IN THE HIGH COURT OF JUSTICE **Claim No. QB-2021-001113**
QB-2021-001115

QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

DEPUTY MASTER YOXALL

B E T W E E N

[1] RAZIEL (RICHARD) DAVIDOFF
[2] HANNI DAVIDOFF
[3] TAMARA DAVIDOFF
[4] DEBBY DAVIDOFF
[5] ABC BLOCK MANAGEMENT LIMITED
[6] ABC HENDON LIMITED

Claimants

And

DHIR DOSHI
QB-2021-001113

THOMAS GOVAN
QB-2021-001115

Defendants

JUDGMENT

My Judgment will not be electronically recorded. Accordingly, this may be treated as authentic.

1. I have before me two linked cases which raise common issues. Each Defendant has issued an application for an order that the claim against him be struck out or that he be granted summary judgment.

2. Mr. William Bennett QC., and Ms Beth Grossman, of counsel, appeared on behalf of the Claimants and Mr. Ian Silcock, of counsel, appeared on behalf of

the Defendants. I heard submissions on 26th November 2021 and reserved judgment. On the 29th November 2021, I received a supplemental note from counsel for the Claimants and on the 1st December 2021, I received supplemental submissions from Mr. Silcock. I am grateful to counsel for their written and oral submissions. The skeleton arguments and supplemental notes should be read alongside this judgment. I hope that I will be forgiven for not rehearsing their arguments in full.

3. I also have the benefit of two witness statements by Mr. Doshi; two witness statements by Mr. Govan; and a witness statement from Mr. Mark Lewis, solicitor with conduct of the case on behalf of the Claimants. I have a bundle of 801 pages.

The Background

4. We have the same Claimants in each case. The Fifth Claimant is engaged in property management. The Sixth Claimant is a sales and letting agency. The First to Fourth Claimants are all engaged in the running of these businesses through the companies. It is a family business.

5. The Fifth and Sixth Claimants trade as "ABC Estates", "ABC Edgware", and "ABC Hendon". There is also an ABC Estates Limited but that company is not a claimant.

6. The Claimants plead that ABC Estates maintained offices on high streets in Mayfair, Hendon and Edgware and that those offices were visited by clients and prospective clients and the First to Fourth Claimants attended those offices to meet them. Furthermore, each of the First to Fourth Claimants drove a car branded with ABC Estates' name, which they used for personal as well as professional purposes.

7. In addition, the First to Fourth Claimants plead that they are active members of the Jewish community in and around the Edgware and Hendon areas of North London and are widely known by members of that community in relation to ABC Estates. It is pleaded that many members of that community are current or former clients, service users or competitors of ABC Estates.

8. Mr. Doshi was employed by ABC Estates as a consultant. He states that he was employed by ABC Estates Limited. Mr. Govan was employed by ABC Estates. The events complained about happened after their employment ceased.

9. ABC Estates maintains a website *www.abcestates.co.uk*. Upon a person entering into the Google search engine the words "ABC Estates", "ABC Edgware", or "ABC Hendon", a list of search returns will be published to that

user, which includes reviews (Google reviews) from members of the public together with the ABC Estates website and other property websites.

10. The Claimants' pleaded case is that on dates unknown to them, Mr. Doshi published five Google reviews which were defamatory of the Claimants; and Mr. Govan published seven such Google reviews. The Defendants published each review under a different false name.[1] Two of the reviews published by Mr. Doshi sought to give the impression that he was Jewish.[2] Likewise Mr. Govan.[3] Mr. Bennett told me that neither of the Defendants is Jewish. In most of the reviews the writer was claiming to have worked with or to have used the services provided by the Claimants.

11. The Claimant's case is that the reviews were fakes and that the events described in them fictitious.

12. The Particulars of Claim in each case plead the defamatory meaning of the publications complained of. The thrust of it is that ABC Estates, ABC Edware and ABC Hendon are a fraudulent and dishonest enterprise exploiting landlords and tenants alike by making fraudulent claims for maintenance work and fraudulent invoices and by letting and allowing to be let properties in a state of disrepair and so putting lives at risk.

13. As far as the First to Fourth Claimants are concerned, the meaning pleaded is that they, being the individuals who run ABC Estates, ABC Edgware and ABC Hendon, are fraudsters and dishonest because they run a fraudulent and dishonest enterprise (or enterprises) which inflate prices artificially, charge for services not rendered and pursuant to falsified invoices and publish or cause to be published fake reviews of their services in order to deceive prospective clients into obtaining their services, and in so doing have committed criminal offences.

14. Mr. Doshi's case is that his reviews were posted, and thereby first made available online, by 30th December 2019; 10th January 2020; and three reviews on 13th January 2020. Mr. Govan states that his reviews were all posted by 13th January 2020. The Defendants state that the reviews were removed from publication on about the 19th April 2020. The Claimants state that they are unable to agree these dates pending disclosure and, possibly, third party disclosure against Google.

15. The Claimants contend that Mr. Doshi and Mr. Govan acted in concert. They deny this but I note the similarity of the dates of posting. I note also that they

[1] Mr. Doshi published 1 review under the name "Anonymous" and justified that for personal reasons on the basis that he did not want his firm to be associated with ABC Estates. He had no firm.
[2] Under the name Michelle Reshef: "… I asked members within my local Jewish community if they had experience using this company …"; and under the name Erez Cohen.
[3] Under the name David Friedman and under the name Kosher Boy.

have both instructed the same solicitors. The Claimants further contend that there are further fake reviews which were posted by other parties – against whom proceedings have been taken or threatened and settlements obtained. One such person was a Mr. Khanna and it is alleged that the Defendants acted in concert with him – although to what extent is not clear without disclosure. A letter before action was sent to Mr. Khanna on 2nd April 2020. It appears that Mr. Khanna forwarded a copy of that letter to the Defendants and that they then removed the reviews. I should add that, as I understand it, Mr. Khanna denies publishing any review.

16. It is submitted that disclosure may throw more light on the relationship between the Defendants and, possibly, others involved in the posting of fake reviews.

The Procedural History

17. Having discovered the said reviews, the Claimants began to investigate who was responsible for the postings. A number of applications under *Norwich Pharmacal* were made.

18. There was a Norwich Pharmacal application against Google, in respect of a number of Google accounts, dated 26th February 2020 and an order was made on the 30th April 2020. The Claimants obtained the information from Google on 27th May 2020. However, that information proved insufficient for the purpose of identification in relation to these proceedings.

19. A further Norwich Pharmacal application, against Sky UK Ltd and Hutchinson 3G UK Ltd, was made on the 25th August 2020 and an order was made on 8th October 2020. There then followed correspondence between Mr. Lewis and the Information Disclosure Unit at 3G to see if prospective defendants could be identified from the information already obtained by narrowing of the categories of information.[4]

20. On the 17th November 2020, a Norwich Pharmacal application was issued against British Telecommunications Plc ["BT"] and Venus Business Communications Ltd. An order was made on 27th November 2020.

21. On 15th December 2020, BT revealed that the IP address from which the posts attributed to Mr. Doshi in the Particulars of Claim belonged to Mr. Doshi.

22. The Claimant's solicitors sent a letter of claim to Mr. Doshi on 7th January 2021. Mr. Doshi instructed solicitors (Samuels Solicitors) and they replied on 21st

[4] See Mr. Lewis, WS para 12. The problem being that 3G IP addresses were not allocated to a single unique user but to multiple users.

January 2021. The reply did not admit or deny that Mr. Doshi published the reviews complained of but asserted that the BT documentation did not show that Mr. Doshi posted the reviews. They made the point that the burden of proving publication was on the Claimants. The letter denied that the Claimants had suffered any serious harm or serious financial harm and made reference to a number of First Tier Tribunal decisions, articles and witness statements used in proceedings which reflected, so it was alleged, badly on the Claimants.

23. The claim form against Mr. Doshi was issued on *25th March 2021* and the claim form and Particulars of Claim were served on 26th March 2021. An extension of time to serve the Defence by 14th May 2021 was agreed. However, instead of serving his Defence, Mr. Doshi, as he was entitled to do, issued his application that is now before me.

24. As far as the claim against Mr. Govan is concerned, on the 21st August 2020, Sky revealed in a disclosure report that the relevant IP address from which the reviews emanated belonged to Ms Denise Govan. A letter of claim was sent to her on 17th November 2020. She replied on the 11th December 2020 stating that she did not know anything about the reviews or the Claimants. On the 17th December 2020, Samuels Solicitors replied at length on behalf of Ms Govan. The letter conceded that Mr. Govan was her son and stated that Samuels Solicitors did not act for Mr. Govan.

25. A letter of claim was sent to Mr. Govan on the 7th January 2021. Samuels Solicitors wrote a lengthy letter in reply and specifically stated that Mr. Govan did *not* publish the reviews complained about. No doubt this denial was given on instructions. Mr. Govan now accepts that the denial was a lie. His explanation was that he was afraid to admit that he published the reviews as he "had seen the pressure that [the Claimants] put their opponents in litigation under".[5]

26. A claim form against Mr. Govan was issued on *25th March 2021*. The claim form and Particulars of Claim were served on 26th March 2021. As with Mr. Doshi, an extension of time for service of the Defence to 14th May 2021 was agreed. Instead, Mr. Govan issued his present application. With his application Mr. Govan served a witness statement in which, inter alia, he admitted the said lie. The Claimant's submit that Mr. Govan's concealment of his identity ended on 14th May 2021.

27. It will be apparent that these applications have to be considered in the absence of disclosure and the exchange of factual witness statements which would follow disclosure. Although the letters of response raised several issues with the letters of claim, there has been no Part 18 request for further information in respect of any matter in the Particulars of Claim.

[5] Paragraph 20 of his witness statement.

The Applications

28. Each Defendant contends that he should have summary judgment in his favour or that the claims should be struck out given the following defects in the claims:

    [1] Limitation: the claims are statute barred;
    [2] There is no proof of publication to third parties;
    [3] The lack of reference to the Second, Third and Fourth Defendants;
    [4] There is no serious harm and/or serious financial loss in respect of the corporate Claimants.
    [5] Abuse of Process.

29. As far as the applications for summary judgment are concerned, I remind myself that a claimant facing an application for summary judgment does not have to show that he or she will win his or her case. The defendant has to show that the claim has no real prospect of success. Of course, a fanciful prospect of success will not do.

30. I also remind myself that on an application for summary judgment, a court must not conduct a mini-trial. I must also proceed on the factual basis as pleaded by the Claimants. That said, I am not obliged to accept what a party states when what is stated is unsustainable or plainly far-fetched.

Limitation

31. S.4A of the Limitation of Actions 1980 states:

> "4A. Time limit for actions for defamation or malicious falsehood.
>
> The time limit under section 2 of this Act shall not apply to an action for—
>
> (a) libel or slander, or
>
> (b) slander of title, slander of goods or other malicious falsehood.
>
> but no such action shall be brought after the expiration of one year from the date on which the cause of action accrued."

32. The Defendants contend that the claims are statute barred given that proceedings were issued on 25th March 2021: more than one year from the date on which the cause of action accrued. The Defendants submit that the cause of action accrued on the publication of each review; i.e., the 13th January 2020 at the latest.

33. Against this, the Claimants' primary submission is that s.32 of the 1980 Act applies, given the concealment of identity, and the claim is not statute barred.

34. So far as is relevant for present purposes s.32 states:

> 32.— Postponement of limitation period in case of fraud, concealment or mistake.
>
> (1) … where in the case of any action for which a period of limitation is prescribed by this Act, either—
>
> (a) the action is based upon the fraud of the defendant; or
>
> (b) *any fact relevant to the plaintiff's right of action* has been deliberately concealed from him by the defendant; or
>
> (c) the action is for relief from the consequences of a mistake;
>
> ***the period of limitation shall not begin to run*** *until the plaintiff has discovered the fraud, concealment or mistake* (as the case may be) or could with reasonable diligence have discovered it. … (My emphasis).

35. On this basis, the Claimants submit that the concealment came to an end on 14th May 2021 and that, accordingly, the limitation periods ended on 14th May 2022. Alternatively, it is submitted that in relation to Mr. Doshi, the earliest the concealment came to an end was on 15th December 2020 (the date BT revealed that the relevant IP address belonged to Mr. Doshi) so that the limitation period expired on 15th December 2021. In relation to Mr. Govan, it is submitted that the earliest the concealment came to an end was sometime after 21st August 2020 so that the limitation period came to an end after 21st August 2021. However, 21st August 2020 was the date the relevant IP address was revealed to belong to Mrs Denise Govan. It was much later when Mr. Govan was identified.

36. The Defendants submitted that the concealment of the Defendants' identity was irrelevant to the accrual of the cause of action: the date of publication is when the cause of action accrued.

37. In short, the Defendants submission was that s.32 of the Act was inapplicable. If the Claimants wished to exclude the time limit they had to rely on s.32A of the 1980 Act which gives the court a discretion to direct that s.4A of the Act shall not apply. The Defendants relied on *Edwards v Golding [2007] EWCA Civ 416* in support of this proposition. The supplemental submissions of counsel related to the *Edwards* case.

38. In *Edwards* Buxton LJ said;

17. The judge rejected that argument as contrary to principle, and so would I. Two separate issues must be distinguished. First, when did the cause of action accrue, which is the test for determining when the limitation period starts to run. Second, in cases where the claimant had not started proceedings within that limitation period, should the court nonetheless allow his action to proceed? That, in a case of defamation, is provided for by section 32A of the Limitation Act , which provides that the court has to decide whether it would be equitable to allow an action to proceed outside the limitation period, having regard to various matters including the length of and the reasons for the delay on the part of the plaintiff, and also his knowledge of matters relevant to the cause of action. Such relief is only needed where a cause of action has accrued before the expiry of the one-year limitation period. *The cause of action accrues, in defamation, on publication. That is an objective question, nothing to do with the subjective knowledge of the defamed person, either of the fact of the defamation or the identity of the defamer. If he fails to sue or to sue the right person because he subjectively has not got the information necessary to start proceedings, then he has to ask for relief under section 32A .* (My emphasis).

18. Mr Davies said that that view was inconsistent with some observations in this court of Rix LJ in Cressey v Tim [2005] EWCA Civ 763 . But the learned Lord Justice was there addressing the particular rules for a personal injury case contained in sections 11 and 14 of the Limitation Act , which makes specific provision for the potential extension of time when the identity of a defendant is not known to the claimant. Two things follow. First of all, if the knowledge of the identity of the claimant was required for the cause of action to accrue, then there would be no reason for that provision to be in the Act at all. Mr Davies said that it was there, as it were, as a belt and braces provision. I cannot agree with that. It is quite clear from section 11 and 14 that *lack of knowledge is something different from the accrual of the cause of action.* Secondly, Rix LJ pointed out *that one cannot bring proceedings against — that is to say, one cannot sue — X or Y or the person who was responsible for the article, without naming him. That is no doubt right. That is a completely different question from whether the cause of action has accrued. The question of whether proceedings can be brought in respect of a cause of action when one cannot name the party is quite different from whether that cause of action has accrued in the first place,* and it is that difference that is recognised by section 14 of the Defamation Act .

21. The alternative way in which the matter was put was that Mr Edwards could rely on section 32(1)(b) of the Limitation Act: deliberate concealment by the defendant of the fact relevant to the claimant's right of action. It was, he said, arguable — indeed it was, he said, the case — that by publishing the article, by writing the article anonymously, Mr Griffin had deliberately concealed from Mr Edwards the fact relevant to the claimant's right of action, that is to say the identity of the publisher.

> 22. I am not certain that even verbally stated that point is correct, because *if the identity of the publisher is something that is not essential to the cause of action*, then the point about concealment does not arise. However that may be, it seems to me extremely *doubtful that in section 32(a)(b) the statute had in mind a case where there was a merely anonymous publication and no more. The section rather provides that the defendant should not conceal something over and above the acts that he does when actually committing the tort. But it seems to me that we do not need to address that point* ... (My emphasis).

39. Mr. Bennett and Ms Grossman rejected the Defendants' submission that Edwards was authority for the proposition that concealment of a defendant's identity was not a fact "relevant to the cause of action." As to paragraph [21] and [22] in *Edwards*, Mr. Bennett and Ms Grossman submitted that they were obiter and concerned a publication of a newspaper which was anonymous but where no *active* step had been taken regarding concealment. Contrast the present case where the Defendants were engaged in *active* concealment of their identity and also in providing false facts in the reviews and falsely portraying themselves as defrauded customers or service users.

40. The Claimants submitted that the Defendants' identity was a fact relevant to the Claimant's right of action. The Claimant could not realistically or fairly be expected to sue persons unknown as no proper vindication could be obtained by those means.

41. What am I to make to the *Edwards* case? It is important to recall the issue which was before the court. The case concerned an anonymous and allegedly defamatory article in a newspaper which was published during a municipal election which took place in May 2002. The action against the editor (Mr. Golding) and the distributor was commenced promptly. The claim against the editor was never served and in July 2005 the claim against the distributor was discontinued. The Claimant applied to add the alleged author of the article as third defendant ["D3"]. In September 2005, Master Eyre gave permission for D3 to be added as a party. Default judgment was later entered against D3 and he applied to set aside the judgment. It appears that the learned Master gave permission to add D3 as he was persuaded that knowledge of the identity of the author was part of the cause of action and that the identity of D3 was not known until shortly before the hearing.[6] The Master said that he was he was joining D3 without prejudice to any defence of limitation. Tugendhat J granted the application to set aside the judgment. The claimant appealed to the Court of Appeal.

42. The issue before the single Judge and the Court of Appeal was whether or not the joinder of D3 was proper. This meant that the key issue was whether or not

[6] Or that there was a triable issue as to when the Claimant knew that D3 was the author.

the cause of action had accrued. If the cause of action had not accrued no problem with limitation arose. If the cause of action had accrued, D3 could not be joined because the joinder would deprive him of any limitation defence because of the doctrine of "relation back". Rule 19.5 would also prevent the joinder after the expiry of the limitation period.

43. The Court of Appeal held that the cause of action had accrued on publication and that knowledge of the identity of the author was irrelevant to the accrual. I am obviously bound by that decision. However, having decided that the cause of action had accrued, there was no need for the court to consider or rule upon s.32 or s.32A of the 1980 Act other than to state that the claimant could not rely on those provisions in support of the joinder of D3. If s.32 or s.32A were to become relevant that would be in a fresh claim against D3.

44. In *Edwards* Buxton LJ at [22] stated that it was extremely doubtful that in s.32 the statute had in mind a case where there was a merely anonymous publication and no more. However, he said that the point did not need to be addressed.

45. In this case I proceed on the basis that the cause of action accrued on publication. However, I do not consider that anything said in the case of *Edwards* prevents the Claimants from seeking to rely on s.32(1)(b) or, as is accepted by the Defendants, s.32A. I consider that the Claimant's have a real prospect of succeeding on either application.

46. In *C v Mirror Group Newspapers Ltd [1997] 1 W.L.R. 131, CA, P138G*, it was held that in relation to the words in s.32(1)(b) "any fact relevant to the plaintiff's right of action", the relevant facts are those which the plaintiff has to prove to establish a prima facie case. *C v Mirror Group* was applied in *Arcadia Group Brands Ltd v Visa Inc [2015] Bus LR 1362 (CA)* in which it was said that the principles applicable to s.32(1)(b) of the 1980 Act were as follows:-

> [49] … (1) a "fact relevant to the plaintiff's right of action" within section 32(1)(b) is a fact without which the cause of action is incomplete; (2) facts which merely improve prospects of success are not facts relevant to the claimant's right of action; (3) facts bearing on a matter which is not a necessary ingredient of the cause of action but which may provide a defence are not facts relevant to the claimant's right of action.

47. The above has been described as the statement of claim test: that is knowledge of the facts which should be pleaded in the statement of claim. On this basis, if a claimant cannot plead or prove the identity of the defendant it might be said that he cannot establish a prima facie case. Who would draft a statement of claim without identifying the defendant?[7]

[7] One might proceed against "Persons Unknown" in a claim against squatters, but the landowner does not need to identify the occupiers by name.

48. Whilst I accept that knowledge of the identity of the publisher is irrelevant to the *accrual* of the cause of action, I consider that identity is a *fact relevant to the cause of action.*

49. In *Parkin v (1) Alba Proteins Ltd (2) Alba Proteins Penrith Ltd (3) Omega Proteins Ltd [2013] EWHC 2036,* (a nuisance case) a claimant who had repeatedly sought confirmation as to the identity of the correct defendant from a company in the same group, but had received no reply on that issue from the defendant's solicitors during a period of almost three years, was held entitled to amend its claim to add the correct defendant and a declaration that the limitation period did not begin to run until the date of receipt of the defence. It was held that concealment of facts relevant to the cause of action pursuant to the Limitation Act 1980 s.32(1)(b) might be in the form of non-disclosure as well as active concealment. The concealment in that case concerned the identity of the defendant.

50. In this case the question under s.32(1)(b) should not be whether or not the identity of the defendant is a fact relevant the Claimants' right of action. It clearly is. The question is whether or not the Defendants *deliberately concealed* their identity from the Claimants. I consider that the Claimant's have a real prospect of succeeding with an application under s.32(1)(b). The whole point of the Defendants publishing the reviews under false names was to avoid detection and a civil suit – or so it may be realistically argued.

51. I see no reason in principle why a claimant, in an appropriate case, cannot rely on both s.32(1)(b) and s.32A of the 1980 Act.

52. S.32A of the 1980 Act states:

> "32A.— Discretionary exclusion of time limit for actions for defamation or malicious falsehood.
>
> (1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—
>
> (a) the operation of section 4A of this Act prejudices the plaintiff or any person whom he represents, and
>
> (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents, the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates.
>
> (2) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the end of the period mentioned in section 4A—

(i) the date on which any such facts did become known to him, and

(ii) the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action; and

I the extent to which, having regard to the delay, relevant evidence is likely—

(i) to be unavailable, or

(ii) to be less cogent than if the action had been brought within the period mentioned in section 4A.

(3) ….

53. The Defendants submitted that there was no application by the Claimant's before the court under s.32A. Indeed, the skeleton argument submitted on behalf of the Claimants made no reference to that section at all. Accordingly, so it was submitted, the applications should be considered solely on the basis of s.4A of the 1980 Act. In the alternative, it was submitted that relief would not and should not be granted under s.32A as the disapplication of the limitation period is to be regarded as exceptional; see *Bewry v Reed Elsevier UK Ltd [2015] EWCA Civ 1411.* It was further submitted that should the action be permitted to progress, the Defendants would wish to plead defences of truth but the evidence in relation to those defences, and their ability to collect relevant evidence, is likely to be considerably diminished by reason of the Claimant's delay.

54. At the hearing before me, the Claimants did seek to rely on s.32A as an alternative to s.32 of the Act. In my judgment it does not matter that the Claimants did not issue a formal application under s.32A. I bear in mind that in the ordinary course of events limitation would be pleaded in the defence. The claimant would then plead reliance on s.32A (and possibly s.32) by way of reply or, possibly, by way of an amended Particulars of Claim. There might then be a formal application. In my judgment, I must take into account not only the evidence and material before me, but also the evidence and material that can reasonably be expected to be available at trial and the applications which can reasonably be expected to be made a trial.

55. In my judgment, in the circumstances of this case, the Claimants would have a real prospect of success with an application under s.32A given that the fake reviews were published anonymously and so much time and effort had to be expended in uncovering the identity of the Defendants. I am unable to accept at this hearing that the disapplication of the limitation period would prejudice the preparation of the defences of the Defendants or make the gathering of evidence more difficult. I do not think that the Defendants can justly complain about the effects of delay when their own conduct has been the major cause of it. I note that the Defendants have already adduced much material which they say shows that that the Claimants did not behave properly in the conduct of their business.

56. I must stress that I reach no concluded view as to the outcome of an application under s.32A. At that hearing the Defendants' submissions may be accepted. However, I am satisfied that the Claimants would have a real prospect of succeeding at trial with that application.

57. Likewise, I give no concluded view on the outcome of an application under s.32(1)(b) of the 1980 Act. All limitations issues should go to the Judge at trial – possibly on a trial of a preliminary issue on whether or not the claims are statute barred.

Publication

58. The Defendants submit that the Claimants have failed to provide any significant evidence that the reviews have been read by third parties. I am unable to accept this submission. I accept the submission that with material placed on the internet, there is no presumption of law that there has been a publication to a substantial number of persons. However, the question of publication is fact sensitive in this case. For the purposes of the present application, I consider that it can reasonably be inferred that a substantial number of people did read the reviews. The Defendants posted the reviews with the object of damaging the Claimant's business and/or of protecting the public. They intended the reviews to be read and posted them on Google – a well-known, publicly available resource by which any potential client of the corporate Claimants could read reviews. On the Defendants' own case the reviews were available on Google for over 3 months.

59. The Claimants make the point that the actual numbers of people who read the reviews cannot be obtained without obtaining disclosure from Google.

60. In the circumstances, the Claimants have a real prospect of successfully proving publication. It is a matter for trial.

Reference

61. The Defendants contend that the reviews contain no reference to the Second, Third and Fourth Claimants. There are two difficulties with this submission. First, some of the reviews do mention these Defendants by name. Mr. Doshi refers to the Third Defendant on one review. Mr. Govan refers to the Second Claimant in two reviews. He refers to the"Davidoff family" in two reviews. The more significant difficulty is that the question of reference can be decided by looking at context as well as express words. The pleaded case is that the corporate Claimants are the Davidoff family business owned and operated by the family. An accusation that that the Fifth and Sixth Claimants acted fraudulently is an accusation that the First to Fourth Claimants acted fraudulently.

62. I bear in mind that most, if not all, of the reviews posted by Mr. Doshi and Mr. Govan would have appeared alongside each other and would have been read together. This may be all the more significant if it is found that they acted in concert. It is submitted on behalf of the Claimants that readers would have read all of the posts and noticed the references to the Davidoff family and concluded, if they did not know already, that The Fifth and Sixth Claimants were family businesses. In this way, the Second to Fourth Claimants would also be tarred with the same brush.

63. In my view, in the circumstances of this case, the extent to which each Claimant is caught by reference is a matter for trial not summary judgment.

Serious Harm and Serious Financial Harm

64. Section 1 of the Defamation Act 2013 states:

> 1. Serious harm
>
> (1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.
>
> (2) For the purposes of this section, harm to the reputation of a body that trades for profit is not "serious harm" unless it has caused or is likely to cause the body serious financial loss.

65. This provision was considered by the Supreme Court in *Lachaux v Independent Print Ltd [2019] UKSC 27*. Obviously, I bear in mind that decision.

66. As already stated, the Defendants have adduced evidence (principally First Tier Tribunal decisions and witness statements adduced in those proceedings) which may be deployed to show that in fact the Claimants have suffered no serious harm to their reputations or that that the reviews were true.

67. That deployment must take place at trial when the evidence of the parties can be properly tested. For me to properly consider such evidence of the Defendants would require embarking on a mini-trial. I am not willing to do that. In fairness, I should state that the parties did not take me to that evidence in argument.

68. I accept that the Claimants must prove serious harm. However, on an application for summary judgment it seems to me that I must take the Claimants' case as pleaded. I accept the Claimants' submission that the assessment of harm to reputation is not just a "numbers game"; see *Turley v Unite the Union [2019] EWHC 3547* at [109] and cases cited therein. As has been said, "one well-directed arrow [may] hit the bull's eye of reputation". I also bear in mind the likely or possible "percolation" or "grapevine effect" of defamatory publications.

69. Bearing in mind the combination of the meaning of the words; the situation of the Claimants; the circumstances of the publication (12 well-directed posts available for over three months); and the inherent probabilities,[8] I consider that the Claimants have a real prospect of successfully proving serious harm. I bear in mind that at trial inferences of fact as to the seriousness of harm may be drawn from the evidence as a whole.

70. As far as serious financial loss for the corporate Claimants is concerned, the Fifth and Sixth Claimants pleaded that in the circumstances it was to be inferred that the serious harm done to their reputation by publication of the reviews caused or was likely to cause them serious financial loss. It was pleaded that the quantification and evaluation of the loss was continuing and that a full schedule was to be provided in due course. No such schedule has been provided.

71. Counsel for the Claimant's referred me to Duncan and Neill [4-26]:

> "[4-26] The meaning of the statement complained of remains important in determining whether its publication has caused or is likely to cause a trading body serious harm to its reputation and consequent serious financial loss. The nature of the statement (having regard to the imputations made and their tendency to cause serious harm to the claimant's trading reputation) may be such as to give rise to an inference that the publication of the statement has caused, or is likely to cause, serious financial loss to the claimant. But the question whether it can be inferred that serious financial loss suffered by the claimant is attributable to the publication, or that such loss is likely to be suffered in future, will generally depend, as in the case of human claimants and bodies that do not trade for profit, on other factors as well: for example, the nature and size of the claimant's trading activities, the extent of publication and the identity of the publishees. In addition, it seems clear that a claimant could, in an appropriate case, rely on any actual financial loss which it was able to

[8] In *Lachaux*, the finding that serious harm had been proved was based on a combination of (a) the meaning of the words; (b) the situation of the claimant; (c) the circumstances of publication; and (d) the inherent probabilities; see *Turley [*107].

> show had been caused by the publication, even if it could not itself be classified as serious, as demonstrating the likelihood of similar loss in the future whose incremental effect on the claimant's business would be serious."

72. The Claimant's submitted that a more detailed consideration of the evidence was required in particular as to the nature and size of the Claimants' trading activities. I accept this submission.

73. It was submitted that I must assume that the Claimants' pleaded meanings apply and that the posts constituted a series of first-hand accounts of victims of the Claimants - people who claimed to have been defrauded by them or to have otherwise been victims of their dishonesty or witnesses to their dishonesty. It was submitted that it is inconceivable that, as clearly intended by the Defendants, a person or business who read the posts would not conclude that the Claimants were best avoided.

74. No doubt the question of serious harm will be controversial at trial. However, despite the absence of the promised schedule, I am satisfied that the Fifth and Sixth Defendants have a real prospect of proving that the harm to their reputations has caused or is likely to cause them serious financial loss.

Abuse of Process

75. In short, the Defendants submit that these claims are now "not worth the candle" and are an abuse of process within the meaning of *Jameel*. I am unable to accept this submission. The case concerns serious allegations of dishonesty made against people in business. I have already stated that the Claimants have a real prospect of establishing serious harm. It is impossible for me to find that the damages are likely to be trivial or that the costs of litigation make the claims pointless.

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Conclusion

76. In the circumstances, I will dismiss the Defendants' applications. The disposal of these claims by way of summary judgment is not appropriate.

BASIL YOXALL

Dated the 17th December 2021