

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

BETWEEN

JANE WHITTAKER

Claimant

- and -

- (1) [games company]
- (2) ANDI HODGETTS
- (3) JASON MCGANN
- (4) MIKEL LAWS

Defendants

AMENDED DEFENCE OF THE THIRD DEFENDANT

~~I deny all allegations made against me; I believe I was truthful and acted with honest good reason.~~

~~The references in the Particulars of claim which pertain to myself—~~

~~2. It is untrue to claim [games company] has or ever had any liability for my actions.~~

~~4. This is an untrue statement; I am not and never have been a non-executive director of [games company], nor am I or have I ever been [games company] officer and agent.~~

9. This statement I made to the best of my knowledge is true.

10. I have direct evidence from a senior executive and co-founder of MGM interactive stating the claimant did not work at MGM between 1994 and 1998 and that the claimant was not involved with GoldenEye N64's development at MGM. I have direct evidence from two senior members of Rare's GoldenEye N64 development team stating that the claimant was not involved with the game's development at Rare, or at Nintendo Japan. The claimant is not named in the game's credits, is not mentioned in any historic press and is not present in any team group photographs. The claimant is not mentioned in a detailed postmortem of GoldenEye N64 given by the game's director. The claimant's own documentary evidence is chronologically incompatible with the claimant's own claims of involvement. The numerous articles and interviews in which the claimant has inconsistently claimed various levels of involvement with GoldenEye N64 can be shown to be incompatible with the direct evidence and in a chronological sense largely physical impossible.

11a. It is untrue to state Mr Andrew Rosa's YouTube channel is a commonly visited page for gaming industry professionals, it is a small niche channel catering mainly to retro gaming enthusiasts.

12. This was a private correspondence sent with a good natured intention to warn the recipient, the statements I make in it are to the best of my knowledge true.

13. To be clear, when I state that the vast majority of the claimant's career claims are untrue I would estimate this to be 90%+ as untrue or exaggeration, this can be shown with extensive documentary and direct evidence, including direct evidence of the claimant lying to induce another to work for the claimant. Also, direct evidence which

~~shows the claimant lying to entice employees to help steal another companies' property.~~

~~21. This was a private correspondence sent with a good natured intention to warn the recipient, the statements I made in it are to the best of my knowledge true.~~

~~22. It is untrue to state my meaning as "entire" working life and "none" of the things claimed. To be clear, I believe there are some grains of truth as the seed of many of the claimant's claims. It appears the claimant's pattern of behaviour is then to expand on these grains over time until they become grossly exaggerated, fanciful and interconnected. The claimant is skilled at superficially communicating untruths as the truth, the claimant has therefore unfortunately succeeded in convincing prominent games industry publications to publish interviews and articles unchecked, the claimant has then subsequently used the gravitas of these publications to reenforce the claimant's version of events to others.~~

~~33. This was a private follow-up correspondence sent with a good natured intention to warn the recipient, the statements I make in it are to the best of my knowledge true.~~

~~34. It is untrue to state I said "thief" I stated that the claimant was a "fraud" my meaning being intentional deception, for which I hold direct evidence. As to the claimant being a thief in relation to money, that falls outside my purview and therefore I am unsure of the claimant's true motivations. However, I have direct evidence showing the claimant directing an employee to alter documents for the purpose of deceiving an investor, I can call witness this investor and this employee to detail how they were both extensively lied to by the claimant. I also have a copy of an investor~~

~~deck produced by the claimant for the purpose of attracting investment which contains verifiable lies.~~

~~35a. It is untrue to state Bad Panda Games is a large business, it is a small independent games company founded in 2017.~~

~~63. This was a correspondence I sent to the claimant shortly after I had seen two prior emails the claimant had sent to Mr Andrew Rosa. The two omitted emails contain threats of criminal and civil action upon Mr Rosa, they also contain a claim that the police had fully confirmed all allegations against the claimant as being false. I have these omitted emails and direct evidence from the police confirming that these threats made to Mr Rosa are untrue and there was in fact no action from the police towards Mr rosa, or myself. The police also state that the claimant's career history/CV was none of their concern and played no part in the investigation.~~

~~64. It is my belief the claimant has lied about the claimant's career, accomplishments and achievements. I have direct evidence showing the claimant defaming my career, accomplishments and achievements to the claimant's employees for the claimant's own advancement.~~

~~71a. In my professional opinion this figure is questionable and need verification via the corresponding development plan and schedule. In my view these documents should exist and be at hand if this deal existed. I was told these figures were verified by an independent venture capital team, however no access to this team or their data was provided.~~

~~71b. The term "retail royalty is unclear. I was also unable to verify this figure without the corresponding marketing budget and unit cost figures.~~

~~71c, d & e. I have direct evidence showing the claimant's former emmet.ai investor informing IBM not to work with the claimant after IBM approached this investor for information about the claimant.~~

~~I was offered no alternative dispute resolution by the claimant.~~

~~Mr Jason Peter McGann~~

~~12th October 2020~~

1. It is denied that the claimant is entitled to the relief claimed or any relief. It is denied that the third defendant published anything defamatory of the claimant, or that any such publication caused the claimant any loss to her reputation, or otherwise.
2. Save that no admissions are made as to the claimant's occupation, paragraph 1 of the Particulars of Claim is admitted.
3. It is denied that the first defendant is vicariously liable for the actions of the third defendant, as set out in paragraphs 2 and 4 of the Particulars of Claim or at all. It is denied that the third defendant is or was a non-executive director of the first defendant, or the agent of the first defendant at any time, or any purpose.
4. The third defendant does not plead to paragraphs 2 or 5 of the Particulars of Claim.

5. Paragraphs 6 – 8 of the Particulars of Claim do not concern the third defendant, who, accordingly, does not plead to them.

Post 2

6. Save that the words were not defamatory of the claimant, paragraph 9 of the Particulars of Claim is admitted.
7. Paragraph 10 of the Particulars of Claim is denied. However, whether the words in their natural and ordinary meaning bore the meanings and/or imputations contended for by the claimant, or the third defendant's meanings as set out below, it is substantially true that:
 - a. The claimant had never worked at MGM; and
 - b. The claimant had nothing to do with the game called Goldeneye on the N64 platform.
8. The third defendant asserts the truth of his comments – posted following an interview the claimant gave to Mr Andrew Rosa on the You Tube channel, Master-Cast TV, a niche channel catering to retro-gaming enthusiasts in which the claimant had made various claims regarding her involvement in various games – because many of those claims had subsequently been identified as wholly untruthful by those directly involved with those games, with the added comment that the claimant was incompetent. The third defendant added his comments to those pre-existing comments.

9. The third defendant had also carried out his own research into the matter, including contacting a director of MGM Interactive, a key AI programmer on the game; seeing confirmation from a senior artist at Rare; comparing the claimant's claims with the chronology and finding them incompatible with each other; and discovering that the claimant's purported involvement has never been mentioned by anyone involved in the game at a senior level.

10. Further, the third defendant's researches have shown that:
 - a. Although the claimant has claimed to work with Bill Stealey and Sid Meier, Mr Stealey does not remember her and Mr Meier does not mention her in his memoir.

 - b. The claimant had a conference call with Mr Stealey and Mr Schoff of the first defendant, during which the claimant pretended to know Mr Stealey and, when that was denied by Mr Stealey, said that Mr Stealey was maliciously lying.

 - c. Atari was created in 1984 when the claimant was 16. No one there has any memory of the claimant working there in 1984 and the claimant's claim of being "adopted" by the family who founded Atari is untrue. Mr Tramiel (the founder) and the claimant did not meet until 1994.

 - d. The claimant's claim of being a partner at Graftgold between 1982 and 1984 is untrue. In 1982 the claimant was 15. The claimant was employed on 6 weeks probation in 1987, when aged 20, and was not retained because she lacked the capacity to do the work.

- e. The claimant did not work with Mike Singleton on the game, Midwinter. She was employed in a minor capacity on Ashes of Empire for a few weeks as general help.
- f. The claimant was not approached by the artist HR Giger to work on Dark Seed, nor help in developing that game. The claimant's involvement was limited to play testing the game.
- g. The claimant exaggerated her role in Alien vs Predator for the Atari Jaguar console, secured her role in that game by pretending to experience she did not have, was not owed money by Atari despite her claims to the contrary, did not assist with the Jaguar console's hardware design or development tools contrary to her claims, and exaggerated the sales of the Jaguar console by a factor of around 350% in an effort to improve her reputation.
- h. The claimant did not complete a game named Power Crystal for the M2 console, whilst working for Perceptions (the trading name of a company called OmCourt Limited in which the claimant owned 55% of the shares). The company went into liquidation on 28th February 1997 with the game unfinished. The game had not been reviewed in Edge and Next Generation Magazines with any score, still less one of 100% given that the magazines score their reviews out of 10. The reviews were not pulled at the last minute as the claimant claims. The console was not cancelled until about June 1997, and in December 1997 Next generation reported

that the game had been entirely scrapped, without mentioning any review.

- i. Whilst the claimant may have briefly managed 10 people at EA Bullfrog, she was not VP in charge of Production, did not manage 40 internal studios across 12 countries whilst also managing 3rd party acquisitions, and is not credited on any game save for a special thanks in Populous The Beginning's credits. The claimant herself claimed on LinkedIn to have worked for Bullfrog for 8 months rather than 14 years.
 - j. The claimant is not credited on NFL Blitz and did not leave MGM as head of new technology.
 - k. Blue Sock Studios was incorporated on 9th December 2015. Staff were paid through the paypal account of the claimant's partner who was neither a director nor shareholder. Mr Schoff of the first defendant rescinded his interest in investing in Blue Sock Studios after discovering the claimant's untruthfulness about her career, prompting the claimant to claim that Mr Schoff had rescinded everything except a contract forcing the claimant to dress in a little girl's school uniform. The company was voluntarily struck off the Register on 4th February 2020.
11. Further or alternatively, insofar as the words made or contained the following comment or expression of opinion, namely that the third defendant's research persuaded him that the claimant was claiming credit for projects to which she was not entitled, the third defendant contends that the words were a statement

of opinion honestly held by the third defendant, and the third defendant repeats and adopts paragraphs 8 – 10 above.

12. Further or alternatively, the public has an interest in information about the success of commercial products and those who have contributed to that success, and the publication was accordingly a statement on a matter of public interest, into which the third defendant had researched as set out above.
13. The claimant does not appear to have brought any action against those people with direct involvement in the various games in which the claimant claimed to have been heavily involved. In the premises it is denied that the third defendant's comments, even if defamatory and actionable, caused the claimant serious harm or any special damage. The claimant had already been exposed as an incompetent fantasist by people whose reputation in the gaming industry far exceeded that of the third defendant.
14. Save as aforesaid, paragraph 11 of the Particulars of Claim is not admitted.
15. The third defendant will rely, if necessary, upon the provisions of sections 2 – 4 of the Defamation Act 2013.

Post 3

16. It is admitted that on 7th July 2019 in a private message to Mr Godley on LinkedIn, the third defendant published the words set out in paragraph 12 of the Particulars of Claim, in response to Mr Godley's public declaration that he

was thrilled and excited to have joined the claimant's company (Blue Sock Studios).

17. Paragraph 13 of the Particulars of Claim is denied. However, whether the words in their natural and ordinary meaning bore the meanings and/or imputations contended for by the claimant, or the third defendant's meanings as set out below, it is substantially true that:
 - a. The majority of the claimant's claims about her history and programming expertise were untrue; and
 - b. Laudatory articles about the claimant had been withdrawn; and
 - c. The claimant had stolen credit from other artists.

18. The third defendant asserts the truth of his comments, because he had discovered that the claimant had withdrawn from a BBC profile after her claims to be a separated conjoined twin (one of only 40 such twins in the world) could not be substantiated; that the claimant had regularly pretended to a role she did not have in the development of particular games, as set out in paragraphs 8 - 10 above, and that the claimant lacked adequate technical capacity in programming that would permit her claims to be true.

19. Further or alternatively, insofar as the words made or contained the following comment or expression of opinion, namely that the third defendant's research persuaded him that the claimant was untruthful about her personal history and was claiming credit for projects to which she was not entitled, the third defendant contends that the words were a statement of opinion honestly held

by the third defendant, and the third defendant repeats and adopts paragraphs 8 – 10 above.

20. Further or alternatively, the public has an interest in information about the success of commercial products and those who have contributed to that success, and the publication was accordingly a statement on a matter of public interest, into which the third defendant had researched as set out above.
21. The third defendant repeats and adopts paragraph 13 above. Further, Mr Godley appears to have taken no notice of the third defendant's message, and the claimant cannot thereby have suffered any loss, or any damage to his reputation.
22. The third defendant will rely, if necessary, upon the provisions of sections 2 – 4 of the Defamation Act 2013.
23. Paragraphs 15 – 20 of the Particulars of Claim do not concern the third defendant who, accordingly, does not plead to them.

Post 6

24. It is admitted that on 12th July 2019 in a private message to Mr Shuster on LinkedIn, the third defendant published the words set out in paragraph 21 of the Particulars of Claim. The words were published in response to Mr Shuster's announcement that he had won a prize that enabled him to use the claimant's revolutionary Athena technology, and to be mentored by the claimant.

25. Paragraph 22 of the Particulars of Claim is denied. However, whether the words in their natural and ordinary meaning bore the meanings and/or imputations contended for by the claimant or, as the third defendant contends, that he had evidence that the claimant was and had been a liar and a fraud for 30 years, the words were substantially true.
26. The third defendant asserts the truth of his words, for the reasons set out in paragraphs 8 - 10 and 18 above, and because he could find no evidence of the Athena technology ever existing. Further, as the claimant has never led an AAA video game to market, or successfully led a start-up to success, the claimant lacks adequate capacity to provide mentorship in video games production.
27. Further or alternatively, insofar as the words made or contained the following comment or expression of opinion, namely that the third defendant's research and evidence persuaded him that the claimant was a liar and a fraud, and that Mr Shuster should therefore have nothing to do with her, the third defendant contends that the words were a statement of opinion honestly held by the third defendant, and the third defendant repeats and adopts paragraphs 8 - 10, 18 and 26 above.
28. Further or alternatively, the public has an interest in information about the success of commercial products and those who have contributed to that success, and the publication was accordingly a statement on a matter of public interest, into which the third defendant had researched as set out above.

29. The third defendant repeats and adopts paragraph 13 above. Further, Mr Shuster would not engage with the third defendant and blocked him, and the claimant cannot thereby have suffered any loss, or any damage to his reputation.
30. The third defendant will rely, if necessary, upon the provisions of sections 2 – 4 of the Defamation Act 2013.
31. Paragraphs 24 – 32 of the Particulars of Claim do not concern the third defendant who, accordingly, does not plead to them.

Post 9

32. It is admitted that on 1st September 2019 in a private message to Mr Shuster on LinkedIn, the third defendant published the words set out in paragraph 33 of the Particulars of Claim. The words were published in response to Mr Shuster unblocking the third defendant.
33. Paragraph 34 of the Particulars of Claim is denied. However, whether the words in their natural and ordinary meaning bore the meanings and/or imputations contended for by the claimant, or the third defendant's meanings as set out below, it is substantially true that the claimant was a fraud.
34. The third defendant asserts the truth of his comments, for the reasons set out in paragraphs 8 – 10, 18, and 26 above.
35. Further or alternatively, insofar as the words made or contained the following comment or expression of opinion, namely that the third defendant's research

and evidence persuaded him that the claimant was a fraud, and that Mr Shuster and his company should peruse that evidence so that they did not get hurt by the claimant, the third defendant contends that the words were a statement of opinion honestly held by the third defendant, and the third defendant repeats and adopts paragraphs 8 - 10, 18, and 26 above.

36. As to paragraph 35, it is not admitted that Bad Panda was a large business or that the third defendant sent the communication to anyone other than Mr Shuster.
37. Further or alternatively, the public has an interest in information about the success of commercial products and those who have contributed to that success, and the publication was accordingly a statement on a matter of public interest, into which the third defendant had researched as set out above.
38. The third defendant repeats and adopts paragraph 13 above.
39. The third defendant will rely, if necessary, upon the provisions of sections 2 - 4 of the Defamation Act 2013.
40. Paragraphs 36 - 62 of the Particulars of Claim do not concern the third defendant who, accordingly, does not plead to them.

Post 17

41. It is admitted that on 2nd November 2019 in an email to the claimant, copied to Mr Rosa, the third defendant published the words set out in paragraph 63 of the Particulars of Claim. The words were published in response to the

claimant's attempt to pressurise Mr Rosa into taking down the video interview with the claimant, by implying to Mr Rosa that Mr Rosa was being investigated by the police.

42. It is denied that in their natural and ordinary meaning the words in their proper context bore or were capable of bearing the meaning pleaded in paragraph 64 of the Particulars of Claim.

43. Insofar as the words in their natural and ordinary meaning bore and were understood to bear the meanings and/or imputations set out below, it is substantially true that:

- a. The police had confirmed that there was no police action against Mr Rosa; and
- b. The claimant had sought to pressurise Mr Rosa by cc'ing a police officer into the claimant's email to Mr Rosa; and
- c. The claimant had untruthfully told others that Mr Rosa and the third defendant were liars and hate criminals (because they were said to deny that the claimant was a woman) with a vendetta against the claimant.

44. The third defendant asserts the truth of his comments, for the reasons set out in paragraphs 8 - 10, 18, and 26 above, and because:

- a. Although the claimant had threatened Mr Rosa with a US criminal investigation and civil proceedings, no such thing ever materialised; and
- b. The claimant's company, Keystone Games, has been voluntarily struck off the Register by directors other than the claimant or Mr Gordon

Cooper – who invested £200,000 seed capital – having exhausted its finances; and

c. The claimant was born a boy, named Andrew John Whittaker, on 12th October 1967, without a twin. He had a sister named Tracey Ann, who sadly died a few hours after her birth in 1970. The claimant was not, contrary to her claims, named Jane Rachel Jasmine Whittaker, was not a conjoined twin, did not have male upper parts and female lower parts and was never separated from her non-existent twin.

45. Further or alternatively, insofar as the words made or contained the following comment or expression of opinion, namely that the third defendant's enquiries demonstrated that the claimant had sent Mr Rosa oppressive emails implying that there was an active criminal investigation into Mr Rosa, and falsely threatening American civil and criminal proceedings, in an effort to persuade Mr Rosa to take down the video interview with the claimant by making things up, the third defendant contends that the words were a statement of opinion honestly held by the third defendant, and the third defendant repeats and adopts paragraphs 8 – 10, 18, 26 and 44 above.

46. Further or alternatively, the public has an interest in information about the success of commercial products and those who have contributed to that success, and the publication of the words to Mr Rosa were accordingly a statement on a matter of public interest, into which the third defendant had researched as set out above.

47. The third defendant repeats and adopts paragraph 13 above. Further, the email was published only to the claimant and Mr Rosa, and the third defendant denies that it was capable of damaging the claimant's reputation with Mr Rosa.
48. The third defendant will rely, if necessary, upon the provisions of sections 2 – 4 of the Defamation Act 2013.
49. Paragraphs 66 – 68 of the Particulars of Claim do not concern the third defendant who, accordingly, does not plead to them.
50. For the reasons set out in paragraph 12 above, paragraph 69 of the Particulars of Claim is denied.
51. For the reasons set out in paragraph 12 above, paragraph 70 of the Particulars of Claim is denied.
52. Paragraph 71 of the Particulars of Claim is denied. None of the projects listed are admitted to exist in reality. Insofar as any of them exist, they are likely to be premised upon the claimant's false account of her career and achievements, and are likely to be cancelled as soon as the truth about the claimant is known.
53. The claim is one flawed by fundamental dishonesty and the claimant should pay the costs thereof on an indemnity basis.

SIMON MYERSON QC

