Neutral Citation Number: [2022] EWHC 1688 (QB)

Case No: QB-2020-001358

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 July 2022

Before :

THE HONOURABLE MR JUSTICE MURRAY

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Between :

DAVID HAVILAND	**Claimant/ Respondent**
- and -	
(1) THE ANDREW LOWNIE LITERARY AGENCY LTD	
(2) ANDREW JAMES HAMILTON LOWNIE	**Defendants/ Applicants**

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Mr Robert Sterling (instructed by **Carruthers Law**) for the **Respondent**
Mr John Stables (instructed by **Brett Wilson LLP**) for the **Applicants**

Hearing date: 27 July 2021

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Approved Judgment

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THE HONOURABLE MR JUSTICE MURRAY

This judgment was handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down are deemed to be 1 July 2022 at 10:30 am.

Mr Justice Murray :

1. This is an application by the defendants, The Andrew Lownie Literary Agency Ltd ("the Agency") and Mr Andrew Lownie, made by application notice dated 4 May 2021, for summary judgment and/or strike-out in respect of Mr David Haviland's claim ("the Application").

2. The defendants seek summary judgment in their favour on the whole of the claim under CPR r 24.2 on the basis that Mr Haviland has no real prospect of establishing that he has suffered or is likely to suffer serious harm to his reputation as a result of the publications sued upon and there is no other reason why the disposal of the claim, or that issue, should await trial.

3. In the alternative, the defendants seek the strike-out of the claim under CPR r 3.4(2)(a) on the basis that the Re-Amended Particulars of Claim ("RAPoC") and the claimant's response dated 5 March 2021 to the defendants' request dated 12 February 2021 for additional information under CPR Part 18 ("the Part 18 Response") disclose no reasonable grounds for bringing the claim as Mr Haviland cannot, and is not likely to be able to, show serious harm to his reputation as a result of the publications sued upon.

4. In the further alternative, the defendants seek the strike-out of the claim under CPR r 3.4(2)(b) and the court's *Jameel* jurisdiction on the basis that the claim is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings because any harm Mr Haviland may have suffered is so trivial that proceedings would be disproportionate or, in other words, that no "real and substantial" tort has been committed.

Factual background

5. Mr Haviland worked at the Agency from 2012 to 2018.

6. Mr Haviland and Mr Lownie are co-directors of a publishing company, Thistle Publishing Limited ("Thistle").

7. After his departure from the Agency, Mr Haviland brought a claim against the Agency in the Employment Tribunal. That claim (Case No: 2304296/2018, 24 March 2021) was dismissed for want of jurisdiction. The Tribunal found that Mr Haviland was not an employee of the Agency.

8. This claim, as it currently stands, concerns five email messages sent by Mr Lownie to the operators of a website named Reedsy.com ("Reedsy"). Four of the emails were sent in April 2019, and one was sent in June 2019.

9. Reedsy is a website on which people who wish to, or do, work in the book publishing industry can promote their services. Such people post (self-publish) their own profiles on Reedsy. The purpose of the website is to facilitate contact between those offering freelance publishing services and those seeking such services. It is in that respect akin to LinkedIn but aimed at the publishing industry. It is a contact directory or noticeboard that facilitates business

between service providers and clients. Given the nature of the services advertised, the clients are, for the most part, if not exclusively, authors.

10. Reedsy's business model is to take a percentage of fees generated between service providers and clients. Its charging model is said to be similar to that of Airbnb for property lets in that it charges both the service provider and their client.

11. Reedsy allows a service provider or freelancer to register without charge a profile as a service provider in one of six categories, namely, editor, designer, publicist, marketer, ghost-writer, or web designer. Reedsy also allows a person who is seeking the services of a freelance editor, designer, publicist, marketer, ghost-writer or web designer to register without charge as a client. Reedsy operates an algorithm that makes recommendations of service providers to clients.

12. According to the RAPoC, apparently relying on a feature article in *Forbes* magazine (4 March 2019), Reedsy as of 2019 had a community of 150,000 author-clients and carried profiles for 1,500 service providers across the various categories.

13. A person may register on Reedsy as both a service provider and a client, but, according to clause 4.4 of Reedsy's Terms of Use, "you are only permitted to register for one account as a Client and one account as Service Provider".

14. Mr Haviland opened a service provider account as an editor on or around 15 March 2019 and opened a second service provider account as a ghost-writer on or around 26 March 2019.

The alleged defamatory publications

15. In April 2019 Mr Lownie raised objections with Reedsy regarding the accuracy of entries in Mr Haviland's editor profile. According to Mr Lownie, he was not at that time aware that Mr Haviland also had a ghost-writer profile. Mr Lownie's objections were set out in an email sent to service@reedsy.com on 15 April 2019 at 17:09 ("Email 1") and, in more detail identifying references in Mr Haviland's editor profile to eight books, in an email sent to service@reedsy.com on 15 April 2019 at 17:16 ("Email 2").

16. On 15 April 2019 at 17:15, just before Email 2 was sent, Mr Emmanuel Nataf, the Chief Executive Officer of Reedsy, sent an email responding to Email 1 to Mr Lownie, copied to Ms Jessica Kim, another Reedsy employee whose email signature (on an email sent by her to Mr Haviland on 16 April 2019 at 13:43) shows her title as "Reedsy Community Manager". In that email, Mr Nataf stated the accuracy of Mr Haviland's editor profile was Mr Haviland's responsibility and asked whether Mr Lownie had discussed his concerns with Mr Haviland.

17. On 15 April 2019 at 17:52, Mr Lownie responded to Mr Nataf, copied to Ms Kim, copying the substance of Email 2 (identifying the same eight books) and adding further comment ("Email 3").

18. On 17 April 2019 at 10:43, Mr Lownie sent a further email to Mr Nataf, copied to Ms Kim, asserting that it was Reedsy's responsibility "to carry true information", thanking Reedsy "for making the requested changes", and noting "a few more factual inaccuracies which need to be corrected" in Mr Haviland's editor profile ("Email 4").

19. On 10 June 2019 at 10:53 Mr Lownie sent an email to Ms Kim, copied to Mr Nataf, asserting that, although entries on Mr Haviland's editor profile had been changed, there were errors in entries on Mr Haviland's ghost-writer profile that needed to be corrected ("Email 5").

20. The text of each of Email 1, Email 2, Email 3, Email 4, and Email 5 is set out in the Annex to this judgment. These emails are the publications that were found by the court at an earlier stage to be defamatory at common law (see [21(iii)] below).

Procedural history

21. The relevant parts of the procedural history are as follows:

    i) On 14 April 2020, Mr Haviland issued this claim seeking damages, including special and aggravated damages, for alleged libels in seven email messages sent by Mr Lownie and seeking an injunction against the Agency and Mr Lownie restraining further publication. The original Particulars of Claim served were dated 12 August 2020.

    ii) On 20 October 2020, Nicklin J made an order (sealed on 26 October 2020) that there be a trial of preliminary issues to determine (a) the natural and ordinary meaning of six of the seven emails complained of (the meaning of one of the emails having been admitted) and (b) whether, in each case, the meaning so found was defamatory of Mr Haviland at common law. In the same order, Nicklin J gave directions for the determination of those preliminary issues, including that it be on the basis of written submissions.

    iii) On 29 January 2021, Nicklin J handed down his judgment (neutral citation: [2021] EWHC 143 (QB)) and made his order setting out the natural and ordinary meaning of each of the seven emails complained of in the original claim. He found that two of them were not defamatory of Mr Haviland at common law, and gave judgment for the defendants in respect of those, with Mr Haviland to pay the defendants' costs of the claim in respect of those. He also gave directions for Mr Haviland to serve further amended particulars of claim consequent on his determinations, and he gave related case management directions. The natural and ordinary meaning of each of the five email messages that Nicklin J found to be defamatory at common law are set out in the Annex to this judgment.

    iv) On 12 February 2021, Mr Haviland served the RAPoC.

v) On 12 February 2021, the Agency and Mr Lownie made a request for further information under CPR Part 18, to which Mr Haviland responded on 5 March 2021.

vi) On 16 April 2021, the defendants made an application for trial of preliminary issue in relation to the issue of serious harm under section 1 of the Defamation Act 2013.

vii) On 19 April 2021, Nicklin J refused the defendants' application of 16 April 2021, without a hearing and ordering the defendants to pay the costs of the application, appending detailed reasons for doing so. He also gave consequential case management directions.

viii) On 4 May 2021 the defendants made the Application.

ix) On 6 May 2021, Nicklin J made an order giving directions for the hearing of the Application.

Evidence

22. The principal evidence presented by the defendants in support of the Application are two witness statements dated 4 May 2021 and 25 June 2021, respectively, of Ms Elisabeth Mason, a solicitor at Brett Wilson LLP, the defendants' solicitors. I also have her witness statement dated 16 April 2021 made in support of the defendants' unsuccessful application for a trial of preliminary issue in relation to serious harm. Various documents are exhibited to each witness statement.

23. The principal evidence presented by Mr Haviland in opposition to the Application is the witness statement dated 7 June 2021 of Mr Peter Carruthers, a solicitor at Carruthers Law, Mr Haviland's solicitors, to which various documents are exhibited.

24. The bundle for the hearing also includes *inter partes* correspondence for the period 9 September 2020 to 20 July 2021.

Legal principles: summary judgment and strike-out

25. CPR r 24.2 sets out the circumstances in which the court may give summary judgment. It is supplemented by a Practice Direction, PD24 (The Summary Disposal of Claims). By the Application, the defendants seek summary judgment in their favour in relation to the whole of the claim. They argue that Mr Haviland has no real prospect of succeeding on his claim because he has no real prospect of establishing that he has suffered or is likely to suffer serious harm to his reputation as a result of the five emails on which his claim relies.

26. The principles that apply to determining whether a claimant has a "real prospect of succeeding" on a claim, as required by CPR r 24.2(a), are conveniently summarised by Lewison J in *Easyair Ltd (Trading as Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15], which was approved by the

Court of Appeal in *AC Ward & Son Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098 at [24]. Lewison J in *Easyair* set out the principles in seven sub-paragraphs, which are reproduced in the 2022 edition of the White Book at paragraph 24.2.3. The defendants say that sub-paragraphs (i), (ii), (iv) and (v) are the most relevant to the Application.

27. CPR r 3.4(2)(a) provides that the court may strike out a statement of case if it appears to the court that "the statement of case discloses no reasonable grounds for bringing … the claim".

28. CPR r 3.4(2)(b) provides that a court may strike out a statement of case if it appears to the court that "the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings".

29. CPR r 3.4 is supplemented by a Practice Direction, PD 3A (Striking Out a Statement of Case). Paragraph 3.4.2 of the 2022 edition of the White Book discusses various cases relevant to the question of whether a statement of case "discloses no reasonable ground" for bringing the claim. One of those cases, *Harris v Bolt Burdon* [2000] CP Rep 70 (CA) is referred to by the defendants in their skeleton argument, who rely on the following passage in the judgment of Sedley LJ at [24]:

> "… What does in my view make it wholly unfair to let the case go on – and unfair, I would add, not only to the defendants but to the complainant – is that it is a claim which cannot ultimately succeed. Without damage there is no actionable negligence. …"

30. The defendants say that this claim cannot succeed because Mr Haviland has no real prospect of establishing the essential element of serious harm to his reputation as required by section 1 of the Defamation Act 2013. There is therefore no actionable defamation, and the claim should be struck out.

31. CPR r 3.4(2)(b) reflects the *Jameel* jurisdiction (*Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75, [2005] QB 946 (CA)) to strike out a claim that relates to no "real or substantial tort" and that is abusive in light of the fact that the expense of the proceedings is wholly disproportionate to the remedy achievable: *Jameel* at [69] – [71].

32. The defendants submit that it is a particular feature of the proportionality assessment in defamation cases that such actions are inherently complex and cannot by law be litigated other than in the High Court. The application of the *Jameel* jurisdiction in respect of the statutory requirement for serious harm to reputation was considered by the Court of Appeal in *Lachaux v Independent Print Ltd* [2017] EWCA Civ 1334, [2018] QB 594 (CA) at [82(4)-(5)]. Davis LJ held that:

    i) the court should ordinarily be slow to direct a trial of preliminary issue, involving substantial evidence, on a dispute as to whether a publication has caused or is likely to cause serious reputational harm; and

ii) a defendant disputing the claimant's case on serious harm should, if the circumstances so warrant, either issue a Part 24 summary judgment application or an application to dismiss the claim as an abuse of process under the principle in *Jameel*.

33. Nicklin J indicated at paragraph (E) of his reasons for his order of 19 April 2021 that the Court of Appeal's judgment on these points was not disturbed by the later judgment of the Supreme Court in *Lachaux v Independent Print Ltd* [2020] AC 612 (SC), which criticised the Court of Appeal's reasoning for upholding the first instance judgment of Warby J but affirmed that judgment on other grounds.

34. I note Davis LJ's additional comment at the end of [82(5)] of the Court of Appeal judgment in *Lachaux*, confirming that the *Jameel* jurisdiction continues to be available after the Defamation Act 2013 as it was before "(albeit in reality only relatively rarely to be appropriately used)".

Legal principles: serious harm to reputation

35. Section 1(1) of the Defamation Act 2013 provides:

> "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.
>
> …"

36. The Supreme Court has confirmed in *Lachaux* at [13] – [20] that section 1 of the Defamation Act 2013 changed the law of defamation. A statement that would previously have been regarded as defamatory "because of its inherent tendency to cause some harm to reputation" is not now to be so regarded unless its publication "has caused or is likely to cause" harm to reputation which is "serious". The words "has caused" refer to the consequences of the publication and not the publication itself. The reference to harm "likely" to be caused is to "probable future harm".

37. The Supreme Court in *Lachaux* rejected the submission made for the appellant, which had been accepted by the Court of Appeal, that "likely to cause" was a synonym for "the inherent tendency [of the words complained of] which give rise to the presumption of damage at common law". It was not simply a reference to the harm to reputation that was liable to be caused given the tendency of the words. Both past harm and future probability of harm to reputation caused by publication of the offending statement must be proved as a matter of fact.

38. Nicklin J in *Dhir v Saddler* [2017] EWHC 3155 (QB), [2018] 4 WLR 1 (QBD) at [54] – [55], a slander case, made the following observations about the issue of serious harm:

> "55. In my judgment, the authorities demonstrate that it is the *quality* of the publishees not their *quantity* that is likely to determine the issue of serious harm in cases involving relatively small-scale publication. What matters is not the extent of publication, but to whom the words are published. A significant factor is likely to be whether the claimant is identified in the minds of the publishee(s) so that the allegation 'sticks'.
>
> (i) The oft-cited phrase (usually in the context of *Jameel* abuse applications) is that the assessment of harm of a defamatory publication has never been (simply) a 'numbers game', a phrase that appears to have been coined by Eady J in *Mardas v New York Times Co* [2008] EWHC 3135 (QB); [2009] EMLR 8, para 15[.]
>
> (ii) A feature of the 'sticking power' of a defamatory allegation that has potential relevance to the assessment of serious harm is the likelihood of percolation/repetition of the allegation beyond the original publishees ('the grapevine effect') (*Slipper v British Broadcasting Corpn* [1991] 1 QB 283 , 300 per Bingham LJ). In *Sloutsker v Romanova* [2015] EWHC 545 (QB); [2015] 2 Costs LR 321, Warby J said, at para 69:
>
> > 'It has to be borne in mind that the assessment of whether there is a real and substantial tort is not a mere numbers game, and also that the reach of a defamatory imputation is not limited to the immediate readership. The gravity of the imputations complained of … is a relevant consideration when assessing whether the tort, if that is what it is, is real and substantial enough to justify the invocation of the English court's jurisdiction. The graver the imputation the more likely it is to spread, and to cause serious harm. It is beyond dispute that the imputations complained of are all extremely serious.'
>
> … ."

39. Although *Dhir v Saddler* was concerned with slander rather than libel, the same points apply to determination of serious harm in a case such as this.

Submissions

40. For the defendants in support of the Application, Mr John Stables, after reviewing the current state of the evidence, submitted that Mr Haviland's case on serious harm was fanciful, for the following reasons:

i) There are only two publishees, Mr Nataf and Ms Kim.

ii) Pleading of other publication by Mr Haviland is purely speculative and impermissible and is in fact undermined by the facts of the emails' handling within Reedsy and the absence of any evidence of further publication over the course of more than two years since publication of the emails.

iii) The defamatory allegations are not of an especially serious nature.

iv) The facts show that Mr Haviland was not asked to change anything on his profiles because of the defamatory sting of the libels, but because of:

a) Mr Lownie's objection to certain statements on Mr Haviland's profile and his threat to take the matter further with the Advertising Standards Authority; and

b) a second complaint had been received by Reedsy, namely, the complaint by the author, Mei Trow.

v) Mr Haviland continues to operate an editor profile on Reedsy. He has not been shunned or rejected by Reedsy at any stage after publication of the words complained of.

vi) There is no evidence that Mr Haviland and either of the two publishees have any connection other than by reason of the two publishees' positions at Reedsy (and one of the publishees, Ms Kim, no longer works at Reedsy). Mr Haviland has admitted that there is no connection between him and Mr Nataf other than the fact that Mr Nataf is the CEO of Reedsy.

vii) The publishees want nothing to do with Mr Haviland's case. Mr Haviland has admitted as much, and the defendants' solicitor has confirmed that by her own enquiries. For this reason, Mr Haviland has no access to evidence of the reactions of the publishees other than what he has so far adduced. The evidence adduced by Mr Haviland does not show that the publishees think less of him because of the words complained of.

viii) Mr Haviland admits that Mr Nataf was displeased by being put to the trouble of responding to a subject access request ("SAR"). If Mr Nataf thinks less of Mr Haviland, it is likely that Mr Haviland brought that upon himself by making his SAR.

ix) Mr Haviland's pleading of special damage is, in respect of the deletion of his ghost-writer profile, demonstrably wrong and is, in respect of the amendments to his editor profile that he was required to make, so speculative as to be fanciful.

41. Mr Stables submitted that, in the circumstances, the prospect of Mr Haviland showing serious harm to reputation among the two publishees is not realistic. Mr Haviland's case on serious harm does not carry "some degree of conviction" and is not "more than merely arguable", as per *Easyair*. It is barely even arguable. Similarly, the lack of prospect of showing the necessary ingredient of serious harm renders this case, he submitted, liable to being struck out as disclosing no reasonable grounds for bringing the claim.

42. Mr Stables submitted that if Mr Haviland were successful at trial, the only vindication available to him would be correction of the defamatory statements to Mr Nataf and Ms Kim, each of whom has clearly indicated in correspondence that they do not wish to be involved. It is clear that neither has any interest in this case. There is no real and substantial tort. Mr Haviland is seeking to achieve virtually no benefit via a process that would use considerable resources. That is disproportionate.

43. Mr Stables submitted that, if this went to trial, the defendants would have to adduce evidence from a number of people concerned with the creation and publication of the titles objected to by Mr Lownie in order to resolve the issue of substantial truth. That is disproportionate.

44. Mr Stables further submitted that, if this went to trial, the defendants would have a strong argument as to qualified privilege. The matters raised by Mr Lownie with Mr Nataf and Ms Kim directly concerned the business of both defendants as agency and agent for the authors of the titles concerned, Mr Lownie's interest as the provider of the withdrawn testimonial, and Mr Lownie's interest as co-director of Thistle. Reedsy plainly had a corresponding interest in alleged misuse of its platform by Mr Haviland. In light of this and the burden on Mr Haviland to overcome this defence by establishing malice, the evidence and submissions required would add substantially to the time and cost of the trial, but ultimately yield no real benefit to Mr Haviland if he prevailed. That is disproportionate.

45. Mr Stables submitted that the facts of this case are instructively similar to those of *Bode v Mundell* [2016] EWHC 2533 (QB) where qualified privilege and *Jameel* abuse were issues, and where Warby J ruled in favour of the defendant on her applications for summary judgment and/or striking out of the claim. Warby J also indicated *obiter* that the claim would have failed on *Jameel* abuse grounds had it survived the summary judgment and strike-out applications.

46. For Mr Haviland in opposition to the Application, Mr Robert Sterling submitted that each of the five email messages complained of in the RAPoC has caused serious harm to Mr Haviland's reputation. Some of this serious harm comes from Reedsy's influence in the world of publishing.

47. As a threshold matter, in relation to the summary judgment limb of the Application, Mr Sterling submitted that an analysis of the Application and the evidence in support, namely, the witness statements of Ms Mason referred to at [22], shows that the defendants have failed to satisfy the requirement that the Application should state that the applicant believes that the respondent has no real prospect of succeeding on the claim or issue.

48. Mr Sterling also submitted that the court may draw an inference adverse to the defendants from their having originally applied for a trial of preliminary issue in relation to serious harm, namely, an inference that the defendants did not believe that summary judgment in their favour could be justified.

49. Mr Sterling also submitted that the publishees were not only Mr Nataf and Ms Kim (and possibly one other at Reedsy), but Reedsy itself. In assessing the issue of serious harm, therefore, it was important to bear in mind the size and importance of Reedsy and its influence as a publisher in the publishing world. These factors, he submitted, should not be underestimated for a number of reasons, including the number of professional service providers registered on the site, the number of authors in its community, and its market profile as evidenced, for example, by coverage on the BBC.

50. Mr Sterling submitted that Mr Lownie's taking the trouble to contact Reedsy to complain about Mr Haviland's editor profile and then later to complain about his ghost-writer profile is evidence of the value and importance of Reedsy in the publishing world. Reedsy's ranking system for editors and its ability to affect the prominence of an editor on a Google search are further matters relevant to its influence.

51. Mr Sterling submitted that another relevant matter is the factual dispute between the parties as to Reedsy's purported requirement under clause 4.4 of Reedsy's Terms of Use that a service provider should not have two separate profiles on the site. Ms Kim used this as the basis for requiring Mr Haviland to remove his ghost-writer profile after Mr Lownie complained about it. Mr Sterling submitted that this requirement arguably conflicts with other provisions of the Terms of Use, the terms of Reedsy's specific agreement with Mr Haviland, and its practice in relation to other service providers who have more than one profile on the site. This factual dispute needs to be resolved in order to determine whether the real reason for Ms Kim's insistence that Mr Haviland's ghost-writer profile be deleted was, in fact, the defamatory sting of the relevant emails complained of.

52. Mr Sterling submitted that there is also a relevant factual dispute about the extent of Mr Haviland's experience as a ghost-writer and his right to make the statements that he made on his ghost-writer profile. Part of the background is that Mr Lownie had himself promoted Mr Haviland as a ghost-writer. But for Mr Lownie's complaint, Mr Haviland would not have lost his ghost-writer profile on Reedsy. It is arguable as a matter of causation and foreseeability that special damages for the loss of that profile are recoverable by Mr Haviland from the defendants.

53. Mr Sterling submitted that serious harm to Mr Haviland's reputation can be inferred from the text of the five emails complained of in the RAPoC as well as five email messages sent by Ms Kim to Mr Haviland and one by Ms Kim to Mr Lownie between 16 and 18 April 2019. This correspondence was in reaction to two emails sent by Mr Lownie to Ms Kim on 18 April 2019 at 11:48 and at 14:35, in the latter of which he threatened to report Reedsy to the Advertising Standards Authority. This correspondence demonstrates, Mr Sterling submitted, that Reedsy was treating Mr Haviland (i) as though it did not believe the truthfulness of his statements in his profile and (ii) on a hostile basis. Clearly, therefore, it is at least arguable that the emails complained of in the RAPoC must have had a serious impact upon Mr Haviland's reputation and goodwill with Reedsy.

54. As to the legal test, Mr Sterling accepted that Mr Haviland must show actual serious harm was caused by each of the five emails complained of and that this statutory threshold, laid down by section 1 of the Defamation Act 2013, is higher than the common law test. He relied upon the judgment of Richard Spearman QC, sitting as a Deputy High Court Judge, in *Parris v Ajayi* [2021] EWHC 285, in particular, his summary at [167]-[171] of the relevant law following the Supreme Court decision in *Lachaux*.

55. Mr Sterling noted, in particular, Mr Spearman's references in *Parris* to judicial dicta to the effect that serious reputational harm was capable of being proved by process of inference from the seriousness of the defamatory meaning. The court should accept, he submitted, that it will be difficult for Mr Haviland to produce evidence from Reedsy: consider *Ames v Spamhaus Project Ltd* [2015] EWHC 127 (QB), [2015] 1 WLR 3409 at [55]. It is sufficient that there is publication to a single person, particularly if that person is of considerable importance and influence: compare *Ames* at [33]. In this case, there has been publication to Reedsy (a limited liability company, which therefore entails publication to its Board of Directors), Mr Nataf and Ms Kim.

56. In summary, Mr Sterling submitted that there is sufficient evidence before the court to establish that Mr Haviland has a real prospect of success in establishing that he has suffered serious harm as a result of the five email messages complained of. Accordingly, the Application should be refused on both the summary judgment and the strike-out limb, including the defendants' argument based on the *Jameel* jurisdiction.

Analysis and conclusions

57. In my view, it would be wholly unfair to the defendants, and also to Mr Haviland, for this case to go on. Mr Haviland's claim has no real prospect of success on the issue of serious harm. I am also of the view that no real and substantial tort has been committed in this case.

58. While it is true that Email 1 and Email 2 were sent to a generic email address, service@reedsy.com, there is no positive evidence that there were any more than two publishees of those messages, Mr Nataf and Ms Kim. There is also no positive evidence that Email 3, Email 4, Email 5 were published to anyone other than Mr Nataf and Ms Kim, other than Email 3, which Mr Haviland

alleges was sent to Ms Bess Brownlee, another employee of Reedsy (which is not admitted by the defendants). Mr Haviland has pleaded that it is "likely" that Mr Nataf will have shared the contents of the emails complained of with his fellow director, Mr Richard Fayet and the two shareholder founders, Mr Matthew Cobb, and Mr Vincent Durand. There is, however, no evidence at present to support that assertion, and no realistic prospect of there being evidence at trial to support it given the refusal of Mr Nataf and Ms Kim to provide evidence for this case. Furthermore, there is no obvious reason why Mr Nataf would have done so, particularly once the matter had passed to Ms Kim to deal with.

59. Mr Sterling has laid stress in his submissions on there having been publication "to Reedsy", in addition to publication specifically to Mr Nataf, Ms Kim and, in relation to Email 3, Ms Brownlee. This needs to be further analysed. Mr Sterling submitted that, Reedsy being a company and Mr Nataf having received the emails complained of in his role as a director of Reedsy, publication to Mr Nataf was, in effect, publication to the Board of Directors. That may be true in other contexts and for other purposes, but I do not accept that submission in relation to an assessment of serious harm. What matters for this purpose is who actually received the publications.

60. Accordingly, Mr Sterling's submissions about the size and importance of Reedsy and its influence as a publisher in the publishing world are of little, if any, relevance to the issue of serious harm, other than as background relevant to the actual publishees, Mr Nataf and Ms Kim, given their respective positions in the company. For the purpose of assessing serious harm, there has been no publication "to Reedsy" in any meaningful sense.

61. This is a case involving publication to two individuals, Mr Nataf and Ms Kim. It can make no material difference to the issue of serious harm that Email 3 was also received by Ms Brownlee (which is disputed), so, for the sake of simplicity, I will not say anything further about that. There is no evidence of republication to anyone else, and no realistic prospect of there being such evidence by the time of trial.

62. As noted by Nicklin J in *Dhir v Saddler* at [55], in cases that involve relatively small-scale publication, what matters is the quality of the publishees, not their quantity. Mr Sterling emphasised during his submissions Mr Nataf's importance within Reedsy as its Managing Director. By virtue of that position, Mr Sterling submitted that Mr Nataf would have the ability to influence the algorithm that determines the prominence of Mr Haviland's profile on the Reedsy site and its prominence on a Google search. Mr Sterling also suggested that, as a result of the emails complained of, Mr Nataf may well have used his influence adversely to affect Mr Haviland's prominence on the Reedsy site and/or in Google searches that would lead to his Reedsy profile. This factual dispute could only be resolved at trial.

63. Apart from the fact that it seems highly unlikely that Mr Nataf would have taken the trouble to do as Mr Sterling has suggested he could do, given the nature of the defamatory statements made in the emails complained of (as discussed further below), there does not appear to be any realistic prospect of

there being evidence by the time of trial that could help to determine this issue one way or the other, given Mr Nataf's refusal to get involved in this dispute.

64. I accept Mr Sterling's submission that it will be difficult for Mr Haviland to produce evidence from Reedsy, citing *Ames v Spamhaus Project Ltd* at [55]. However, in the absence of such evidence, this becomes a case, similar to *Bode v Mundell*, that largely relies largely on inference from the nature of the defamatory statements.

65. Turning, then, to those statements, and reading them in the context of the fuller set of email exchanges included in the hearing bundle, a number of which I have referred to above, they are not, in my view, of sufficient gravity "to carry the claimant over the serious harm threshold at a trial": *Bode v Mundell* at [49].

66. In essence, the email messages complained of amount to accusations that Mr Haviland has claimed credit, in a marketing context, for matters in respect of which he was not entitled to claim credit. It is common knowledge that exaggeration regularly occurs in a marketing context and unjustified claims are often made. Often there is a degree of truth in such claims, and the claim is debatable. In this case, Mr Lownie complained, and Mr Nataf and then Ms Kim acted on those complaints by asking Mr Haviland to remove the elements that were objected to, rather than attempting to mediate the dispute. They appear to have taken the path of least resistance, rather than having been motivated by any particular animus against Mr Haviland caused by the defamatory sting of the emails complained of.

67. Mr Haviland maintains that five email messages sent by Ms Kim to Mr Haviland and one by Ms Kim to Mr Lownie between 16 and 18 April 2019 demonstrate that "Reedsy" was treating Mr Haviland as though they did not believe the truthfulness of his statements in his profile and on a hostile basis. A fair reading of that correspondence does not support the suggestion of any hostility. The emails from Ms Kim are professional and polite. She offers to speak with Mr Haviland on the telephone. She asks him to "confirm" the accuracy of the statements challenged, which suggests scepticism rather than disbelief. She says, in her message of 16 April 2019 at 6:38pm "[w]e'll work together to get this sorted". It is true that Mr Haviland found the tone of her email "offensive", but a fair and impartial reader of the correspondence would not, in my view, agree with that assessment.

68. Ms Kim also noted in her email sent to Mr Haviland on 16 April 2019 at 1:43pm that he had two service provider profiles, and she asked him to remove one. In this regard, clause 4.4 of Reedsy's Terms of Use is clear that a service provider should not have two separate service provider profiles on the site. That is a sufficient reason for Mr Haviland having been required to remove his ghost-writer profile. The factual dispute as to the extent of Mr Haviland's experience as a ghost-writer and his right to make the statements he did on his ghost-writer profile does not, itself, justify this matter going to trial.

69. More generally, these facts do not, in my view, support an inference that there was any wider publication within Reedsy. There was no apparent need for a

wider publication. The facts also do not support an inference that there was any on-going effect of the emails complained of once Mr Haviland had complied with Ms Kim's requests by amending his editor profile and removing his ghost-writer profile. Mr Haviland chose to comply with those requests, because, it seems, he feared that otherwise he might be required to remove his profiles altogether. Mr Haviland still maintains an editor profile on the Reedsy site, which is a factor relevant to the question of whether he has suffered serious harm.

70. It is understandable that Mr Haviland may feel that the accusations by Mr Lownie were unjust, but, as noted by Dingemans J in *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB) at [46]:

> "… unless serious harm to reputation can be established[,] injury to feelings alone, however grave, is not sufficient to establish serious harm."

71. In my view, having regard to all the circumstances of the case, there is no real prospect of an inferential case of this type succeeding on the issue of the serious harm based on the email messages complained of. I am also of the view that the email messages complained of, while passing the common law threshold for defamation, fall a long way short of establishing serious harm on an inferential case.

72. There is no merit, in my view, in the argument that the defendants have failed to satisfy the requirement that the Application should state that the applicant *believes* that the respondent has no real prospect of succeeding on the claim or issue. A common sense reading of the Application and the supporting evidence by Ms Mason demonstrates that this requirement is satisfied. See, for example, Ms Mason's second witness statement dated 4 May 2021 at paragraphs 46 and 49.

73. The fact that the defendants chose initially to approach the issue of serious harm as a matter to be dealt with as a trial of preliminary issue rather than by application for summary judgment and/or strike-out carries little to no weight in determining the Application.

74. Given my conclusions, I am persuaded that I should grant summary judgment against the claimant on this libel claim. Mr Haviland has no real prospect of establishing that he has suffered or is likely to suffer serious harm to his reputation as a result of the publications sued upon and there is no other reason why the disposal of the claim, or that issue, should await trial.

75. If I were not granting summary judgment in the defendants' favour, I would strike out the claim under CPR r 3.4(2)(a) on the basis that the RAPoC and the Part 18 Response disclose no reasonable grounds for bringing the claim. Mr Haviland cannot, and is not likely to be able to, show serious harm to his reputation as a result of the publications sued upon.

76. Had the claim survived the summary judgment and strike-out limbs of the Application, I would have found that it failed pursuant to the *Jameel*

jurisdiction. A trial would involve substantial resources, including, among other things, for the purposes of addressing the issues of substantial truth and qualified privilege. It is also my view that the sending of the email messages complained of does not amount to a real and substantial tort.

77. If, at the end of that trial, Mr Haviland were to have been successful, the vindication that he would have achieved in relation to Mr Nataf and Ms Kim would not, on any realistic measure, justify that expenditure of resources. Such a trial, in other words, would be wholly disproportionate to the possible benefit to Mr Haviland.

ANNEX

Defamatory publications

Relevant publication	Date and time of publication	Addressee(s)	Text	Natural and ordinary meaning
Email 1	15/04/2019 17:09	service@reedsy.com	I'd like to complain about this entry https://reedsy.com/david-haviland which is full of inaccuracies. I have certainly not given an endorsement nor I suspect have several of those quoted and David Haviland did not found Thistle – I set it up in 1996. Nor does he run Thistle – he is a co-director with me. Andrew Lownie.	[The Claimant] has made many false and misleading statements on his webpage on Reedsy's website, including the endorsement he claims was given by Andrew Lownie and his claim that he is the founder and running the business of the publishing company, Thistle Publishing.
Email 2	15/04/2019 17:16	service@reedsy.com	Following my e mail I'd ask you to remove these entries. They are actually books represented by me at the Andrew Lownie Literary Agency , with which David Haviland has no association now, which on reversion were published by Thistle at my instigation Atom Bomb to Santa Claus: What Have the Americans Ever Done for Us? Trevor Homer Holiday SOS: The Life-Saving Adventures of a Travelling Doctor	The Claimant's claiming credit, on his webpage on the Reedsy website, for eight works was, as the Claimant knew, false and misleading.

Relevant publication	Date and time of publication	Addressee(s)	Text	Natural and ordinary meaning
			Dr. Ben MacFarlane To the Edge of the Sky: A Story of Love, Betrayal, Suffering and the Strength of Human Courage Anhua Gao My Life with Leopards: Graham Cooke's Story Fransje van Riel Irreplaceable: A Journey Through Love, Loss and Healing Louise Moir Through A Mother's Tears: The tragic true story of a mother who lost one daughter to a brutal murderer and another to a broken heart Cathy Broomfield Crime Squad: Life and Death on London's Front Line Mike Pannett, Kris Hollington A Life in Death	

Relevant publication	Date and time of publication	Addressee(s)	Text	Natural and ordinary meaning
			Richard Venables, Kris Hollington Andrew Lownie	
Email 3	15/04/2019 17:52	Emmanuel Nataf, cc: Jessica Kim	Dear Emmanuel, There were a large number of author complaints about David Haviland and he no longer works for the agency. The matter is now subject to legal action. He does not have permission to use my endorsement and I would ask you to remove it. I'd also ask you to remove these entries. They are actually books represented by me at the Andrew Lownie Literary Agency , with which David Haviland has no association now, which on reversion were published by Thistle at my instigation. They are not books he edited. Atom Bomb to Santa Claus: What Have the Americans Ever Done for Us? Trevor Homer Holiday SOS: The Life-Saving Adventures of a Travelling Doctor	(1) The Claimant's webpage on the Reedsy Website contained the following statements which the Claimant knew were false and misleading and ought to be removed: (a) that the Claimant had edited eight works; and (b) that the Second Defendant had given the Claimant an endorsement. (2) Whilst working for the First Defendant, the Claimant had conducted himself in such a way that led to well-founded complaints and legal action.

Relevant publication	Date and time of publication	Addressee(s)	Text	Natural and ordinary meaning
			Dr. Ben MacFarlane To the Edge of the Sky: A Story of Love, Betrayal, Suffering and the Strength of Human Courage Anhua Gao My Life with Leopards: Graham Cooke's Story Fransje van Riel Irreplaceable: A Journey Through Love, Loss and Healing Louise Moir Through A Mother's Tears: The tragic true story of a mother who lost one daughter to a brutal murderer and another to a broken heart Cathy Broomfield Crime Squad: Life and Death on London's Front Line Mike Pannett, Kris Hollington A Life in Death	

Relevant publication	Date and time of publication	Addressee(s)	Text	Natural and ordinary meaning
			Richard Venables, Kris Hollington Andrew Lownie	
Email 4	17/04/2019 10:43	Emmanuel Nataf, cc: Jessica Kim	Dear Emmanuel, It's Reedsy's responsibility to carry true information. Thank you for making requested changes. There are a few more factual inaccuracies which need to be corrected David Haviland did not found Thistle Publishing — I did that in 1996 and he was made a co-director in 2012. Nor does he run it. He is a co-director responsible for production and accounting. Yours sincerely, Andrew Lownie	The Claimant's claim, on his webpage on the Reedsy website, that he was the founder and was running Thistle Publishing was, as he knew, false and misleading.
Email 5	10/06/2019 10:53	Jessica Kim, cc: Emmanuel Nataf	Dear Jessica, David Haviland changed his entry as Editor but not as ghost writer. https://reedsy.com/haviland-david The following misrepresentations need to be corrected	The Claimant had made the following statements on his webpage on the Reedsy website which he knew were false and misleading: (1) That one of the Claimant's books was a New York Times and Sunday Times No.1 bestseller for a total of 13 weeks and the best-selling non-celebrity memoir that year, when, in truth the book was the work of the

Relevant publication	Date and time of publication	Addressee(s)	Text	Natural and ordinary meaning
			1/ One of my books was a NY Times and Sunday Times No. 1 bestseller for a total of 13 weeks, and the best-selling non-celebrity memoir of that year. The author Cathy Glass has confirmed that David Haviland made little contribution to the book. His changes had to be rewritten by the publisher. 2/ When I left the agency, I was ranked #6 in sales worldwide for UK Fiction by Publishers Marketplace. This is not true. 3/ I currently run Thistle Publishing. He is a co-director of Thistle. 4/ "David has worked with me for almost ten years as a trusted reader, one of my authors, my fiction agent and co-director in Thistle Publishing. He is the first and only person I have appointed in my twenty-five years running the agency which gives some idea of how highly I rate him. A shrewd and insightful editor and reader, a very good researcher and writer, a diligent and imaginative agent and a very hard-working and skilful publisher with a great eye for covers." Andrew Lownie, owner	author Cathy Glass, he made little contribution to the book and the changes that he made to the book had to be re-written by the publisher. (2) That when the Claimant left the First Defendant, he was ranked sixth in sales worldwide for UK Fiction by Publishers Marketplace, which was not true. (3) That the Claimant had been given an endorsement by the Second Defendant (in the terms quoted on the website) whereas the Second Defendant had refused to provide that endorsement.

Relevant publication	Date and time of publication	Addressee(s)	Text	Natural and ordinary meaning
			of the Andrew Lownie Literary Agency I have refused him this endorsement. 5/ Since 2013 1 have been Publisher and Co-Director of Thistle Publishing, He is not Publisher but simply a co-director. I look forward to confirmation that the entry has been corrected. Best wishes, Andrew	