some going to Polfood. At least one of the Howard loans features on the director's loan account. Ms Howard received some of her repayments out of the Polfood account with NatWest. Finally, the Claimant's explanation for the difference in treatment between the Howard and Wozniczka loans – the former being interest free and the latter at high rates of interest – does not remotely convince. To my mind, the legal position in relation to the Howard loans is difficult to discern. The only sensible inference for present purposes is that Ms Howard lent the Claimant, or his company, monies on the faith of promises he was making to her in their personal life.

118. It is unnecessary for me to conclude one way or the other whether the Howard and Wozniczka receipts were personal or company loans. The foregoing narrative is relevant only to the extent that it directly affects my view of the Claimant's credibility, lends further insight into his character and business ethics, demonstrates that for him the business and the personal are inextricable, and may throw some light in due course on the defence of truth in relation to the sixth meaning.

119. The accounting records of Polfood, for which the Claimant as sole director was responsible, are in a state of complete disarray. It would require expert accountancy evidence to plumb all the necessary depths, and I have had to do the best I can on the fragmentary documents which are available. At this stage I am examining this material for the light it throws on the Claimant's credibility.

120. Polfood's sales for the accounting period ending September 2009 were £1,277,000; the sales for the first 45 weeks of the second accounting period were £1,558,000. Polfood never filed certified accounts

at Companies' House, as it was obliged to do. There are abbreviated accounts, which were filed at Companies House but have been rejected as non-compliant, for the year ended 30th September 2009 which purport to show a loss on the profit and loss account of £317,813. (I have not ignored the point that the Official Receiver's report states that this was the loss on the P&L account for the year ended 30th September 2010, but I think that must be a mistake.) They also show on the balance sheet shareholders' funds of £297,813. This last figure does not reconcile with any calculation I have been able to undertake. On the other hand, the bundles contain what appear to be management accounts which show a figure for P&L which cannot be reconciled with the abbreviated accounts, a director's loan of £227,000 and a shareholders' loan of £131,000. This first figure is inconsistent with the version of the director's loan account I have seen; the second figure cannot be explained, because there were no shareholders' loans.

121. In my view, there are no accounting documents which properly specify the fact and value of the investors' various shareholdings. The Amended Reply avers that Mr and Mrs Paczesny received a 34% shareholding for their £100,000 investment, Ms Cyparska 15% for approximately £65,000 and Mr and Mrs Ligeza 9% for £40,000. The total investment was, therefore, in the region of £205,000 for an aggregate 58% stake in the company. Yet, the Claimant's case throughout has been that his shareholding was 52% of the company. There is a memorandum dated 26th February 2010 from Cath Thorpe which shows that the consideration for the Claimant's 52% shareholding was £385,000. This was based on information received from Polfood. It matches the credit figure in the director's loan account but ignores the debit figure.

122. The Claimant has asserted that Polfood's losses at the time it ceased trading were in the region of £750,000. I have seen no evidence to vouch this figure.

123. I have scrutinised the director's loan account although the Claimant was asked no questions about it in cross-examination. In my view, the document speaks for itself. I shall assume that it is genuine. It covers the period November 2008 to December 2009, and shows that the Claimant's loans to the company aggregated £385,054.51 and his withdrawals £105,644.33. These are evidentially significant figures because they more or less tally with the figures given respectively by Mrs Paczesny in her complaint to the Insolvency Service in January 2011 (as well as other evidence relating to the £385,000 and a 52% shareholding) and by Ms Howard in her email to the investors sent in February 2010 (where she stated that the withdrawals were over £100,000).

124. I draw the following from the director's loan account:

(1) of the £164,397.64 received by the Claimant in relation to the sale of 25 Lynmouth Road in November 2008, and the further sum of £89,209.15 received by him when 25A Lynmouth Road was re-mortgaged in November 2009, some significant amounts were undoubtedly credited to the loan account. The total is unclear. As a separate exercise, and correlating the bank statements of the Claimant and Polfood respectively, it may be seen that at least £100,000 went from the former to the latter after November 2008.

(2) the sum of £3,000, paid to Lemonexs (a supplier) on 14th January 2009, must have come from Ms Howard. It tallies with one of her documents. The same may apply to the payment of £16,000 paid to another supplier through Sami Swoi on 2nd December 2008.

(3) at least £40,000 of the Wozniczka loans appear as credits and at least four of the corresponding loan repayments appear as withdrawals.

(4) the loan from Henryk Malczuk accepted in May 2009 appears as a credit. The Claimant says that it was repaid, but I cannot discern whether the repayments appear as withdrawals in the loan account.

(5) on 5th November 2008 the sum of £5,500 was credited to the Claimant. According to the 19th November 2008 document annexed to Renata Cyparska's witness statement, the sum of £5,500 appears by the descriptor "Renta Novemer". This may just be a coincidence but is certainly causes me to suspect that the Claimant treated this particular CCW contribution as referable to his loan account.

(6) the money withdrawn by the Claimant appears to cover loan repayments, suppliers, company liabilities (petrol, stationery etc.) and unexplained cash amounts.

125. It is surprising that the Claimant has not disclosed any director's loan account for the period December 2009 to October 2010; or perhaps it is not. It was not his case that he made further cash injections into Polfood after the re-mortgage in November 2009. If it existed, what the missing director's loan account might well show is further withdrawals over the later period: it is simply not plausible that these suddenly ceased in December 2009. If such a document was never compiled, the inference that the Claimant was effecting uncovenanted withdrawals would be even stronger.

126. Another surprising feature of all this material is that there is nothing to indicate that the Claimant paid anything for his shareholding. Plainly, lending money to one's company is not the same as investing in it. It is not the Claimant's case that he was to acquire a majority shareholding for no consideration. As I have said, he accepts that he told Mr Wegrzynowski that he would invest £200,000 in the business. I do not believe that he ever did so. He has not demonstrated that he invested anything in Polfood beyond what he put into the director's loan account. The Claimant was aware at an early stage of the hearing of my concerns about this, yet he did nothing to assuage them.

127. The Claimant told me that he never said to anyone that he had paid into the company the sum of £385,000, although it was his case that he had in fact put in that sum, and had taken out £120,000 (the loan account shows a lower figure for withdrawals). I find that the Claimant must have told the investors, or at least some of them, about the £385,000: it cannot be a coincidence that it matches the only version of the director's loan account that is available, and it also matches the figure Mrs Paczensy provided in her complaint to the Insolvency Service. Her evidence was not challenged. In my judgment, the Claimant told the truth to Mrs Paczesny but not to me.

128. My analysis of the director's loan account shows that the Claimant's "puff" to Polfood's shareholders that the gross figure for his cash injections was in the region of £385,000, was seriously misleading. He has not reflected the very considerable sums contributed by third parties (see, for example, paragraph 124 above) which, when properly accounted for, serve to reduce the payments he actually made. The fact that he may have owed a corresponding personal liability to these third parties is, for these purposes, nothing to the point.

129. In his closing address to me the Claimant emphasised that he is not financially literate, that he could not afford an accountant to complete and certify the accounts, and that the picture is one of chaos not dishonesty. Further, I have to bear in mind that the Claimant was not cross-examined in much details about many of the points that have, as it were, appealed to me during the course of preparing this judgment. Mr Metzer did not touch the director's loan account. In all the circumstances, including the Claimant's own failure to cross-examine Mrs Paczensy and Ms Cyparska on some of the key details, I must exercise extreme care before reaching adverse credibility findings based, at least in part, on my examination of the *minutiae*. All these things having been said, I am completely satisfied that the picture which emerges is not just one of chaos and incompetence. The Claimant has not been honest with his investors and lenders, he has failed to present a coherent documentary picture to the court

when it was his obligation to do so, and he has lied to me on several important issues. Where those lies take me is another matter.

130. Sixthly, the Claimant stated at page 19 of his witness statement dated 2nd June 2017 that "as a result of [the article] I have stopped going to my dance club because the other members look upon me with suspicion". Under cross-examination a Facebook photograph showing the Claimant happily dancing on 24th February 2017 was put to him. This may be a small point, but it is still a lie.

131. The Defendants have made an allegation of forgery or fraud in relation to one document disclosed by the Claimant and which has been placed in his bundle. It is more appropriate to deal with that allegation in the context of my review of Ms Woznizcka's evidence.

F. **Credibility Issues: Other Witnesses**

Ms Henryka Woznizcka

132. Ms Woznizcka met the Claimant in October 2008 when he carried out work on a boiler. There was no romantic interest in the early stages. The Claimant made repeated requests to her to invest money in his business. He promised her that her money would be as safe as his money, and gave him his oral assurance that if anything happened she would be repaid out of his properties in Poland and his house in London.

133. The first two loans, each in the sum of £20,000, were made in January and March 2009 which was before she had developed any feelings for him. It avails her credibility that she was insistent about this. However, before she made the second loan the Claimant said that they could have a future together involving a house in North London with a swimming pool. After Ms Woznizcka had lunch with the Claimant on his birthday, on 6th May 2009, their relationship quickly developed. As I have already said, I reject the Claimant's evidence that the intimate relationship did not start until July.

134. The remainder of Ms Woznizcka's loans were made in the context of her relationship with the Claimant, and her ignorance of there being anyone else. She told me, through her witness statement, that she was madly in love with the Claimant and did not understand what she was getting herself into. At the same time, the Claimant was reassuring her that he was a man of honour.

135. One of the loans Ms Woznizcka made to the Claimant was in the sum of £10,298.41 which came out of her father's account over which she had a power of attorney. A supplier in Poland was paid out of this sum. I have not been able to find it in the director's loan account. The Claimant denies that he knew the source of the money, but in my view he must have done: see paragraph 152 below, and Ms Howard's evidence on this point.

136. It was during their holiday in Athens in September 2009 that the photograph about which separate complaint is made was taken.

137. Their relationship cooled after Ms Woznizcka discovered that the Claimant had been staying with Mrs Anna Serafin at her home in December 2009. After a period, however, it returned to what it was before.

138. In November 2010 the Claimant told Ms Woznizcka that he had to go to Poland to transfer properties into his children's names and negotiate with a supplier in relation to payments for which his family were guarantors.

139. According to paragraphs 33, 34 and 35 of her witness statement which was written in 2011 as a record

of her experiences with the Claimant:

> "33. … One day he told me that he had money because he had never invested money in the company – he was laughing. Seeing my reaction and anger [the Claimant] assured me again that my money was safe …
>
> 34. On 17th November 2010 [the Claimant] told me that we needed to have a talk. He picked me up in his car and during the journey to his client … he told me that only Ms Elizabeth Howard was helping/working for him now and he had been with her for 10 years and in Poland he had wife. If I wanted to, he said, we could keep in touch from time to time as he does with other women and that I had to come to terms with the fact that he is a womaniser, and the only women he wouldn't have affairs with where those younger than his daughter. 'You are not the first and not the last one' – he said.
>
> 35. [the Claimant] told me that he would repay the loans whenever possible but if I were to talk to anyone about them or do anything, he threatened me that: 'you know I am so strong that I can rip off your head together with lungs. You don't know what I am capable of'. I was crying and so he said also: 'why are you so hysterical, nothing happened to you. You are not pregnant' …"

140. Ms Wozniczka also gave an account in her witness statement about her meetings with Ms Howard which I will address in due course.

141. Ms Wozniczka said that she was not a vengeful person although she had written to Mrs Serafin (I have already discussed the latter's reply) and to the local authority in Kroscienko.

142. Finally, Ms Woznizcka gave evidence about electronic communications between her and the Claimant.

143. Included in the Claimant's disclosure (page 137 of File 3) is an email sent by Ms Woznizcka to the Claimant on 20th December 2010. The email comprises five paragraphs and there is no salutation, sign off or name at the bottom of the page. On the next page appears the following wording (translated from the Polish):

> "Jan, I am waiting until 27th January 2011 for the return of the money, otherwise all Nowy Sacz, Kroscienko and London will get to know of the whole affair. You keep forgetting that I am in possession of the details of your son's bank account, to which you were sending money. As well, as your wife's. AND MANY MORE DETAILS CONCERNING THE TRANSFER OF MONEY. You see pictures ON FACEBOOK, I'VE GOT MORE. Are you Kalibabke [a nickname]. I know why you had to leave the country! Did you do it out of God's will?"

144. One would have thought on a first reading of these documents in the Claimant's bundle that the message appearing on page 138 is in fact the continuation of the email on page 137. However, upon closer examination it is in slightly different font. In fact, the continuation of the page 137 email appears at page 135, in the wrong place.

145. It was put to the Claimant in cross-examination that page 138 is a forgery. Mr Metzer had been told that it was Ms Woznizcka's position that she did not send this message. The Claimant's first response was to say that this must be a different email, but that cannot be right: there is nothing to suggest that page 138 is an email at all. Then he said that it must be a Facebook message. He added, in his closing address, that he must have copied and pasted it from his Facebook account onto a Word document. He

had closed his Facebook account in the light of his fall-out with Ms Woznizcka. Accordingly, it was not altogether clear when the copying and pasting occurred.

146. There is evidence that the Claimant invited Ms Wozniczka to befriend him on Facebook on 8th November 2010. Photographs of the Claimant and Ms Woznizcka together remain on her Facebook account. However, Ms Woznizcka maintained under cross-examination that she did not send the Claimant any Facebook messages. The Claimant's McKenzie friend could confirm that there are no sent messages from Ms Woznizcka to the Claimant in her Facebook account. Furthermore, Ms Woznizcka said that she does not use capital letters in electronic communications, and I would add that an examination of other emails bears this out.

147. There remain a number of truly bizarre features about this fragment of evidence. On 14th January 2011 the Claimant's then solicitors wrote to Ms Woznizcka stating that she had made a number of derogatory comments about the Claimant on Facebook. When one examines the terms of the disputed document, one really does begin to wonder why the Claimant would have wished to forge it. I take Mr Metzer's point that the document does not show Ms Woznizcka in a particularly good light, but in my view it shows the Claimant in a far worse light – unless he is double-bluffing. The message contains material which is positively harmful to the Claimant's case in these proceedings, and is consistent with other evidence about his activities in Poland. It contains information which Ms Wozniczka could only have obtained from the Claimant, assuming that it is her document, and which she had good reason to threaten to communicate to others. Furthermore, Ms Woznizcka could have deleted all her Facebook messages sent to the Claimant.

148. Mr Metzer placed heavy reliance on Ms Woznizcka's assertion that she is not vengeful. I cannot accept that part of her evidence. She has every reason to detest the Claimant who in my view behaved appallingly towards her. She has not let the matter rest, which is her right. She has spoken to many people about the Claimant, including the First and Third Defendants. If she were not vengeful she would be a saint.

149. As I pointed out during the course of the trial, there is very little room for judicial manoeuvre. I said that someone must be lying. I have thought long and hard about this, and remind myself that credibility is not a monolithic characteristic or attribute. Much of Ms Woznizcka's evidence was cogent and compelling, and I have been able to accept it without reservation. Much of the Claimant's evidence is not credible, and unreliable, and I have been able to reject it. This does not mean that I am driven to find that he forged the disputed message.

150. Ultimately, I have concluded that I cannot be satisfied that he did. On this issue the burden of proof rests on the Defendants. The message remains a mystery. Accordingly, I have decided that I should not hold it against the Claimant. I note that the contents of the message do, as I have already pointed out, chime with other evidence in the case. This includes the evidence of Mr Wegrzynowksi that the Claimant told him that he had five flats in Krakow.

151. I accept Ms Woznizcka's evidence as summarised under paragraphs 132-139 above, including her evidence about the Claimant's physical threat. It follows that I accept her account that the Claimant told her that he had not invested any money in the company. However, that might have been an untruthful boast. On the other hand, I must continue to bear in mind the real possibility that the Claimant had withdrawn all the money he had put in before Polfood went bust. If that had happened, the Claimant's boast would have been true: *ex hypothesi*, there would have been no investment by him, and his loan account would have shown a zero balance.

Ms Elizabeth Howard

152. Ms Howard confirmed Ms Woznizcka's account that the two women first met on 3rd January 2011. The conversation was warm and friendly. They soon worked out that the Claimant had been participating in simultaneous relationships. Ms Howard had also been promised a life together entailing a house with a swimming pool, although her recollection was that it was to be in Reading. Ms Howard told Ms Woznizcka that the money she had lent was put into the Polfood account in the Claimant's name, but her father's loan was put in Ms Woznizcka's name. The inference must be that the Claimant knew the source of this money. I note that paragraph 43 of Ms Woznizcka's 2011 witness statement says that Ms Howard gives a different account on a minor matter of detail: that the father's money did not pass through the accounts at all. Whichever is the precise position is equally damming of the Claimant.

153. Ms Howard confirmed the truth of paragraphs 40-43 of Ms Woznizcka's 2011 witness statement, save that the date of her engagement to the Claimant was 2008 not 2007 (in fact, it was on 7th November 2007). According to paragraph 43, the Claimant bought her an engagement ring when she sent him a letter asking for the return of her money. I am slightly troubled by this – Ms Howard had not made any loans by that stage, so there was nothing to repay.

154. Paragraph 42 of Ms Woznizcka's 2011 witness statement had made reference to Anna Serafin being the Claimant's wife in Poland. Ms Howard confirmed the truth of paragraph 35 of Ms Cyparska's witness statement which mentioned the Sunday morning telephone calls to the Claimant's wife. On a separate but related matter, Ms Howard agreed with Ms Cyparska's evidence that the Claimant was not affectionate towards her in public, and preferred to live in separate accommodation because it was more convenient for him.

155. Ms Howard told me that out of a total sum that she lent the Claimant, £39,157.91 was to Polfood.

156. Ms Howard was asked about the minutes of the investors' meeting held on 17th August 2010. Copies of accounts were circulated at the meeting. Ms Howard agreed that these were unlikely to have been audited accounts. Whatever they were, they have not been disclosed by the Claimant in this litigation.

157. Ms Howard was asked about paragraph 21 of Ms Cyparska's witness statement which states that in February 2010 she had told the investors that more than £100,000 had been removed by the Claimant from the company business account, and that she did not consider that it had any justification. Ms Howard said: "I agree with that, possibly yes" (the "that" was her belief that this was without justification).

158. Ms Howard was not asked to confirm the truth of her memorandum dated 19th February 2010 which was sent to the investors. Most of it cannot be disputed, and is corroborated by other evidence. However, the second question she posed is of interest:

> "We strongly suspect that there has been misappropriation of company funds – a considerable amount of funds systematically have been removed from the company bank account. Again, the accountant is getting to grips with the figures. [The Claimant] claims this is all part of the directors loan account, however, given that the company is not in a financially healthy state, does he really have the autonomy to do so and would it be possible to prove misappropriation?"

159. Ms Howard's question inadvertently engages sections 206 and 207 of the Insolvency Act 1986, although Mr Metzer did not develop the point during the course of the trial. He did not need to, because diversion of company funds to Poland for an ulterior purpose would, if it occurred, undoubtedly constitute fraud on the shareholders. Whether it was improper for reasons connected with insolvency

law is a detail of marginal relevance.

160. Ms Howard confirmed that she had been wholly repaid by the Claimant. She did not specify the total amount she had received. In answer to my question, she said that she thought that the reason she had been repaid whereas others had not been was because the Claimant felt some sort of moral obligation towards her children.

161. I felt that Ms Howard was an entirely honest and credible witness. She had not come to court willingly, doubtless not wanting to be forced to recall this painful and distressing episode in her life. However, she had not anticipated the sort of questions that were likely to be posed of her, some of the detail is complex, and the events with which we are concerned took place over seven years ago. She was not asked questions about the director's loan account. In the witness box she was asked to confirm the truth of various factually intricate matters, some of which required forewarning. Given that she attended the trial pursuant to a witness summons, she could not be forewarned. But, when it comes to the *minutiae*, her reliability as a witness may be out into question. However, I am able to accept her evidence about her relationship with the Claimant, the promises he made, and the concerns she had about the sums he was withdrawing from Polfood.

Ms Beata Parylak

162. Ms Parylak became manager of Kolbe House in 2012 and she began an intimate relationship with the Claimant in 2013. Since 2016 they have been living together in her house in West London.

163. According to her evidence, the Claimant started delivering bread to Kolbe House from the Polish bakery in 2006. During the currency of her tenure as manager, the Claimant has been delivering bakery products, as well as frozen bread, which is always within its use-by date (c.f. the Claimant's own evidence, which was that the bread was often close to its use- or sell-by date). He was also transparent as to where the bread came from. The Claimant never delivered milk, frozen or otherwise; this came from online orders.

164. The Claimant was the maintenance man between 2013 and 2015 (the invoices indicate otherwise, as did the evidence of Miss Anna Romiszewska). All maintenance work was estimated, sometimes in writing and sometimes "verbally", before it was approved by the House Committee. Ms Parlyuk signed off all the Claimant's invoices for payment with the wording "please pay". As for the replacement of bathroom equipment, this was in relation to an old bath which had been at Koble House before she started working there. She believed that it dated back to the 1960s. Ms Parylak further stated that the Claimant "also gave us a lot of original features like brass chandeliers amongst other things for free".

165. Ms Parylak denied that the Claimant has access to any confidential documents. These were locked away in cupboards to which the Claimant did not have the key.

166. Ms Parylak accepted that she had not referred to her ongoing relationship with the Claimant in her witness statement, that she had not disclosed it to Miss Anna Romiszowska, and that there was a conflict of interest. She agreed that the Claimant took his meals at Kolbe House three times a day when he was working there, and said that this was a Polish custom. She denied that the Claimant was some sort of shadow manager.

167. Ms Parylak was specifically asked about a copy of an English translation of a letter Kolbe House employees had written to the editor of *Nowy Czas* on 13th February 2014. This letter was disclosed in the litigation but is confidential to the parties. Ms Parylak had posted the translated document on the employees' notice board at Kolbe House. Ms Parylak admitted that the Claimant had given her the

letter. She denied that she was intimidating anyone, but in my view she obviously was. This episode did not show her in an attractive light.

168. Ms Parylak was not cross-examined about the Claimant's invoice relating to the provision of a new chandelier for £4,050. More importantly, she was not cross-examined about her evidence that the bath was old rather than in good condition. Nor was she asked about the age of any bread.

169. Overall, Ms Parylak was an unimpressive witness out to avail the Claimant's cause as best she could. Much of what she said was likely to have been placed in her statement by the Claimant. Even so, I cannot accept Mr Mezter's submission that the whole of her evidence should be disregarded. As I have said, her evidence about the bathroom furniture was unchallenged, and was not inherently incredible.

Mr Piotr Serafin

170. Mr Piotr Serafin is the Claimant's nephew and was general manager of Polfood until its demise. In his opinion, the company's fate was sealed from day 1. This was because Polfood could not set its margins at a sufficiently high level and there were always cash-flow difficulties: with suppliers wishing to be paid up-front and customers in the UK wishing to conduct business on credit terms. On his understanding, the Claimant paid money into the company "from time to time", although he was not specific about this.

171. Mr Piotr Serafin explained the system in relation to Polfood's bank account at NatWest and Sami Swoi, a money transfer network in the UK used for making online transfers in zloty to accounts in Poland. Polfood used Sami Swoi as a top-up account in the sense that the company had a credit facility of £10,000 and monies not transferred to Poland for any reason would remain to Polfood's order rather than being returned to the NatWest account. Mr Piotr Serafin's evidence was that all Polfood's business with its Polish suppliers was effected by bank transfer save for one cash transaction in April 2010. The majority of payments to other suppliers were via Sami Swoi. In re-examination, he added that "we never made any transfers to the personal account of the Claimant or his relatives".

172. In cross-examination Mr Piotr Serafin said that the date of Bac-Pol's "wexsel" was 4th March 2010. Previously, Bac-Pol had been paid in cash against delivery. The first cash payment to Bac-Pol involved using a Post Office in Poland and the services of Mrs Anna Serafin, who collected the cash therefrom. Mr Piotr Serafin was clear: Mrs Serafin did this only once.

173. There were a number of aspects of Mr Piotr Serafin's evidence which it was difficult to reconcile against the known facts. The cash payment involving Mrs Serafin (£10,200 in two tranches) was made on 6th April 2010, which was a month after the "wexsel" was signed and therefore at a time when Polfood had a credit line with Bac-Pol. The need for any sort of cash transaction was unexplained, and I will need to revert to this. The Claimant's late disclosure, given after Mr Piotr Serafin's evidence, showed that two cash payments were made to Bac-Pol on 26th February 2010 (£30,196.02) and 12th March 2010 (£10,000). Whereas it is true that the second payment was after the "wexsel", one possibility is that Bac-Pol had not yet put the credit facility in place. These documents, if they are genuine, show that there was more than one cash payment to Bac-Pol, and – if this witness' evidence is correct – that Mrs Anna Serafin was not involved in the others.

174. Mr Piotr Serafin was asked about a number of transactions involving Sami Swoi. To be fair to him, he understandably struggled with the specifics so many years after these events occurred. However, he was able to deal with the point that more than £13,000 was transferred via Sami Swoi to his account in Poland. His explanation was that the source of the funds was his private account, and that he used Polfood's arrangements with Sami Swoi to obtain a better rate of exchange.

175. Just as Mr Piotr Serafin could not be cross-examined on the Bac-Pol receipts, he could not be questioned about the late disclosure of Rofood cash receipts totalling a sum in the region of £200,000. I cannot be precise about this owing to the poor quality of some of the photocopies. His evidence did not give the impression that there could have been such substantial cash business. However, it would not be right to hold this against Mr Piotr Serafin. This is because Mr Ryszard Ogonowski made exactly the same point at paragraph 22 of his witness statement:

> "I have read the Amended Reply at paragraph 18.32.3. During the first year of Polfood, I was the main supplier, initially exclusively, with Bac-Pol coming on board more than a year later. Mr Serafin states that if he withdrew £120,000 then it was to pay company suppliers. I can confirm that until the end of February 2010 Rofood was paid £914,634.57 and it was mainly done by bank transfers."

The Claimant probably told Mr Ogonwoski, who was a good witness, that Rofood was Polfood's exclusive supplier, but in my judgment this was not the case. Mr Ogonowski confirmed that the cash receipts, disclosed late, did appear to be Rofood's documents. I have not been able to work out what proportion of the £200,000 I have mentioned pre-dated February 2010.

176. What I do draw from this evidence is that Polfood was conducting a significant proportion of its business in cash, and I suspect that some of it did not pass through its books at all. This makes it impossible to track down each and every cash payment and allocate it to any specific transaction. The existence of significant cash transactions creates a general sense of impropriety and lack of transparency, but it does not, without more, demonstrate that cash payments were made for ulterior purposes to individuals or entities in Poland.

177. According to paragraph 21 of Mr Ogonowski's witness statement:

> "… When Polfood eventually collapsed in November 2010 [in oral evidence he said that the date could have been October], I told Piotr that Rofood would recover the goods that we had supply [sic] as the last delivery that Polfood had not been paid for – however, Piotr told me that goods were disappearing from the warehouse when Mr Serafin would take them at night in his van."

Mr Piotr Serafin denied that he had any such conversation with Mr Ogonowski, agreed that there were rumours that goods were disappearing, said in re-examination that there were no night deliveries, and also said that there must have been a misunderstanding between the two of them. I do not think that there was any such misunderstanding. The better view on all the evidence is that this was what was happening.

178. Overall, whereas I have not concluded that Mr Piotr Serafin was a mendacious witness consciously prepared to lie to the court, I believe that he was unreliable and not altogether frank and open on several key matters.

Other Witnesses

179. The Claimant heavily criticised the evidence of Mr Zygmunt Lozinski and submitted that I should prefer the evidence of Dr Leslek Bojanowksi. The Defendants had criticisms to make about other Claimant witnesses including Ms Maria Stenzel, Mrs Halina Dubrowksa-Landsman and Miss Anna Romiszewska. For my part, I have doubts about the evidence of other witnesses called by both sides. It is convenient to address the parties' criticisms, and my own concerns, under the next chapter of this judgment.

G. **The Defence of Truth**

The Law

180. I have already addressed the issue of meaning (see chapter D above), and have noted that issues arise as to whether the section 1 test of serious harm has been satisfied. To be clear: the Defendants' case is that the meanings at paragraphs 13.1, 13.2, 13.3, 13.8, 13.9, 13.10.1, 13.10.2 and 13.12 are not sufficiently serious. I propose to address this aspect of the Claimant's case at this stage of my analysis.

181. Section 2 of the Defamation Act 2013 provides:

> "**Truth**
>
> (1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.
>
> (2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.
>
> (3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation.
>
> (4) The common law defence of justification is abolished and, accordingly, section 5 of the Defamation Act 1952 (justification) is repealed."

182. The Defendants' case on the law has been set out at paragraph 63 of Mr Speker's Skeleton Argument. I have the following observations.

183. I agree that the section 2 defence is intended broadly to reflect the common law position: see the Explanatory Notes to the 2013 Act, paragraph 13; and Gatley, paragraph 11.2. I also agree that the phrase "substantially true" should be given the same meaning as it had at common law: see Turcu v News Group Newspapers Ltd [2005] EWHC 799 (QB), per Eady J, cited with approved by the Court of Appeal in Rothschild v Associated Newspapers Ltd [2013] EWCA Civ 97:

> "the court should not be too literal in its approach or insist on proof of every detail where it is not essential to the sting of the article."

184. I part company with Mr Speker's analysis on sub-sections (2) and (3) of section 2. If, as I have found, this is not a "common sting" case, then the "statement" referred to under sub-section (2) is not the article as a whole, or even the aggregate of the 13 or 14 meanings relied on by the Claimant, but each individual meaning. Sub-section 3 applies only if any individual statement, thus defined, has more than one imputation: see Polly Peck (*loc. cit.*), page 1033B-G. It follows, not that much turns on this, that there is no slight lowering of the threshold.

The First Meaning

185. The relevant words complained of mean, subject to the additions and qualifications set forth under paragraph 186 below: the Claimant abused his position in POSK in order to award himself or his company profitable contracts for renovation or maintenance work; and that proper procedures were not followed. In my opinion, this allegation clearly transcends the serious harm threshold.

186. The additions and qualifications are, first of all, that the article used the plural ("contracts"), but in my view the imputation would be substantially true if this happened just once. Everything hinges on the significant contract for the renovation of the Jazz Café. Secondly, the engagement of the Claimant's ex-wife is not part of the allegation pleaded, but there is no dispute that she or her firm did carry out some design work. This is relevant to the suggestion of nepotism, and would serve to reduce the Claimant's damages even if the pleaded imputation were untrue. The third qualification is that, at least in the context of this particular contract, the article says that others in POSK saw no problem with this. The allegation is not that the Claimant bypassed proper procedures; it is less specific. Even so, the implied imputation is that, one way or another, there was a problem with this.

187. The Claimant's own evidence was that as director or chairman of the House Committee, building, renovation and house-keeping work did fall under his aegis, but all spending had to be, and was, approved by the Executive Committee of the Council. On his account, the builder who renovated the Jazz Café was chosen by the Chairman of POSK.

188. The Claimant's key witness on this issue was Dr Leslek Bojanowski, who was co-opted onto the Executive Committee of POSK in 2005 and formally elected onto the Council in 2006. Since May 2013 he has also been a trustee at Kolbe House – he said that he recommended the Claimant to Kolbe House. He is highly qualified and has had a distinguished career. Dr Bojanowski's witness statements are somewhat opinionated and lacking in objectivity, but in many ways he came across as a reasonable and measured witness. According to his witness statement, the contractor who was engaged to renovate the Jazz Café, Antec the Builder, "went through a tendering process and I remember checking their safety records". He states that he still has some of the tendering documents, but he did not provide these for my consideration.

189. In oral evidence Dr Bojanowski said that the Claimant as chair of the House Committee had a significant involvement in the running of the construction work, although the chair of the Executive Committee, Dr Lalko, examined the tendering documents. He claimed that the Claimant "would not have known about Antec". Although his witness statement had made no mention of Mrs Serafin's involvement, he agreed in cross-examination that she did carry out some drawings for POSK, he assumed for payment.

190. The Defendant's key witness on this issue was Mr Zygmunt Lozinski. He was born in 1929, and his memory for some of the detail is suspect. For example, although he was on the General Council of POSK and on the House Committee at the relevant time, his witness statement was inaccurate as to the membership complement of the former. Further, Mr Lozinski's evidence about the entrance hall was clearly incorrect as to who was responsible for the selection of the marble, and – as it turned out in cross-examination – was based on hearsay.

191. However, Mr Lozinski has had an immensely distinguished career in structural and civil engineering, and in my view he was an honest witness. He told me that renovation works were undertaken without prior House Committee meetings or proper deliberations by the Council. Whenever Mr Lozinski raised an issue, Dr Lalko rushed to the Claimant's defence. As for the renovations to the Jazz Café, these cost £350,000 and Mr Lozinski was very concerned about the lack of oversight. Further:

> "The name of the company was announced at the meeting and I then looked into the company records in Companies House and this company that was contracted to complete the project had no experience in construction."

192. Mr Lozinski's evidence on this topic is rather borne out by the available documentary evidence. According to the Defendants' hearsay notice, Antec the Builder was a dormant company in 2005.

Indeed, the bundle contains a copy of the accounts for the year ending 31st December 2015, signed by the director Mr Maciej Marek Szczygiel, showing precisely that. It had changed its name from "DZD Van Transport Ltd" (when is unclear). In accounts filed for 2006 Antec the Builder had a turnover of £304,564 of which the cost of sales was £242,544. No accounts have been filed for subsequent years. It is reasonable to infer that the turnover related to the POSK project.

193. Dr Bojanowski's assertion that the Claimant would not have known about Antec the Builder is belied by the following extract from the POSK yearbook for 2007, which was written by the Claimant as chair of the House Committee:

> "during the past year the House Division spent most of its time on works connected with the renovation of the basement. The complex refurbishment of the rooms was a multi-sector project and required synchronisation of work by several companies. After running a tender process we selected the company 'Antec the Builder Ltd' as a building works contractor … supervision of the whole project was given to the company Rumun Consulting. Works were done efficiently and were completed within the time scale and a planned budget … Overall cost of the whole refurbishment was around £200,000. Here I would like to thank all those who participated … I would like to thank also Dr Leslek Bojanowski without whose unending help the successful refurbishment of the basement would not be possible."

194. Under cross-examination, the Claimant said that he did not know who Antec the Builder was or that it had been a dormant company, and sought to distance himself from the POSK yearbook entry. That was wholly unconvincing. Interestingly, the Claimant's late disclosure included an unpaid invoice from JTS Building Services to Antec dated 2008. In my judgment, it is clear that the Claimant was heavily involved in the instruction and engagement of Antec the Builder.

195. Dr Bojanowski's attempts to protect the Claimant in regard to Antec the Builder were also, at least in part, self-serving. The Claimant's effusive thanks to him in the POSK yearbook support that latter inference. Although Dr Bojanowski's credibility was enhanced by his early recognition that the Claimant's oral evidence gave cause for concern, him having sat through the cross-examination, his objectivity remained in question. I prefer Mr Lozinski's evidence on this subject.

196. The inferences to be drawn from these various evidential shards must now be considered. I cannot conclude that the renovation works were in fact carried out by the Claimant or his company. In fact, the Claimant never had a company as such. The picture I have is that POSK was a somewhat secretive organisation when it came to financial matters, and that there was a lot of in-fighting with various individuals and factions vying for control. The Claimant and his faction had a considerable measure of control over these renovation works. I do not doubt that Antec the Builder was paid £304,564 for the work they carried out, but it is difficult to avoid the conclusion that this was not an arms' length relationship with POSK. In my judgment, the Claimant's lies and obfuscations in relation to Antec the Builder drive me to conclude that he did benefit in some way from the engagement of this company, in relation to which he was instrumental. I accept Mr Lozinski's evidence that the Claimant got his choice through the House Committee without proper debate, and that his allies on the Executive Committee were less than punctilious.

197. Given that the Claimant's express case is that the words complained of mean that he *abused his position* in appointing either himself or his company, it seems to me – turning the point against the Claimant – that the principal sting of this allegation is precisely that; and the detail is of secondary importance. I find that he did abuse his position in being instrumental in the appointment of Antec the Builder.

198. The engagement of Mrs Serafin remains shrouded in mystery. The Claimant says that there was a competitive tender for certain design drawings, and that the tender of Mrs Serafin (or that of her firm) was the lowest. However, no evidence as to how much she was paid or what she did has been provided. The fault for this evidential *lacuna* rests with the Claimant. The imputation of nepotism, to the extent that this matters, has been made out.

199. The first meaning has been proved to be substantially true, and the defence has therefore prevailed.

The Second Meaning

200. The relevant words complained of mean: the Claimant manipulated the voting process at POSK by purchasing memberships for those whom he knew would support his bid to be chairman of POSK.

201. The Claimant accepts that he purchased the memberships for Mr and Mrs Paczesny; the cost was £10 each. He denied that it was his ambition to become POSK chairman. His case was that he acted in this way in order to enlist support for the current chairman, Dr Lalko.

202. The agreed evidence of Mrs Teodora Paczesny is that the Claimant told her and her husband that "he wanted to go for the top job in POSK – the Chairman". After their memberships were bought, they went to the general meeting and voted for him.

203. The Claimant has never stood for election as chairman of POSK. However, he did stand unsuccessfully for the Executive Committee in 2007 or 2008, and I find that it was his ambition to become chairmen of POSK in due course, no doubt using Dr Lalko as his ally when the time came. The Claimant accepted in evidence that there were rumours in POSK regarding the scale of his ambition.

204. It follows that the second meaning, assuming that the test of serious harm is met, is substantially true.

The Third Meaning

205. The third meaning runs along the lines that the Claimant presented himself in London as a single man and as available to women in order to pursue his various goals. I am not sure that the third meaning can be articulated with precision, but it does not matter.

206. I have already found that the Claimant maintained a close emotional relationship with Mrs Anna Serafin, and that the nature of that relationship was concealed from at least two of his female partners in London. I have also noted, and accepted, Ms Wozniczka's evidence that the Claimant told her that he is an inveterate womaniser, and that she was neither the first nor would be the last. I have no doubt that the third meaning has been proved as substantially true.

207. I have wondered whether it is defamatory to impute against a man (or a woman for that matter) that he seeks to make himself available by deliberately concealing an ongoing emotional relationship. Reasonable people might have different views about that. In my opinion, much would depend on the degree of deception and precisely what is said before any relationship commences. Yet, in the circumstances of the present case these are academic, if not idle, musings. The real sting or punch of the article is that the Claimant exploited his relationships with women by extracting money from them. The third meaning is really neither here nor there.

The Fourth Meaning

208. The fourth meaning is that, in the course of supplying alcohol for retail sale in POSK's Jazz Café, the Claimant dishonestly ensured that money taken from sales would by-pass the cash register in order to

obtain unlawful and fraudulent profit from those sales.

209. The evidence is that the Claimant ran the Jazz Café between 2007 and 2012 with Mr Marek Greliak, who is now deceased. Had the Claimant been making a personal profit out of the Jazz Café, it is reasonable to infer that Mr Greliak would have known about it. The absence of any evidence of complaint by him suggests that either the Defendants' case is wrong, or that he participated in the fraud.

210. A number of witnesses told me that there was no cash register in the Jazz Café; or, at the very least, they did not see one. It is unnecessary to list them all, but these witnesses include the First and Third Defendants, and Mr Wegrzynowksi. There was convergent evidence from witnesses about a drawer or wooden box under the counter into which cash was placed. Ms Wozniczka gave evidence about giving the Claimant £50 for a round of drinks and no change or proper account was provided.

211. Dr Bojanowski told me that there was a cash register in the Jazz Café from the outset. Specifically:

> "The issue of the cash register was discussed at one of the Executive Committee meetings as I raised concerns about not being able to see what was written on the keys of the register. The Committee decision was for Mr Greliak to buy a more suitable cash register. The Executive Committee was also clear that it wanted to have proper accounts."

Under cross-examination he added that the money for the bar food, as opposed to the drinks, was kept in a box in a drawer. He did not specify its exact location.

212. I heard similar evidence from POSK's book-keeper, Ms Maria Stenzel. Her evidence was that in 2007 the cash register could not specify what drinks were purchased; only the price could be keyed in. She was able to reconcile the cash takings with what appeared on the till roll. She was unware of Moneygram receipts being given to customers on request (an example was put to her in cross-examination). Ms Stenzel also agreed that monthly stock checks were started more or less at the same time as the cash register was changed.

213. Neither Dr Bojanowski nor Ms Stenzel was cross-examined on the basis that there was no cash register until 2012. In any event, the Claimant's case is not that the article stated that there was no cash register; rather, that it was by-passed. Even so, given the weight of evidence bearing on this point, I feel that I should deal with it. Mr Metzer submitted that Ms Stenzel was an unreliable witness because her witness statement included the assertion that no cheques were ever issued to "A. Serafin" or "A. Serafin Project Co Ltd" – as far as she was concerned, she added in cross-examination, they never worked for POSK. I agree with Mr Metzer that this was surprising evidence, but in my judgment it does not undermine her testimony about the cash register. I find that there was a cash register at all material times; that it was somewhat inadequate at the start; that it was not readily visible to customers; and that it was replaced in 2012.

214. The real issue is whether the Claimant made a clandestine profit from his joint running of the Jazz Café. He could have done so by ensuring that cash by-passed the cash register and went into a wooden drawer or cash box.

215. The evidence of Mr Wegrzynowski and Ms Cyparska went broadly speaking along the same lines. As far as they were concerned, the Claimant purchased alcohol from a Polish wholesaler and paid about £10 a bottle for spirits. These were then sold at £3.50 a shot, i.e. approximately £70 for a whole bottle. The Claimant boasted that he would easily make £300-400 every Friday and Saturday night, that he was working with a friend, and "each of them would make a few hundred pounds each weekend". Mr Wegrzynowski was cross-examined about this evidence but Ms Cyparska was not.

216. The Claimant denied under cross-examination that he bought alcohol wholesale: he mentioned "Booker" and "Hoti", the latter being a retailer run by Indians. He denied that there was any drawer under the counter for coins and notes.

217. The theft of monies from a charitable organisation such as POSK would be, if proved, a serious matter. The imputation contained in the article that the Claimant did precisely that is very serious. There is absolutely no love lost between Mr Wegrzynowski and Ms Cyparska, and the Claimant, and their evidence was not properly tested on this issue. The Claimant's cross-examination of the former witness was carried out under quite difficult circumstances: there was evident hostility shown by Mr Wegrzynowski, and his command of English was far from perfect. There was no Polish interpreter available.

218. In my judgment, POSK's accounting practices and procedures before the cash register was upgraded in 2012 were inadequate, and the possibility for diversion of funds clearly existed. I am satisfied that there was a drawer into which money was placed. I was not impressed by the Claimant's evidence that he did not buy alcohol wholesale. In my view, he could and should have done so, and it was more natural for him to use the Polish wholesaler referred to by Mr Wegrzynowski. The latter's evidence, and the evidence of Ms Cyparksa, was convincing as to its level of detail, including the reference to the Claimant's friend, whom I infer was Mr Greliak.

219. The possibility clearly arises that the Claimant was boasting to Mr Wegrzynowski and Ms Cyparska about siphoning money out of the Jazz Café because he thought that might impress them in some way. I have already said that there is an element of the Walter Mitty about the Claimant, and that he is all about self-promotion. If he was really taking out such substantial sums, one would have thought that POSK would have noticed. Ms Stenzel was a reasonably truthful and reliable witness whose evidence was not undermined in all respects by her ill-advised attempt to help the Claimant in relation to Mrs Serafin's professional services. Overall, I do not think that the Claimant could have taken out of the Jazz Café as much money as he saw fit to brag about.

220. The article does not specify particular amounts. I remain conscious that this is a serious matter. I am driven to conclude that the Claimant did not properly account to the Jazz Café and POSK for all payments received, and that the fourth meaning is substantially true.

The Fifth Meaning

221. The fifth meaning is that the Claimant conned a number of women into investing their life savings into his food business by leading each woman to believe she was the only one and with promises of a good life together with him.

222. I am satisfied on the evidence that the Claimant:

(1) at all material times enjoyed an ongoing emotional relationship with Mrs Anna Serafin;

(2) promised Ms Howard that their life together would involve a house in Reading with a swimming pool, and that on the back of this and similar promises, including those implicit in giving her an engagement ring, Ms Howard lent the Claimant money. It is irrelevant for these purposes whether these were personal or company loans;

(3) withheld the nature of his relationship with Mrs Anna Serafin from Ms Howard;

(4) obtained loans from Ms Woznizcka at a time when he knew that she loved him, after he promised her that they could have a life together in a house in north London with a swimming pool, and after

making various representations as to the security of her loans and the good sense of this form of investment;

(5) withheld the nature of his relationship with Mrs Anna Serafin, and Ms Howard, from Ms Wozniczka.

(6) well knew that Ms Howard and Ms Wozniczka were not women of substantial means, and that the sums involved were likely to represent everything they had; as was indeed the case.

223. The fifth meaning is substantially true.

The Sixth Meaning

224. The sixth meaning is that the Claimant, having dishonestly persuaded investors in his food business to part with their life savings, stole their money for himself and transferred it to Poland to support a family construction project in Poland and to support his family there.

225. The fifth meaning segues into the first limb of the sixth meaning, in particular the averment that investors were dishonestly persuaded to part with their life savings. I draw no distinction between loans and investments for these purposes. At this juncture, I should add that the Claimant's admittedly thwarted attempt to borrow money from Dr Dabrowicki in October 2010 when Polfood was known to be insolvent was grossly improper. It is relevant as evidence of similar fact and/or to the particular sting of the sixth meaning.

226. However, I should deal separately with the position of the Paczesnys, and of Mr Wegrzynowski and Ms Cyparska. As for the former, the evidence is that they invested a total of £100,000 in the summer of 2009 on the faith of various assertions made by the Claimant as to the viability of his business and the likely returns. I am not persuaded that it has been established that the Claimant was dishonest, in the sense that any representation he made was fraudulent. Further, I do not know what steps were taken by the Paczesnys to satisfy themselves of the good sense of this investment. If inadequate accounts and financial records were unavailable, or were not provided, it might be argued that they took the risk.

227. I consider that the position is slightly different as regards CCW and Mr Wegrzynowski/Ms Cyparska because in their case promises were made that the latter would be appointed a second director. I do not believe that the Claimant ever intended to honour that promise. He was dishonest.

228. Thus, in relation to the first limb of the sixth meaning, I find that it is substantially true.

229. The real gravamen of the sixth meaning is that the Claimant wrongly removed monies which belonged to the company and transferred them to Poland – to support a construction project or his family there. In my view, it is sufficient for the Defendants' purposes to prove that the Claimant stole company funds. It is unnecessary for the Defendant to prove that these funds were the investors' monies (as a matter of law, they were not: they belonged to the company) or that the funds ended up in Poland to be deployed in a specific way.

230. However, the Defendants invite me to draw the inference that, because there was in being a hotel project that was funded by the Claimant, the source of those funds must have been Polfood. It is in those circumstances that the evidence relating to the hotel project must be viewed and analysed.

231. In August 2009 the Claimant's son, Mr Jan Serafin, based in Krakow, gave a declaration in writing relating to a construction project in Kroscienko. This was in the context of an application for a subvention from the EU. The overall value of the project was 3,941,658.35 zloty (approximately

£400,000-5000,000) spread over three years, to begin in 2010. Under the rubric, "source of the applicant's contribution towards the cost of the project", appears the following:

> "Applicant's own funds:
>
> Gift from the parents: 2 million zloty
>
> Bank loan: 1 million zloty."

232. On my interpretation of this, Mr Jan Serafin junior was proposing to take out a bank loan in the sum of 1M zloty; a further 2M zloty was to come from his parents; and the balance was to be the subsidy from the EU. Given that Mrs Anna Serafin claims in her letter to Ms Wozniczka to have very little money, the "gift from the parents" was largely to come from the Claimant.

233. The Claimant's case is that Mrs Serafin purchased the plot in Kroscienko, which is near to her parents' home. According to the Claimant's witness statement, he "had nothing to do with the project and put no money towards it". In my judgment, it would have been very easy for the Claimant to prove that Mrs Serafin bought the plot. She could have given evidence to that effect; documents could have been provided by her; Mr Jan Serafin junior could have testified. As against the Claimant's blanket assertion, which is in any event contradicted by his son's written declaration, I have also noted the evidence of Ms Wozniczka that he told her that *he* bought the plot and put it in his son's name. I do not believe that Ms Wozniczka could have made this up. In my judgment, Ms Wozniczka's evidence is reliable on this point, and I reject the Claimant's account. Furthermore, there is also the evidence of the official placard placed at the boundary of the plot which shows the investors as the Serafins, father and son, and the architect as Mrs Anna Serafin.

234. It is not clear how far the building works ever advanced. The Claimant's case is that very little took place, and that the project was always aspirational: in the event, the monies were never forthcoming to achieve it. There is a paucity of evidence in this regard, although I reiterate what I have already said: it would have been so easy for the Claimant to disclose documents, through his son and, if necessary, Mrs Serafin, revealing the precise position.

235. The Defendants rely on further evidential fragments which indicate that the project was not still-born. For example, there is an email dated 8th June 2012, from someone in Poland whose name has been redacted, which states:

> "Their son, Jan, also comes [to Kroscienko] because he started the construction of that hotel at Trzech Koron Street, about 200m from us. We went there yesterday with my husband. The work has stopped over a month ago. But there is electricity there and a temporary fence. They are planning a big development there. Ania insists that everything is handled by their son, Jan, who is a builder and lives in Krakow. It is possible that he acts on behalf of his father, and in secret."

Save that to indicate that some works have been carried out, I am not sure that this email takes me very much further. The Claimant's family may have intended to carry out a "big development" but the collapse of Polfood, and his personal bankruptcy, may well have put a stop to it.

236. The Defendant also rely on what Mr Ligeza said at one of the investors' meetings, but that in my view is at least double hearsay.

237. In my judgment, the Defendants have failed to establish that much progress was ever made with this

building project. However, I find that the plot of land was funded by the Claimant, and that the limited works which were carried out were met by his monies. Either these came from undisclosed assets in Poland, in which case he deceived the Official Receiver as well as his creditors, or they came from Polfood.

238. The proposition that the Claimant stole Polfood's money requires careful analysis. In my judgment, the Defendants' case is not proved merely by showing, as is the case, that £105,000 was withdrawn by the Claimant from Polfood between November 2008 and December 2009. These could have been lawful and proper drawings from the Claimant's loan account. Nor is the case proved by the sort of analysis undertaken at paragraph 19 of Ms Cyparska's witness statement: namely, that the turnover was so large, and the claimed margin so significant, that the inference must be that the Claimant had his hand in the till. With respect to Ms Cyparska, that is a simplistic analysis, and is met by Mr Piotr Serafin's evidence that Polfood's business model was naïve. Ms Cyparska's analysis would have been stronger had she focused on the turnover of £1.5M plus for the first 45 weeks of the second year of trading, and I bear this in mind.

239. Slightly more compelling, in my view, was the Defendants' analysis of the Sami Swoi account for September 2010. An analysis of Polfood's running account with Sami Swoi shows that £44,471.55 is fully accounted for. A further £68,500 is not, in the sense that the individual sums comprising that amount are nowhere to be seen on the relevant document (File III/page 484). These sums are referenced as "Sami Swoi" on Polfood's bank statements. The Defendants' contention, as I understand it, is that these are Sami Swoi payments which went from Polfood to an unknown third party, and not to one of Polfood's suppliers. I do not draw that inference. Although the fact that these payments do not appear on the relevant document is unexplained, it does not follow that the monies went elsewhere. I could only come to that conclusion if the evidence was that the NatWest bank entries were somehow wrongly designated as Sami Swoi payments in order to conceal an underlying fraud. There is nothing to indicate that this was, or might have been, the case. The NatWest bank statements give precise and detailed references for the unexplained payments relating to Sami Swoi which have every appearance of being the same as the Sami Swoi payments which have been accounted for.

240. Even so, the accounts and other financial information provided, which is incomplete, gives a troubling picture. I have identified my principal concerns at paragraphs 11-129 above. Most troubling, in my view, is the Claimant's failure to account for the drawings on his loan account that must have taken place after December 2009. It is inconceivable that they stopped suddenly after that month, although it is far from inconceivable that the Claimant put no further money into the company in 2010. Additionally, this was a company which undertook a significant proportion of its business in cash transactions. The scope for abuse, and defalcations, was considerable, and the Claimant as sole director had complete control over the running of this company.

241. Two further pieces of evidence seem to me to carry considerable weight. First, there are the two cash transfers collected by Mrs Anna Serafin from the Post Office on 6th April 2010. I do not accept the explanation that this was done in order to pay Bac-Pol: by that date, the credit facility was in place. The Claimant has not produced any Bac-Pol receipts to reflect these payments; he has produced Bac-Pol receipts for earlier payments. Secondly, the evidence of night deliveries by Mr Serafin in October and/or November 2010 indicate that he was off-loading company supplies to his own account.

242. These two pieces of direct evidence do not stand in isolation. I have itemised my concerns as to how this company was run. I have pointed out that the Claimant's disclosure is inadequate and that relevant evidence has not been called. I should also point out that the Claimant has adduced no evidence as to what salary he took from Polfood at all material times. I am satisfied that the Claimant has assets in Poland beyond those which he placed in his sons' names in November 2010. Further, I have been given

no information as to when any properties were bought. The Claimant was continuing to transfer sums to Mrs Anna Serafin, he claims in modest amounts, and I am satisfied that the Kroscienko project would have required monetary injections from the Claimant, not least in respect of the purchase of the land.

243. I am not able to quantify the amounts involved, but overall I am satisfied that the Claimant moved monies out of Polfood which were not his.

244. It follows that the sixth meaning has been proved to be substantially true.

The Seventh Meaning

245. The seventh meaning is that the Claimant defrauded his creditors and dishonestly circumvented the normal consequences of bankruptcy in order to retain for himself personal wealth, in the form of a BMW X5 car and real property that he pretended to sell, that should have been made available to satisfy the claims of his creditors.

246. The Claimant was automatically discharged from his bankruptcy in August 2012, but remained subject to a BRU until August 2017. Under the conditions of that BRU, he could not carry on business under a *different* name without informing relevant persons of his bankruptcy. I italicise the adjective "different" because Mr Metzer raised a point of law on the impact of this condition. His submission, as I understand it, was that it was incumbent on the Claimant to inform Kolbe House that he had been a bankrupt, because he was working for them *qua* "JTS Building Services". In my judgment, it was not. The Claimant has traded under the style and name of "JTS Building Services" at all material times since 1987 and has not used a personal alias. The BRU condition would only apply if the Claimant either had changed his name from Serafin to someone else, or had used a different trading name.

247. The BMW X5 car was bought long after the Claimant was automatically discharged from his bankruptcy. I am far from satisfied that I have been given full and proper disclosure in relation to its purchase. However, the Claimant was entitled to buy this car because he owed no continuing obligation to his creditors in 2014.

248. The real issue here is whether the Claimant retained an interest in real property that he pretended to sell, to the detriment of his creditors.

249. I have already found that the Claimant disposed of 25A Lynmouth Road at an undervalue, that he continued to live there until 2016 on a mysterious basis, and that he transferred two properties in Poland into his sons' names. All of these transactions amounted to preferences, and were accordingly to the detriment of his creditors. They were also sufficiently reprehensible to warrant the Official Receiver requiring the Claimant to conclude a BRU. Strictly speaking, the Claimant is estopped from asserting otherwise, because he submitted to the BRU, but I am independently satisfied as to the degree of misconduct involved. I do not think that it matters for present purposes whether what the Claimant did falls precisely within the linguistic scope of the Defendants' imputation. A broader interpretation is permissible.

250. It follows that the Defendants have proved the seventh meaning to be substantially true.

The Eighth Meaning

251. The eighth meaning is that the Claimant has profited or attempted to profit by selling out-of-date food to Kolbe House, a residential care home for elderly and vulnerable people, including those suffering from dementia.

252. The allegation that the Claimant supplied, or attempted to supply, out-of-date food to Kolbe House relates to the period when Ms Lidia Williams was the manager: the allegation is that she questioned the out-of-date food he supplied.

253. Ms Williams' evidence was that the Claimant started donating bread to the Kolbe House residents in late 2011. She accepted the offer; it seemed to her to be a kind gesture. Then, according to paragraph 11 of her witness statement:

> "Mr Serafin continued to deliver us bread and, over time, this extended to other food products such as yoghurt and cheeses, which Mr Serafin said came from his company. It was at this time that I found out that he had a company that supplied traditional Polish foods. After this, the housekeeper and the cook noticed that some of the products that Mr Serafin delivered were either close to the expiry date, or past their expiry date. Once this happened, I would have declined to accept any more deliveries, but they all stopped anyway. We no longer got any deliveries. I believe this coincided with his business collapsing."

254. I think that Ms Williams must be confused about the dates. The Claimant's evidence, which I accept on this issue, is that he started delivering bread in 2006; that he delivered Polfood products whilst it was trading and therefore before September 2010 (the invoices bear him out on this); and, that he recommenced the bread deliveries in 2012 which on my understanding was after Ms Williams left. It is to be noted that in her witness statement she did not say in terms that *she* noticed that any produce was past its sell-by date (I am drawing no distinction for these purposes between use-by and sell-by). Instead, she claims that the deliveries just stopped in any event. When cross-examined by the Claimant, Ms Williams said that she did check the products (she did not specify what they were) and "I can't remember if they were past their expiry date; they were probably both coming up to and past their expiry dates, but I cannot say for sure". I did not find Ms Williams' evidence to be particularly reliable or convincing on this point. I cannot rely on it in support of the proposition that the Claimant delivered food which was out-of-date.

255. The Defendants also called evidence from the cleaner/cook at Kolbe House, Mrs Maria Gorowska. She retired in 2015. She was a dignified witness who clearly had her grievances with both Ms Parylak and the Claimant. Her evidence on this topic was as follows:

> "At the end of 2011, before Ms Williams retired. A very elegant gentleman started to appear in Kolbe House, bringing, apparently from his own warehouse, bread, cakes, and even various food products like ketchup, tomato paste and mustard, which only had a few days left to their expiry date. Ms Williams thanked him. A few days later he appeared again, went into the office and tried to talk to her, but she said firmly she was busy, and this was the end of Mr Jan Serafin's visits to Kolbe House."

256. This witness must be wrong about the date because Polfood stopped trading long before the end of 2011. Probably not coincidentally, her mistake was exactly the same as Ms Williams'. Mrs Gorowska does not say that the produce was beyond its expiry date. When cross-examined, she agreed that she could not say whether Ms Williams declined further deliveries. She did not say in evidence that she had any conversation with Ms Williams about this.

257. In my judgment, the Defendants have failed to prove that Ms Williams questioned the out-of-date food supplied. I find that (1) the food was not out of date, and (2) Ms Williams did not question it.

258. The issue arises on Ms Gorowska's evidence whether the food the Claimant supplied via Polfood was

close to its sell-by date: if it was, the harm to the Claimant's reputation would be mitigated. The Claimant accepted that the bread he donated may have been close to its use- or sell-by date, but I would add that would be true of most bread. He did not accept that the Polfood products were nearly time-expired. Given that I did not find Ms Gorowska to be an entirely convincing witness, I cannot conclude that the Defendants' fall-back position, not that it was expressly advanced as such, has been made out.

259. For completeness, I should add that I have been unable to place any weight on the evidence of Mrs Halina Dubrowolska-Landsman, a former Kolbe House witness who was called by the Claimant. She was not a remotely objective and independent witness. Furthermore, the Claimant should have supplied the court with a version of her witness statement in the original Polish.

260. The Defendants contend that to accuse someone of supplying out-of-date food is not a serious imputation on his reputation. In the context of a charity and an elderly persons' home, I consider that it is.

The Ninth Meaning

261. The ninth meaning is that the Claimant, by means of exploiting his charm and sway over the female manager of Kolbe House, inveigled himself into the highest levels of management at the home to the extent that he treated it as if it were his own personal property, including accessing at will the highly confidential records of the vulnerable residents despite having no legitimate reason to do so.

262. I heard a mass of evidence relating to the Claimant's behaviour *vis-à-vis* Kolbe House until he was removed from his role as maintenance man in late 2015. Much of that evidence was subjective, tendentious and unreliable. It is unnecessary to set it all out because there is only one allegation that really matters: the imputation that the Claimant had access to the confidential records of residents.

263. The generic evidence that I can regard as reliable was along the lines that the staff called the Claimant "Prezes" (president or chairman); that he had ready access to the kitchen and sometimes helped himself to food; that he took his meals at Kolbe House at will, often in full view of the residents; that he had access to the property because he knew the access code and held a fob key; that he used the manager's computer in her office; and, that on one occasion he showed a prospective resident and her carer around the premises. I accept the evidence of Mrs Gorowska that the Claimant was often high-handed and well exceeded the proper bounds of his responsibilities as maintenance man.

264. I have no doubt that the Claimant is capable of acting in a high-handed fashion, and that when it comes to women whom it is not his ambition to charm and/or seduce his comportment may well seem peremptory. I consider that, as the partner of the manager, Ms Parylak, the Claimant regarded it as his entitlement to boss the cleaning and kitchen staff around; and that Ms Parylak was happy to let him do it.

265. I was also struck by the fact that Ms Williams ran Kolbe House in a more generous and less austere fashion than does it current manager. No longer are there seasonal fruits on the tables for the residents to enjoy; on the other hand, the institution is now running at a profit. The Claimant was keen to enforce this new frugal regime, whether or not the impetus for it emanated from him or from Ms Parylak. I have little doubt that what I am calling the new regime caused personality clashes between staff and the Parylak/Serafin axis which in due course aroused the complaints to *Nowy Czas*.

266. In my view, none of this evidence amounts to very much. Even if the Claimant's ability to be "everywhere" in Kolbe House stemmed from his personal relationship with the manager, I doubt whether most reasonable people would think that an assertion to that effect in *Nowy Czas* should be

viewed as a serious imputation upon the Claimant and his reputation. In any event, it is substantially true. The real point here is whether the Claimant gained unauthorised access to the confidential records of residents. In my judgment, there is no evidence that he did. The evidence establishes only that the Claimant used Ms Parylak's computer, but I accept her evidence that he did not have the password, and that residents' confidential records were not stored on her computer in any case. The evidence also establishes that the Claimant knew what staff members were paid and for how many hours they worked. I accept Ms Parylak's evidence that the confidential records of residents were locked away in the cupboards in her office, and that the Claimant did not have access to the key.

267. It follows that the Defendants have failed to prove the most serious "sting" of the ninth meaning, although they have proved, for what it is worth, that the Claimant was very often at Kolbe House, ate many meals there, and threw his weight around to the chagrin of members of staff.

The Tenth Meaning

268. The tenth meaning, subject to the explanation and qualification I have provided under paragraph 77 above, is that the Claimant abused his position of trust at Kolbe House and callously diverted to himself funds that were needed for the care of the home's elderly and sick residents by securing for himself a contract for the major renovation of the bathrooms at the home, even though these renovations were completely unnecessary.

269. The Claimant's case is limited to the major renovation of the bathrooms, although the Defendants seek to cast the net wider by bringing into consideration the propriety of other works of renovation conducted by the Claimant between 2013 and 2015. I consider that the Defendants are entitled to do this, because if they are wrong about the bathroom but right about everything else, the error would be largely academic.

270. I have summarised the evidence of Ms Beata Parylak and expressed certain reservations about that evidence, noting at the same time that what she said about the age of the bathroom equipment was not challenged by Mr Metzer. Miss Anna Romiszowska told me that, although Ms Parylak signed off all the invoices, the management committee, of which she was chair, approved the works before they were undertaken on the basis of estimates. It is unclear from her evidence whether Kolbe House obtained competitive tenders for work, although she did tell me that the Claimant was not the only contractor who undertook work at the material time. She was not asked to address Ms Parylak's evidence that some estimates were not in writing. Until the article was published, Miss Romiszowska was not aware of the personal relationship between the Claimant and the manager, but she said that it was irrelevant. The reason the Claimant was dismissed from his position as maintenance man was not owing to the article, but in the light of the fact that he escorted a prospective resident around the premises. This was Mrs Hadjuk, to whom I will be returning at paragraphs 284-290 below.

271. Miss Romiszowska was clear that the Claimant's work was always of a good standard, and the management committee satisfied itself of this. Dr Bojanowski gave evidence to a similar effect.

272. The Defendants' evidence about the necessity for and quality of the Claimant's work was somewhat anecdotal and subjective. The point was made that many of the Claimant's invoices are in round numbers, which is true. Witnesses opined as to the quality and value of the Claimant's work when in my judgment they were unqualified to do so. Perhaps unsurprisingly, I received no expert evidence about this. However, in a situation where the burden of proof was on the Defendants, this omission was significant. The Claimant himself was not asked many questions about the quality etc. of his work, and when cross-examining the Defendants' witnesses he made some headway.

273. I cannot accept the evidence of Miss Romiszowska that the personal relationship between Ms Parylak and the Claimant was irrelevant. She, in common with the rest of the management committee, was heavily reliant on the information directly passing from the manager. The Claimant's estimates are somewhat uninformative, and Ms Parylak conceded that some of them were not in writing. I am deeply conscious of the fact that I have found the Claimant to be a dishonest witness, to have stolen monies from the Jazz Café and to wrongly diverted company funds from Polfood. However, I am not persuaded on the available evidence that his work for Kolbe House was improper, inappropriate or wrongly priced.

274. The Defendants have not proved the defence of truth in relation to the tenth meaning.

The Eleventh Meaning

275. The eleventh meaning is that the Claimant abused his position of trust at Kolbe House and callously diverted to himself funds that are needed for the care of the home's elderly and sick residents by supplying to the home frozen milk and bread of an unknown and dubious provenance that was almost past their sell-by date.

276. I have already concluded that nothing turns on this imputation because the serious harm test has not been fulfilled. For what it is worth, I reject the evidence of Mrs Gorwoska, which I felt was hyperbolic on this topic if not more generally, that the Claimant delivered "mouldy" bread. He did not. The focus here must be on the period after Ms Williams' departure when the Claimant was donating bread to Kolbe House, now under the charge of Ms Parylak, in 2012/2013 and onwards. I accept Ms Parylak's evidence that she was aware of the source, namely the Polish bakery. I also accept her evidence that Kolbe House's milk comes from Waitrose. I find that some of this bread was close to its use-by date, as the Claimant and Dr Bojanowski accepted, but the freshness of bread as a comestible is short-lived. Had I been of the view that the eleventh meaning of the words complained of caused serious harm to the Claimant's reputation, I would have upheld the defence of truth.

The Twelfth Meaning

277. The twelfth meaning is that the Claimant dishonestly concealed from the manager and trustees of Kolbe House his current status as an undischarged bankrupt in order to win their trust and also to obtain a building contract for the extension of the manager's home.

278. I find that the Claimant did not inform either Ms Parylak or the trustees of Kolbe House of his status as a bankrupt. However, after August 2012 he was under no obligation to do so – he was no longer a bankrupt – and in my view he was not required to inform them that he was subject to a BRU.

279. On the chronology, the Claimant's personal relationship with Ms Parylak started after he was automatically discharged from his bankruptcy, as did his work as maintenance man for Kolbe House.

280. The article was written on the mistaken premise that the Claimant remained an undischarged bankrupt in October 2015. The First Defendant was aware of the BRU but I do not think that he fully understood it. Even if the article were notionally adjusted expressly to refer to the BRU this would, on my analysis of the Claimant's legal obligations, make no difference. To be clear: the Claimant was under no obligation to disclose his prior bankruptcy or his extant BRU, and no issue of dishonesty can arise.

281. The Defendants dispute that the imputation conveyed by the twelfth meaning generates serious harm to the Claimant's reputation. I disagree. Underlying the imputation conveyed is the clear suggestion that the Claimant has acted improperly; that he has wrongly concealed something he should have revealed; and that he did so for personal gain. I am satisfied that the section 1 threshold has been met.

The Thirteenth Meaning

282. The thirteenth meaning is that the Claimant dishonestly and/or unlawfully concealed this status as an undischarged bankrupt in the plans for Ms Parylak's extension submitted to Ealing Council, despite the fact that, as the head of construction, he ought to have disclosed it.

283. This raises exactly the same point as that I have just considered. In my view, the Claimant was under no obligation to disclose his BRU to Ealing Council. He was using the same trading name he had always deployed. The defence of truth must fail.

Mrs Hadjuk

284. As I have said, the article did not refer to the Claimant's involvement with Mrs Hadjuk although the Defendants were aware of her existence and of the concerns that had been expressed. The relevance of this seam of evidence has already been explained. The Defendants were unaware of what two witnesses I heard from, Ms Margaret Curtin and Ms Krysia Carr, would have to say on the topic. In my judgment, these were impressive witnesses whose evidence I could accept.

285. In April 2015 Mrs Hadjuk was considering a week of respite care in Kolbe House. She was aged 90, getting frail, and finding it increasingly difficult to manage at home. Her main carer took her to Kolbe House to look round. Ms Carr came too, because she speaks some Polish. Ms Parylak was not available, and Mrs Hadjuk was shown round by the Claimant. He sang the praises of the establishment, and arranged an excellent meal for the three women. Mrs Hadjuk stayed at Kolbe House for approximately one week, and when Ms Curtin came to collect her the Claimant was sitting on his own in the dining room, just inside the door. He was facing the residents enjoying a meal. The Claimant was fulsomely warm towards Ms Curtin and Ms Hadjuk, and insisted that they dine with him. After a brief conversation it transpired that Ms Hadjuk was his "long-lost aunt", and they hit it off royally. Thereafter, the Claimant was very attentive.

286. The Claimant discovered that Mrs Hadjuk was planning to have some work done at her home. The Claimant soon supplanted the original contractor and undertook these works in the summer of 2015. These included the installation of a downstairs toilet, a new boiler, new radiators and a new window. The Claimant gave fairly rudimentary estimates for this work, and the total cost seems to have been £8,350. However, it was Ms Carr's understanding that Mrs Hadjuk gave him some cash payments on top.

287. Question marks have been raised about the quality of the Claimant's work. It is unnecessary for me to resolve these issues. The boiler broke down on a number of occasions, the Claimant says because the under-floor pipework also needed replacing. The Claimant installed the wrong window without prior building regulations' approval. When Ms Carr challenged him about this, he said that he regulated himself. This rather chimes with what the Claimant told Polfood's shareholders – that he wanted to have control over his company. According to his witness statement, he replaced the window but he corrected this at the start of his oral evidence. The window has never been replaced, and the error in the Claimant's witness statement has not been satisfactorily explained.

288. The Claimant invited Mrs Hadjuk, Ms Curtin and Ms Carr to Côte in Ealing and plied them with alcohol. Eventually, he fell out with Mrs Hadjuk. Ms Curtin and Ms Carr had been suspicious of his motives for some considerable time.

289. I did not hear from Mrs Hadjuk because she died in the summer of 2017. I am troubled by the fact that her witness statement, which was relied on by the Claimant, states that she thought that the total cost of

the works was £1,000. Ms Curtin's evidence is that Mrs Hadjuk was gullible in her financial affairs and had been hoodwinked in the past.

290. In my judgment, this is a cautionary tale which really speaks for itself. I would not go so far as to conclude that the Claimant cheated Mrs Hadjuk, but I am concerned about the level of his charges, his failure to ensure that her carers were kept abreast of his work, and his failure to replace the window. Miss Romiszowksa told me that the Claimant was removed from his position as maintenance man at Kolbe House owing to a combination of the Hadjuk incident and the article. I consider that the former, taken in isolation, would have been sufficient. This contradicts the Claimant's case that he was removed from Kolbe House on account of the article.

"Common Sting"

291. I have rejected the Defendants' case based on "common sting" but, in the event that this conclusion is reconsidered elsewhere, I should set out my factual finding on the alternative hypothesis that the Defendants' legal approach is right.

292. The Defendants say that the "common sting" of the article is that the Claimant was a bankrupt and a serially untrustworthy man who, in order to satisfy his ambition and financially benefit himself and his family in Poland, took improper advantage of a number of people, including women. I would not take issue with this formulation save to point out that the article asserted that the Claimant *is* a bankrupt, not was or has been one. Furthermore, the article rather suggests that bankruptcy was the Claimant's decision ("the only rational course was to declare bankruptcy") whereas the truth of the matter is that the Bankruptcy Order was made on HMRC's petition.

293. These, however, are somewhat pedantic points. The virtue of "common sting" from the Defendants' perspective is that the court dispenses with the microscope and views the imputations and the evidence more panoramically. It is the overall sweep of the topography that counts, not individual features.

294. Adopting that approach, if this were a "common sting" case I would unhesitatingly conclude that the defence of truth had been made out.

My Conclusions on the Defence of Truth

295. The Defendants' defence of truth has succeeded in relation to what I have been calling the first to seventh meanings, but has failed in relation to the eighth to thirteenth meanings (excepting the eleventh meaning, where the serious harm test has not been met, but if it had been the defence of truth would have succeeded).

H. **The Defence of Honest Opinion**

296. The Defendants have been sparing in their legal analysis of this defence and its application to the facts. As I have said, they have pleaded that the defence of honest opinion applies to the headline ("Bankruptcy need not be painful") and to the caption (paragraph [B]).

297. Section 3 of the Defamation Act 2013 provides:

> "**Honest opinion**
>
> (1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.

(2) The first condition is that the statement complained of was a statement of opinion.

(3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.

(4) The third condition is that an honest person could have held the opinion on the basis of —

> (a) any fact which existed at the time the statement complained of was published;
>
> (b) anything asserted to be a fact in a privileged statement published before the statement complained of.

(5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.

(6) Subsection (5) does not apply in a case where the statement complained of was published by the defendant but made by another person ("the author"); and in such a case the defence is defeated if the claimant shows that the defendant knew or ought to have known that the author did not hold the opinion.

(7) For the purposes of subsection (4)(b) a statement is a "privileged statement" if the person responsible for its publication would have one or more of the following defences if an action for defamation were brought in respect of it—

> (a) a defence under section 4 (publication on matter of public interest);
>
> (b) a defence under section 6 (peer-reviewed statement in scientific or academic journal);
>
> (c) a defence under section 14 of the Defamation Act 1996 (reports of court proceedings protected by absolute privilege);
>
> (d) a defence under section 15 of that Act (other reports protected by qualified privilege).

(8) The common law defence of fair comment is abolished and, accordingly, section 6 of the Defamation Act 1952 (fair comment) is repealed."

298. In the absence of focused submissions by the parties on this issue, I propose to do the best I can in analysing whether section 3 of the 2013 Act truly applies to the circumstances of this particular case. After preparing an advanced draft of this judgment, my further researches took me to the decision of Warby J in Yeo v Times Newspapers [2015] 1 WLR 971, in particular paragraphs 88-89. My analysis is consistent with his.

299. I think that it is clear that the point that the article seeks to make, in narrating this "modern morality tale" about the exploits and behaviour of the Claimant, is that bankruptcy need not cause financial pain because he can continue in a substantial way of business notwithstanding that status and ensure that his creditors will remain unpaid.

300. The first condition in section 3 is that the statement complained of is a matter of opinion. In my

judgment, this applies to the headline and to the central proposition in the caption that any creditor would have to be mad to believe that she or he would be repaid. There are no "pure" statements of fact in these imputations: they are recognisable as comment as distinct from imputations of fact, although there are factual assumptions or predicates which underpin them.

301. The second condition is that the basis of the opinion is indicated in general terms. In my judgment, the substantive content of the article, if I may characterise it in those terms, clearly does set out the basis of the opinion.

302. The defence cannot operate if the Defendants and each of them did not honestly hold these opinions. I will deal with my assessment of the First and Third Defendants under chapter I below, but at this stage I can say by way of summary that I am entirely satisfied that the relevant opinions were honestly held.

303. The third condition is that an honest person could have held the opinion on the basis of any fact which existed at the time the statement complained of was published. Here, it is necessary to identify what is meant by "fact", and which "facts" are relevant for this purpose. As I have said, I received no submissions about this. My unaided analysis is that the defence can only apply if the opinions expressed are based on a substratum of fact, that is to say evidence, which a reasonable person would consider could justify the giving of that opinion. The defence is not rebutted or rendered inapplicable if the "fact" proves to be incorrect: what is required is some reasonable basis for concluding that the "fact" exists.

304. What are the "facts" which may be said to form the evidential bedrock for these opinions? I list these as being: that the Claimant was an undischarged bankrupt in October 2015; that he had arranged his own bankruptcy; that he did so as to avoid his creditors; and, that his creditors have not been repaid.

305. I consider that it is clear that many of these "facts" are incorrect. The Claimant had no choice in the matter and his bankruptcy formally ended in August 2012. As a matter of law, the Claimant was under no obligation to repay his personal creditors in relation to debts incurred before the petition was presented. In any event, he owed no legal obligation in relation to Polfood's debts. Finally, I have accepted Ms Howard's evidence that she has been repaid in full.

306. The question arises whether these cumulative evidential errors renders the third condition unfulfilled. An informed lawyer, particularly one with expertise in matters of personal insolvency, would observe that the errors are numerous and significant. That, however, would be to take too technical an approach. This is a fairly recondite area, and it is not incumbent on journalists to take legal advice. Their mistaken understanding of the law was not way off-beam, assuming that it is right to judge them, as I believe it is, as intelligent lay-persons without legal expertise or training. The First and Third Defendants relied on what they were told by their sources: in particular on this issue, Ms Wozniczka. As I will make clear under chapter I below, it was reasonable to do that. Further, as the Insolvency Service pointed out in its letter to Ms Woznczka's solicitors dated 8th January 2013, "the effects of a Bankruptcy Restrictions Order are largely the same as those an individual is subject to under bankruptcy". Additionally, the Defendants were entitled to form the opinion that bankruptcy had no impact on the Claimant's moral obligations – the fact that Ms Howard was repaid, pursuant to the Claimant's perception of a moral obligation, rather reinforces that point. As it happens, the First and Third Defendants did not know that Ms Howard had been repaid by the Claimant. Even if they had known, and had been aware of all the circumstances, they were entitled to form the opinion that one would have to be mad to believe that other creditors would ever be repaid.

307. I am satisfied that the defence of honest opinion is made out, to the limited extent that it is required. I should emphasise this last point: the headline and the caption pale into relative insignificance when

measured against the imputations made elsewhere in the article.

I. **The Defence of Public Interest**

The Law

308. Having failed to persuade me of the truth of the vast majority of the Kolbe House allegations, the Defendants are forced back to this line of defence in that regard. However, it is right that I also address the Defendants' submission that the defence of public interest applies to *all* the words complained of. My positive findings, from the Defendants' perspective, as to the truth of the POSK and the Polfood allegations does not obviate the need to address this issue comprehensively.

309. Section 4 of the Defamation Act 2013 provides:

> "**Publication on matter of public interest**
>
> (1) It is a defence to an action for defamation for the defendant to show that—
>
> > (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
> >
> > (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.
>
> (2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
>
> (3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party, the court must in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.
>
> (4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.
>
> (5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.
>
> (6) The common law defence known as the Reynolds defence is abolished."

310. The best recent analysis of this provision appears in the judgment of Warby J in Economou v de Frietas [2016] EWHC 1853 (QB):

> "137. The Explanatory Notes to the Act record, at paragraph 29, that the intention was to create "a new defence … of publication on a matter of public interest … based on the existing common law defence established in *Reynolds v Times Newspapers* Ltd [2001] 2 AC 127 and … intended to reflect the principles established in that case and in subsequent case law." The *Reynolds* defence had emerged as a new form of qualified privilege.

…

139. It is possible to identify a number of broad points concerning s 4 which I do not understand to be in dispute:

> (1) It is not enough for the statement complained of to be, or to be part of, a publication *on* a matter *of* public interest. It must also be shown that the defendant reasonably believed that publication of the particular statement was *in* the public interest.
>
> (2) To satisfy this second requirement, which I shall call "the Reasonable Belief requirement", the defendant must (a) prove as a fact that he believed that publishing the statement complained of was in the public interest, and (b) persuade the court that this was a reasonable belief.
>
> (3) The reasonable belief must be held at the time of publication.
>
> (4) The "circumstances" to be considered pursuant to s 4(2) are those that go to whether or not the belief was held, and whether or not it was reasonable.
>
> (5) The focus must therefore be on things the defendant said or knew or did, or failed to do, up to the time of publication. Events that happened later, or which were unknown to the defendant at the time he played his role in the publication, are unlikely to have any or any significant bearing on the key questions.
>
> (6) The truth or falsity of the allegation complained of is not one of the relevant circumstances.
>
> (7) It is not only those who edit media publications who are entitled to the benefit of the allowance for "editorial judgment" which s 4(4) requires (see paragraph 33 of the Explanatory Notes).

140. Points (5) and (6) are logical, just, and convenient, and reflect the law as it was understood and applied before s 4 was passed. May LJ put it this way in one of the early post-*Reynolds* cases, *GKR Karate (UK) Ltd v Yorkshire Post Newspapers Ltd* [2001] 1 WLR 2571 at 2578-2579:

> "… the existence or otherwise of qualified privilege is to be judged in all the circumstances at the time of the publication. It is not necessary or relevant to determine whether the publication was true or not. None of Lord Nicholls's 10 considerations require such a determination and some of them (for example number 8) positively suggest otherwise. Nor is it necessary or relevant to speculate (for the purposes, for instance, of considerations 3, 4 or 7) what further information the publisher might have received if he had made more extensive inquiries. The question is rather whether, in all the circumstances, the public was entitled to know the particular information without the publisher making further such inquiries. …
>
> …the defendant's state of mind is to be determined at the time of publication. The subsequently determined truth or falsity of the publication is not material. Where, as in the present case, the contention is that [the journalist] was

reckless and that she did not consider or care whether her publication was true or not, this is to be inferred (or not) "from what [she] did or said or knew." A failure to make further or proper inquiries is capable of being an ingredient from which recklessness may be inferred. What the response to those inquiries might have been is not capable of being such an ingredient."

141. The line of relevance does not necessarily have to be drawn at the moment of publication. As was pointed out in argument in *GKR*, evidence of a defendant's post–publication conduct can in principle be probative of a state of mind at the time of publication. This can include the defendant's conduct in the witness box: see 2575G-H. But as May LJ observed (2577D) such evidence will not always have enormous value for that purpose."

I understand that Economou is *en route* to the Court of Appeal. The issue on appeal will not be Warby J's formulation of the test but its manner of application. For what it is worth, I cannot improve on his formulation.

311. Earlier, I pointed out that there was a measure of vacillation in the Defendants' camp as to whether the defence of public interest could apply to the whole article or just the Kolbe House allegations. In Jameel v Wall Street Journal [2007] 1 AC 359 Lords Hoffmann and Hope observed that it was not necessary to find a public interest justification for each item of the article. At paragraph 108 Lord Hope said:

"… on the contrary, each piece of information will take its colour and its informative value from the context on which it is placed. A piece of information that, taken on its own, would be gratuitous can change its character entirely when its place in the article read as a whole is evaluated. The standard of responsible journalism respects the fact that it is the article as a whole that the journalist presents to the public. Weight will be given to the judgment of the editor in making the assessment, as it is the article as a whole that provides the context within which he performs his function as editor."

312. Lord Dyson JSC took up this theme in Flood v Times Newspapers [2012] 2 AC 273, at paragraph 192:

"Although the question of whether the story as a whole was in the public interest must be determined by the court, the question of whether defamatory details should have been included is often a matter of how the story should have been presented. On that issue, allowance should be made for editorial judgment."

313. The combined effect of these passages is that a Defendant can fail on "common sting" yet succeed on proving public interest *tout court*. However, if I were satisfied that the principal public interest here was the Claimant's involvement in Kolbe Court and his bankruptcy, the closer should be examination of the other features of the article (i.e. POSK, Polfood and aspects of the Claimant's private life) before reaching any conclusion that the public interest defence could reach into these areas.

The Evidence of the First Defendant and the Third Defendant

314. These Defendants provided me with lengthy witness statements and each was cross-examined by the Claimant. He had difficulty with witnesses of this calibre. Before summarising their evidence, I should set out my impressions of each of them.

315. The First Defendant was born in 1956 and is a highly educated man, both in his homeland and the UK. He came to this country in 1981 when heavily involved in the activities of Solidarity, and did not return

to Poland after martial law was declared. He studied for his doctorate in philosophy at Balliol College Oxford, and after obtaining his PhD has worked in the world of journalism in a number of capacities. In 2006 he and his wife set up *Nowy Czas* with some of their former colleagues.

316. I hope that he will not mind me saying so, but I would describe the First Defendant as a Polish intellectual in the old school. He should not read that as other than a compliment. I do not think that his health is particularly good, and fear that it is possible that some of the spark and fire has deserted him, at least for the time being. Most importantly, I have concluded that the First Defendant was an honest and reliable witness whose evidence I could safely accept.

317. *Nowy Czas* is a publication which prides itself in its investigative reporting. Its aim is to publish pieces of interest to the heterogeneous Polish community resident in this country. That community extends across individuals who came here shortly before, during and after the Second World War (and now their children and grandchildren), an influx of politically active people who came here in the early 1980s during and following the imposition of martial law between 1981-83, and the more recent advent of younger Poles who have come here since 2004 exercising their free-movement rights.

318. On 13th February 2014 *Nowy Czas* received an anonymous email from employees at Kolbe House claiming that the Claimant had inveigled his way into the administration of the home and had exploited his relationship with the manager, Ms Parylak, for his own benefit. These employees were fearful of speaking out, being concerned about their job security. The First Defendant explains that he and his wife engaged in correspondence with the employees, with a view to setting up a meeting, because an assessment had to be made of the likely veracity of their testimony: "whistle-blowers can be genuine but they can also have ulterior motives or fail to see the whole picture".

319. The First and Third Defendants met their "confidential sources" on 12th September 2015. A redacted transcript of the meeting is exhibited to the Third Defendant's witness statement. According to paragraph 26 of the First Defendant's witness statement:

> "To them, the claimant was a maintenance man with a dubious reputation, a known bankrupt, pretending to be the manager of an institution that cares for vulnerable people. The employees provided examples of how the claimant would deliver out of date products to the home; how he would abuse his position and eat for free at the home; how he would redecorate and refurbish aspects of the home and charge a disproportionate amount for the work, and how he bullied and intimidated the workers who didn't actively support him being there. They cited specific examples and gave details which seemed credible. They were low paid staff at risk of losing their jobs if it was discovered they had spoken out. Their motives appeared genuine."

320. I have read the transcript with some care. It refers to out of date bread and food. Some of the bread was mouldy. On occasion it had to be frozen. Employees said that the Claimant effectively acted as "shadow manager" and made decisions as to whom would be employed. They alleged that the Claimant raised invoices in amounts which were higher than the true value of his work. There were savings in relation to fabric softener and basic toiletries. There was also some limited reference to Mrs Hadjuk, but – as Mr Metzer submitted on instructions from the Third Defendant – this was insufficient to justify referencing her in the article that came to be written.

321. There was a further meeting on 10th October 2015. I do not understand this meeting to have been tape-recorded. I have not seen any notes. The employees gave further information about the Claimant's workshop at Kolbe House and the work he was doing at the manager's home.

322. The First and Third Defendants felt that this was genuine, reliable evidence. Kolbe House was a Polish charity, largely funded by charitable donations, and was therefore of particular interest to the readers of *Nowy Czas*. The Defendants were minded to write a piece about the Claimant, but before doing so went back to earlier articles and letters published by the newspaper which related to him.

323. It is unnecessary for me to cover all the material. What is relevant, in my view, is that in October 2012 the Defendants published a short note letting readers know that a cash register had finally been installed in the Jazz Café; that in 2011 Ms Wozniczka had informed the Defendants of her experiences with the Claimant; that in 2013 the Defendants had an informal meeting with Mr Wegrzynowski and Ms Cyparska regarding their investments in Polfood; that in May 2014 the Defendants published an article *inter alia* about the renovation of the basement at POSK and the suspicious involvement of Antec the Builder; that in May 2014 the Defendants also published a letter from Mr Zygmunt Lozinski requesting that the Claimant's "achievements" be carefully examined; that in June 2014 the Defendants reported on the fact that Mr Lalko of POSK had failed to provide satisfactory answers to *Nowy Czas*'s queries as to the nature of the Claimant's involvement; that in June 2014 the Defendants published a letter from Mr Wegrzynowksi detailing his grievances; and, that in September 2014 the Defendants published a further letter from Mr Lozinski setting out Mrs Serafin's involvement in POSK. There had been no response by the Claimant to any of these publications.

324. In October 2015 the Defendants had further discussions with Ms Wozniczka during the course of which she disclosed information regarding the Kroscienko project. She also provided the photograph which forms the subject of the Claimant's privacy/misuse of confidential information claim.

325. As for the final decision to publish the article:

> "Our investigations led Teresa and I to conclude that there was a real public interest in publishing an article on the Claimant. He had persuaded very many people to invest in a failing business, had cheated women of integrity, and took, and appeared still to be taking, advantage of charities such as Kolbe House, and previously POSK. Despite having been made bankrupt and then subject to a bankruptcy order and as result of disposing of assets to the detriment of his creditors in contravention of the terms of his bankruptcy, he was still active in the local community, including with charities and at the embassy. We were told that he was prospering again, having already purchased a BMW X5, whilst many others were out of pocket and deeply affected by what he had done to them.
>
> …
>
> I believed that it was in the public interest to set out how the Claimant had prospered in England and had done so, in part, through his membership of POSK. Whilst it was difficult to obtain information from a closed organisation such as POSK, which did not like to be criticised or investigated, the basis for the material about his activities there came from credible sources who I believe to be telling the truth and from my own knowledge.
>
> … Yet many sources explained that his activities at POSK were directed towards self-promotion and/or that of his family.
>
> …
>
> This material was such that led me to believe that what was said in the article about POSK was true – that the Claimant had abused his position in various ways – and that it was in the public interest to publish it as part of this article.

I had also come to the conclusion that it was necessary to report, in general terms without naming names, upon the Claimant's relationships with women because the evidence we had obtained demonstrated, to my mind, that he presented himself as a single man and had exploited, to our knowledge, Ms Wozniczka and Ms Howard. Also his relationship with the Kolbe House manager, Ms Parylak, which facilitated his position in Kolbe House.

…

It was important and relevant to us to include these matters because they showed the character of the man and because of what the Kolbe House employees had said about his new relationship with the female manager of the home. There was evidence of him exploiting women and others to benefit himself and it looked like he was doing so again.

We also had evidence that that in addition to having relationships in London he remained close to his wife or ex-wife when he visited her hometown Kroscienko. We had a confidential source who was told that Mrs Serafin's sister-in-law was not aware that they were divorced.

…

We had amassed credible evidence to our minds about how he had taken over assets from CCW Foods and incorporated Polfood, how he had persuaded people to part with their money and how he ran it until its collapse leaving many people out of pocket to the tune of hundreds of thousands of pounds.

…

We had also seen the documents Ms Wozniczka had obtained through her solicitor from the Official Receiver's office. This showed that the Claimant was subject to a bankruptcy restriction order because he had transferred properties out of his name into the names of family members in 2010. This too was evidence that whilst others had lost out, he was able to benefit himself and his family by putting properties he owned out of the reach of creditors."

326. The First Defendant's reasons for not contacting the Claimant before the article was published were that he had not complained about previous articles and letters published in *Nowy Czas*, he did not believe that he would respond for comment, and that the Third Defendant has been warned that the Claimant was a violent and co-operative liar.

327. Under cross-examination the First Defendant repeated that the spur for the article was the Claimant's continued involvement in Kolbe House, and that the earlier history was relevant because it showed a pattern in his behaviour. It was for this reason that the First Defendant wished to introduce his readers to the Claimant "from the start", because the history was relevant to how he built up an established position which allowed him to manipulate others.

328. The Third Defendant was born in Poland in 1957 and she is also highly educated. The Third Defendant was invited to meetings attended by various POSK members between 2012 and 2014, and was aware of the concerns regarding the way that institution was run. POSK members were very concerned about the refurbishment of the Jazz Café and, later, how it was being run. The Third Defendant referred me to a note published in *Nowy Czas* in May 2013 which questioned whether the annual income could be as low as £10,000. On other matters, the Third Defendant's evidence largely duplicates that of her husband – I have summarised his evidence first of all, only because he was the writer of the article and

must take primary responsibility for it. It is clear from the Third Defendant's written evidence that, save for two matters, she had investigated all the matters which were in due course to be published in the article. In my judgment, the Third Defendant was an honest and reliable witness.

329. I set out just two passages from her evidence:

> "In May 2010 I was in the Jazz Café buying a drink after a Sunday matinee show. I found myself at the bar with the Claimant, and I started a conversation with him – I mentioned to him that I knew Ms Wozniczka. He started to laugh and said to me "Henryka is so naïve", and then, to my astonishment, ignoring my presence, he leaned over the bar counter and started to kiss passionately a lady volunteer at the Jazz Café.
>
> …
>
> The Claimant suggests that we should have contacted Kolbe House management to check and verify the facts of the article. The Claimant is currently in a relationship and living with the manager of Kolbe House and on the face of it she would therefore not have been a reliable source. We believe that our confidential sources were credible, and they had been backed up by other independent sources. The employees also stressed that before turning to us for help they had tried, in vain, to complain to the management of Kolbe House."

330. There were two possible *lacunae* in the evidence of the First and Third Defendants which the Claimant did not appear effectively to exploit. First, I do not believe that the transcript of the meeting with the Kolbe House employees in September 2015 reveals that they complained of the Claimant's access to confidential information about residents. Secondly, there is an absence of evidence in relation to the unnecessary replacement of bathroom furniture. The first issue was touched on in re-examination: the Third Defendant said that "staff were also concerned about residents' confidential information". As for the bathroom furniture, there was no cross-examination about this, and the issue may well have been covered either in the October 2015 meeting, which has not been transcribed, or in the various emails, some of which have not been translated. In all the circumstances, I have to conclude that the Defendants did have an evidential base for their imputation that the Claimant replaced bathrooms unnecessarily.

331. It is for the court to decide whether publication was in the public interest; and, if so, to what extent.

332. I am completely satisfied that it was in the public interest for the Defendants to publish an article about the Claimant's fitness or otherwise to be involved in a charitable institution, Kolbe House, and the Claimant effectively conceded as much. The Defendants had evidence from apparently credible sources that the Claimant had secured an entrée to Kolbe House through the current manager, and that he was exploiting that relationship and his position as maintenance man to his personal advantage. In relation to the Kolbe House allegations, it is supererogatory for the Defendants to add that the Claimant had an established reputation within the Polish community and that he had "form" for similar behaviour. However, these matters add considerable weight to the already cogent force of the Defendants' arguments in relation to public interest in that context.

333. The Claimant submits that it was unnecessary for the Defendants to go further than the Kolbe House matters. The POSK matters were stale, and the Polfood matters went to his private life, and were not therefore in the public interest. I disagree. POSK was also a charitable organisation. It, as I have said, was somewhat secretive in the management of its affairs, and it was entirely within the scope of good investigative journalism for this secrecy to be penetrated. Moreover, there was a direct contextual link between the allegation that the Claimant was cheating Kolbe House – another fairly secretive

organisation, in my view – and the allegation that the Claimant had profited from his involvement in POSK in two specific ways. To my mind, the link it obvious, because they are both charities; it follows that the editorial judgments that were made cannot be gainsaid. The fact that the refurbishment of the Jazz Café had been completed about a decade previously is nothing to the point.

334. The Defendants accept that there was no public interest in publishing a limited story about the Claimant's simultaneous entanglement with Ms Wozniczka and Ms Howard. I would go slightly further. Polfood was a private company and the fact that respected members of the community lost out through the Claimant's brazenly unethical activities would not have justified a limited or narrow story. However, I agree with the First Defendant that these matters acquired direct saliency, and real public interest, once a proper basis for publishing a story about Kolbe House and POSK was established. The connection between the earlier cheating of women, in both the personal and financial domains, and the Claimant's exploitation of his relationship with Ms Parylak was clear. Once the Polfood tale could properly be told, because it was now in the public interest to narrate it, the length, breadth and depth of that narration became a matter of editorial judgment.

335. Section 4 requires that the publisher reasonably believes that the statement complained of was in the public interest. This means that the publisher's honest belief must be reasonable, and that he, she or it took reasonable steps to ascertain the reliability and credibility of the substantive content of the publication. In other words, the publisher must undertake reasonable inquiries, come to a reasonable conclusion that any sources are reliable and credible, and, where appropriate, obtain the target's version before publication. As for this last step, I consider that ordinarily a publisher would have to approach the target for his or her account before reliance could properly be placed on section 4.

336. The Claimant argues that the defence under section 4 cannot apply in the circumstances of this case because the Defendants' sources are unreliable. Indeed, I have found that the defence of truth has failed in relation to almost the entirety of the Kolbe House allegations. However, the Claimant clearly overstates the position because, if truth (retroactively established by the court) were the stumbling block, section 4 of the Defamation Act 2013 could never add anything to section 2. In my judgment, a publisher has to act reasonably. He cannot be expected to act as judge and jury, deploying all the forensic tools available to this court. However, he must exercise common sense and sound judgment; he cannot be overly sedulous in pursuit of a good story; he must eschew naivety or gullibility.

337. I am satisfied that these Defendants did undertake reasonable inquiry in relation to all the factual matters upon which their story was based. Indeed, I would go further. I think that they applied rigorous, objective journalist standards in the context of a piece which cried out to be published. They were not precipitate; on the contrary, they were cautious and measured. Furthermore, for the reasons that the First and Third Defendants have given, and which I accept, this case falls into the unusual category of case where it was not incumbent on the First and Third Defendants to approach the Claimant for comment before publication.

338. The reason why the defence of truth has failed in relation to virtually all the Kolbe House allegations does not cast doubt on the integrity of the Defendants or their journalistic credentials. The explanation is that their sources were not as objective as they thought; or, put more neutrally, I have reached a different conclusion on all the evidence, applying familiar forensic tools and mindful of the burden of proof. These resources, including the possibility of cross-examination, were simply not available to the Defendants.

339. The defence of public interest succeeds in relation to the entirety of the words complained of.

J. **The Photograph and the Misuse of Confidential Information Claim**

The Law

340. The claim for misuse of confidential information is not limited to the photograph, but I have focused on it because I do not believe that it is arguable that the Claimant has a reasonable expectation of privacy in relation to information about his bankruptcy, being in the public domain, and the fact of his multiple relationships with unnamed women.

341. The test for whether there is a reasonable expectation of privacy in this sort of case is that laid down by the Court of Appeal in Murray v Express Newspapers Plc [2009] Ch 481, paragraph 36, per Sir Anthony Clarke MR:

> "As we see it, the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher."

342. My attention was drawn to other authorities but in my opinion these do not add to, still less improve on, this formulation.

343. The photograph in question was taken by Ms Wozniczka on a beach near Athens when the couple were on holiday in September 2009. The Claimant is shown bare-chested, performing a V-sign in the direction of the camera. This, on the evidence available to me, was a light-hearted, gentle moment between the two of them, captured by the camera and now given a more public airing. The photograph has particular potency for the purposes of this article because it is an effective and cogent means of portraying the Claimant as not caring two hoots for his creditors. This is a paradigm example, I suppose, of one picture being worth a thousand words.

344. The Claimant's argument is that he enjoyed a reasonable expectation of privacy in relation to this photograph because Ms Wozniczka has transmitted the digital fruits of what was supposed to be a private moment to a publisher who is now using it for a public purpose. Ms Wozniczka maintains that she owned the copyright in the photograph but in my view that addresses a different, irrelevant question. The correct question is simply whether in all the circumstances the Claimant has a reasonable expectation of privacy in relation to the photograph.

345. There were at least two reasons why the Court of Appeal concluded in Murray that the Article 8 threshold had arguably been met. The first was that the photographer had taken the image at long-range, unbeknownst to the subject and to his mother, JK Rowling. The second is that the subject was a child at the material time. These reasons do not apply to the present case.

346. This photograph was taken in a public place, the Claimant was aware that it was being taken, and he posed for it. Other members of the public could have witnessed this. It was not an *intimate* moment, although I accept that the Claimant probably would not have acted in this way outside the context of a personal relationship. Whether it was a *private* moment is central to the issue I have to determine.

347. Had the photograph been taken surreptitiously by a member of the public, and then been disseminated, I consider that it would be more arguable that the Claimant's reasonable expectations would have been violated. I put it no higher than more arguable because the Claimant took the risk that he might be photographed by anyone. There is some force in the point that Ms Wozniczka has used the photograph

for a purpose which went beyond the Claimant's implied authorisation. However, the issue is not whether some sort of permission or licence has been exceeded, but whether the Claimant had the relevant reasonable expectation at all material times, including the circumstances surrounding the publication of the photograph.

348. Looking at the Murray checklist:

(1) the Claimant is an adult and is not vulnerable in any way.

(2) the Claimant was engaged in gentle or playful visual repartee with his partner.

(3) this was a public beach.

(4) the Claimant consented to the taking of the photograph. He did not consent to its onward transmission to any newspaper.

(5) there was no intrusion by Ms Wozniczka at the time the photograph was taken. The intrusion pertains to its subsequent dissemination.

(6) there is no evidence as to the effect of this intrusion on the Claimant, although it may be inferred that he feels peeved that his rights have been violated.

(7) Ms Wozniczka provided the photograph to the Defendants because she must have felt that it provided a good pictorial representation of the Claimant's attitude towards his creditors.

349. Item (2) above is capable of a modicum of refinement. My assessment that the photograph shows the Claimant in gentle and playful activity with his partner is based on evidence which would not be known to the average reader of *Nowy Czas*. That hypothetical individual would have no idea of the circumstances which obtained when the photograph was taken. S/he might well infer that the Claimant was putting two fingers up to an individual or to the world at large.

350. In my judgment, these various factors needed to be balanced against one another and an overall assessment made. I do not lose sight of the fact that the Court of Appeal in Murray was critical of Patten J's failure to place into the balance the circumstances surrounding the publication of the photograph – in addition to those which obtained when the photograph was taken. It is also relevant that the decision in Murray was that the Claimant had an arguable case, not that it was correct.

351. Conducting the relevant balancing exercise, I confess that the merits are finely balanced. Ultimately, I have concluded that the Claimant does not have a reasonable expectation of privacy in relation to this photograph. Publishing a photograph showing a man gesticulating with two fingers is, in the modern age, no big deal. The Claimant's real grievance is that this shows him in a bad light because, in proximity to the caption and the remainder of the article, the reasonably informed reader would think that he is delivering two fingers to his creditors. I would describe this as a form of editorial coup, but no reasonable expectation of privacy arises. This was a semi-private moment, displayed and captured in a public setting on a beach. I cannot uphold the Claimant's cause of action in this regard.

K. **Conclusion**

352. In outline, I have upheld the defence of truth in relation to the POSK and Polfood allegations, rejected it in relation to the Kolbe House allegations (save as regards the eleventh meaning, where I have held that the serious harm test has not been met), and upheld the defence of public interest across the board. I have not upheld the claim for misuse of private information.

353. Had the defence of public interest not succeeded, I would not have awarded the Claimant any damages in relation to the Kolbe House allegations. His reputation has been sufficiently shot to pieces by the proven allegations in relation to POSK and Polfood.

354. The Claimant observed somewhat wistfully towards the conclusion of the trial that had he anticipated what was entailed, he would not have brought this claim in the first place. Without prejudice to the terms of any order for costs that I will make after receiving written submissions, this litigation has proved to be enormously costly for him as well as for the Defendants. It is, in a different way perhaps from the article itself, a modern morality tale: a cautionary warning that litigation of this sort, having regard to the nature of the issues at stake, should not be initiated out of almost unbounded self-confidence and lack of judgment, coupled with a misplaced belief that the court will surely succumb to the same charm and eloquence that has worked so effectively in the world outside.

355. There must be judgment for the Defendants.

Bankruptcy need not be painful

When in the 80s Janek came to London, he applied a quick eye to his situation. He soon realised that one could make good money out of one's compatriots who have been here for years. He left his wife and children in Poland and went to England for seasonal labour. He managed. He took care of his family but presented himself as divorced, for simplicity.

Like most Poles in a similar situation, he started by doing minor renovations. Sometimes he cleaned up somebody's yard. He did not complain about lack of work, rather his clients had to wait for him, and the queue grew longer year by year. He owed his success not only to the reliability of his services, but mostly to personal charm, openness, resourcefulness, and a willingness to have long conversations and bow low. He easily won the hearts of women, especially those living alone, who were afraid of hiring professional companies to carry out the repair works. They worked faster but not better, and they turned one's life upside down. Janek was cheaper and very communicative, and he spent much time chatting in Polish.

The circle of satisfied customers grew wider, and he gained their ever growing trust. Later, when his social status had grown enough, he started to meet with them only to socialize. Money was no longer his sole aim. He devoted more and more time to community work. At least that was what his new friends believed. But for him, dancing in a folk group, working in committees in the Polish centre, and engaging in other similar activities were part of building his position and starting anew — this time making pretty decent money.

[A] The turning point in Janek's career was a hard-earned success in the biggest Polish centre in Hammersmith. He became the house manager, the person responsible for all ongoing repairs and renovations, without the necessity of getting approval for such activities from a wider body. Reports and coherent accounts were sufficient, and Janek didn't have any problem with them.

PHOTOGRAPH OF CLAIMANT

[B] [CAPTION] JANEK IS PENNILESS AND CHEERFUL. MONEY? WHAT MONEY? YOU HAVE GOLDFISH IN YOUR MIND— HE COULD PARAPHRASE THE FAMOUS QUOTE FROM "THE PROMISED LAND" BY REYMONT.

PHOTOGRAPH of "WORKSHOP"

[Caption] In the utility rooms of Kolbe House he has created himself a private workshop – in the end,

in London he would pay dearly for such a spot. And after all, he is a bankrupt…

[C] Even more so as he saw more and reached further. Handsome and eloquent, with a sense of humour, he did not have to try hard to obtain the approval of the centre's officers for his decisions. He gained recognition and his appetite for increasing his wealth and prestige within the community continued to increase. He even dreamed of being the centre's chairman. To increase his chances, he purchased memberships for kith and kin, mainly for builders who worked for him.

[D] But the real gains, and not just of a social nature, came from his "single" status, which he decided on at the outset of his London career. He was a respected public figure and the reputation of the centre he did his "community" work for was a guarantee of his honesty and selflessness. Although it was an open secret that the renovations were done by his company - and he even managed to employ his wife (non-wife?) from Poland — no-one from his closest circle had a problem with that. The job was done, so nobody saw any problem. And the women ever more frequently regarded Janek with admiration.

And in this blissful state Janek could have waited for a well-deserved retirement, medals for community work and the splendour that goes with it. Unfortunately, the laws of business propel the man, who has once tasted success, ever further; the stakes increase and there is no resting on one's laurels. There are ever more challenges. Poland joined the EU, and hundreds of thousands of Poles came to London. In this situation passivity could have meant failure.

Poles took over the construction market. Janek gradually withdrew from this sector. In a sense, he gave this market away: it was a dirty job, so why bother. He had already worked and earned enough in this market. But if an interesting opportunity arose, then one could, using one's own experience and contacts, hire subcontractors and easily reap the profits.

Poles not only overran the labour market, but also formed a large consumer group. They had their own culinary preferences. Polish shops sprang up.

[E] Everything indicated that it would be an easy way to make money, with great profits and loyal, reliable customers — Poles will not drink English beer. Janek knew that. There were two options: wholesale or retail, but he didn't hesitate. He went for wholesale, leaving retail for his supposed community activities, in the jazz cellar bar, where he supervised the supply of alcohol and ensured that goods would not be registered on the cash register. Cash register? What for?

In the community centre, where everyone did community work?

[F] Who would bother? At the same time, the jazz cellar club offered the opportunity to establish new contacts, also with women - after all Janek was a declared divorcé and a handsome, successful entrepreneur. And women, like women, blinded by his charm, believed his every word. There was no reason not to believe, since Janek was respected by chairmen and clergymen. And the fact that he still wanted more? These are the laws of economics... One doesn't need to be a graduate in science to give credence to a simple principle — the only guarantee of success is growth, further investments, expansion and overtaking competitors.

[G] Janek expanded his investor base, both male and female, the females in ignorance of one another. They invested their life savings in the profits of the business and their joint dolce vitae [sic[1]], tens of thousands of pounds in each case.

There was no sign of impending disaster. It probably would not have occurred if Janek had focused on one business... and one woman. But he was far too ambitious for that.

[H] Did he think that his new business interests would bring such profits as to enable him to repay his (female) creditors? Or perhaps he knew from the beginning that someone has to lose, so he could earn money not requiring continual reckoning and balancing the books? It is difficult to say. The fact is that Janek transferred the borrowed money to Poland and allocated it to a family construction project, which was supposed to be financially supported by EU funds. He didn't forget about his wife and children — family is sacrosanct.

[I] Meanwhile in London, the only rational course was to declare bankruptcy and surrender to the official procedures. But before that happened, Janek sold his second home, which he still however sporadically uses (the victims say the sale was fictitious; the only person to have visited the house in the last few years is its former owner).

[J] Did he leave London in disgrace? No, it's not his style. With the official papers of a bankrupt, he continues to shine, and how. He sits behind the wheel of a BMW X5 and with unshakable confidence gets out of the car. He has returned to Kolbe House in Ealing — the house for people in need of care, created by the Polish independence emigration. Returned – because his cooperation with the former manager was not successful – she questioned the out of date food he supplied. The current manager is a different story. Friendly, susceptible to his charm and, most importantly, impervious to the whispers circulating in West London about the famous bankrupt. Kolbe House soon became his second home.

[K] He is everywhere, has full access to confidential documents concerning residents (often people with dementia), and enters the centre at all hours, even at night. He takes a seat in the office, at the computer, even though he is not an official employee in the Home's administration. Kolbe House nurtures him — in both a literal and figurative sense. He parks his off-road BMW in a parking space designated for long-serving staff. In the utility rooms, he has created himself a private workshop – in the end, in London he would pay dearly for such a spot. And after all, he is a bankrupt…

[L] Recently, he has done some major renovations in Kolbe House. Even the bathroom equipment, which was in good condition, was replaced, although Kolbe House needs to economise on everything — not only on night staff, but also on fabric softeners, needed to launder the rough towels used to dry the frequently aching bodies of the patients. Also on frozen milk and bread, almost past its use-by date, which Janek delivers from a source known only to himself.

[M] Being a bankrupt he can't operate an independent business, but apparently, somehow he does, or maybe someone officially does it for him. With major renovations comes serious money. Janek has already got into the Inland Revenue's black books. Will it happen again? But maybe he works charitably? Do the trustees of Kolbe House (which, over the years, has been supported and meticulously run by the institutions of Polish immigrant communities) inspect everything now, on behalf of the sick, lonely and disabled who were entrusted to them? They won't check this themselves. Let's hope that their families, who pay a lot for their care, will do it on their behalf.

[N] Or perhaps the trustees think they don't need to control everything because Janek is doing so well in Kolbe House that even its manager has commissioned him to extend her house. Officially, in the plans submitted to the local office (which is Ealing Council) he is the head of the construction's supervision but — as we can assume — his bankrupt status is concealed.

Janek is not a fictional character. In case anyone has not recognised the protagonist of the story, I hereby confirm: it is Jan Serafin, well known among Polish society in London.

Note 1 La Dolce Vita is Italian, not Latin. It would not be put in the plural in Italian, but the plural of “Vita” is “Vite”. [Back]