

IN THE COUNTY COURT MONEY CLAIMS CENTRE

CLAIM No: D89YM035

BETWEEN:

MR DAVID RICHARD SMITH

Claimant

-And-

(1) MARKS & SPENCER PLC

Defendant

(2) THE CHIEF CONSTABLE OF THE METROPOLITAN POLICE

Proposed Defendant

PARTICULARS OF CLAIM

1. At all material times, the first Defendant employed Ms Julie Snook, Ms Judith Moffat, Mr Wesley Theophane and Mr Clemons Daley at their shop premises situate at Marble Arch, 458 Oxford Street, London, WC1 1AP (hereafter "the store"). Further and/or in the alternative, the aforesaid named individuals were otherwise servants or agents for and on behalf the first Defendant at all times material to this claim.
2. The Claimant was at all material times a paying customer of the first Defendant; moreover, a long standing patron of the above-mentioned store. Further, from 18th November 2012 to on or about 16th April 2014, the Claimant's wife; Ms Senait Woldetsadik was employed by the first

Defendant at the above-mentioned store set out above in paragraph 1. The Claimant's wife worked as one of the first Defendant's shop assistances.

3. Following the termination of his wife's employment, the Claimant continued to shop at the aforesaid store. In the course of so doing and in light of the unsatisfactory manner in which the first Defendant had terminated his wife's employment; the Claimant sought to clarify his concerns in relation to that termination. Accordingly, the Claimant attempted to seek clarification in relation to his concerns from the first Defendant, more particularly, Ms Julie Snook; hitherto the Claimant's wife line manager.
4. Prior to the termination of his wife's employment, the Claimant answered a number of telephone calls from Ms Snook in the course of which he made clear that the first Defendant's termination of his wife's employment had had a negative impact on his mental health.
5. On 9th May 2014, the Claimant visited the store so as to shop and if available, briefly speak to Ms Julie Snook. The Claimant accepts and volunteers that the purpose of his visit on this occasion was equally two-fold: one, to carry out some shopping and the other, to speak to Ms Julie Snook.
6. During the Claimant's visit to the store on 9th May 2014, he made enquires with security personnel for the first Defendant, namely; Mr Wesley Theophane. The Claimant enquired as to whether or not Ms Julie Snook was available to see him and if so, his wish to speak to her. In the event, Ms Snook was neither available to see the Claimant nor speak to him in anyway.

7. Some several months after 9th May 2014, albeit having attended the first Defendant's store in the interim singularly for shopping; the Claimant attended the first Defendant's store for an equally dual purpose as set out above in paragraph 5. Upon making a request to speak to Ms Julie Snook, the Claimant was then followed and questioned by the first Defendant's above-mentioned security personnel, namely; Mr Wesley Theophane. The Claimant found the manner and tone of Mr Theophane's treatment of him to be unnecessarily threatening, rude, abusive and distressing. Again the Claimant did not see, speak or communicate with Ms Snook in any way whatsoever.

8. On about 12th September 2014, the Claimant attended the first Defendant's store; his reason again was two-fold: namely, to shop and speak to Ms Julie Snook. On this occasion the Claimant made enquires with two employees of the first Defendant, one of whom being Ms Judith Moffat. The Claimant was accordingly informed that Ms Julie Snook was not available. During the course of this visit the Claimant was once again approached by the first Defendant's Mr Theophane. Mr Theophane once again treated the Claimant in a similarly unnecessarily rude and abusive way as set out above in paragraph 7. This incident resulted in the first Defendant providing the Claimant with a gift voucher in the sum of £50.00.

9. The Claimant attended the first Defendant's store on or about 10th October 2014. He did so with the intention to use the gift card presented to him by the first Defendant following the Claimant's complaint in relation to Mr Theophane treatment of him on 12th September 2014. In the course of this visit, the Claimant, conveniently, also wished to hand-

deliver a letter marked for Ms Julie Snook's attention. Soon after entry into the first Defendant's store, the Claimant was approached and thereafter questioned by a Police Officer. That Police Officer was PC 2636 Campion.

10. PC Campion questioned the Claimant as to his reason for attending the store. The Claimant in turn provided his reason in full. During the Claimant's conversation with PC Campion, one of the first Defendant's security personnel intervened and alleged that the Claimant had harassed members of the first Defendant's staff. The Claimant denied this allegation. Hurt and embarrassed by the allegation together with police questioning; the Claimant vacated the store without having used his gift card.

11. On 31st October 2014, the Claimant returned to the store so as to make use of his gift card. Shortly after his arrival, the Claimant was confronted by the first Defendant's Mr Theophane. Mr Theophane then proceeded to physically restrain the Claimant by taking hold of his arm and forcibly leading the Claimant to an area of the store of his choosing. Mr Theophane physically confined the Claimant's ability to move freely.

12. During the course of his above-mentioned confinement, Mr Theophane was joined by the first Defendant's Mr Clemons Daley. Messrs Theophane and Daley together continued to physically restrain the Claimant from moving. Whilst restraining/detaining the Claimant Mr Daley swore at the Claimant and threaten to "...smash..." his "...phone into..." the Claimant's "...face...". The Claimant apprehended immediate physical harm; he felt frighten and intimidated by Mr Daley's violent aggressive conduct towards him.

13. Whilst Messrs Theophane and Daley physical confined the Claimant, a document was handed to the Claimant. This document was not read. The Claimant volunteers and avers that at no stage whatsoever up to 31st October 2014, did the first Defendant notify him not to attend its store. In any event, the Claimant categorically avers he received no formal notice from the first Defendant preventing him from attending its store. In the premise, the Claimant avers that the treatment received at the hands of the first Defendant's Messrs Theophane and Daley amounted to false imprisonment, assault and battery.

Particulars

(i) The Claimant relies on the facts and matters above; Messrs Theophane and Daley had no lawful right to physically restrain or detain the Claimant;

(ii) In the course of his physical detention or in any event within close proximity to him; violent threats to do immediate physical harm to the Claimant were made.

14. On 4th November 2014 on or about 8.30am, PC Campion together with other police officers attended the Claimant's home. The Claimant was arrested. Further particulars in relation to that arrest are set out below. The Claimant, whom then as now, is retired and a veteran of the British Royal Air force was in poor physical health. He is now in poor mental health.

15. The Claimant, a man good character, was acutely distress; humiliated and embarrass by his arrest. He was handcuffed and escorted by police

officers to a police van parked in the locality of the Claimant's home. The arrest took place in full view of the Claimant's neighbours. Accordingly, the Claimant feels that he has lost all dignity, integrity and good standing amongst his neighbours and no longer feels able to engage in friendly conversation with them.

16. The Claimant volunteers and avers, among other matters, that his conduct hitherto 12th September 2014 and thereafter (including but not limited to 4th November 2014) was reasonable at all material times. Moreover, nothing in the Claimant's behaviour satisfied the required ingredients under section 5 Public Order Act 1986 or alternatively section 1 of The Protection from Harassment Act 1997. Further still, there was no material difference in the Claimant's conduct so as to give the proposed second Defendant reasonable or probable cause to arrest the Claimant on 4th November 2014. And if so, which is denied, the proposed second Defendant certainly had no reasonable or probable cause to arrest the Claimant in the manner and way it did or at all.

17. It is the averment of the Claimant that the first Defendant's arrest was procured by false and malicious statements. Those statements were made to police by the above-mentioned employees or otherwise servants or agents of the first Defendant.

Particulars of Falsity

- (i) Paragraphs 1 and 17 above are repeated.
- (ii) Ms Julie Snook provided police with a statement in which she accused the Claimant of having subjected her to harassment. She also contended that she had no idea as to why the Claimant wished

to speak to her. That allegation and contention was false. Prior to the Claimant's attempt to speak to Ms Snook, a number of telephone calls had been exchanged between the two. Those telephone calls were amicable at all times. Further, Ms Snook was fully aware of the fact that the Claimant wished to see and speak directly to her in relation to the termination of his wife's employment with the first Defendant.

- (iii) Ms Judith Moffat provided police with a statement in which she described the Claimant's manner as "...aggressive..." That allegation is false. As noted above, more particularly in paragraph 15, the Claimant's conduct was reasonable at all material times.

- (iv) Mr Wesley Theophane provided police with a statement in which he was critical of the Claimant's attitude. Mr Theophane described the Claimant's attitude as putting him on "...edge..." That allegation was false. Moreover, as averred here above in paragraphs 7 and 12, Mr Theophane's conduct towards the Claimant, together with that of Mr Clemons, was unlawful; violently threatening, rude and abusive. Conduct which the Claimant found particularly distressing.

Particulars of Malice

- (i) Paragraphs 1 to 17 above are repeated and the Claimant also pleads reliance on s.3 of the Defamation Act 1952 in relation to his claim for special damage.

- (ii) The Claimant's conduct has been reasonable throughout. The first Defendant's employees, servants or agents statements to police were motivated by a desire to bring about the Claimant's wrongful

arrest and thereby cause him and his wife yet further harm and damage. Alternatively, the first Defendant's employees, servants or agents statements were made recklessly.

- (iii) If the first Defendant's wished to stop the Claimant from attending the relevant store, this fact should simply have been formally communicated to him, which as noted above, was not.

Particulars of Special Damages

- (i) Travel and subsistence in relation to hospital appointments; General Practitioners appointments and Psychological therapists' sessions - £100.00.

18. The Claimant volunteers and avers that in so far as is relevant, the Claimant will seek to rely on the discretion provided to the Court under sections 33 and 32A of the Limitation 1980.

19. Further and in the alternative, the conduct of the first Defendant's employees, servants or agents, caused the Claimant personal injury or alternatively, exacerbated the Claimant's injury.

20. The first Defendant's employees, Ms Snook in particular, knew or ought to have known that the Claimant was vulnerable, not least because the Claimant's as noted in paragraph 4 above expressly informed Ms Snook of his vulnerable condition.

Particulars of Negligence

- (i) Without prejudice to the generality of the Claimant's averment as to his reasonable conduct throughout: the first Defendant's employees, servants or agents failed to take any or any sufficient

steps to inform the Claimant that he should not attempt to make any contact with Ms Snook and/or attend the store;

- (ii) In light of matters set out above the first Defendant's employees, servants or agents statements to police; were negligent and/or reckless and/or unnecessary and/or premature.

Particulars of Injury

(i) the Claimant born 28th June 1948 was 66 years of age at the time of the above-mentioned conduct on behalf of the first Defendant. The Claimant was and is physically disabled as a result of a server back injury and spinal operation. As a result of the first Defendant's act, the Claimant suffered mental injury in the form of Post Traumatic Stress. Although the Claimant's Psychological Therapist's has already provided the first Defendant with particulars of that injury, the Claimant will provide further particulars of injury in due course.

21. In the alternative to the Claimant's averment as to the procurement of his arrest by employees, servants or agents of the first Defendant, the Claimant avers that his arrest and thereby false imprisonment and unreasonably long detention without charge occurred as a result of the second Defendant's failure to ensure the proper exercise of their discretion to arrest, most notably to corroborate information received and thereto the necessity to arrest the Claimant. In the event, the proposed second Defendant had no reasonable or probable cause to arrest the Claimant as they so did, or to arrest the Claimant at all.

22. The proposed second Defendant is the Chief Officer of Police for the Metropolitan Police and is thereby liable for the acts and omissions of police officers referred to above and below acting under her discretion and control in the performance or purported performance of their duties.
23. As set out above, in paragraphs 13, 14 and 15 the Claimant was arrested at his home address on or about 8.30am on 4th November 2014.
24. PC Campion 2636, wrongfully and without reasonable or probable cause arrested the Claimant for a purported offence contrary to section 1 of The Protection from Harassment Act 1997.
25. The Claimant was handcuffed and taken from his home to a police van in full view of his neighbours. He was then transported to West End Central Police Station, arriving on or around 10.00am. A police sergeant thereafter authorised the Claimant's detention.
26. The Claimant was neither interviewed nor charged and was released on bail on or about 10.00pm. He was released into adverse weather conditions for which he was improperly dressed and without any means by which to contact family or friends for assistance.
27. Even if, which is denied, the Claimant was initially lawfully arrested, the Claimant was held at West End Central Police Station for longer than was reasonably necessary contrary to section 37 of the Police and Criminal Evidence Act 1984.

28. In the aftermath of his arrest and detention, the Claimant brought his complaint on appeal to the attention of the Independent Police Complaint Commission (“IPCC”). The IPCC upheld the Claimant’s complaint.

29. Without prejudice to the burden on the proposed second Defendant to justify the reason for the Claimant’s arrest and thereto length of detention, it is averred, there were no lawful grounds for the Claimant’s excessive detention in any event.

Particulars

- (i) the Claimant was arrested by a total of three police officers including PC Campion;
- (ii) there was no other individual who required to be or were interviewed in connection with the above-mentioned purported offence.
- (iii) the Claimant himself was not interviewed.

30. By reason of matters set out above, the Claimant has sustained loss and damage.

Particulars

- (i) Loss of liberty – 12 hours 30 minutes.

31. The Claimant will claim interest upon such damages as he may be awarded by virtue section 69 of the County Courts Act 1984 at such rate and for such period as this honourable Court shall consider fit.

AND THE CLAIMANT CLAIMS:-

1. Damages exceeding £5,000 but not more than £15,000;
2. Damages for Assault, battery and false imprisonment;
3. Damages for false and malicious complaint including aggravated or alternatively special damages;
4. Damages for unlawful arrest and false imprisonment;
5. The aforesaid interest thereon.
6. Costs.

Trevor P. Browne

Statement of Truth

I believe that the facts contained in this Particulars of Claim are true.

Dated ...19/02/2018...

Signed ......