

This is deeply prejudicial to Defendants. The personification of judicial fairness is the figure of Dame Justice holding her scales perfectly balanced between the parties. It is the statue that stands not only at the Old Bailey in London, the Supreme Court of Canada, the Supreme Court of Queensland, but also outside courthouses in Switzerland, Hungary, Japan and many other countries

far from the Common Law tradition – for it represents that the judges and juries within will do impartial justice as between plaintiff and defendant. The perfectly balanced scales are, one notices, the central image in the badge of this very court – the Superior Court of the District of Columbia.

Yet it is hard to conceive of a more fundamental imbalance in the scales of justice than *allowing the plaintiff to have his name on the scale but not the defendants.*

This is very seriously prejudicial, both to the remaining parties and to those long gone from this case, not least with respect to the eventual judgment. Per *Devlin v. Scardelletti* (US Supreme Court, 536 U.S. 1, 2002):

*The ‘parties’ to a judgment are those named as such... Karcher v. May, 484 U.S. 72, 77 (1987). As the Restatement puts it, ‘[a] person who is named as a party to an action and subjected to the jurisdiction of the court is a party to the action,’ Restatement (Second) of Judgments § 34(1), p. 345 (1980) (hereinafter Restatement); **‘[t]he designation of persons as parties is usually made in the caption of the summons or complaint.’ [EMPHASIS ADDED]***

In which case it is vital that the case caption reflect reality. See, inter alia, *Cameron v. EMW Women’s Surgical Ctr.* (US Supreme Court, 142 S. Ct. 1002, 2022):

*Here, because respondents initially named then-Attorney General Beshear as the lead defendant in their complaint, the District Court’s orders originally captioned the defendants as ‘ANDREW G. BESHEAR, et al.’ E.g., App. 28. **After the District Court dismissed the attorney general on May 21, 2018, the court ordered the clerk to modify the case caption to ‘reflect the remaining properly named Defendants’: ‘Meier, et al.’ Id. , at 5, 7; see also App. to Pet. for Cert. 104a (District Court final judgment listing the defendants as ‘ADAM W. MEIER et al.’).** [EMPHASIS ADDED]*

There are potentially confusing and disastrous consequences to an inaccurate “case caption”. *Jaffe v. Nocera* (District of Columbia Court of Appeals, 493 A.2d 1003, 1985) quotes a letter from counsel:

*[T]he case caption refers to Nocera, Papermill Associates and Columbine. **If they are jointly the ‘respondent,’ that would of course affect the assets which might***

be used to satisfy any judgment entered. Thus, the requested clarification is that the respondent be identified as Papermill Associates Limited Partnership.

[EMPHASIS ADDED]

As the Court of Appeals held:

The parties are those who are named in the pleadings. The trial court appeared to base its determination that the caption of the demand is irrelevant on three cases... The court reassured the plaintiff by noting that an administrative captioning 'has no effect on what cause of action and what parties are (or are not) joined in the substantive allegations of the pleadings.' 667 F.2d at 482. We do not read these cases as providing authority for the trial court's holding that Nocera was not a party to the arbitration even though he was personally served with a demand for arbitration naming him as such. [EMPHASIS ADDED]

American courts have insisted on amending the case caption to correct even the most footling errors in a corporation's public identity¹, or modest spelling mistakes². They have also denied attempts to maintain on the marquee parties that have been dismissed. Per *Anderson v. Local 435 Union* (District of Delaware Civ. No. 12-1119-LPS, 2017):

The Court will also deny Plaintiff's motion to correct the case caption found in the April 29, 2016 order. (D.I. 52) The caption contains the name of Local 435, but not GM's name. Plaintiff asks the Court to include GM in the caption. There is no need to do so. At the time the order was entered, GM had been dismissed as a defendant. [EMPHASIS ADDED]

Beyond the case law, the practical effect of this mis-titled case is to distort the nature of the parties: Plaintiff Mann is permitted to appear as a plucky little individual doggedly battling corporate interests, but Defendants are misleadingly cast as mere stooges for two large, rich, powerful and

¹ Exhibit A: *Lin Gao v. St. Louis Language Immersion Sch., Inc* (Eastern District of Missouri, No. 4:13CV1956 SPM, 2014): "Plaintiff has incorrectly named defendant as the Chinese Department/School of St. Louis Language Immersion School. Defendant has motioned the Court to amend the case caption with its correct corporate name, St. Louis Language Immersion Schools, Inc. [Doc. #19]. Defendant's motion will be granted."

² Exhibits B, C: *Cervantes v. Scott* (District of Nevada, No. 2:17-cv-00562-MMD-DJA, 2020); *Moore v. Kulkarni* (Eastern District of Michigan, No. 1:18-cv-12280, 2019)

highly partisan entities. This is prima facie prejudicial, since it is passing off both Plaintiff and Defendants as something they are not.

Furthermore, in the event that Defendants were to prevail at trial, the Court's obsolescent labelling of the case would deny them the fruits of victory. Defendant Steyn is mindful of Plaintiff's form in such matters. When Plaintiff's suit against Steyn's friend and compatriot Dr Tim Ball was dismissed by the Supreme Court of British Columbia for Mann's failure to prosecute³, that should have been the end of it: Mann lost; Ball won; case closed. Instead (and in addition to refusing to pay what he owed Dr Ball, to the point where Mrs Ball was obliged to "crowdfund" for the costs of her ruined husband's funeral⁴), Mann told his legions of fan-boys that he hadn't really lost at all⁵:

*The defendant Ball did not 'win' the case. The Court did not find that any of Ball's defenses were valid. The Court did not find that any of my claims were *not* valid.*

[EMPHASIS IN ORIGINAL]

It is not difficult to imagine Plaintiff reacting similarly to a defence victory in this Court:

Simberg and Steyn did not 'win' the case. How could they? They are not even named parties on the case docket...

And, in the event that Defendants lost, it would equally be prejudicial to *National Review* to have the press reporting that, in the matter of *Mann vs National Review*, Mann had prevailed.

Furthermore, no prudent person familiar with Plaintiff's modus operandi would rule out attempts to suggest (per *Jaffe vs Nocera* above) that NR and CEI need to pony up their share of the eleventy-bazillion dollars in damages.

So there are real-world consequences to the ongoing misnaming of the case.

³ Exhibit D: *Mann vs Ball* Mr Justice Giaschi's Reasons for Judgment (Supreme Court of British Columbia, 22nd August 2023)

⁴ Exhibit E: "Ball's Bearing", *Ave atque vale*, SteynOnline (26th September 2022)

⁵ Exhibit F: Michael E Mann Facebook statement, 23rd August 2019
<https://www.facebook.com/221222081267335/posts/there-have-been-some-wildly-untruthful-claims-about-the-recent-dismissal-of-libe/2470358663020321/>

Impartial justice demands that the case be re-titled (with immediate effect, given that we are three months from trial) in compliance with the Court's order of 11th January and that the clerk, the parties and any other relevant bodies be directed to amend the name of *Mann vs National Review* to that stated by the Court:

Mann vs Simberg and Steyn

But certainly parties no longer in the dock should not be on the docket.

Dated: 21st August 2023

/s/ Mark Steyn

Mark Steyn
Defendant

CERTIFICATE OF SERVICE

I hereby certify that on 21st August 2023 a copy of the above motion was served via electronic filing or electronic mail on the following:

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Dated: 21st August 2023

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