Neutral Citation Number: [2025] EWHC 13 (KB)

Case No: KB-2024-001325

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 January 2025

Before:

RICHARD SPEARMAN K.C
(sitting as a Deputy Judge of the King's Bench Division)

- -

Between:
EVANGELOS MARINAKIS

Claimant

- and -

(1) IRINI KARIPIDIS
(2) AMANI SWISS (CYPRUS) LIMITED
(3) ARI HAROW
(4) SHEYAAN CONSULTING LIMITED

Defendants

- -

David Sherborne (instructed by Slateford Law) for the Claimant
Matthew Hodson (instructed by Gary Summers) for the First and Second Defendants
Ali Reza Sinai (instructed by Keystone Law) for the Third and Fourth Defendants

Hearing date: 31 October 2024

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This judgment was handed down remotely at 10.30am on 10 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Richard Spearman KC

INTRODUCTION

1. This is the hearing of the applications of (a) the First and Second Defendants dated 26 July 2024 and (b) the Third and Fourth Defendants dated 10 July 2024, each seeking (i) to set aside the Order of Senior Master Cook dated 29 May 2024 whereby he granted the Claimant permission to serve the Claim Form on those Defendants out of the jurisdiction and (ii) an Order that the Claimant pay those Defendants' costs on the indemnity basis.

2. That Order was made on the application of the Claimant by notice dated 10 May 2024, without notice to the Defendants, and without a hearing. The Claimant's application was supported by the first witness statement of the Claimant's solicitor, Christopher Howard Scott, dated 10 May 2024. No Skeleton Argument was lodged in support of the Claimant's application. However, Mr Scott's witness statement included a number of submissions on the law (for example, paragraphs 28, 29 and 31 state: "Each of the four Defendants is domiciled out of the jurisdiction. Neither CPR Rules 6.32 nor 6.33 apply, so the Claimant requires permission to serve the claim form out of the jurisdiction under CPR Rule 6.36 and 6.37 … the Claimant seeks to rely on both of the heads of jurisdiction or "gateways" identified at both Paragraphs 3.1(9) and (2) of Practice Direction 6B in order to serve his claim form upon the Defendants out of the jurisdiction … In the present case, the Claim falls within the scope of paragraph 3.1(9)(a) and (b) of Practice Direction 6B"; and paragraphs 46 and 47 state: "The jurisdiction of England and Wales is clearly the most appropriate place in which to bring an action in respect of this claim for the purposes of CPR Rule 6.37(3) as modified by Section 9(2) Defamation Act 2013 … the jurisdiction of England and Wales is clearly the most suitable place for the Claim to be brought.")

3. No grounds were identified in the First and Second Defendants' application notice. However, their application was supported by, among others, the witness statement dated 26 July 2024 of Gary Summers, a barrister directly instructed by those Defendants, which states at paragraph 10: "The court is respectfully invited to set aside and/or discharge the Order, and then decline jurisdiction, on each or any of four bases: (a) The Claimant did not give full and frank disclosure in its (sic) application. (b) England and Wales is not clearly the most appropriate place in which to bring this action. (c) The claim against the First and/or Second Defendants lacks merit. (d) The claim against the First and/or Second Defendants is an abuse of process." The First and Second Defendants' application was further supported by (i) a witness statement of the First Defendant (who gives her name therein as "Eirini Karypidou") dated 16 August 2024 and (ii) a witness statement also dated 16 August 2024 of an individual described as "Investigator A", who gives their address as "c/o" the chambers of Mr Summers, and who states at paragraph 1 of that witness statement "I am a professional investigator … Due to the sensitivities of this matter, I have not identified myself at this stage (as my work is still ongoing) …". The First Defendant states at paragraph 1 of her witness statement that it is "made on behalf of myself alone"; and at paragraph

3 she lists every company of which, on her case, she is a director or in which she has a shareholding. The Second Defendant is not on that list.

4. The grounds identified in the Third and Fourth Defendants' application notice were, in summary, (i) that the Claimant did not give full and frank disclosure of the merits of his claim when making his application to Senior Master Cook and (ii) that the claims against each of those Defendants were "insufficiently strong to merit the exercise of [the] jurisdiction [to try the claims against the Third and Fourth Defendants]". That application was supported by the witness statement of the Third Defendant dated 10 July 2024, in which he describes himself as the "founder and owner of the Fourth Defendant", and which summarises the grounds of the application in paragraph 5 as follows:

> "I believe, for the reasons set out below, that the Claimant did not provide the Court with the information which I am advised he was obliged to provide in his application for permission. I also believe that the claims against me and the Fourth Defendant are so weak that even though I accept that the Court has jurisdiction over those claims as pleaded, it should decline to exercise that jurisdiction. Whether the Claimant's failure to provide the Court with all the information he was obliged to provide was linked to a realisation of the weakness of the claims against me and the Fourth Defendant I am unable to say, but I do believe that that failure had the effect of concealing that weakness from the Court."

5. The Claimant served evidence in reply, all of which is dated 17 October 2024, comprising (i) a second witness statement of Mr Scott, (ii) a witness statement of the Claimant, (iii) a witness statement of Ioannis Vrentzos, and (iv) a witness statement of Yiannis Kourtakis. This was followed by a second witness statement of Mr Summers dated 28 October 2024, served on behalf of the First Defendant, which attacked the credibility of Mr Kourtakis on the basis that he is a "professional slanderer who has been convicted of slander in Greece on several occasions", and, further, complained that he had not mentioned that he was a defendant to a claim for criminal libel that had been brought by the First Defendant and her brother in Greece.

6. Mr Matthew Hodson appeared for the First and Second Defendants, Mr Ali Reza Sinai for the Third and Fourth Defendants, and Mr David Sherborne for the Claimant. I am grateful to all of them for their clear and helpful written and oral submissions.

THE PARTIES

7. According to paragraph 1 of the Particulars of Claim, the Claimant is a Greek national, and a businessman who has been well-known since 2017 for his involvement in and ultimate beneficial ownership of Nottingham Forest Football Club ("NFFC"), which is currently playing in the English Premier League. Not only is the Claimant, through his companies, the majority owner and chairman of NFFC, he also "attends games and other events as a prominent public figurehead for the club". In addition, the Claimant has longstanding business relationships in London, having founded Curzon Maritime

Limited, a ship-broking company, in 1991 in England and Wales, and having lived in London for many years thereafter. He maintains extensive commercial interests in England and London through the Capital Group of shipping businesses, whose brokering, insurance and legal services "all have a keen focus on London". His personal interests in London include "longstanding personal and social connections", and he is a member of a number of clubs (namely Mossimann's, Oswald's, 5 Hertford Street and The Arts Club).

8. According to paragraph 2 of the Particulars of Claim, the Claimant has a number of other international business interests, including in the world of shipping, media and sports. Among other things, the Claimant is the majority shareholder in Olympiacos FC, a football club that competes in the Super League Greece.

9. Paragraph 3 of the Particulars of Claim pleads that the First Defendant is (i) resident in Greece, (ii) the President and Managing Director of the Second Defendant, (iii) the chairperson of Aris Thessaloniki FC, a football club that also competes in the Super League Greece, and (iv) the chairperson of the Hellenic Trade Council, HETCO, an international non-governmental organisation based in Athens, Greece. According to the First Defendant, however, she is not a director of the Second Defendant (see [3] above).

10. Paragraph 3 of the Particulars of Claim further pleads that the Second Defendant (i) is a limited company incorporated in Cyprus whose sole shareholder is the First Defendant's husband, Mr Dimitris Messinezis, and (ii) operates in numerous international industries such as trade, agri-foods, logistics, real estate, tourism, sports (including its ownership of Aris Thessaloniki FC), and green technologies. The Second Defendant's case is that she has never been married to Mr Messinezis, although she accepts that he is or was her partner.

11. Paragraph 4 of the Particulars of Claim pleads that the Third Defendant (i) is resident in Israel, (ii) is a political consultant, and a former chief of staff to the current Prime Minister of Israel, Benjamin Netanyahu, and (iii) is the founder and chief executive officer of the Fourth Defendant, which is also based in Israel and operates as a consultancy, advising on and delivering political advocacy strategies internationally.

THE CLAIM

12. Paragraph 5 of the Particulars of Claim states that the Claimant's claims against the Defendants are for (1) libel and (2) unlawful means conspiracy, and arise out of a "smear campaign" waged against the Claimant from 8 November 2023 until at least 23 March 2024 ("the Campaign"). It is pleaded that the Campaign "was organised, paid for and pursued … by the First and Second Defendants", and that "the Third and Fourth Defendants participated in its creation and implementation, including facilitating payments and providing instruction as part of [the Campaign]".

13. Paragraph 6 explains that the Claimant sets out below "the best particulars which he is able to give in relation to [the Campaign] waged against him by the Defendants" prior to "the provision by them of full disclosure and/or further information". Paragraph 6 continues:

"This has involved the publication of false and defamatory allegations about him:

6.1 in individual articles on a website, the homepage of which was at the URL https://nottinghamforestfire.co.uk ("the Website");
6.2 in videos published on the YouTube channel "Nottingham Forest Fire", using the YouTube handle @NottinghamForestFire and publishing from the URL https://www.youtube.com/@NottinghamForestFire ("the YouTube Channel");
6.3 in posts and reply posts on 'X' by the 'X' account 'nottinghamforestfire', using the 'X' handle @nottinghamff ("the X Account"); and
6.4 on mobile billboards ("the Mobile Billboards") driven around Nottingham, UK, by promotional digital advertising vans ("Digivans") on 23 December 2023 ("the First Billboard") and 7 January 2024 ("the Second Billboard")."

14. Paragraphs 7 to 12 of the Particulars of Claim plead further details of each of these forms of publication, as follows:

(1) The domain name of the Website, nottinghamforestfire.co.uk, was registered on 8 November 2023 via GoDaddy.com LLC with Nominet, the exclusive domain registrar for UK domain names. The following day, 9 November 2023, the three individual Website articles complained of in this action and particularised below ("the Website Articles") were published on the Website in Anglicised rather than Americanised English, to appear written by and for an English audience.

(2) The X Account was also created on 8 November 2023. More than 200 posts and reply posts were published by the X Account, making false and defamatory allegations against the Claimant. The six X posts complained of in this action ("the X Posts") actively encouraged the reader to visit the Website, and provided the Website's domain name or a preview image for those purposes.

(3) The YouTube Channel was created on 27 November 2023. On that day, four of the six YouTube videos complained of in this action ("the YouTube Videos") were published on the Channel. The fifth and sixth videos were published on 20 December 2023. The first, second, fifth and sixth videos actively encouraged the viewer to visit the Website, and included the Website's domain name for those purposes.

(4) The First Billboard was driven around Nottingham, UK by a low-load Digivan with the vehicle registration number ("VRN") BW17 FFM on 23 December 2023, ahead of a football fixture between NFFC and AFC Bournemouth that same day. This Digivan and the First Billboard were operated by Promogroup Ltd, a UK-based advertising agency. In addition to the matters particularised below, the First

Billboard contained a quick response ("QR") code, which when scanned brought the user to the Website.

(5) The Second Billboard was driven around Nottingham, UK by a Digivan with the VRN CE71 APF on 7 January 2024, ahead of a football fixture between NFFC and Blackpool FC that same day. This Digivan and the Second Billboard were operated by Communicorp UK Ltd, a UK-based marketing agency. In addition to the matters particularised below, the Second Billboard contained a quick response ("QR") code, which when scanned brought the user to the Website.

(6) From 9 November 2023 and at all material times thereafter, the Website contained the following contents ("the Website Contents"):

a. a carousel, which presented and enabled the user to access the three Website articles complained of in this action;
b. the three Website articles complained of in this action;
c. a tab titled "*TIMELINE*", which when clicked presented the user with a timeline, scrollable horizontally, with entries for the years 2011, 2014, 2015, 2021 and 2023 and respectively titled "*ORGANIZED CRIME*", "*Drug Trafficker*", "*Match Fixer*", "*Sanctions Evader*", "*Murderer?*" and "*Money Laundering*";
d. a panel which appeared at the bottom of the home page of the Website, which described the Claimant as "*responsible for corruption*" and encouraged readers to "*Stand for Justice & a Corruption-Free Future in Football!*" by signing up for updates and providing their first name, last name, email address and telephone number; and
e. a horizontal scrollbar part the way down the home page of the Website ("the Scrollbar"). The Scrollbar contained three boxes. Each box contained a photograph of the Claimant and a modified version of the logo of NFFC ("the Modified Logo"). The Modified Logo depicted the original NFFC logo's tree as being on fire, and included the additional word "*FIRE*" under the word "*FOREST*".

The first box contained the words "*CHARGE MARINAKIS WITH HIS CRIMES[.] CORRUPTION, MATCH-FIXING, DRUG TRAFFICKING*". The second box contained the words "*NOTTINGHAM FOREST F.C. NEEDS NEW OWNERSHIP! REMOVE CORRUPT EVANGELOS MARINAKIS*". The third box contained the words "*WE NEED NEW OWNERSHIP!*". The Claimant will refer to the fact that when users of the Website hover their cursor over the boxes a prompt to download the image appears, indicating it is intended to be used and shared by visitors to the Website on their own social media as part of the campaign.

15. Paragraph 13 of the Particulars of Claim pleads that the Campaign "was deliberately designed to and did give the false impression that it was a NFFC fan-led, 'grassroots' campaign relating to the ownership of NFFC ("the Fake NFFC Campaign"), rather than, as was the case, a smear campaign against the Claimant involving the Defendants". It then pleads a number of facts and matters in support of that contention, including that "the role of each of the individual Defendants in [the Campaign] was

concealed from anyone who visited the Website and/or viewed any of the publications complained of in this action".

16. Paragraph 14 of the Particulars of Claim pleads that the Campaign "was devised and implemented with the assistance of Harris Media LLC ("Harris Media"), a digital communications and marketing agency based in Texas, USA". It then pleads the Claimant's case as to the role and activities of Harris Media "pending full disclosure and/or the provision of further information". Among other things, it is pleaded that Harris Media (i) registered the YouTube channel at the channel url @NottighamForestFire through the email address and Google account nottinghamforestfirefangroup@gmail.com, "taking instructions from the First Defendant on the use of the YouTube channel as demonstrated in an email of 9 January 2024" and (ii) was responsible for commissioning Communicorp UK Ltd either directly or via the Yellow Rook LLC entity "as noted in instructions from the First Defendant to Harris Media of 9 January 2024 updating on [the Campaign] and referencing activity in Nottingham on 7 January".

17. Paragraph 15 of the Particulars of Claim pleads that in light of the scale and wide-ranging nature of the Campaign, and the gravity of the false and defamatory allegations levelled against him, the Claimant was forced to instruct legal representatives to take steps to limit the impact of the Campaign and to secure the removal of the false and defamatory allegations made online as part of it, and that in the result (i) the first four YouTube videos complained of in this action were geo-blocked in this jurisdiction on 12 December 2023; (ii) the X Account was deactivated and permanently taken offline on 29 December 2023; (iii) the Website was taken down on 19 January 2024; and (iv) the YouTube channel and the remaining two YouTube videos were removed on approximately 23 March 2024.

18. Paragraphs 16 to 69 of the Particulars of Claim then plead in detail the nature and content of the 17 publications which the Claimant complains of, comprising the six X Posts, the six You Tube Videos, the First Billboard, the Second Billboard, and the three Website Articles.

19. Paragraphs 70 to 86 of the Particulars of Claim plead the defamatory meanings which the Claimant contends that those publications bear. There is considerable overlap between the meanings pleaded in respect of different publications. In order to demonstrate the general tenor of the meanings relied on, as well as their seriousness, it is sufficient to record that paragraph 73 pleads that in their natural and ordinary meaning, the words complained of in the First YouTube Video meant and would be understood to mean that:

    (1) the Claimant was guilty of criminal football match-fixing practices in Greece, including extortion, fraud and arson;

    (2) despite pretending publicly to be critical of the Russian Federation's invasion of Ukraine in 2022, the Claimant had cynically and hypocritically engaged in

lucrative commercial activities for his own personal gain which indirectly supported the Russian war effort in Ukraine – notably the transportation, through his company, Capital Ship Management, of Russian oil;

(3) there are strong grounds to suspect that the Claimant is deeply and actively involved in international heroin trafficking, including through being in consistent communication with and meeting with key figures in an international heroin smuggling network, and providing substantial amounts of money to individuals themselves deeply involved in trafficking heroin;

(4) the Claimant is the leader of a criminal organisation known as "The System", through which he and others engaged in criminal and corrupt practices to [exercise] control over national football in Greece, including fraud, attempted extortion, bribery, intimidation.

20. Paragraphs 87 to 96 of the Particulars of Claim set out the Claimant's case (1) that each of the statements complained of reached a substantial number of publishees in this jurisdiction and (2) as to how the statements complained of have caused him serious reputational harm for the purposes of section 1 of the Defamation Act 2013. In summary, the pleaded case concerning the extent of publication relies on the length of time that the publications were available, the fact that they were targeted at NFFC supporters who are predominantly based in this jurisdiction, the cross-fertilisation of the publications, the known extent of a number of the publications (for example, that "Shortly before [they were] geo-blocked in England and Wales, on 11 December 2023, the First YouTube Video had been viewed 20,000 times … [and] … the Second YouTube Video had been viewed 16,000 times"), and the "grapevine effect" (recognised in the authorities, and which applies perhaps most acutely to publications on social media). In summary, in addition to those factors relating to the nature and extent of publication, the pleaded case concerning serious harm relies on (i) the nature and extent of the Claimant's reputation in England and Wales, (ii) the highly defamatory meanings of the words complained of, and (iii) the contention that due to the way in which the Campaign was presented the allegations concerning the Claimant were likely to have been believed by all, or a significant proportion of, the publishees.

21. Paragraph 97 of the Particulars of Claim pleads that "The Defendants' single and joint liability for the [Campaign] can be demonstrated by or is to be inferred from the following facts and matters".

22. Paragraphs 97.1 to 97.4 then set out the Claimant's case against the First Defendant.

23. This includes the following text, which comprises the sole reference to the Second Defendant in the context of the pleaded case on "single and joint liability" for the Campaign:

"97.2 The First Defendant paid Harris Media to devise and implement the Smear Campaign. This payment was made in two instalments. It was effected by the First Defendant directing and authorising the Second Defendant to pay the two instalments, which instalments the Second Defendant did in fact pay on the First Defendant's behalf."

24. Paragraph 97.5 pleads that the Third Defendant:

"97.5.1. had a pre-existing relationship with the First Defendant;

97.5.2 acting with and/or through the Fourth Defendant, referred the First Defendant to Harris Media for the purposes of engaging and instructing Harris Media;

97.5.3 with and/or through the Fourth Defendant, earned a referral fee for having done so;

97.5.4 acted as a conduit for the payment of the second instalment by the Second Defendant to Harris Media for the devising and implementation of the Smear Campaign, by directing and/or authorising the Fourth Defendant to act as a conduit for that payment;

97.5.5 was copied into a significant amount of email correspondence between the First Defendant and Harris Media relating to the content and execution of the Smear Campaign over December 2023;

97.5.6 passed on instructions from the First Defendant to Harris Media;

97.5.7 generally referred new clients to Harris Media (on numerous occasions which the Claimant cannot presently identify pending full disclosure and/or the provision of further information);

97.5.8 had a pre-existing relationship with Mr Harris, on the basis of:

97.5.8.1 the Third Defendant's and Harris Media's involvement in the electoral campaign of Israeli Prime Minister Benjamin Netanyahu in 2015;

97.5.8.2 the Third Defendant's and Harris Media's involvement in a campaign run by an American organisation, "Shining City", in 2014-2015; and

97.5.8.3 the Third Defendant's and Harris Media's involvement in a US-based organisation, "One Jerusalem"."

25. Paragraph 97.6 pleads:

> "97.6 In the premises, the Claimant will contend that on the basis of the facts and matters particularised above, it is clear (or clearly to be inferred) that the Third Defendant:
>
> 97.6.1 had a comprehensive understanding of the services provided by Harris Media, and of the means by which it was prepared to deliver those services;
>
> 97.6.2 referred the First Defendant to Harris Media in the knowledge that she intended to instruct Harris Media to devise and implement a smear campaign against the Claimant;
>
> 97.6.3 knew about the different features of the Smear Campaign, being the Website, the Website Articles, the YouTube Videos, the X Posts and the Mobile Billboards, and about the false and defamatory allegations about the Claimant which were published through those channels; and
>
> 97.6.4 was therefore knowingly and actively involved in the process of publishing the statements complained of by the Claimant."

26. Paragraph 97.7 pleads:

> "In the premises, the Claimant will contend on the basis of the facts and matters particularised above, that it is clear (or clearly to be inferred) that the Fourth Defendant was knowingly and actively involved in the process of publishing the statements complained of by the Claimant."

27. Paragraph 98 pleads that each of the publications complained of have caused the Claimant damage in the form of "grave" harm to reputation and "considerable" distress and embarrassment. Paragraph 99 contains a claim for aggravated damages.

28. Paragraph 100 contends that, in addition, the Claimant has sustained special damages, the best currently available particulars of which are said to be contained in an Annex to the Particulars of Claim. This Annex claims "Costs of investigating, exposing and mitigating the conspiracy up until March/April 2024" in the sum of £1,663,288.94 and "Cost[s] of continuing to deal with the conspiracy" in the estimated sum of £447,000. The first head of claim includes Counsel's fees of £37,225.00 and solicitors' fees of £314,015.50, investigative fees of £809,572.49, and US counsel fees of £93,096.20. The second head of claim includes solicitors' fees of £50,000 per month for 6 months.

29. Paragraph 101 contains a claim for an injunction to restrain further publication.

30. At paragraph 102, the Particulars of Claim move on to "The Claim for Conspiracy to Injure by Unlawful Means". Paragraphs 102 to 105 plead as follows:

> "102 The First, Second, Third and Fourth Defendants (or any two or more together) wrongfully and with intent to injure the Claimant and by unlawful means conspired and combined together to publish or cause to be published the false and defamatory allegations set out above. Paragraphs 5 to 15 and 97 above are repeated.
>
> 103 Pursuant to and in furtherance of this conspiracy, the First, Second, Third and Fourth Defendants published or caused to be published the said false and defamatory allegations, which had the foreseeable result of injuring or causing harm to the Claimant.
>
> 104 As a result of the matters set out above, the Claimant has been caused (and will continue to be caused) loss and damage, in the sum of at least £2,100,000, as identified in Schedule 1 to these Particulars of Claim. The Claimant reserves the right to seek additional losses as and when they are identified during the course of these proceedings.
>
> 105 By reason of the aforesaid conspiracy and by reason of the unlawful means identified above (namely the acts of publication complained of above), the First, Second, Third and Fourth Defendants are jointly and severally liable to the Claimant in damages for conspiracy."

31. Paragraph 106 contains a claim for interest under the Supreme Court Act 1981, and paragraph 107 a further claim for an injunction to restrain future acts of conspiracy.

32. The prayer for relief seeks damages, interest, injunctions, and "further or other relief".

THE LEGAL FRAMEWORK

33. There was no dispute between the parties as to the applicable legal principles.

34. In *Soriano v Forensic News LLC* [2021] EWCA Civ 1952; [2022] QB 533 (*"Soriano")*, Warby LJ summarised the law on service outside the jurisdiction and *forum conveniens*, at [11]-[12], as follows:

> "11. This is well established. For present purposes, it can be adequately distilled as follows. The court can only give permission to serve a claim on a defendant outside the jurisdiction if it meets three conditions.
>
> (1) The first is that the claim is of a kind that falls within one of the "gateways" set out in CPR PD 6B ("the Gateway Requirement"). On this question, the claimant has to satisfy the court that he has a good arguable case or, as it is sometimes put,

the better of the argument. This connotes "more than a serious issue to be tried or a real prospect of success, but not as much as proof on the balance of probabilities": *AstraZeneca UK Ltd v Albemarle International Corpn* [2011] 1 All ER (Comm) 510, para 24 (Hamblen J).

(2) Secondly, the claimant must satisfy the court that he has a real as opposed to a fanciful prospect of success on the claim ("the Merits Test"). One way this has been put is that the claimant has to show that any "reverse" summary judgment application would fail.

(3) Thirdly, "The court will not give permission unless it is satisfied that England and Wales is the proper place in which to bring the claim": CPR r 6.37(3) ("the Forum Test"). This is normally resolved by reference to the "Spiliada" principles as to the appropriate forum or (in the classic language) forum conveniens for the trial of the claim: see *Spiliada Maritime Corpn v Cansulex Ltd (The Spiliada)* [1987] AC 460, 478-480 (Lord Goff of Chieveley). The question is whether this jurisdiction is "clearly or distinctly" the most appropriate. The appropriate forum is the one in which the case "may most suitably be tried for the interests of all the parties and for the ends of justice". The first thing to consider is what is the "natural forum", namely the one "with which the action [has] the most real and substantial connection". If the court concludes that another forum is as suitable or more suitable than England, it will normally refuse permission. Again, the issue is not determined on the balance of probabilities; the claimant's task is to show that he has the better of the argument on the point. If he fails to do so, the application will be dismissed.

12. A claimant seeking permission to serve outside the jurisdiction always bears the legal burden of proof on all these issues. That is so whether the matter is being considered on an application by the claimant at the initial, without notice stage, or at the hearing of a subsequent application by the defendant to set aside an order permitting service outside the jurisdiction. But a defendant challenging such an order needs to identify some other forum which does have jurisdiction; and even the initial application requires there to be another candidate with the requisite jurisdiction: *Unwired Planet International Ltd v Huawei Technologies (UK) Ltd* [2020] Bus LR 2422, paras 96-97. Where the claimant's contention that the case is a proper one for service out is disputed by the defendant on a specific ground the defendant bears an evidential burden in relation to that ground: see *AstraZeneca* (above) at paras 33–39 (Hamblen J).”

35. In *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV* [2019] EWCA Civ 10; [2019] 1 WLR 3514, Davis LJ said at [124] of applications of the kind with which the Court is presently concerned: “This is by its nature an interlocutory process, not in any way concerned with a final conclusion on the facts or merits”.

36. So far as concerns the “Gateway Requirement”, CPR 6.36 provides:

> "In any proceedings to which rule 6.32 or 6.33 does not apply, the claimant may serve a claim form out of the jurisdiction with the permission of the court if any of the grounds set out in paragraph 3.1 of Practice Direction 6B apply."

37. In *Brownlie v Four Seasons Holdings International* [2017] UKSC 80; [2018] 1 WLR 192, Lord Sumption JSC said at [28] "in different ways all the jurisdictional gateways in the Practice Direction are concerned to identify some substantial and not merely casual or adventitious link between the cause of action and England."

38. In the present case, the Claimant relies on the following grounds set out in paragraph 3.1 of Practice Direction 6B:

> "(2) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction.
>
> (9) A claim is made in tort where –
>
> (a) damage was sustained, or will be sustained, within the jurisdiction;
> (b) damage which has been or will be sustained results from an act committed, or likely to be committed, with the jurisdiction; or
> (c) the claim is governed by the law of England and Wales."

39. With regard to the first of those grounds, in *Ahuja v Politika Novine I Magazine D.O.O* [2015] EWHC 3380 (QB); [2016] 1 WLR 1414, Sir Michael Tugendhat said at [23] that "the discretion to grant permission will not be exercised unless an injunction is a genuine part of the substantive relief sought and there is a reasonable prospect of an injunction being granted", and at [66] that "An injunction is a normal remedy to give to a successful libel claimant … [and] an English court is the only court that would grant an injunction specifically restraining publication in England."

40. So far as concerns the "Merits Test", all parties agreed that the appropriate approach for the Court to adopt was that set out in *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3; [2021] 1 WLR 1294 by Lord Hamblen at [22] (emphasis added):

> "Where, as will often be the case where permission for service out of the jurisdiction is sought, there are particulars of claim, the analytical focus should be on the particulars of claim and whether, on the basis that the facts there alleged are true, the cause of action asserted has a real prospect of success. Any particulars of claim or witness statement setting out details of the claim will be supported by a statement of truth. Save in cases where allegations of fact are demonstrably untrue or unsupportable, it is generally not appropriate for a defendant to dispute the facts alleged through evidence of its own. Doing so may well just show that there is a triable issue."

41. The core elements of the cause of action for libel were described by Warby LJ in *Soriano* at [15] as follows:

"At common law, a cause of action for libel is made out by proof that the defendant was responsible for the publication to one or more third parties of a written statement that bore a defamatory meaning about the claimant. Statute has added a requirement that publication caused serious harm to the claimant's reputation or is likely to do so: Defamation Act 2013, s 1(1). If this much is established, the burden shifts to the defendant to raise a defence. So defamation remains a relatively simple tort to prove …"

42. The core elements of the cause of action for the tort of conspiracy to injure by unlawful means were described by Nicklin J in *MBR Acres Ltd & Ors v Free The MBR Beagles & Ors* [2022] EWHC 1677 (KB) at [33]-[34] as follows:

"33. A conspiracy to injure by unlawful means is actionable where a claimant proves that s/he has suffered loss or damage as a result of unlawful action taken pursuant to a combination, or agreement, between the defendant and another person or persons, to injure him or her by unlawful means whether or not it is the predominant purpose of the defendant to do so: *Kuwait Oil Tanker Co. v - Al Bader* [2000] 2 All ER (Comm) 271 [108].

34. The elements that a claimant must prove for unlawful means conspiracy can be broken down as follows:
i) concerted actions between two or more persons (the "combination");
ii) use of unlawful means;
iii) knowledge of the unlawfulness;
iv) intention to injure the claimant, whether or not it is the predominant purpose of the defendant to do so;
v) overt act in pursuance of the agreement or undertaking;
vi) loss or damage as a result."

43. At [36], Nicklin J cited further passages from the judgment of Nourse LJ in the *Kuwait Oil Tanker* case, including the following:

"111. A further feature of the tort of conspiracy, which is also found in criminal conspiracies, is that … it is not necessary to show that there is anything in the nature of an express agreement, whether formal or informal. It is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end.

Thus it is not necessary for the conspirators all to join the conspiracy at the same time, but … the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of …

112. In most cases it will be necessary to scrutinise the acts relied upon in order to see what inferences can be drawn as to the existence or otherwise of the alleged

conspiracy or combination. It will be the rare case in which there will be evidence of the agreement itself …"

44. Earlier in the same judgment, in passages to which none of the parties before me made reference, Nicklin J addressed the pleading requirements in relation to such a claim:

> "29. Allegations of conspiracy made in a civil claim are serious … As such, there are stricter rules as to the pleading requirements of what might be thought to be more routine allegations.
>
> 30. I take the following principles from *Ivy Technology v Martin* [2019] EWHC 2510 (Comm) *per* Andrew Henshaw QC:
>
> [12] Conspiracy to injure must be pleaded to a high standard, particularly where the allegations include dishonesty:
> i) Allegations of conspiracy to injure "must be clearly pleaded and clearly proved by convincing evidence" (*Jarman & Platt Ltd v I Barget Ltd* [1977] FSR 260, 267).
> ii) The more serious the allegations made, the more important it is for the case to be set out clearly and with adequate particularity *Secretary of State for Trade and Industry v Swan* [2003] EWHC 1780 (Ch) [22]-[24]; CPR PD 16 §8.2 in respect of the obligations on a party pleading dishonesty; *Mullarkey v Broad* [2007] EWHC 3400 (Ch); [2008] 1 BCLC 638 [40]-[47] on the burden and standard of proof for such claims and reiterating the well-established principle that an allegation of dishonesty must be pleaded clearly and with particularity (citing *Belmont Finance Corp v Williams Furniture* [1979] Ch 250, 268).
> iii) Unlawful means conspiracy is a grave allegation, which ought not to be lightly made, and like fraud must be clearly pleaded and requires a high standard of proof: *CEF Holdings v Mundey* [2012] EWHC 1534 (QB); [2012] IRLR 912 [74].
> iv) Where a conspiracy claim alleges dishonesty, then "all the strictures that apply to pleading fraud" are directly engaged, i.e. it is necessary to plead all the specific facts and circumstances supporting the inference of dishonesty by the defendants: *ED&F Man Sugar v T&L Sugars* [2016] EWHC 272 (Comm).
> v) As to the substantive elements of the tort:
> "To establish liability for assisting another person in the commission of a tort [common design], it is necessary to show that the defendant (i) acted in a way which furthered the commission of the tort by the other person and (ii) did so in pursuance of a common design to do, or secure the doing of, the acts which constituted the tort…
> The elements of this tort [conspiracy] are a combination or agreement between the defendant and another person pursuant to which unlawful action is taken which causes loss or damage to the claimant and is intended or expected by the defendant to do so (whether or not this

was the defendant's predominant purpose)." (*Marathon Asset Management LLP v Seddon* [2017] IRLR 503 [132] and [135]).

31. As to the requirements of pleading fraud or other discreditable conduct, the approach was set out in *Portland Stone Firms Limited v Barclays Bank* [2018] EWHC 2341 (QB) *per* Stuart-Smith J:

> [25] Where, as here, a Claimant wishes to amend to plead fraud and the application is opposed, it is material to bear in mind the approach that the Court routinely takes to proving fraud in civil litigation. A sufficient summary for present purposes is provided by *Fiona Trust & Holding Corp v Privalov* [2010] EWHC 3199 (Comm) [1438]-[1439] *per* Andrew Smith J:
>
> > 'It is well established that "*cogent evidence is required to justify a finding of fraud or other discreditable conduct*": *per* Moore-Bick LJ in *Jafari-Fini -v- Skillglass Ltd* [2007] EWCA Civ 261 [73]. This principle reflects the court's conventional perception that it is generally not likely that people will engage in such conduct: "*where a claimant seeks to prove a case of dishonesty, its inherent improbability means that, even on the civil burden of proof, the evidence needed to prove it must be all the stronger*", *per* Rix LJ in *Markel -v- Higgins* [2009] EWCA 790 [50]. The question remains one of the balance of probability, although typically, as Ungoed-Thomas J put it in *In re Dellow's Will Trusts* [1964] 1 WLR 415, 455 (cited by Lord Nicholls in *In re H* [1996] AC 563, 586H), "*The more serious the allegation the more cogent the evidence required to overcome the unlikelihood of what is alleged and thus to prove it*"…
> > …Thus in the *Jafari-Fini* [49], Carnwath LJ recognised an obvious qualification to the application of the principle, and said, "Unless it is dealing with known fraudsters, the court should start from a strong presumption that the innocent explanation is more likely to be correct."'

[26] This summary is consistent with many other decisions of high authority which establish that pleadings of fraud should be subjected to close scrutiny and that it is not possible to infer dishonesty from facts that are equally consistent with honesty: see, for example, *Mukhtar -v- Saleem* [2018] EWHC 1729 (QB); *Elite Property Holdings Ltd -v- Barclays Bank* [2017] EWHC 2030 (QB); *Three Rivers DC -v- The Governor and Company of Barclays of England (No.3)* [2003] 2 AC 1 [186] per Lord Millett...

[27] One of the features of claims involving fraud or deceit is the prospect that the Defendant will, if the underlying allegation is true, have tried to shroud his conduct in secrecy. This has routinely been addressed in cases involving allegations that a defendant has engaged in anti-

> competitive arrangements. In such cases, the Court adopts what is called a generous approach to pleadings. The approach was summarised by Flaux J in *Bord Na Mona Horticultural Ltd & Anr -v- British Polythene Industries Plc* [2012] EWHC 3346 (Comm) [29]ff. Flaux J set out the principles in play as described by Sales J in *Nokia Corporation -v- AU Optronics Corporation* [2012] EWHC 731 (Ch) [62]-[67], which included the existence of a tension between (a) the impulse to ensure that claims are fully and clearly pleaded, and (b) the impulse to ensure that justice is done and a claimant is not prevented by overly strict and demanding rules of pleading from introducing a claim which may prove to be properly made out at trial but may be shut out by the law of limitation if the claimant is to be forced to wait until he has full particulars before launching a claim. Sales J indicated that this tension was to be resolved by "allowing a measure of generosity in favour of a claimant"."

45. So far as concerns "The Forum Test", CPR 6.37(3) provides:

> "The Court will not give permission unless satisfied that England and Wales is the proper place in which to bring the claim."

46. Further, section 9 of the Defamation Act 2013 provides:

> "Action against a person not domiciled in the UK or a Member State etc
>
> (1) This section applies to an action for defamation against a person who is not domiciled — (a) in the United Kingdom; (b) in another Member State; or (c) in a state which is for the time being a contracting party to the Lugano Convention.
>
> (2) A court does not have jurisdiction to hear and determine an action to which this section applies unless the court is satisfied that, of all the places in which the statement complained of has been published, England and Wales is clearly the most appropriate place in which to bring an action in respect of the statement.
>
> (3) The references in subsection (2) to the statement complained of include references to any statement which conveys the same, or substantially the same, imputation as the statement complained of."

47. These provisions were considered by Warby LJ in *Soriano* at [19]-[21] and [60]-[61]:

> "19. In some ways this language resembles that of the common law test of *forum conveniens*, but it is plainly intended to establish a different approach. At a minimum, it modifies the common law position in two

respects: (a) by requiring the court to answer the question of which jurisdiction is "clearly the most appropriate" by considering "all the places in which the statement complained of has been published" and (b) by treating any statement that conveys substantially the same imputation as if it were a "statement complained of".

20. Section 9 has been considered in a handful of cases to date: *Ahuja v Politika Novine I Magazini D.O.O* [2015] EWHC 3380 (QB), [2016] 1 WLR 1414 (Sir Michael Tugendhat); *Huda v Wells* [2017] EWHC 2553 (QB), [2018] EMLR 7 (Nicklin J); *Wright v Ver* [2019] EWHC 2094 (QB) (Nicklin J), affirmed [2020] EWCA Civ 673, [2020] 1 WLR 3913; *Al Sadik v Al Sadik* [2019] EWHC 2717 (QB), [2020] EMLR 7 (Julian Knowles J); and *Kim v Lee* [2020] EWHC 2162 (QB) (Julian Knowles J).

21. Some uncontroversial propositions emerge from these cases:

(1) The claimant bears the burden of satisfying the court that England is the most appropriate place in which to bring the claim: *Wright v Ver* (CA) [60].

(2) When determining that question, the court must consider all the "places", which in this context means jurisdictions, in which there has been publication of "the statement complained of", giving that term the expanded meaning identified in s 9(3): *Ahuja* [31], [41]; *Wright v Ver* (CA) [61].

(3) Relevant factors for consideration will include the best evidence available to show what all those places are; the number of times the statement has been published in each jurisdiction; and the amount of damage to the claimant's reputation in England and Wales compared with elsewhere: *Ahuja* [31]; *Wright v Ver* (CA) [61-63].

(4) Other relevant factors are likely to include the availability of fair judicial processes in the other jurisdictions in which publication occurred, the available remedies from the courts of the other jurisdictions, the costs of pursuing proceedings in each possible jurisdiction, other factors that might impact on access to justice - for example language barriers - and the location of likely witnesses, as well as the relative expense of suing in different jurisdictions; *Ahuja* [31]; *Wright v Ver* (CA) [64-65].

(5) This list of factors is non-exhaustive because the relevant multifactorial question to be answered by the court is whether it can be shown that England and Wales is clearly the most appropriate jurisdiction in which to bring the claim. This will be fact-specific, but it is likely to require the court to make the best assessment that it can on the evidence whether any competing jurisdiction is an appropriate place to bring the claim: *Wright v Ver* (CA) [65].

> 60. … the standard of proof which a claimant must meet on an issue under s 9 is the well-established standard for *forum conveniens* disputes, of a good arguable case. That is because, as I have explained, s 9 should not be treated as a fresh stand-alone provision of unique character but rather as a tailored modification of the established regime, and it does not purport to alter the standard of proof.
>
> 61. I see no good reason for adopting any rigid rule about the nature of the evidence that either party will be required to adduce on a contest under s 9. It is sufficient to say that the court must be satisfied of the matters specified in the section, that the legal burden of doing so rests on the claimant, and that the claimant has a duty of full and frank disclosure at the without notice stage. Whether the evidence adduced in a given case is enough to meet these requirements will depend on the circumstances of the case. This will ordinarily be a matter for the assessment of the Judge, and not apt for review on an appeal…"

48. Finally, the law concerning the duty to make full and frank disclosure which rests on an applicant on a without notice application was summarised as follows by Warby J in *Sloutsker v Romanova* [2015] EWHC 545 (QB); [2015] 2 Costs LR 321, at [51]:

> "i) An applicant for permission to serve proceedings outside the jurisdiction is under the duty of full and frank disclosure which applies on all applications without notice.
>
> ii) The duty requires the applicant to make a full and fair disclosure of those facts which it is material for the court to know: *Brinks Mat v Elcombe* [1988] 1 WLR 1350, 1356 (1) and (2) (Ralph Gibson LJ). Put another way, disclosure should be made of "any matter, which, if the other party were represented, that party would wish the court to be aware of": *ABCI v Banque Franco-Tunisienne* [1996] 1 Lloyd's Rep 485, 489 (Waller J).
>
> iii) Non-disclosure of material facts on an application made without notice may lead to the setting aside of the order obtained, without examination of the merits. It is important to uphold the requirement of full and frank disclosure.
>
> iv) But the court has a discretion to set aside or to continue the order. Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to the issues that were to be decided. The answer to the question whether the non-disclosure was innocent is an important, though not decisive, consideration. See *Brinks Mat* at pp1357 (6) and (7) and 1358 (Balcombe LJ).
>
> v) In the context of permission for service outside the jurisdiction the court has a discretion to set aside the order for service and require a fresh application, or to treat the claim form as validly served and deal with the non-disclosure by a costs order: *NML Capital Ltd v Republic of Argentina* [2011] UKSC 31, [2011] 2 AC 495, [136] (Lord Collins)."

49. The relevant principles were also summarised by Carr J in *Tugushev v Orlov (No. 2)* [2019] EWHC 2031 (Comm), at [7]:

> "i) The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;
>
> ii) It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;
>
> iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents;
>
> iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;
>
> v) Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. It extends to matters of intention and for example to disclosure of related proceedings in another jurisdiction;
>
> vi) Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The

primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect;

vii) A defendant must identify clearly the alleged failures, rather than adopt a scatter gun approach. A dispute about full and frank disclosure should not be allowed to turn into a mini-trial of the merits;

viii) In general terms it is inappropriate to seek to set aside a freezing order for non-disclosure where proof of non-disclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily established, otherwise the application to set aside the freezing order is liable to become a form of preliminary trial in which the judge is asked to make findings (albeit provisionally) on issues which should be more properly reserved for the trial itself;

ix) If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;

x) Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it will only be in exceptional circumstances in cases of deliberate non-disclosure or misrepresentation that an order would not be discharged;

xi) The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;

xii) The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) the importance of the facts not disclosed to the issues before the judge ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on the merits will never be a good excuse for a failure to disclose material facts;

xiii) The interests of justice may sometimes require that a freezing order be continued and that a failure of disclosure can be marked in some other

way, for example by a suitable costs order. The court thus has at its disposal a range of options in the event of non-disclosure."

50. That summary was approved by the Court of Appeal in *Derma Med Ltd v Ally* [2024] EWCA Civ 175 (see Males LJ, with whom Bean LJ and Lewis LJ agreed, at [29]). At [30], Males LJ said "Although this was said in the context of an application for a freezing order, the principles are of general application."

51. On behalf of the First and Second Defendants, Mr Hodson also made reference to *Masri v Consolidated Contractors International Co SAL* [2011] EWHC 1780 (Comm) - in which Burton J expressed the view at [58] that the duty of full and frank disclosure may apply "particularly where [the without notice application] is made on paper where the judge is left to consider on his own in his or her room what may often be a pile of undigested exhibits" - and to *Ophthalmic Innovations International (UK) Ltd v Ophthalmic Innovations International Inc* [2004] EWHC 2948 (Ch).

52. The particular point that emerges from those cases relates to the relevance of foreign proceedings. In the latter case, in which Lawrence Collins J set aside the order granting permission to serve proceedings out of the jurisdiction, he stated at [45] that "the existence of overlapping proceedings in a foreign jurisdiction between the same or related parties (whether pending or prospective) is likely to be a particularly relevant matter which in normal circumstances must be disclosed, and the non-disclosure of which may well of itself lead to the order for permission being set aside".

53. I should add that the duty of fair presentation was described in *Fundo Soberano de Angola v Jose Filomeno dos Santos* [2018] EWHC 2199 (Comm) by Popplewell J at [52] as follows:

> "The evidence and argument must be presented and summarised in a way which, taken as a whole, is not misleading or unfairly one-sided. In a complex case with a large volume of documents, it is not enough if disclosure is made in some part of the material, even if amongst that which the judge is invited to read, if that aspect of the evidence and its significance is obscured by an unfair summary or presentation of the case. The task of the judge on a without notice application in complex cases such as the present is not an easy one. He or she is often under time constraints which render it impossible to read all the documentary evidence on which the application is based, or to absorb all the nuances of what is read in advance, without the signposting which is contained in the main affidavit and skeleton argument. It is essential to the efficient administration of justice that the judge can rely on having been given a full and fair summary of the available evidence and competing considerations which are relevant to the decision."

54. I should also add that further guidance as to the correct approach to be adopted by the parties and the Court towards allegations of material non-disclosure was provided in *Mex Group Worldwide Ltd* v *Stewart Owen Ford and others* [2024] EWCA Civ 959:

(1) By Males LJ at [112]:

> "… I sought in *National Bank Trust v Yurov* [2016] EWHC 1913 (Comm) at [14] and [15] to encourage a degree of restraint and a sense of proportion on the part of those seeking to set aside without notice orders on this ground, but it appears that the message has not got through. In this case we have been prepared to separate the wheat from the chaff, but I would suggest a different approach for the future. In future, if the court is presented with a long shopping list of alleged failures of disclosure, with no attempt made to identify the relatively few points which really matter, it should simply decline to consider the issue at all."

(2) By Coulson LJ at [127]-[128]:

> "It is almost always the position that, no matter how big the case or how complex the underlying issues, a defendant's case that the claimant failed to make full and frank disclosure at the *ex parte* hearing will stand or fall on no more than a handful of alleged failures. That is because, if the 'big ticket' allegations of failure are not established, or are established but found to be immaterial, then the less significant failures will not bridge the gap. It is the law of diminishing returns…
>
> Accordingly, those preparing this sort of attack in the future should ensure that they concentrate their efforts on alleged failures of disclosure which are clear-cut and obviously important. Quality not quantity should be the watchword. The failure to follow that course … means that there is a real risk that the best points become buried in an avalanche of trivia …"

THE GATEWAY REQUIREMENT

55. As appears from the summary of the grounds of their applications in [3] and [4] above, none of the Defendants contend that the Claimant does not have a good arguable case that his claim falls within the grounds set out in paragraphs 3.1(2) and 3.1(9) of Practice Direction 6B. As Mr Sherborne submitted, this is unsurprising.

56. First, the claims for injunctions in respect of both the cause of action for defamation and the cause of action for conspiracy to injure by unlawful means are clearly pleaded, and there is no obvious basis on which, on the materials at present available, it could be contended (a) that those claims are not a genuine part of the substantive relief sought by the Claimant or (b) that there is no real prospect that the injunctions sought may be granted. Second, in respect of both causes of action, the Claimant relies on damage said to be have been sustained by him within this jurisdiction (and, in addition, the Particulars of Claim do not rely on foreign law, and none of the Defendants suggest that those causes of action are not governed by the law of England and Wales).

THE MERITS TEST

The First and Second Defendants

57. On behalf of both the First Defendant and the Second Defendant, Mr Hodson argued that the Claimant's claims had no real prospect of success. Mr Hodson referred to the points concerning the strength of the Claimant's case contained in paragraphs 49 to 61 of Mr Summers' witness statement, which Mr Hodson summarised as being (1) that the Claimant had no real prospect of satisfying the threshold requirement of serious harm contained in section 1 of the Defamation Act 2013, and (2) that there were "clear" defences that (i) the imputations conveyed by the statements complained of are substantially true (see section 2, *ibid*) and (ii) the statements complained of were protected by the public interest defence (see section 4, *ibid*). Mr Hodson accepted, for the purposes of the First and Second Defendants' current application, that these defences raised "triable issues", from which I understood that he accepted that the Claimant had a real prospect of success in defeating them. He argued, however, that the question of serious harm could be determined summarily, against the Claimant.

58. Mr Hodson's core submission was that "Taking the Claimant's case at its highest, there is little to no evidence of serious harm". Mr Hodson focussed on the Annexe to the Particulars of Claim. He described this as a "costs-building exercise of extraordinary proportions", which he suggested the Claimant had embarked upon "to manufacture some appearance of damage where there is none". He submitted that the heads of loss claimed related to the Claimant's attempts to respond to the publications complained of, and not to loss or harm to reputation resulting from the publications, and in any event were disproportionate. Overall, the game was not worth the candle.

59. Mr Sherborne's core response to these submissions was that the Claimant's pleaded case on serious harm has at the very least a real prospect of success. In fact, in his Skeleton Argument, Mr Sherborne addressed in some detail a number of points which he, not unreasonably, understood were being advanced on behalf of the First and Second Defendants in light of the contents of Mr Summers' witness statement. For example, the suggestion that the Claimant had a pre-existing reputation in this jurisdiction that was so bad that the publications complained of could not have caused him further serious harm was disputed by Mr Sherborne both on the facts (in that reliance was placed on other publications which were "[not] properly particularised or substantiated") and as a matter of law (including that evidence of other publications making the same allegation(s) as the statement(s) complained of is inadmissible as proof of a pre-existing bad reputation: see *Associated Newspapers Ltd v Dingle* [1964] AC 371). Little if any mention was made of these points by Mr Hodson at the hearing.

60. I have no hesitation in preferring Mr Sherborne's submissions on this issue. As Lord Sumption explained in *Lachaux v Independent Print Ltd* [2019] UKSC 27, [2020] AC 612 at [14], whether a statement has caused "serious harm" falls to be established "by reference to the impact which the statement is shown actually to have had", and that, in turn, "depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated". Further: (i) the assessment of harm of a defamatory statement in not simply "a numbers game" (see *Mardas v New York Times Co* [2009] EMLR 8, Eady J at [15]); (ii) indeed "Reported cases have

shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person" (see *Sobrinho v Impresa Publishing SA* [2016] EMLR 12, Dingemans J at [47]); (iii) "Depending on the circumstances of the case, the claimant may be able to satisfy section 1 without calling any evidence, by relying on the inferences of serious harm to reputation properly to be drawn from the level of the defamatory meaning of the words and the nature and extent of their publication" (see *Doyle v Smith* [2019] EMLR 15, Warby J at [117]); and (iv) decided cases recognise the "grapevine effect" whereby the defamatory imputations complained of percolate beyond the original publishees, adding to the harm arising from publication.

61. Leaving aside altogether that this is ultimately an issue for trial on the evidence that will by then be available, the gravity of the allegations complained of and the nature and extent of each publication pleaded is such that, in my judgment, on the materials at present before the Court, an inference of "serious harm" appears hard to resist.

62. Mr Hodson's reliance on the Annexe to the Particulars of Claim is misplaced: first, general damages for harm to reputation are additional to the contents of the Annexe; second, if the Claimant's pleaded case succeeds, the level of general damages to which he would, on the face of it, be entitled is such that, from the perspective of compensating for harm to his reputation alone, the claim seems well worth bringing, to say nothing of compensation for distress or the element of vindication which is typically of significance in claims for defamation; and, third, even if arguably excessive, the claims in the Annexe are not obviously baseless either in fact or in law.

63. Although that means that the Claimant succeeds on the Merits Test as against the First Defendant, Mr Hodson had further points, which relate to the Second Defendant alone.

64. The first of these points is that the only concrete pleaded allegation made against the Second Defendant is (see paragraph 97.2 of the Particulars of Claim) that the Second Defendant participated in payment to Harris Media by two instalments. It is pleaded that this was "effected" by the First Defendant "directing and authorising" the Second Defendant to pay these instalments, which it did "on the First Defendant's behalf". So far as the Second Defendant is concerned, therefore, the allegations against the First and Second Defendants contained in paragraph 5 of the Particulars of Claim of "organising, paying for, and pursuing" the Campaign boil down to making two payments to Harris Media at the behest of the First Defendant and on her behalf.

65. Mr Hodson accepted that, at common law, liability for publication "extends to any person who participated in, secured, or authorised the publication" (see *Gatley on Libel and Slander, 13th edn, para 7-010*). In addition, in *Bataille v Newland* [2002] EWHC 1692 (QB) Eady J said at [25]:

> "To participate in a publication in such a way as to be liable in accordance with the law of defamation is not, I should emphasise, to be equated with being a source of the information contained within the relevant document. There are various acts that can give rise to legal responsibility, for example, encouraging the primary

author, supplying him with information intending or knowing that it will be re-published, or, if one is in a position to do so, instructing or authorising him to publish it."

66. Mr Hodson submitted, however, that making payments in the circumstances and manner alleged against the Second Defendant is insufficient to give rise to liability. At highest, the allegations against the Second Defendant concern acts of facilitation.

67. In this regard, if the Second Defendant is not liable as a primary tortfeasor, then, as stated in *Sea Shepherd UK v Fish & Fish Ltd* [2015] UKSC 10, [2015] 1 AC 1229, Lord Kerr JSC at [21]-[22]

> "We are concerned with a different category in which the defendant, D, has allegedly assisted the principal tortfeasor, P, in the commission of tortious acts ...
>
> To establish accessory liability in tort it is not enough to show that D did acts which facilitated P's commission of the tort. D will be jointly liable with P if they combined to do or secure the doing of acts which constituted a tort. This requires proof of two elements. D must have acted in a way which furthered the commission of the tort by P; and D must have done so in pursuance of a common design to do or secure the doing of the acts which constituted the tort. I do not consider it necessary or desirable to gloss the principle further."

68. To like effect, in *Credit Lyonnais Bank Nederland NV v Export Credits Guarantee Department* [1998] 1 Lloyd's Rep 19, Hobhouse LJ said at 46:

> "Mere assistance, even knowing assistance, does not suffice to make the 'secondary' party jointly liable as a joint tortfeasor with the primary party. What he does must go further. He must have conspired with the primary party or procured or induced his commission of the tort (my first category); or he must have joined in the common design pursuant to which the tort was committed (my third category)."

69. Mr Sherborne responded, first, that the pleaded case against the Second Defendant does amount to a claim that the Second Defendant "participated in, secured, or authorised" each of the publications complained of. Second, he emphasised that the facts and matters set out in paragraph 97 of the Particulars of Claim are the best particulars that the Claimant can give in circumstances where the role of each of the Defendants was concealed in the manner set out in paragraph 13 of the Particulars of Claim (as to which, see [15] above). Third, he submitted that the Second Defendant is the owner of a Greek football club which is a rival to the Greek football club owned by the Claimant, and that these matters are "not totally unrelated to" the Campaign.

70. On the first of those points, I agree with Mr Hodson. I do not consider that the pleaded case against the Second Defendant sets out a basis for liability at common law either as a primary tortfeasor or as a joint tortfeasor with all or any of the other Defendants.

71. Nor do I find the second of Mr Sherborne's points persuasive. It is clear from the contents of the Annexe to the Particulars of Claim that a very substantial sum (it would appear more than £800,000) has been expended by the Claimant on investigating the matters complained of in these proceedings. It is also clear from the hearing papers that proceedings for the production of documents were brought against Harris Media in the USA, and indeed it would seem that much of the material upon which paragraph 97 of the Particulars of Claim is based was obtained as a result of those proceedings. It does not follow, as the Defendants' Counsel submitted at times, and as Mr Sherborne rightly disputed, that nothing further may emerge on disclosure in the present case. Nevertheless, the Claimant has substantially more visibility as to the role played by different Defendants in the actions complained of than would normally be true in a case of this kind. Further, the Claimant cannot ask for generosity with regard to his pleaded case on grounds of lack of access to financial resources or legal advice. Even if the approach which applies in claims of fraud or deceit ought also to be applied to a claim for joint and several liability for publication in the circumstances of the present case, I consider that the balance between holding the Claimant to his pleaded case – in the words of Lord Hamblen in *Okpabi v Royal Dutch Shell plc* [2021] 1 WLR 1294 at [22], applying an analytical focus to the facts alleged and asking whether on the basis that those facts are true the cause of action asserted has a real prospect of success - and the risk that by adopting an overly strict and demanding approach in that regard the Claimant may be shut out from pursuing a claim against the Second Defendant which might prove to have merit at trial comes down against the Claimant.

72. In this context, I consider that it is important to recognise that there is no allegation or suggestion in the Particulars of Claim that the First Defendant acted for or on behalf of the Second Defendant, or that the First Defendant's knowledge should be imputed to the Second Defendant. On the contrary, the pleaded case is clear in its focus on the First Defendant, and the actions she is said to have taken. In particular, this is true of paragraphs 97.1 to 97.4 of the Particulars of Claim, which allege (among other things) as follows: (1) "The First Defendant hired and instructed Harris Media to devise and implement [the Campaign]" (paragraph 97.1); (2) "The First Defendant paid Harris Media to devise and implement [the Campaign]" (paragraph 97.2); (3) "The First Defendant sent Harris Media the necessary information and materials regarding the Claimant … sent Harris Media a draft article about the Claimant … sent Harris Media … a list of names of approximately 80 journalists, along with their employing media organisations and, in some cases, their job titles … sent Harris Media … a list of names of sports journalists and their X handles … corresponded with Harris Media" (paragraphs 97.3.1 to 97.3.5); and (4) "the communications particularised in paragraph 97.3 above clearly related to actual or proposed features of [the Campaign] … these communications reflect a high, consistent and active level of involvement by the First Defendant in the content and execution of those actual or proposed features … and … it is to be inferred that the First Defendant had a high, consistent and active level of

involvement in all facets of [the Campaign's] content and execution" (paragraph 97.4). Paragraph 14 of the Particulars of Claim is to the like effect (see [16] above).

73. As to Mr Sherborne's third point, in his Skeleton Argument he provided the following summary of the First Defendant's witness statement:

    (1) paragraphs 3 to 43 contain "a range of disparate allegations by the First Defendant against the Claimant, including one that the Claimant apparently conducted a smear campaign against her";

    (2) paragraphs 45 to 110 contain "a range of admissions by First Defendant regarding her involvement with the Third Defendant and her engagement of Harris Media LLC to conduct a public campaign against the Claimant";

    (3) paragraph 112 contains "a characterisation of that campaign by the First Defendant as a 'quest… to deliver the truth about Mr. Marinakis to the people of Greece and elsewhere'";

    (4) paragraph 59 contains "a statement by the First Defendant that her 'rationale when choosing the material to send to Harris [Media LLC] was that [she] believed that there was substantial truth in the allegations that Mr Marinakis was [a] a football match fixer, [b] that he routinely and systematically breached oil sanctions imposed on Russia and Iran; and [c] that he was the arranger behind the Noor1 drugs trafficking case'";

    (5) paragraph 60 onwards contains "various statements by the First Defendant as to what she 'based' her 'rationale' on in respect of each of those allegations. These include … references to pre-existing online articles".

74. It is correct that within this narrative there is (among many other matters) evidence about rivalry between Greek football teams. However, the emphasis is on personal antagonisms. In paragraphs 4 and 5, the First Defendant states that the background to the present claim stems from the conduct of the Claimant "which I allege was criminal in nature, [and] was sustained and targeted by [the Claimant] against both me and my brother Theodoros Karipidis and breached our human rights"; and paragraph 6 refers to "a chronology of adverse incidents either involving or orchestrated by [the Claimant] against either myself, my brother, or other people in our presence".

75. The evidence relating to the Greek football team rivalry begins in paragraph 17 of the First Defendant's witness statement, where she states that "the present situation all started on 2 April 2023 after the game between Aris and Olympiacos in Karaiskakis stadium, which ended in a 2-2 draw". In very brief summary, the First Defendant alleges that the Claimant was determined that his team, Olympiacos FC, should win that match, by fair means or foul; that the Claimant pressurised her brother to "fix" the game; that the First Defendant's brother did not do this, and the Claimant was

furious when, in the result, Aris Thessaloniki FC won; and that matters were made worse when on 26 April 2023 in another match between the same teams Aris Thessaloniki FC also won because "From that day on [the Claimant] thought that we were responsible for him losing the championship because we accomplished 2 wins and a draw – whereby he started to threaten me and my family in every possible way". The evidence relating to the match on 2 April 2023 and its aftermath includes the following:

> "21 At the end of the game with the final score a draw at 2-2, [the Claimant] returned again to verbally assault [my brother], telling him: "You are finished," and "I will destroy you … I will eliminate you from Greece and from football."
>
> 22 Coming off the pitch my brother was approached by Vassilis Roubetis, [the Claimant's] right hand man, and an organised criminal (now deceased) who had a role with Olympiacos's and [the Claimant's] team. Roubetis told him the following: 'I have orders from Marinakis to make you disappear; you won't have a place to hide; I'll blow you up in the Porsche you have outside with the 7s (meaning the license plate number of my brother's car which is 7777) I will burn your office, you can't fathom what we can do to you, we'll make you and your family disappear. You'll be on your knees begging for your life.'"

76. The only reference that the Claimant makes to the contents of the First Defendant's witness statement in his evidence in reply is at paragraph 27 of his witness statement, in which he addresses the First Defendant's claims (i) at paragraph 55 of her witness statement, that "by sharing publicly available information with foreign media, there would be more public scrutiny of me by the Greek public", and (ii) at paragraph 112 of her witness statement, "that her 'quest' was to deliver the truth about me to the people of Greece and elsewhere". He states (perhaps straying into argument):

> "It is ridiculous to argue that the smear campaign which targeted NFFC fans (including through the deliberate use of digital vans driving around Nottingham) would have any impact on the opinion of the Greek public. It is clear that carrying out any kind of media campaign in England, would only have a significant effect on the minds of the English public, and specifically in this case, the people of Nottingham and supporters of NFFC."

77. However, the First Defendant's evidence is disputed by Mr Vrentzos, who states that he is a director of Nottingham Forest Football Club and NF Football Investments Limited, as well as being the CEO of Alter Ego Media. For example, (i) with regard to the alleged request to "fix" the match on 2 April 2023, Mr Vrentzos states "I cannot imagine Mr Marinakis ever having such a discussion with Mr Karipidis. I have witnessed their relationship firsthand for many years" and that "There is no reason that [their] relationship would not have continued normally following the match in April 2023"; and (ii) with regard to Mr Roubetis, Mr Vrentzos states:

> "I know who Mr Roubetis was, but to my knowledge Mr Marinakis ever had a professional relationship with him. Had he been a "right hand man" I would have been aware of this given my close working relationship with Mr Marinakis; it is clearly untrue. Mr Roubetis was a member of supporter groups at Olympiacos, but as far as I know, the only crossover between Mr Marinakis and Mr Roubetis was that they would be in the same place at the same time by being in the stadium on match days, but their relationship did not go any further than that as far as I am aware."

78. Further, in his second witness statement, Mr Scott states at paragraph 26 that "The Claimant's position is that the assertions about him in the First Defendant's witness statement are untrue" and states at paragraph 28, going into further detail:

> "The same is true of the match fixing allegations. The series of events did not take place. It seems that there were only two people involved in this alleged conversation, one being the Claimant and the other being the First Defendant's brother (although he gives no evidence about it himself) … Likewise, the suggestion that Vassilis Roubetis was the Claimant's "right hand man" is also untrue. I am instructed that the Claimant has never had any form of business dealings with this individual and this has also been confirmed in evidence before this Court by a close business associate of the Claimant."

It is perhaps a little ironic that Mr Scott takes the point that the First Defendant's brother has not given evidence in this context when the Claimant has also not done so.

79. The First Defendant's evidence in other respects is disputed by Mr Kourtakis, who states, for example, that the First Defendant's claim that Mr Kourtakis receives instructions and orders from the Claimant is false.

80. In my judgment, none of these materials go any way towards fleshing out or making good a case that the Second Defendant is involved with or implicated in the Campaign against the Claimant alleged in the Particulars of Claim or the publications complained of, in some further or alternative way to the pleaded acts of making two payments. The First Defendant's evidence, as I have said, alleges actions, differences, threats, and intimidation involving the Claimant on the one hand and her brother and her on the other hand. Those allegations are not answered by evidence from the Claimant himself, but are effectively disputed root and branch by other witnesses – the thrust of the evidence of Mr Vrentzos, for example, being that there was never any conversation out of the ordinary between the Claimant and the First Defendant's brother, and that there was no reason for falling out, and no actual falling out, between them. The fact that the Second Defendant is the owner of a Greek football club that is a rival to the one owned by the Claimant does not by itself advance the Claimant's case at all.

81. For these reasons, I decide this issue in favour of the Second Defendant. Even if all the facts alleged in the Particulars of Claim are true, the cause of action for defamation asserted against the Second Defendant has no real prospect of success. The Claimant

has not persuaded me that the outcome which that conclusion points to should be tempered or reversed either (i) because the Campaign was structured in such a way that the role of the persons behind it was concealed, and the Claimant's knowledge about how it was organised and authorised is inevitably incomplete, or (ii) because the Second Defendant might be motivated to become involved in the publication of defamatory allegations against the Claimant in this jurisdiction because it owns a Greek football club which is a rival to one owned by the Claimant. Both of these points, in different ways, involve the suggestion that the evidence that can reasonably be expected to be available at trial may be such as to enable the Claimant to improve and extend his case against the Second Defendant beyond the facts currently pleaded. However, I am not persuaded of this. As rehearsed above, the Claimant has expended an extraordinary amount of effort and money in investigating the wrongdoing complained of, although the parties have filed extensive witness statements neither side's evidence supports that suggestion, and I consider the pleaded case must prevail.

82. Before leaving the contents of the witness statements, it is right to mention that the First Defendant explains at paragraph 56 of her witness statement that "I borrowed [the sum of US $30,000 that I had agreed to pay Harris Media LLC] under contract from the company I work for [the Second Defendant], and [the Second Defendant] deposited into their account on my behalf on 18 October 2023. I produce the loan contract between [the Second Defendant] and myself…". There is no challenge to this evidence in the Claimant's evidence in reply, and while Mr Scott states that the fact that evidence is not challenged does not mean that it is accepted by the Claimant, on the face of it, it supports the case that the Campaign was funded by the First Defendant.

83. In my judgment, the like points apply to the pleaded case that the Second Defendant is liable for conspiracy to injure the Claimant by unlawful means. In essence, the making of two payments to Harris Media at the behest of the First Defendant and on her behalf (as set out in paragraph 97.2 of the Particulars of Claim) is the only act of the Second Defendant that is relied on either (i) as evidencing the Second Defendant's combination with other Defendants with the common intention of publishing the defamatory allegations complained of, or of causing them to be published (see paragraph 102 of the Particulars of Claim) or (ii) as constituting overt action taken by the Second Defendant in furtherance of the alleged conspiracy (see paragraph 103 of the Particulars of Claim). The language of paragraph 97.2 of the Particulars of Claim is not suggestive of a common design between the First Defendant and the Second Defendant (let alone between the Second Defendant and other Defendants, who are not mentioned at all in this context): for A to make payment to a third party on behalf of B pursuant to the directions and authorisation of B suggests that A received instructions and acted in compliance with them rather than a combination or agreement between A and B. The like allegations could be made with regard to a bank or other financial institution. Further, the fact that the Second Defendant acted in the manner alleged is inadequate to support any inference of conspiracy between the Second Defendant and the First Defendant, let alone between it and other Defendants.

84. Indeed, the authorities make clear that allegations of conspiracy to injure are grave and serious and must be pleaded to a high standard, even if they do not involve

dishonesty. In the instant case, so far as concerns the Second Defendant, I do not consider that standard has been met. The allegations in paragraphs 102 and 103 of the Particulars of Claim are, by themselves, scant and of the most general nature. So far as concerns the First Defendant, clarity and particularity is supplied by the incorporation by reference of paragraphs 5 to 15 and paragraph 97 of the Particulars of Claim, which contain detailed allegations against her. So far as concerns the Second Defendant, however, no such clarity or particularity is provided, and, as set out above, the facts alleged in paragraph 97.2 of the Particulars of Claim seem to me inadequate.

85. The only point which weighs in favour of the Claimant under this head is that the authorities make clear that, in the interests of ensuring justice by not preventing him from pursuing a claim that he may be able to make good at trial, he should be allowed "a measure of generosity" in respect of his pleaded case. As explained above, I consider that, on the facts of this particular case, the reasons for adopting that approach are weakened, but, in any event, I do not consider that it warrants bolstering the facts alleged so as to convert them into a cause of action that has a real prospect of success; or allowing the case to go forward on the basis that it may somehow be made good.

86. Accordingly, the strength of the Second Defendant's arguments against the Claimant in respect of the merits of this cause of action are, if anything, stronger than they are in respect of that for defamation. I therefore conclude that it, too, lacks sufficient merit.

87. A point that has caused me to pause before reaching these conclusions is that in the letter from Mr Harris that was relied upon in support of the Third and Fourth Defendants' current application (see [98] below) reference is made to a relationship existing, to services being provided, and to a budget being set, as between, on the one hand, Harris Media and, on the other hand, not only the First Defendant but also the Second Defendant. As against that, Mr Harris made an Affidavit on 7 March 2024 pursuant to an Order made by a District Court in Texas on 4 March 2024, in which, among other things, he verified on oath the name and contact details of the "unknown client" of Harris Media referred to in the proceedings in the Texas Court. In that Affidavit, Mr Harris named the First Defendant as the "unknown client" and gave as the material email address the First Defendant's personal email address (although he also gave the Second Defendant's address as the "Mailing address" or the "Mailing address of the unknown client's business" and gave the name of the Second Defendant as the "Name of unknown client's business"). As the Affidavit was available to the Claimant when the Particulars of Claim were being prepared, and as they contain no allegation that Harris Media provided services to the Second Defendant, or acted on the instructions of the Second Defendant (whether through the medium of the First Defendant or at all), it appears to me that the Claimant's legal advisers must have taken the Affidavit (and the 51 pages of Harris Media records which were attached to it) at face value, and I consider that I should do the same. I assume that the letter was not available to the Claimant at that time, and on one view it could provide a basis for changing the stance adopted in the Particulars of Claim. However, the extensive written and oral arguments before me contained no suggestion of that. In these circumstances, and bearing in mind that the Affidavit comprises sworn evidence, and that the apparent purpose of the letter was to make clear that the Third Defendant was

not a "client" rather than to deal with the roles of the First and Second Defendants, I do not consider that the contents of the letter should cause me to alter my conclusions.

88. I should also mention that Mr Summers further contended on behalf of the Second Defendant (a company incorporated under the laws of Cyprus) that it should not have been sued at all, and that the Claimant should instead have sued a company of the same name that is incorporated under the laws of Greece, which, it was said, is the entity that made payment to Harris Media. This contention was met by evidence in reply from Mr Scott, supported by letters from Greek Counsel and Cypriot Counsel, to the effect that the Greek entity in question is not a separate legal entity, but merely a branch of the Second Defendant for whose actions the Second Defendant is liable.

89. Faced with this evidence, Mr Hodson gave up on the point, for present purposes alone.

The Third and Fourth Defendants

90. The submissions of Mr Sinai on behalf of the Third and Fourth Defendants were to similar effect to those of Mr Hodson on behalf of the First and Second Defendants.

91. In particular, Mr Sinai submitted:

(1) The acts and knowledge of the Third Defendant alleged in paragraphs 97.5 and 97.6.1 to 97.6.3 inclusive of the Particulars of Claim form the basis of the pleaded case (i) that the Third Defendant was actively and knowingly involved in publishing the statements complained of (see paragraph 97.6.4 of the Particulars of Claim); (ii) that the Fourth Defendant was actively and knowingly involved in publishing the statements complained of (see paragraph 97.7 of the Particulars of Claim); (iii) that the Third and Fourth Defendants conspired and combined together and/or with one or more of the other Defendants to injure the Claimant by publishing the allegations complained of or causing them to be published (see paragraph 102 of the Particulars of Claim); and (iv) that all the Defendants published those allegations or caused them to be published pursuant to and in furtherance of that conspiracy (see paragraph 103 of the Particulars of Claim).

(2) The allegations in paragraphs 97.5.1, 97.5.2, 97.5.3, 97.5.7, 97.5.8 and 97.6.1 of the Particulars of Claim do not in and of themselves take the claim anywhere. Even if the Third and/or Fourth Defendants (a) had a pre-existing relationship with the First Defendant, (b) referred the First Defendant to Harris Media, (c) earned a referral fee, (d) generally referred new clients to Harris Media, (e) had a pre-existing relationship with Mr Harris, or (f) had a comprehensive understanding of the services provided by Harris Media, none of those facts and matters constitutes participating in, securing, or authorising the publications complained of in such a way as to be liable in accordance with the law of defamation. Further, the facts and matters alleged do not give rise to accessory liability on the part of the Third and/or Fourth Defendants because it is not enough to show that they, or either of them, did acts which facilitated the commission of the tort of defamation by others.

Still further, these facts and matters do not involve conduct which is only consistent with participation in either the libels of the conspiracy complained of.

(3) Accordingly, the Claimant's ability to satisfy the Court that he has a real prospect of success at trial on both the claim for defamation and the claim for conspiracy depend upon the pleas contained in paragraphs 97.5.4, 97.5.5 and 97.5.6.

92. Paragraph 97.5.4 of the Particulars of Claim pleads that the Third Defendant acted as a conduit for the payment of the second instalment by the Second Defendant of the fees charged by Harris Media for devising and implementing the Campaign "by directing and/or authorising the Fourth Defendant to act as a conduit for that payment". The contemporary documents record a payment from the Second Defendant to the Fourth Defendant of US $29,949 on 6 December 2023, and a payment of US $25,000 from the Fourth Defendant to Harris Media on 14 December 2023. The Third Defendant's evidence (paragraph 11 of his witness statement) is that: "This fee [i.e. of US $5,000] was due from Harris Media and so it was administratively convenient for the instalment to be paid via the Fourth Defendant (so that it could deduct that fee)". Mr Sinai submitted: "The payment itself was lawful and made for services rendered. Deducting a commercial fee for a professional introduction does not amount to acting as a conduit or active involvement in publishing the defamatory statements or a concert to injure. Neither does [making] a lawful deduction constitute an intention to cause loss …".

93. Paragraph 97.5.5 of the Particulars of Claim alleges that the Third Defendant was copied into a significant amount of email correspondence between the First Defendant and Harris Media relating to the content and execution of the Campaign over December 2023. Mr Sinai submitted: (i) The email correspondence, which the Claimant had obtained from Harris Media pursuant to a Court Order made in Texas, is not exhibited to the Particulars of Claim and was not placed before Senior Master Cook. (ii) It is exhibited to the Third Defendant's witness statement (see pages 1107 to 1159 of the hearing bundle), and the emails which were copied to him are at pages 1110, 1113, 1123, 1124, 1126, 1127, 1130, 1150, 1158 and 1159 of the hearing bundle. (iii) Apart from two emails (see pages 1158-1159), none of the emails are addressed to the Third Defendant or evidence or require any involvement by him. (iv) Instead, the emails comprise instructions and information passing between the First Defendant and Harris Media and "There is no engagement, input, response, reaction or anything similar from [the Third Defendant]… the emails show nothing more than [him] being copied on exchanges between the First Defendant and Harris Media. They do not evidence involvement … and do not show that [he] introduced the First Defendant to Harris Media with the intention of starting a defamatory smear campaign".

94. The Third Defendant's evidence about these emails (see paragraph 12 of his witness statement) is as follows:

> "It can be seen from the attachments that I was copied into some of the email correspondence, but not all of it. I do not know why I was/was not copied into any

particular email, but my experience as an introducer is that the parties I introduce will often include me in group emails going forward. I believe that this may initially be done as some sort of courtesy (or perhaps to ensure that each side is aware that I can see how the other is behaving given that I introduced them) but sometimes this continues long after the introduction."

95. Paragraph 97.5.6 of the Particulars of Claim alleges that the Third Defendant passed on instructions from the First Defendant to Harris Media. Mr Sinai submitted that, in fact (i) there was only one material email, (ii) that email undermines the Claimant's case on intention and involvement, because it shows that the Third Defendant was merely passing on the First Defendant's "preference" and did not make any decisions, and (iii) in any event, the "instruction" that was passed on was not to use an aircraft banner and thus does not relate to any of the publications complained of.

96. The text of the material email (from the Third Defendant to Harris Media dated 12 December 2023) reads as follows:

> "Hi Brian
> Irini prefers that we stick to the current budget and at this point only do the plan banner fly over.
> Thanks
> Ari"

97. Mr Sinai submitted that, accordingly, (i) the primary facts pleaded in the Particulars of Claim do not disclose a case that has any real prospect of success against either the Third Defendant or the Fourth Defendant, (ii) in fact, no real attempt is made to formulate a case of corporate liability against the Fourth Defendant, (iii) indeed, it is pleaded that the publications comprising the Campaign were the work of Harris Media without any express involvement or instruction from the Third or Fourth Defendants.

98. Mr Sinai further relied on the following letter from Mr Harris produced by the Third Defendant (spellings reproduced below as in the original):

> "I confirm that your role in the relationship between Harris Media LLC and [A]mani Swiss (Cyprus) Limited was simply to have introduced Irina Karipidis to me and my company and no more.
>
> To my knowledge you were not party to decisions or services provided by Harris Media LLC to Irina Karpidis and Amani Swiss (Cyprus) Limited nor did you in any way direct provision of and requirement for those services on behalf of Irina Karpidis and Amani Swiss (Cyprus) Limited.
>
> I also confirm that I am aware of one email received from you in which you request that Harris Media LLC keep within the budget requested by Irina Karpidis

and Amani Swiss (Cyprus) Limited. This request was clearly made and understood to be on behalf of Irina Karpidis and Amani Swiss (Cyprus) Limited."

99. Mr Sherborne submitted:

(1) The Third Defendant admits (at paragraphs 8 to 11 and 14 to 15 of his witness statement) the facts pleaded in paragraphs 97.5.1 to 97.5.4, and 97.5.7, of the Particulars of Claim, and (in substance) in 97.5.8 of the Particulars of Claim.

(2) As to paragraph 97.5.5 of the Particulars of Claim, the Third Defendant admits to being copied into email correspondence. In fact, his evidence about these emails is contained in paragraph 12 of his witness statement (see [92] above).

(3) As to paragraph 97.5.6 of the Particulars of Claim, the Third Defendant admits to passing instructions from the First Defendant to Harris Media LLC in the form of an email of 12 December 2023. In fact, his evidence about this email (see paragraph 13 of his witness statement) is as follows:

> "I believe that the reason I sent that email was because I was with the First Defendant when the email from Harris Media arrived and she told me that she wanted to stick to the budget that she had agreed and asked me if I would say so. I do not believe that I passed on any instructions on any other occasion. I had no reason to involve myself in what the Claimant calls the Smear Campaign. My only financial incentive was as introducer, and I bore the Claimant no ill-will. If I had been expected to remain involved professionally and not just as an introducer, I would have sought a significant ongoing financial remuneration and would have produced a formal contract setting out my responsibilities and rewards and shared documented plans for executing my responsibilities."

(4) It should be noted that the email in question states "Irini prefers that we stick to the current budget", which is consistent with the Third Defendant (and not merely the First Defendant alone) playing a part in orchestrating the Campaign.

(5) Insofar as the Third and Fourth Defendants appear to attack the merits of the Claimant's claim, this amounts merely to a denial of their personal involvement in the Campaign, and a challenge to the conclusions which the Claimant is inviting the Court to draw at paragraphs 97.6 and 97.7 of the Particulars of Claim.

(6) Contentions of this kind cannot assist the Third and Fourth Defendants, as they give rise to matters for trial, which cannot be resolved on the present application.

100. Accordingly, Mr Sherborne submitted that the Claimant clearly has at the very least a real prospect of success in his claim as against the Third and Fourth Defendants.

101. I agree with Mr Sinai that the allegations in paragraphs 97.5.1, 97.5.2, 97.5.3, 97.5.7, 97.5.8 and 97.6.1 of the Particulars of Claim do not in and of themselves amount to a cause of action. However, I do not consider that they are pleaded on this basis. Instead, they are put forward as relevant to support the inference that, speaking broadly, when the Third Defendant put the First Defendant in touch with Harris Media he did so in the knowledge that the First Defendant needed assistance in publishing allegations like those which comprised the Campaign, that he chose Harris Media as the right people to help her with this, and that he thus actively participated in such publication.

102. As to paragraph 97.5.4 of the Particulars of Claim, I also agree with Mr Sinai that neither acting as a conduit for payment nor deducting a fee for effecting an introduction in and of themselves amount to a cause of action. Again, however, I do not consider that the allegations concerning participation in the payment of Harris Media are pleaded on this basis. Instead, they are put forward as demonstrating the involvement of the Third Defendant (because he organised these matters) and the Fourth Defendant (because it received the monies, and, as it happens, retained the fee) in the engagement of Harris Media, and that engagement (in the knowledge of what the First Defendant wanted help to do) is said to comprise participation in publication.

103. In any event, I consider that the Third and Fourth Defendants' arguments run into difficulty at paragraphs 97.5.5 and 97.5.6 of the Particulars of Claim. By the time that these emails were copied to him, or in one instance sent by him, it is at the very least clearly arguable that the Third Defendant knew the contents of the Campaign or at least the substance of the publications that constituted the Campaign. The fact that, on the material at present available, the Third Defendant passed no comment, still less expressed any misgivings or suggested any element of restraint, is capable of supporting the inference that what was happening came as no surprise to him, and that he knew the nature of what was planned by the First Defendant before and at the time that he introduced her to Harris Media. Indeed, he does not deny this:

(1) In paragraph 6 of his witness statement, the Third Defendant states:

> "I had no reason to take part in any action against him (or to have the Fourth Defendant do so) and I wish to be clear that I took no part in the campaign of which he complains in this claim."

(2) However, whether or not the Third Defendant "took no part in the campaign" depends on what he did, and the knowledge with which he did it.

(3) The Third Defendant deals with the circumstances of his introduction of the First Claimant to Harris Media at paragraph 9 of his witness statement:

> "I knew when I made the introduction that the First Defendant wished to retain Harris Media in order to engage in a public campaign against the Claimant (because the First Defendant made no secret of her dislike for him), but whether

Harris Media would accept any retainer and if so how that retainer would be conducted were matters which were completely at the discretion of Harris Media."

(4) This evidence does not grapple with the precise extent of the Third Defendant's knowledge concerning the proposed Campaign. However, it contains no denial that the Third Defendant knew the details of what was planned. As he knew that the First Defendant disliked the Claimant and was planning a public campaign against him, the Third Defendant apparently knew that her intentions were hostile. The prospect that the Claimant may establish at trial that the Third Defendant knew in detail what the First Defendant intended is plainly real on this evidence alone.

104. The Third Defendant's explanation as to why he was copied in on emails between Harris Media and the First Defendant is expressed in defensive and general terms. In any event, there is a real prospect that it may be shown to be inaccurate or incomplete.

105. The use of the word "we" in the email passing on the First Defendant's "preference" is also, on the face of it, a legitimate point to be explored at trial.

106. In addition, there is, it seems to me, a real prospect that further documents exist which may be relevant to the roles played by the First Defendant and the Third Defendant respectively, and the precise nature of their relationship to one another. For example, it is not unlikely that there are in existence material emails passing between the Third Defendant and the First Defendant. In particular, it is impossible to reach a conclusive view as to the implications of the emails that the Claimant obtained from Harris Media out of context, which may include the contents of other emails.

107. It seems to me that the facts upon which the Claimant's case against the Third and Fourth Defendants depend are not dissimilar to the facts of *Dar Al Arkan Real Estate Development Com. v Al Refai & Ors* [2013] EWHC 1630 (Comm). In that case, a company ("FTI") which provided public relations services and which was alleged by the Claimants to have been engaged as part of a campaign by a former employee of the Claimants to discredit them failed to obtain summary judgment or to have the case struck out against it. FTI accepted that one of its directors had participated in discussions about the possibility that the internet might be used "to get out into the public domain [the employee's] side of the story" and was told that the employee had "information in his possession that was adverse to the Claimants", but the director denied being provided with the information itself. FTI argued, among other things, that it was not responsible for the publications complained of on a Website because it had made clear that it would not be involved with developing the Website at a time when the words of which Claimants complained had yet to crystallise, and the Website contained "radically different" allegations to those contemplated when FTI was involved. Andrew Smith J said at [34] that he was "not persuaded that it is fatal to the claimants that they do not allege … that FTI knew of the precise words complained of before they were published" and cited the following words from the judgment of Lord Denman CJ in *R v Cooper* (1846) 8 QB 533, at 535-536: "If a man request another generally to write a libel, he must be answerable for any libel written in pursuance of

his request: he contributes to a misdemeanour and is therefore responsible as a principal. He takes his chance on what is to be published …".

108. Nor am I persuaded that the pleaded case against the Fourth Defendant is insufficient. The Fourth Defendant is in the business of providing services of the kind which were provided to the First Defendant in the present case; the fee that was charged for those services was paid to the Fourth Defendant; and, although this is not expressly pleaded in the Particulars of Claim, the natural inference is that the Third Defendant acted for and on behalf of the Fourth Defendant. Moreover, the Third Defendant does not suggest in his evidence that he acted in his personal capacity.

109. In my opinion, the position of the Fourth Defendant, and its relationship to the Third Defendant, is very different from the position of the Second Defendant, and its relationship to the First Defendant. None of the above points apply to the latter.

110. The above analysis is primarily concerned with the case of joint and several liability for the tort of defamation. However, in the present case, as was true in the *Dar Al Arkan* case, there is a substantial overlap between the facts relied on in support of that cause of action and the facts relied on in support of the claims for unlawful means conspiracy. Indeed, Counsel for both sides addressed both claims together.

111. In this regard, the clarity and particularity of the pleaded claim for conspiracy as against the Third and Fourth Defendants is made good by the repetition of the facts and matters relied upon in support of the pleaded case of defamation against them. Those allegations, if right, are capable of supporting not only (i) a claim that the Third and Fourth Defendants are liable as primary tortfeasors or as accessories to the First Defendant's commission of the tort of defamation but also (ii) a claim that they are liable as participants in a combination or agreement between them and the First Defendant pursuant to which unlawful action was taken which caused loss or damage to the Claimant and was intended or expected by them to do so (even if that was not the predominant purpose of the Third and Fourth Defendants or either of them).

112. For all these reasons, I conclude that both the Claimant's pleaded causes of action as against the Third and Fourth Defendants have at least a real prospect of success.

Section 10 of the Defamation Act 2013

113. In reaching the above conclusions, I have not overlooked the fact that both Mr Hodson and Mr Sinai argued that the court has no jurisdiction to hear the claim against the Defendants in light of the provisions of section 10 of the Defamation Act 2013:

> "(1) A court does not have jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of unless the court is satisfied that it

is not reasonably practicable for an action to be brought against the author, editor or publisher.

(2) In this section "author", "editor" and "publisher" have the same meaning as in section 1 of the Defamation Act 1996."

114. In this regard, (among other things) section 1(2) of the Defamation Act 1996 (i) defines "author" as "the originator of the statement, but does not include a person who did not intend that his statement be published at all", and (ii) defines "publisher" as "a commercial publisher, that is, a person whose business is issuing material to the public, or a section of the public, who issues material containing the statement in the course of that business". It also defines "editor" as "a person having editorial or equivalent responsibility for the content of the statement or the decision to publish it".

115. Section 10 of the Defamation Act 2013 is considered by the authors of *Gatley* at para 7-045 under the rubric "jurisdictional bar on claims against secondary publisher". In keeping with the discussion contained in that paragraph, Mr Sherborne submitted that, in essence, this provision is concerned with protecting innocent disseminators.

116. In my judgment, there is nothing in this point.

117. First, there was plainly an "author" of each of the statements complained of in the Particulars of Claim within the meaning of section 1 of the Defamation Act 1996. On the material presently before the Court, the live possibilities would appear to be (i) that the "author" was the First Defendant alone, or (ii) that the "author" was the First Defendant together with one or other or both of the Third and Fourth Defendants, but (iii) that even in the event that (i) applies, the Third and/or Fourth Defendants are nevertheless at least arguably liable in accordance with the principle of accessory liability. If either (i) or (ii) applies, the Court plainly has jurisdiction to hear and determine the claim for defamation, either as against the First Defendant alone or as against her and one or other or both of the Third and Fourth Defendants. So far as scenario (iii) is concerned, I do not consider that section 10 of the Defamation Act 2013 was intended to exclude or cut down the jurisdiction of the Court to entertain claims against those jointly liable with the "author" of published statements for the tort of defamation. No authority was cited to me in support of the contrary proposition.

118. The same reasoning applies if the correct label to be applied to any or all of the First, Third and Fourth Defendants is, in truth, that of "editor" rather than "author".

119. Second, turning to the definition of "publisher" contained in section 1 of the Defamation Act 1996, it was submitted on behalf of the Defendants (i) that Harris Media was the "commercial publisher" of the statements complained of in the Particulars of Claim and (ii) that the Claimant has not explained why it is not reasonably practicable for him to bring an action against Harris Media.

120. As to the first of those points, if Harris Media was a "commercial publisher", there would appear to be no reason why (on the basis that the facts alleged in the Particulars of Claim are to be taken as true) the Fourth Defendant was not also a "commercial publisher"; and no reason why the Third Defendant should not be caught by section 1(4) of the Defamation Act 1996: "Employees or agents of an author, editor or publisher are in the same position as their employer or principal to the extent that they are responsible for the content of the statement or the decision to publish it".

121. As to the second of those points, this is discussed by the authors of *Gatley* at para 7-045, where they give the example of a claim against a publisher in the USA which would be unenforceable in that jurisdiction in accordance with the principles of freedom of expression in that jurisdiction, and express the view that "It cannot be required of a claimant that he pursue a claim that even if successful would be of no practical value to him …". It appears from that discussion that the point is undecided, and indeed no authority was cited to me as to the ambit of the expression "not reasonably practicable" either in this specific context or at all. The arguments based on section 10 of the Defamation Act 2013 were not flagged up to the Claimant in advance of the exchange of Skeleton Arguments for the hearing, were not developed in any detail at the hearing, do not require to be resolved in this regard in light of my conclusions relating to the definition of "author" and/or because if Harris Media is a "commercial publisher" it would seem that the Third and Fourth Defendants can be sued on the like footing; and even if those arguments were right they would leave the Claimant able to pursue a cause of action for unlawful means conspiracy which would cover all the same terrain as the defamation claim (because the alleged unlawful means consists of libelling the Claimant). In these circumstances, I consider it better to leave the second point to be decided on some occasion where it needs to be decided.

122. That said, I can see force in the views expressed by the authors of *Gatley*, bearing in mind, in particular, that it is now well-settled that the courts should adopt a purposive approach to statutory interpretation where possible (see, for example, *Rittson-Thomas v Oxfordshire County Council* [2022] AC 129, Lady Arden JSC and Lord Burrows JSC speaking for the Supreme Court at [33]).

THE FORUM TEST

123. Mr Hodson submitted that the Claimant had not discharged the burden of showing that England and Wales is clearly the most appropriate place in which to bring his claims in respect of the publications complained of, or the proper place in which to bring his claims for unlawful means conspiracy, for the following principal reasons: (i) no part of the alleged common design is pleaded as having taken place, or in fact took place, within this jurisdiction; (ii) it is clear from the existence of proceedings in Greece that "all parties consider Greece to be an appropriate forum for the airing of defamation proceedings", and, further, the Claimant's evidence nowhere explains why "the Greek courts would be unsuitable, or an unfair forum, to hear the case".

124. Mr Sinai did not contend that England and Wales is not the appropriate place for the determination of the Claimant's claims against the Third and Fourth Defendants.

125. Mr Sherborne's principal submissions in response to Mr Hodson's arguments were to the following effect: (i) the statements complained of were published in this jurisdiction, and caused damage to the Claimant's reputation in this jurisdiction; (ii) accordingly, this is the jurisdiction with which both the action for defamation and the action for unlawful means conspiracy (as the "unlawful means" comprise the same defamatory publications) have the most real and substantial connection; (iii) there is no other suitable forum, let alone any forum which is more suitable, because (among other things) none of the Defendants are domiciled in any single foreign jurisdiction, and the claim is centrally concerned with a Campaign of publications which were published in England to an English audience and in the English language (and to which the law of England and Wales applies); and (iv) even if the place of commission of the unlawful means conspiracy could be said to be some foreign jurisdiction (and it should be noted that Mr Hodson did not identify what jurisdiction that would be), that is only one factor which is relevant when deciding whether that jurisdiction is clearly or distinctly the appropriate place in which to bring the present claim, and in the instant case that factor is outweighed by other factors, such as those identified in (i)-(iii) above. In particular, it is impossible to say that the bulk of the evidence will come from witnesses in any one foreign jurisdiction as (a) it is unclear whether and on what basis the allegations complained of will, in fact, be defended, (b) even if they are defended, for example as being substantially true, they concern not only match-fixing in Greece and drug trafficking into Greece but also sanctions breaking involving shipments from Russia and complaints emanating from the USA, (c) further, evidence relevant to other possible defences, such as public interest, would or may involve witnesses from Israel and the USA, and (d) how many witnesses may be required from each jurisdiction is unknown (see *VTB Capital plc v Nutriek International Corp* [2013] UKSC 5; [2013] 2 AC 337, Lord Mance JSC at [51] "The significance attaching to the place of commission may be dwarfed by other countervailing factors.").

126. In my judgment, Mr Sherborne's submissions are plainly to be preferred.

FULL AND FRANK DISCLOSURE

127. The First and Second Defendants' case that Mr Scott's evidence before Senior Master Cook failed to comply with the Claimant's duty of full and frank disclosure is summarised in Mr Summers' first witness statement as comprising a failure (i) "to bring adverse documents on the material chapters of the case … to the attention of the court" and (ii) to appraise the Court "of the history of intimidation by the Claimant's family and cohorts in Greece before and since the claim was filed in court".

128. Mr Summers explains, in summary:

(1) With regard to allegations of match fixing, (i) media companies controlled by the Claimant are Defendants in a libel action in Greece brought by the First Defendant

and her brother in September 2023 in connection with a sustained public relations campaign orchestrated by the Claimant, this action involves match fixing claims against the Claimant, and Senior Master Cook was entitled to know the detail of these proceedings so that he could consider the issue of overlapping proceedings in Greece dealing with similar issues of fact; (ii) as these Greek libel proceedings had been commenced first, it was at least arguable that bringing the present libel claim in this jurisdiction amounted to an abuse of process, alternatively that Greece was the appropriate place in which to determine the allegations of match fixing against the Claimant; and (iii) in any event, it was not disclosed that there are in the public domain in this jurisdiction many allegations of match fixing against the Claimant, which was "relevant to merits, and in particular to 'serious harm'".

(2) With regard to allegations of drug trafficking, (i) the Claimant is a suspect in a live drug trafficking investigation in Greece and has faced preliminary charges, and although the lead investigator concluded that there was no evidence implicating the Claimant, the Piraeus Appeals Prosecutor disagreed and has returned the case for further investigation which is still ongoing; (ii) there is an ongoing criminal libel action in Greece brought by the Claimant against a journalist called Alexander Clapp relating to an article of September 2020 in which Mr Clapp accused the Claimant of trafficking drugs; (iii) Senior Master Cook was not informed of these two sets of Greek criminal proceedings, as he ought to have been; (iii) as these Greek proceedings had been commenced first, it was at least arguable that bringing the present libel claim in this jurisdiction before they had reached their conclusion amounted to an abuse of process, alternatively that Greece was the appropriate place in which to determine the allegations of drug trafficking against the Claimant; and (iv) it is at least arguable that "there is no prospect of surpassing the 'serious harm' threshold".

(3) With regard to sanctions breaking, (i) in 2021, a vessel owned by the Claimant's company, Capital Ship Management Corporation, was stopped and found to contain sanctioned Iranian oil resulting in the seizure of the vessel under US forfeiture laws; (ii) the Claimant admitted to the First Defendant that he was involved in "knowingly transiting Iranian sanctioned oil"; (iii) the First Defendant has compiled a schedule of 9 voyages involving vessels owned and controlled by one of the Claimant's companies entering Russian ports, which she "contends involved clear breaches of US/EU/UK sanctions and associated criminal offences"; (iv) there are in the public domain within this jurisdiction a number of articles containing allegations concerning the Claimant's alleged shipping of Iranian and Russian oil, which "would have been relevant to merits, and in particular to 'serious harm'"; and (v) had Senior Master Cook "known all this [he] would not have allowed the Claimant to proceed with his claim where the Claimant through his companies was persistently in breach of sanction laws", as it was "either a clear abuse of process or doomed to fail in the face of a defence of truth".

129. As indicated in Mr Summers' witness statement, these points were fleshed out in the First Defendant's witness statement. For example, with regard to the Greek libel proceedings brought by the First Defendant and her brother, she states that "in

September 2023 we filed a lawsuit against [the Claimant's] close associate and friend, Mr Kourtakis, and their media entities, for the false publications against us, because [the Claimant] continued his war against us with continuous articles when all the previous years he had only positive comments about our team and us".

130. These points are answered in Mr Scott's second witness statement:

(1) With regard to the history of intimidation, "I am instructed that the Claimant has no knowledge of these matters whatsoever, and therefore he cannot possibly have been expected to advance evidence on them".

(2) With regard to allegations of match fixing, Mr Scott makes the following points (among others): (i) there is no conceivable abuse as the Claimant is not a defendant or any party to the Greek libel proceedings and the allegations that they seek to resolve do not in truth overlap with the proceedings in this jurisdiction; (ii) it is simply incorrect that the Greek libel proceedings also involve "issues of prior match fixing claims against the Claimant"; (iii) although, for these reasons, it was not material to bring the Greek libel proceedings to the attention of Senior Master Cook, they were in fact exhibited to Mr Scott's first witness statement before him; (iv) with regard to the alleged lack of full and frank disclosure about what is in the public domain, not only was public domain material exhibited to Mr Scott's first witness statement but also the Claimant had previously been acquitted of these allegations.

(3) With regard to allegations of drug trafficking, Mr Scott makes the following points (among others): (i) the "preliminary charges" referred to by Mr Summers are "a complete misstatement of the nature and effect of the Greek system"; (ii) it is misleading to suggest that the Claimant has been charged or that his role in this investigation is "live", when in truth "he was merely named in a preliminary investigation, which yielded no evidence against him in the first instance"; (iii) the Claimant has not been charged, arrested or brought to stand trial for these allegations, and "nothing has happened in relation to this "ongoing" investigation as concerns the Claimant, since March 2018"; (iv) there is simply no evidence to substantiate the pleaded meaning regarding drug trafficking and accordingly no basis for any reference to this to have been made at the permission stage; (v) as to the claim against Mr Clapp, this has since settled, "there are no longer proceedings in place", "judgment was entered in favour of the Claimant", and "Mr Clapp has withdrawn his allegations against the Claimant".

(4) With regard to allegations of sanctions breaking, Mr Scott makes the following points (among others): (i) although Iranian origin oil was loaded in Fujairah, UAE, by a ship-to-ship transfer onto a ship owned by his company, the Claimant had no involvement in this, and in fact his company was deceived by the charterers of the vessel; (ii) accordingly, the allegations that Mr Summers asserts should have been brought to the attention of Senior Master Cook are baseless; (iii) the allegations against the Claimant that are in the public domain are the product of

attempts to smear his name, and, in fact a Google search of "Marinakis oil sanctions" reveals a Forbes article published on 12 July 2024 which states "there is no evidence that any of these [Greek] billionaires violated sanctions"; (iv) moreover, the allegations made in the Campaign do not relate to Russian ports and Russian oil; (v) in any event, the Claimant's business has at all times been fully approved by the European Union; and (vi) "By exhibiting the correspondence, the press coverage in the exhibit CHS1 and the detailed references to the allegations in both those and my First Witness Statement … full, frank and proper disclosure was given of all material matters for the purposes of seeking permission".

131. This evidence, in turn, was met by further evidence to the effect that Mr Scott's account of the status and outcome of the Greek libel claim involving Mr Clapp was disputed by Mr Clapp.

132. In light of the guidance provided by Males LJ in *Mex Group Worldwide*, it would have been open to me to decline to consider the long list of alleged failures of disclosure advanced by Mr Summers and fleshed out by the First Defendant. Because of the seriousness of the allegations, however, I have thought it right to set them out, together with the Claimant's principal answers. Having carried out that exercise, I have reached the clear conclusion that none of them are made out.

133. In a number of instances, the contentions are clearly without substance. For example, the suggestion that the existence of allegations in the public domain against the Claimant is relevant to the issue of "serious harm" or to the merits more generally is manifestly without foundation. The mere fact that others have made allegations, which are not claimed to have been substantiated, cannot affect whether the Claimant has a cause of action in relation to further allegations made by the First Defendant (even if they are to identical effect). Further, the existence of the alleged public domain material does not undermine the Claimant's ability to satisfy the threshold requirement of "serious harm" (see [59] above).

134. In other instances, the alleged failures of disclosure depend on proof of facts which are in issue and which are plainly incapable of being resolved on the current applications, and in many instances facts which relate to the Claimant's causes of actions. This applies, for example, to whether the Claimant has ever truthfully been implicated in drug trafficking (which includes the status and outcome of the Greek libel proceedings involving Mr Clapp) or in sanctions breaking.

135. In still further instances, the alleged failures raise a mixture of issues, all of which seem to me to favour the Claimant's contentions over those of the First and Second Defendants. This applies, for example, to the allegations concerning the Greek libel proceedings brought by the First Defendant and her brother. First, approaching the matter on the basis of what appears to be common ground, it is clear that these proceedings do not involve the same parties as the current proceedings in this jurisdiction, and the parties that are being sued in Greece are not, on proper analysis, "related" to the Claimant. On these grounds alone, these two sets of proceedings do

not appear to "overlap" in such a way that they were material to be disclosed on the Claimant's application before Senior Master Cook. Second, not only does it seem implausible that an action for libel brought by the First Defendant and her brother even as against the Claimant would give rise to a need to consider whether the Claimant was involved in match fixing, but also there is a dispute on the evidence about whether the Greek libel action does in fact raise any such allegation against the Claimant, and none of the parties suggested that this was a dispute that I could or should resolve.

136. Even if Greek libel proceedings had been brought by the First Defendant and her brother against the Claimant and (for some reason) the determination of those claims for libel against the Claimant involved determining the same allegations of match fixing as are made against the Claimant in the publications complained of in the present proceedings, it would not follow that the claims relating to allegations of match fixing that form the subject of the present proceedings (in relation to publications within this jurisdiction) could or should be brought in Greece. The like points apply to claims in Greece relating to drugs trafficking or sanctions breaking. It is not as if the Claimant can be said to be bringing overlapping claims in Greece. Nor is it clear how the Claimant could be made a party to the libel proceedings of the First Defendant and her brother, let alone how the Defendants or any of them could be made parties to the Claimant's claim against Mr Clapp, or how the parties in this jurisdiction could participate in any criminal investigation in Greece. In fact, there are differences between the statements complained of in the present proceedings and the allegations which have arisen in Greece, so the premise of all this is inapplicable in any event.

137. It is untenable to suggest that the material relied on in the witness statements of Mr Summers and the First Defendant is sufficient to establish against the Claimant wrongdoing of such a high order of seriousness, so as to make the present claim an abuse of process or doomed to fail by reason of an unanswerable defence of truth. In fairness to Mr Hodson, the way he argued the case before me was different. It was to the effect that as the Claimant had been put on notice that the truth of the allegations made in the publications complained of in the Particulars of Claim would be in issue in the present proceedings, it was necessary to provide full and frank disclosure of the various proceedings in Greece (for example, the libel claim against Mr Clapp). However, leaving aside altogether (i) that the status, contents and implications of those proceedings have been put in issue by Mr Scott, and (ii) Mr Scott's evidence that sufficient disclosure was given of these matters, it seems to me that even a very full exposition of these proceedings would go no further than to suggest that a defence of truth is arguable, which by itself takes matters nowhere in light of the Merits Test.

138. I consider that these allegations should not have been made, and certainly, once the extent of dispute became clear, pursued, in the unfiltered way in which they were.

The Third and Fourth Defendants

139. Mr Sinai adopted a different approach, and focused his submissions on (i) the failure to place before Senior Master Cook the documents obtained from Harris Media

as a result of the proceedings in Texas and (ii) the contents of Mr Scott's first witness statement, in support of a contention that the merits of the case had been "inflated".

140. Mr Sinai listed twelve points in support of his argument that there were serious deficiencies in the presentation that was made to Senior Master Cook. I do not consider that some of them are of any moment (for example, the complaint that Mr Scott failed to point out that the Third and Fourth Defendants had offered to be cooperative). The main criticisms that were made of Mr Scott's evidence may be summarised as follows:

(1) In paragraph 14 of his first witness statement, Mr Scott states:

> "The Defendants, all of whom were actively involved and participated in the implementation and pursuit of the Smear Campaign, are as follows …"

(2) The complaint is made that this does not differentiate between the Defendants.

(3) In paragraphs 16 and 17, Mr Scott explains how *Norwich Pharmacal* applications made by the Claimant led to the identification of Harris Media as the entity behind the publications. Then, in paragraph 18, Mr Scott refers to the disclosure order that the Claimant went on to obtain against Harris Media in Texas, and states:

> "Through this order … the Claimant identified the First and Third Defendants as the individuals who provided instructions to Harris Media LLC to operate the Campaign, together with the Second and Fourth Defendants paying invoices issued by Harris Media LLC".

(4) The complaint is made that this exaggerates the documented case against the Third and Fourth Defendants. In this regard, none of the documents obtained by the Claimant as a result of the proceedings in Texas were placed before Senior Master Cook. Further, it was apparent from those documents that (a) in his sworn Affidavit, Mr Harris had identified the First Defendant as the "unknown client" of Harris Media (see [87] above), and (b) there was only one documented "instruction" provided by the Third Defendant, which consisted of passing on a decision of the First Defendant not to approve publication by aircraft banner (see [96] above). Similarly, the reference to the Second and Fourth Defendants paying invoices suggests a pattern of payments made on behalf of these Defendants, whereas the pleaded case against both the Second Defendant (see [23] above) and the Fourth Defendant (see [24] above) is both different and narrower than that.

(5) In paragraph 26, Mr Scott states:

> "The First and Third Defendants provided instruction to Harris Media LLC to carry out the campaign. The Second and Fourth Defendants made (or alternatively, on the Fourth Defendant's own solicitors' case, facilitated) payments to Harris Media LLC. The conspiracy was orchestrated by all the

Defendants, who each played a specific role in its operation. Together, the Defendants have all played an active role in the unlawful means conspiracy, as well as the defamatory publications, and are therefore liable in this jurisdiction".

(6) The like complaints are made as apply to paragraph 18 of the witness statement.

(7) In paragraphs 44 and 45, Mr Scott states:

> "As to the Third and Fourth Defendants, Keystone Law … suggest that their clients are not responsible for the Smear Campaign. As outlined above, this is entirely contradicted by the evidence which the Claimant has obtained.
>
> They may seek to argue in relation to the defamation complaint that they are not publishers for the purposes of s1 Defamation Act 1996. The Claimant's position is that having been bound up in instigating the conspiracy and instructing and paying for its deployment, and [in] the knowledge of the subject matter to be deployed, the Third and Fourth Defendants would be unable to satisfy the requirements of s1(c) of the 1996 Act and assert they are not publishers".

(8) It is complained that it is inaccurate to claim that any suggestion that the Third and Fourth Defendants lack responsibility is "entirely contradicted" by the evidence. The repetition of the assertions that the Third and Fourth Defendants were "bound up" in "instigating the conspiracy" and "instructing and paying for its deployment" reinforces the suggestion that these allegations are not open to dispute.

(9) In paragraph 54, Mr Scott states:

> "For the purposes of full and frank disclosure, I am mindful of the need to identify what defences might be raised by the Defendants. Given the lack of any positive assertion in correspondence, the Claimant has no basis for believing the Defendants will advance defences to the unlawful means conspiracy claim".

(10) It is complained that this, again, overstates the strength of the case against the Defendants, and indeed suggests that the conspiracy claim will not be defended.

(11) In paragraph 55, Mr Scott states:

> "In relation to the Third and Fourth Defendants, they have also not advanced substantive defences … They may seek to argue that they did not agree with others to be part of a conspiracy and/or did not intend to injure the Claimant. The Fourth Defendant at the direction of the Third Defendant did, however, direct funds to pay for the campaign, while the Third Defendant was

instructed by the First Defendant and made at least the introduction to Harris Media LLC and was aware of the defamatory allegations to be made against the Claimant. On this basis the Claimant believes his claims against both the Third and Fourth Defendants in unlawful means conspiracy will succeed".

(12) On one view, this paragraph in the witness statement describes the case against the Third and Fourth Defendants in more qualified terms than some of the earlier paragraphs quoted above. On the other hand, it suggests that (i) the Fourth Defendant itself provided funding for the campaign, (ii) the Third Defendant carried out the instructions of the First Defendant, and (iii) the Third Defendant knew what defamatory allegations were to be made before they were made.

(13) In paragraphs 69 of his first witness statement, Mr Scott states that the solicitors for the Third and Fourth Defendants "have also failed to provide any substantive response to the Letter before Claim".

(14) It is complained that this compounded earlier references by Mr Scott to the contents of the pre-action correspondence which failed to point out that the limited role played by the Third and Fourth Defendants had been explained by their solicitors; that merely exhibiting the pre-action letters from those solicitors was not sufficient; that the materials obtained from Harris Media, which were not disclosed, in fact contradicted the Claimant's case against the Third and Fourth Defendants; and that this failure was "substantial and likely a deliberate decision".

141. Mr Sherborne's written submissions concerning the Third and Fourth Defendants' case on the alleged failure to comply with the duty of full and frank disclosure were partly devoted to addressing points which Mr Sinai did not pursue at the hearing. For example, the complaint in the Third Defendant's witness statement that the failure to provide the Third and Fourth Defendants with disclosure of the documents obtained by the Claimant from Harris Media was itself a breach of the duty was answered in Mr Scott's second witness statement by pointing out (among other things) that the Defendants had these documents in any event, and was not pursued by Mr Sinai.

142. Mr Sherborne's main submissions (supported by the evidence of Mr Scott contained in his second witness statement) with regard to the points set out above were as follows: (i) Mr Scott's first witness statement contained a fair presentation of the issues overall, including the position of the Third and Fourth Defendants; (ii) this included Mr Scott's presentation of the contents of the pre-action correspondence, which was in any event included in the exhibit to that witness statement, as expressly stated by Mr Scott in paragraph 3 of the same; (iii) there was no obligation to place before Senior Master Cook the materials obtained from Harris Media, which in any event did not contradict or undermine the Claimant's case, both (a) because they were documents obtained in response to an order of the court in Texas which was of limited ambit, and could fairly be presumed to form only part of the communications which evidence the Third Defendant's involvement in the Campaign, and (b) because they

were, by themselves, sufficient to show that the Claimant's claims against the Third and Fourth Defendants had a real prospect of success; and (iv) proper application of the principles and guidance contained in the decided cases led to the conclusion that there had plainly been no failure to comply with the duty of full and frank disclosure.

143. When considering these rival contentions, I bear in mind, in particular, the following points. On the one hand, "It is important to uphold the requirement of full and frank disclosure" (*Sloutsker* at [51](iii)) and "It is a high duty and of the first importance to ensure the integrity of the court's process" (*Tugushev* at [7](i)). Further, "Full disclosure must be linked with fair presentation" (*Tugushev* at [7](i)) and "The evidence and argument must be presented and summarised in a way which, taken as a whole, is not misleading or unfairly one-sided" (*Fundo Soberano de Angola* at [52]). On the other hand, while "The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim", the duty "need not extend to a detailed analysis of every possible point which may arise" (*Tugushev* at [7](v)). Further, "a due sense of proportion must be kept", "sensible limits have to be drawn", and, at the end of the day, "The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect" (see *Tugushev* at [7](vi)).

144. In my judgment, the Defendants have the better part of the argument on this issue. I consider that the way in which the case was presented in Mr Scott's evidence gave the impression that the case against each of the Defendants was of equal or similar strength, failed to flag up the narrow nature of the concrete pleaded case against the Second Defendant, and suggested that the unlawful means conspiracy claim was quite straightforward as against each of the Defendants, without addressing fairly whether the evidence and the way in which the claim had been pleaded was sufficient to support such serious allegations, specifically as against the Second Defendant.

145. In particular: (i) that evidence presented the case against the Second Defendant in stronger and different terms than the case pleaded in the Particulars of Claim; (ii) the statement that the disclosure obtained from Harris Media showed that the Third Defendant had provided instructions to Harris Media to operate the Campaign was an overstatement (see [140](4) above); and (iii) the statement that this disclosure showed that the Second and Fourth Defendants paid invoices issued by Harris Media was misleading in light of the pleaded case on payment of instalments contained in paragraphs 97.2 and 97.5.4 of the Particulars of Claim. These matters were compounded by the decision not to include the materials the Claimant had obtained from Harris Media as a result of the proceedings in Texas in the evidence before Senior Master Cook, because this deprived the Court of the opportunity to consider for itself whether Mr Scott's characterisation was fair or one-sided (see [140](4) above).

146. I do not consider that there is any basis for saying that this was done deliberately, in order to conceal the extent to which those materials contained only limited pointers towards the involvement of the Second, Third and Fourth Defendants. However, I have little doubt that if those materials had been thought to provide strong support for

the Claimant's case against any or all of those Defendants then the Claimant's legal advisers would not have thought it disproportionate to include them in the evidence before the Court. I suspect that what occurred is that either too superficial a view was taken of what those materials showed, and whether they supported points which the Defendants might wish to make, or else, subconsciously, they were thought to be not particularly helpful to the Claimant's case and were omitted for that reason.

147. It is not easy to say what would have happened if the duty of full and frank disclosure had been complied with. In keeping with the conclusions that I have reached on the Merits Test with the benefit of detailed argument from all parties and far more time than was available to Senior Master Cook, the outcome would have been to grant the application for permission to serve out as against the First, Third and Fourth Defendants, but to refuse it as against the Second Defendant. Another possibility is that Senior Master Cook might have adjourned the application to ask for further assistance with regard to the points which, in accordance with my analysis, ought to have been brought to his attention. In any event, it seems to me that there is no reason to suppose that he would not have granted permission either immediately or following further argument as against the First, Third and Fourth Defendants. In addition, permission might have been granted against the Second Defendant as well, as it is possible he might have reached a different conclusion to me on the Merits Test.

148. In these circumstances, I consider it right to impose a sanction for the breaches that I have held to be made out, but at the same time I consider that it would be going too far to set aside the Order of Senior Master Cook on these grounds. In my judgment, the appropriate way in which to mark the failures to comply with the duty of full and frank disclosure which occurred in this case is by ordering that the Claimant should be deprived of his costs of the application that he made before Senior Master Cook.

ABUSE OF PROCESS

149. Mr Hodson argued that the present claim constitutes an abuse of process because "It is plainly brought for the collateral purpose of pursuing the Claimant's vendetta against the First Defendant, arising from her family's refusal to bow to his demands" and "The purpose of this claim is not vindication of rights … [but] to intimidate and harass the First Defendant and anyone connected with her". In support of these submissions, Mr Hodson relied on the First Defendant's evidence as to a campaign of harassment against her and her family, for which she claimed the Claimant was responsible, and the very large claim for in excess of £2.1m contained in the Annexe to the Particulars of Claim (see [28] above) which he criticised as set out in [58] above.

150. Mr Sinai did not in terms allege abuse of process, but submitted that (i) it is not clear what the Claimant seeks to achieve by suing the Third and Fourth Defendants, (ii) the pleaded allegations do not support the £2.1m or more claimed, and (iii) the Court is entitled to question the claim against the Third and Fourth Defendants.

151. In my judgment, it is impossible to accept Mr Hodson's submissions. On the face of it, the Claimant's claims are substantial and well founded. As Warby LJ remarked in *Soriano* "… defamation remains a relatively simple tort to prove". Further, for the reasons rehearsed in detail above, not only is the claim for unlawful means conspiracy, in factual terms, closely connected to the claim for defamation, in particular so far as that claim relies on accessory liability, but also and in any event it, too, cannot be said to be unmeritorious. A genuine desire to obtain vindication of rights cannot be peremptorily ruled out, and indeed, on the basis of the facts alleged in the Particulars of Claim, seems entirely plausible. As for the suggested collateral purpose, the Claimant denies pursuing a campaign of harassment against the First Defendant and her family, and that factual dispute cannot be resolved on the materials at present before the Court. The claim contained in the Annexe is certainly of a remarkable magnitude, but whether that is due to unwarranted exaggeration or because the matters complained of have caused the Claimant an extraordinary amount of financial harm is a matter for trial, and if and to the extent that the former is correct the claim will fail.

152. Mr Sinai's points also, in my opinion, come nowhere near to justifying rejection of any of the Claimant's claims. First, the Claimant is not required to demonstrate what he seeks to achieve by suing the Third and Fourth Defendants, but, in any event, it seems clear that this involves at the very least (a) establishing the full details of the Campaign, and (b) ensuring that he obtains relief, including the grant of injunctions if appropriate, against all those who were responsible for it. Second, whether the pleaded allegations support the £2.1m or more claimed is a matter for trial. Third, there are no obvious grounds for "questioning" the claim against the Third and Fourth Defendants, but even if there were that would not warrant granting their present application.

CONCLUSION

153. For these reasons: (i) I grant the application of the Second Defendant, (ii) I dismiss the applications of the First, Third and Fourth Defendants, and (iii) I order that the Claimant's costs of his application dated 10 May 2024 must be borne by him.

154. So far as concerns the costs of and occasioned by the Defendants' applications before me, my provisional view is as follows: (i) there should be no order as to costs as between the Claimant on the one hand and the First and Second Defendants on the other hand (because the First Defendant failed on the application, the Second Defendant succeeded on the application, I am minded to treat the parties' costs arising from the application of those Defendants as being equally attributable to each of them, and while the Second Defendant only succeeded on the Merits Test at the same time it made a complaint of failure to comply with the duty of full and frank disclosure which succeeded although it did not succeed on the grounds advanced on behalf of those two Defendants but instead did so on some of the grounds advanced on behalf of the Third and Fourth Defendants), and (ii) as between the Claimant and the Third and Fourth Defendants, the Claimant should be awarded 40% of his overall costs (because I am minded to treat 50% of the Claimant's costs as being attributable to responding to the Third and Fourth Defendants' application, to regard the Claimant as

being the substantial winner of the dispute with them, but to make a 20% reduction in the costs to which the Claimant would otherwise be entitled to reflect their success with regard to the issue of failure to comply with the duty of full and frank disclosure).

155. I emphasise that this is necessarily a provisional view, but I express it in the hope that it may assist the parties to agree, or at least narrow, any arguments about costs.

156. I ask Counsel to agree an order which reflects the substantive rulings above. I will deal with submissions on any points which remain in dispute as to the form of the order, and on any other issues such as costs and permission to appeal, either when judgment is handed down, or on an adjourned hearing on some other convenient date.