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Case No: KB-2023-003483

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/01/2025

Before :

MRS JUSTICE HILL DBE

Between:

- (1) XIULING WEI
(2) WEIGUO WANG
(3) YIPENG WANG
(4) ANASTASIIA MARCHUK

Claimants

-and-

- (1) JINGPING LONG
(2) DNC HOLDINGS INC
(3) GATECHINA INC
(4) PORKBUN LLC

Defendants

The **First, Second** and **Third Claimants** appeared in person
The **Fourth Claimant** appeared in person (by video link)
The **First** and **Second Defendants** did not appear and were not represented
Arnold Ayoo (instructed by **Farleys**) for the **Third Defendant**
Greg Callus and **Katya Pereira** (instructed by **Greenberg Traurig, LLP**) for the **Fourth Defendant**

Hearing date: 12 December 2024
Further submissions and evidence: 18, 20 and 21 December 2024 and 2 January 2025

Approved Judgment

This judgment was handed down remotely at 2:00pm on 31st January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill:

Introduction

1. By a claim issued on 19 July 2023 the Claimants (“C1”, “C2”, “C3” and “C4” respectively) bring proceedings for harassment, defamation, malicious falsehood and various privacy-related claims¹ against the four Defendants (“D1”, “D2”, “D3” and “D4” respectively). D1 is an individual. The claims against him rely heavily on internet posts on various websites for which it is said D2, D3 and D4 are responsible.
2. By an order dated 24 October 2023, Master Stevens held that England and Wales was the most appropriate forum for the litigation. The Master granted the Claimants permission to serve the Claim Form and if required any other documents on the Defendants outside of the jurisdiction, in the United States of America. D4 is based in the state of Oregon in the United States.
3. This is my judgment on:
 - (i) The Claimants’ application dated 2 August 2023 against D4 for further information under CPR Part 18 (“**the Part 18 Application**”);
 - (ii) The Claimants’ application dated 9 October 2024 against D4 for an order under the Defamation Act 2013 (“the 2013 Act”), s.13 (“**the Section 13 Application**”);
 - (iii) D4’s application dated 27 November 2024 challenging jurisdiction under CPR Part 11 and the Claimants’ application dated 5 December 2024 to dismiss D4’s CPR Part 11 application as being totally without merit (together, “**the Jurisdiction Applications**”); and
 - (iv) D4’s application dated 20 December 2024 for relief from sanctions and/or a retrospective extension of time for the filing of its Acknowledgment of Service (“**the Relief from Sanctions Application**”).
4. The Claimants are representing themselves. At the hearing before me on 12 December 2024 C1 and C2 required the assistance of an interpreter. C4 joined the hearing remotely. C1 and C3 made submissions on behalf of all four Claimants.
5. D4 is represented by solicitors, and leading and junior counsel, who have been of considerable assistance.

The Claimants’ claims in overview

¹ These are described at p.65 of the Particulars of Claim as “misuse of private [information] and breach of privacy” and “misuse of personal data and breach of privacy”. It is also alleged that D1 has engaged in conduct in breach of Article 8 and 10 of the European Convention on Human Rights.

6. C1 had been a legal academic in China for many years before her retirement in January 2022. By then she was a professor of law at Shenzhen University. C2 is a lawyer practising in a law firm in Beijing. C1 and C2 are the parents of C3. C3 has been in a romantic relationship with C4 since July 2022.
7. C4 was previously in a relationship with D1. It is the Claimants' case that rather than respecting C4's decision to reject his marriage proposal and end their relationship, D1 has subjected her, C3 and his parents to the torts alleged. The Claimants allege that D1 has attended uninvited at the homes of C1, C2 and C3 in England and C4 in the Ukraine and harassed them.
8. The Claimants also claim that D1 has extensively defamed them on the internet, thereby harassing them further. They rely on many hundreds² of posts on three websites, mostly dating from November 2022 to March 2023. The websites are: <https://www.6park.com>, <http://wenxuecity.com> and <https://fishandchips.fans>.
9. The posts are said to defame the Claimants by, for example, alleging that C1 and C2 have committed criminal offences and by casting various aspersions on the characters of C3 and C4. The posts are also said to involve the disclosure of personal data about C1, C2 and C3 in the form of Land Registry documentation about the three properties they own in Manchester; and photos of cars believed to belong to C3.
10. The Claimants contend that D1's actions have damaged all their reputations and had a serious adverse impact on C2's health such that in October 2022 he had a heart attack, suffers from depression and is unable to work. The Claimants seek damages of £950,000.
11. The Claimants' case is that D2, D3 and D4 respectively are the companies responsible for the three websites. The Claimants seek damages from the three Defendants as well as orders identifying who posted the material in question other than D1 and orders to delete the material.
12. The extent of the Claimants' pleaded case against D4 is that they were responsible for the <https://fishandchips.fans> website. At paragraph 46 of her eleventh witness statement, C1 summarised the case against D4 as being that they "provided the platform to publish and disseminate the defamatory statements and articles", "condoned the continued dissemination of defamatory statements, over a period of four months", "turned a blind eye" and "never took any monitoring measures".
13. Although some of the Claimants' documents suggest that they bring claims of malicious falsehood and breach of privacy against D4, the hearing before me proceeded on the basis that the Claimants' claim against D4 is primarily a defamation claim.

Certain aspects of the procedural history

14. On 24 October 2023 the Master granted the Claimants permission to serve the Claim Form on the Defendants in the United States; and an additional four months to do so.

² The Claimants have incorporated over 300 posts into paragraphs 34-343 of their Particulars of Claim, albeit that paragraph 28(3) avers that there were over 840 posts in relation to C3 alone. At paragraph 5 of her eleventh witness statement, C1 averred that there were over 1,000 posts.

15. On 30 March 2024 D1 was served with the proceedings. He failed to file an Acknowledgment of Service or a Defence to any part of the claim by the required deadline. Accordingly on 28 May 2024 the Claimants applied for, and on 10 June 2024 obtained, default judgment against D1. D1 has so far not engaged with these proceedings at all.
16. On 8 July 2024 the court's Foreign Process Department informed the Claimants that it had not been possible to serve the claim on D4 as the address given to the process server was incorrect, and no other postal address for D4 was discoverable by the Claimants. However, they had been communicating with D4 by email for over a year.
17. Accordingly on 10 July 2024 the Claimants applied for, and on 20 September 2024 obtained, an order from the Master permitting them to serve the claim on D4 by email. Three email addresses for D4 were given. The order provided that service would be deemed effective on the date the communication was sent; and gave D4 22 days to serve an Acknowledgment of Service. By a second order of the same date the Master retrospectively extended time for service of the Claim Form from 19 May 2024 to 20 October 2024.
18. On 22 September 2024, the Claimants served the Claim Form and Particulars of Claim on D4.
19. At 4.16 pm on 27 November 2024 D4 filed their Acknowledgment of Service with the court. At 9.57 pm on the same day they filed their application challenging jurisdiction under CPR Part 11. D4 accepted that their Acknowledgement of Service should have been filed by 14 October 2024 and that accordingly when it was filed, it was 44 days late.
20. It is a hallmark of this litigation that the Claimants have made a vast number of applications; correspond with the court very regularly; and routinely provide the court with voluminous documentation, the relevance of which is not always immediately apparent, and sometimes without permission to do so.
21. It was partly because of their conduct of the litigation in this way that the hearing on 12 December 2024 was limited to considering the applications referred to at [3(i)-(iii)] above. There had, in fact, been a series of other applications listed for consideration at the hearing; and the Claimants and other parties invited the court to consider yet further applications at the hearing. The hearing was also intended to deal with the disposal of the claim against D1, in relation to which the Claimants had filed some 15 volumes of evidence.
22. By my order dated 16 December 2024, amended under the slip rule on 17 December 2024, the issues as between the Claimants and D1, and the issues as between the Claimants and D2 and D3, will be considered at separate hearings.
23. Despite the fact that the Claimants had filed extensive documentation on the jurisdiction issue (see [54]-[57] below), I acceded to their request that they be permitted to serve further written submissions on the legal issues after the hearing. D4 responded to these and made their Relief from Sanctions Application. The Claimants then provided evidence in response to that application (and further evidence that did not, but which I have nevertheless taken into account).

24. The Claimants and D4 were content for the Relief from Sanctions Application to be determined without a hearing and in my judgment that is appropriate. Accordingly, both CPR 23.8(1)(b) and (c), permitting the application to be determined without a hearing, are satisfied.

The order in which the applications should be considered

25. The Claimants' case is that because D4's Acknowledgment of Service was filed late, they are precluded from advancing their jurisdiction challenge. D4's position is that if their jurisdiction challenge succeeds, there is no basis on which the court could allow the Section 13 Application or the Part 18 Application.
26. Accordingly, it is appropriate to consider the Relief from Sanctions Application first, followed by the Jurisdiction Applications and then the Section 13 and Part 18 Applications.

The Relief from Sanctions Application

The context of the application

27. CPR 11(5) makes provision for a Defendant to be deemed to have submitted to the jurisdiction of England and Wales. This requires both that they have filed an Acknowledgment of Service and that they have not made a CPR Part 11 application within the following 14 days: *Hoddinott v Persimmon Homes* [2008] 1 WLR 806 at [27]. Here, D4 did file an Acknowledgment of Service and filed its CPR Part 11 application later the same day. On that basis, D4 cannot be deemed to have submitted to the jurisdiction.
28. The Claimants disputed this analysis, on the basis that where an Acknowledgment of Service is filed late, there is an implied sanction that a CPR Part 11 application cannot be made. This is because CPR 11(2) provides that a defendant who wishes to make such an application must first file an Acknowledgment of Service "in accordance with [CPR] Part 10". Part 10 sets out the relevant time limits.
29. D4's primary position was that this was incorrect and that sanctions cannot properly be "implied" into CPR 11(2) because there is another express sanction for failure to file an Acknowledgment of Service in time (namely "default judgment if Part 12 allows it": see CPR 10.2). Reliance was placed on the observations of Birss LJ in *Lufthansa Technik AG v Panasonic Avionics Corp* [2024] 1 WLR 2012 at [20]-[22] and *Yesss (A) Electrical Ltd v Warren* [2024] EWCA Civ 14 at [29]-[31] for the proposition that implying sanctions in this way requires a "high hurdle" which is not met in this scenario. On that basis there is no "sanction" from which any relief is needed.
30. That said, D4 recognised that there is some first instance authority supporting the Claimants' argument, namely *Talos Capital* [2014] EWHC 3977 (Comm) at [30]-[34], per Flaux J (as he then was); *Taylor v Giovanni Developers* [2015] EWHC 328 (Comm) at [13]-[18], per Popplewell J (as he then was); and *Cunico Resources* [2019] 1 WLR 2881 at [27]-[34] and [65]-[66], per Andrew Baker J. While expressly preserving their position that these decisions are wrong for argument in the Court of Appeal if necessary, D4 made the Relief from Sanctions Application to protect their position.

The legal principles relevant to relief from sanctions

31. CPR 3.9 provides as follows:

“Relief from sanctions

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –

(a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.”

32. In *Denton and ors v TH White Ltd and ors* [2014] EWCA Civ 906, [2014] WLR 3926 at [40] the Court of Appeal made clear that a judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the “seriousness and significance” of the “failure to comply with any rule, practice direction or court order” which engages CPR 3.9(1). If the breach is neither serious nor significant, the court is “unlikely to need to spend much time on the second and third stages”. The second stage is to consider why the default occurred. The third stage is to evaluate “all the circumstances of the case, so as to enable [the court] to deal justly with the application including factors (a) and (b) [in rule 39(1)]”.

The evidence on the application

33. D4 relied on the second witness statement from their solicitor Annabel Thomas dated 20 December 2024 which set out the reasons for the failure to file the Acknowledgment of Service in time and the basis on which relief from sanctions was sought.

34. Ms Thomas’s evidence was that those working for D4 in the United States on whom the claim had been served had not appreciated that valid service had been effected. This was because (i) D4 had received a “slew of communications” from the Claimants, some of which were “incoherent and confused”; (ii) D4 did not appreciate that amid the many communications from the Claimants the Claim Form had in fact been served; (iii) the documents attached to the email of service were sent by Google Drive link and in transmission the formatting had become “scrambled”; and (iv) D4 does not voluntarily accept service of legal proceedings by email. It was only on being served with the order of Steyn J, sealed on 5 November 2024, that D4 appreciated they needed English lawyers. On 13 November 2024 Ms Thomas’ firm was instructed and they acted promptly thereafter.

35. The Claimants responded to this application and evidence with the twelfth witness statement of C1, dated 20 December 2024, supported by a 94-page exhibit, XW12. This set out the detail of the Claimant’s dealings with D4 and their reasons for opposing the application.

36. C1’s evidence was that D4 is a corporate organisation with a well-established organisational structure, with independent teams handling legal matters, fraud and

abuse. She explained that the Claimants had been communicating with D4's various departments by email since June 2023, the salient features of which are as follows.

37. *First*, on 12 August 2023 a member of D4's legal department in the United States, Sarah Knobloch, asked whether the Claimants' "request" could be "localized to a court in United States jurisdiction". The Claimants responded by explaining that they were bringing a claim in the "UK" jurisdiction, due to C2's ill health and the fact that "the civil claim system is very convenient" due to the ability to submit documents to the court via the "E-filing system". The Claimants provided links to the guidance available online about practice in the King's Bench Division.
38. *Second*, when the claim was served on D4 on 22 September 2024, these were responded to by someone using the email address legal@porkbun.com (to which the Claimants had been advised to send legal documents), again asking if the matter could be localized to a court in United States jurisdiction. By this point, the Claimants had initiated proceedings in the United States, in the form of a petition filed in the United States District Court of Oregon on 29 August 2024. The documents relating to this claim were also served on D4 around this time.
39. *Third*, on 3 October 2024, some 11 days before the 14 October 2024 deadline, C1 emailed Ms Knobloch, highlighting that there was going to be a hearing in the King's Bench Division in November 2024 and asking "would you like to file an Acknowledgement of Service for defence to the court on the claim KB-2023-003483?". Ms Knobloch responded to this on 10 October 2024, saying "we would request that any legal documents be from a court with jurisdiction in Sherwood, Oregon, USA". This position was reiterated on 16 October 2024. Steyn J's 5 November 2024 order was served on D4 on the evening of 5 November 2024.
40. C1 contended that a member of D4's external legal team in the United States, Marc Trachtenberg, refused to accept service of the subpoena that had been obtained in the Oregon proceedings and thus was not acting in good faith in trying to resolve the dispute.

Application of the Denton test to this case

41. The delay in filing the Acknowledgment of Service was a delay of 44 days. This was more than double the 22 days allowed by the Master and so must be regarded as "serious" within the first stage of the *Denton* test, albeit that I accept Ms Thomas' evidence that it was not intentional.
42. As to whether the failing was significant, and why it occurred (under the second stage of the *Denton* test), the communications summarised at [37]-[39] show that the Claimants had tried to explain to D4's legal department in the United States that they were bringing claims in this jurisdiction and why; and indeed had specifically alerted D4's legal department to the imminent hearing in London and raised the issue of the possibility of them filing an Acknowledgement of Service on 3 October 2024. It is therefore, on the face of it, a little hard to follow why nothing was done to engage English lawyers until early November 2024.
43. However, I have some sympathy with the position D4's legal department in the United States found itself in. The "slew of communications" from the Claimants described by

Ms Thomas, their content, and the technical issues summarised at [34] chime with the manner in which the Claimants communicate with this court, as noted at [20] above. In my judgment they provide a substantial level of mitigation for the failure to identify that the claim had been served.

44. Further, the delay in filing the Acknowledgement of Service has had no impact on the conduct of the litigation as between the Claimants and D4: all the issues between them were the subject of argument in court a matter of weeks later, at the next listed hearing on 12 December 2024. For these reasons while the failing was serious, it has not proved in any way “significant” in the litigation.
45. As to other “circumstances of the case” under the third stage of the *Denton* test, it is relevant that: (i) the Claimants have been permitted significant latitude in the litigation so far, having obtained several extensions to the validity of the Claim Form as well as permission to serve by alternative means; and (ii) D4 have complied with all the other obligations on them in these proceedings.
46. It is also relevant that if this application is not granted, such that D4 is found to have submitted to the jurisdiction, D4 will proceed to make a summary judgment application based on the same arguments that feature in the jurisdiction challenge (namely the assertions that D4 is not a publisher at common law and not a web operator under s.13). I accept Mr Callus’ submission that the overriding objective is not furthered by duplicative applications, leading to an increase in delay and costs for all the parties, including the Claimants.

Conclusion on the Relief from Sanctions Application

47. For all these reasons I allow D4’s application for relief from sanctions. Time is retrospectively extended for D4 to file their Acknowledgment of Service. Accordingly it cannot be said that they have submitted to the jurisdiction or that they are precluded from advancing their jurisdiction challenge.

The Jurisdiction Applications

The legal principles relevant to jurisdiction

48. The court can only give permission to serve a claim on a defendant outside the jurisdiction if it is satisfied of three conditions: (i) there is a good arguable case that the claim is of a kind that falls within one of the “gateways” set out in CPR Practice Direction 6B (“the Gateway Requirement”); (ii) the claimant has a real as opposed to a fanciful prospect of success on the claim or, put another way, can show that any “reverse” summary judgment application made by the defendant would fail (“the Merits Test”); and (iii) England and Wales is the proper place in which to bring the claim” under CPR 6.37(3) (“the Forum Test”): *Soriano v Forensic News* [2022] QB 533 at [11].
49. A claimant seeking permission to serve outside the jurisdiction always bears the legal burden of proof on all these issues. That is the case whether the matter is being considered on an application by the claimant at the initial, without notice stage, or (as here) at the hearing of a subsequent application by the defendant to set aside an order permitting service outside the jurisdiction that was obtained without notice: *Soriano* at

[12]. On an application of this kind the court considers the issue *de novo* or afresh, but the test is applied as at the date of the original grant of permission for service out: *Golubovich v Golubovich* [2022] EWHC 1605 (Ch) at [62]-[67].

The evidence relevant to the applications

50. D4 relied on the first witness statement from their solicitor Ms Thomas dated 27 November 2024, in which she described the various actors and roles in the existence of websites.
51. In summary, almost all websites are connected to domain names. A Domain Name Registrar is an accredited organisation permitted to sell or allocate certain sorts of domain names to third parties. Once a Domain Name Registrant has purchased a domain name they must take active steps to connect the domain name to the internet and to use it to host websites or email. They must contract with a Website Hosting Service for this purpose.
52. Ms Thomas explained that D4 is a Domain Name Registrar. The Domain Name Registrant registered the fishandchips.fans domain name using D4's service. The domain name was used to direct web traffic to the <http://fishandchips.fans> website.
53. Like many other Domain Name Registrars, D4 also offers Website Hosting Services. However it does not do so in respect of the fishandchips.fans domain name. Accordingly, D4 has no control over, or non-public knowledge of, the use the domain name is put to, if any, including whether or not any specific content is posted on the domain name.
54. In response, and in support of their own application relating to jurisdiction, the Claimants relied on the eleventh witness statement of C1 dated 4 December 2024. This appeared to accept Ms Thomas' description of D4's role with respect to the fishandchips.fans domain name and the <http://fishandchips.fans> website, but made various legal submissions which I address below. The statement was supported by a 600-page exhibit, XW11. Part 2 of the exhibit included copies of the posts in question. Parts 1-7 comprised many hundreds of pages of correspondence between the Claimants and D4, with this court and with the court in Oregon.
55. In advance of the hearing the Claimants provided me separately with copies of communications they had had with D4's Porkbun Fraud and Abuse Reporting Center in August 2022 in which D4 indicated that it would explore suspending the domain name.
56. The Claimants also relied on the second witness statement of C3 dated 9 December 2024. C3 explained that on 2 December 2024 the court in Oregon issued a subpoena and court order requiring D4 to disclose information relating to the posts on the <http://fishandchips.fans> website.
57. C3 also made allegations against Mr Trachtenberg, as C1 had done (see [40] above). He contended that Mr Trachtenberg had given contradictory accounts, at one point saying that D4 did not have information about people who may have posted on the <http://fishandchips.fans> website, nor did it have a way of obtaining that information; yet also saying if the Claimants wished D4 to disclose the identity of the Domain Name

Registrant for the fishandchips.fans domain name, they would need to obtain a court order requiring D4 to do so.

Submissions and analysis

58. The Claimants advanced certain preliminary procedural objections to D4's application challenging jurisdiction, as set out in C1's eleventh witness statement.
59. *First*, they contended that there was no evidence in support of D4's application. That was plainly incorrect: D4 relied on Ms Thomas' first witness statement.
60. *Second*, they relied on the fact that the Acknowledgement of Service had not been served on them by D4. However, CPR 10.1(3) and 10.4 make clear service is not required: it is sufficient that the Acknowledgment of Service is filed with the court, which then notifies a claimant of that fact.
61. *Third*, they relied on the fact that there was subject matter and territorial jurisdiction, in other words that they could satisfy the Gateway Requirement and the Forum Test. However, D4's position was that there was no personal jurisdiction over D4, meaning that it solely focused on the Merits Test aspect of the *Soriano* requirements. Success on that ground for D4 would lead to success on the application overall.
62. D4 advanced the jurisdictional challenge under CPR Part 11 in two ways.
63. *First*, D4 contended that the Claimants could not prove it was the publisher of the words complained of at common law, such that the order permitting service out of the jurisdiction should be set aside as the Claimant could not satisfy the Merits Test ("**the 'publisher at common law' ground**").
64. *Second*, D4 argued that as they were not the "author, editor or publisher" of the words complained of, s.10 of the 2013 meant that the court did not have jurisdiction over the defamation claim ("**the section 10 ground**"). Such jurisdiction challenges are to be taken by way of CPR Part 11 challenge: *Mohammed v Daily The News International* [2023] EWHC 674 (KB) at [18], applying *Soriano* at [52].

(i): *The 'publisher at common law' ground*

Relevant legal principles

65. The law of defamation distinguishes between different types of responsibility for a publication: see, for example, *Monir v Wood* [2018] EWHC 3525 (QB) from [133] to [194]. The "general rule" is that everyone "who knowingly takes part in the publication of a libel, or authorises or ratifies it" is jointly and severally liable: *Monir* at [135i].
66. To be liable as a "primary publisher" a person must be shown to have "knowing involvement in the publication of the particular words". It is insufficient that a person "merely plays a passive role in the process": *Monir* at [135ii)], citing *Bunt v Tilley* [2007] 1 WLR 1243 at [22]-[23]. Accordingly, an author, co-author, editor or printer could be a primary publisher; but a newsagent selling defamatory copies of a newspaper, or the distributor of a magazine, could be liable for publication as a secondary publisher.

67. A secondary publisher, but not a primary publisher, can invoke the common law defence of “innocent dissemination” if they show they: (a) did not know of the defamatory statement; (b) had no reason to know of the defamatory statement; and (c) their ignorance was not founded on negligence.
68. The law in this area overlaps with that relating to “subsequent ratification”, arising from *Byrne v Deane* [1937] 1 KB 818. This applies so that where a third party publishes material via a medium over which the defendant has control, the defendant can become liable for the publication if, in all the circumstances, it can be inferred from the defendant’s failure to remove the defamatory material that the defendant “acquiesced in or authorised the continued publication”: *Monir* at [175]. A defendant held liable on this basis is liable as a primary, not secondary, publisher: *Monir* at [176]. This is because, effectively, the publisher has, with knowledge of the defamatory statements, actively chosen to continue publication thus allowing the inference of authorisation or acquiescence as if they were the original publisher.
69. The fundamental distinction between a primary and secondary publisher is “*knowledge* that a publication contains some defamatory matter and the ability to *control* its publication or continued publication”: *Monir* at [178] [emphasis in the original].

Submissions and analysis

70. The Particulars of Claim do not contend that D4 had written the posts in question or edited them. Rather, the Claimants’ case is that D4 was liable because D1’s posts were on a site for which D4 was responsible and which it had failed to correct.
71. However, Ms Thomas’s evidence shows that D4 was merely the Domain Name Registrar and does not host or operate the <https://fishandchips.fans> website. It has a merely passive role in registering domain names that direct web traffic. It did not transmit the defamatory statements complained of. At the date of the original grant of permission to serve out, D4 had neither the knowledge nor the control over the content to make it either a primary or secondary publisher at common law.
72. D4’s position in this regard was supported by the case law. Mr Callus and his junior had not been able to find any case in which it had been argued that a Domain Name Registrar, who was not also hosting material, is responsible for publication on a website whose domain name it had registered. However, he relied on cases involving other participants in the website process, including *Bunt v Tilley* [2007] 1 WLR 1243 and *Metropolitan Schools International v DesignTechnica* [2011] 1 WLR 1743. These illustrate that even passive, non-hosting Internet Service Providers and search engines that automatically publish snippets are mere “facilitators” and not publishers at common law. On that basis a Domain Name Registrar who does not host or operate the website complained of cannot possibly be a publisher, primary or secondary and whether or not on notice, at common law.
73. The Claimants did not suggest that Ms Thomas’ evidence was wrong. They accepted that D4 was a Domain Name Registrar. Beyond that, I confess I found their case hard to follow. As far as I understand it, their case was as follows.
74. *First*, the Claimants submitted that D4 was the operator of the <https://fishandchips.fans> website. Indeed in oral submissions C1 argued that D4 was both an “operator and a

distributor”. However, Ms Thomas’s evidence shows that that is factually incorrect: D4’s role was limited to that of a Domain Name Registrar.

75. *Second*, C1 asserted in her eleventh witness statement that as a matter of law a website operator “assumes the roles of “author”, “editor” and “publisher” under the Defamation Act 1996 (“the 1996 Act”). She contended that the 2013 Act had established “a more open model” by which the definition of “operator” of a website embraces the six separate roles of “author”, “IP”, “domain”, “host”, “administrator” and “webmaster”. She maintained this in her oral submissions, arguing that the 2013 Act adopted a “very open definition”. This meant that those involved in the domain name, the publisher and the editor were all equal in terms of liability. The same was true, she argued, of the administrators, support staff, service providers and communication company.
76. C3 took a similar approach in oral submissions. He confirmed that there was no disagreement between the Claimants and D4 in terms of the technicalities. However, he contended that it is important to understand how the internet works: a Domain Name Registrar performs an essential role, in that without the domain names they sell, it would be impossible to access the internet. There is a “lack of definitions” in the legislation and a “very open” definition should be adopted to the meaning of “publisher” or “operator”.
77. I do not accept that any of these statements properly summarise the law. It is clear that both the common law and the statutory framework have specifically delineated the different roles in the website process, for good reasons: see [65]-[69] above and [83]-[84] below. There are plenty of definitions, and the position is very far from “open” or fluid in the way C1 and C3 suggested.
78. *Third*, the Claimants argued that because D4 had suggested in correspondence that it might be able to deregister the domain name this was evidence of control over the content on the website. In her oral submissions, C1 posed the question “if they are not the operator of the website, why are they in a position to suspend the domain?”.
79. However, this submission reflects a failure to take into account Ms Thomas’ evidence about the different roles of those involved in the website process, and D4’s limited role as a Domain Name Registrar: all D4 can do is deregister the domain name so the whole site becomes impossible to find. It has no control over the content on the site. Mr Callus offered an analogy of defamatory comments posted on YouTube. The Domain Name Registrar would only be able to suspend the whole of YouTube, not delete the individual comments.
80. In light of Ms Thomas’ evidence and my rejection of the Claimants’ arguments at [74]-[79] above, the Claimants do not have a case capable of withstanding an application for reverse summary judgment that D4 was responsible as the publisher of the allegedly defamatory statements at common law. The same is true of their assertion, to the extent that it is made, that D4 was itself directly responsible for any malicious falsehood or breach of privacy.
81. Accordingly, the Claimants cannot establish the requisite case to meet the merits test for service out under CPR 6.37. D4 is therefore entitled to the declaration of non-jurisdiction it seeks in the CPR Part 11 application and the 24 October 2023 order

granting permission to serve the Claim Form on D4 out of the jurisdiction must therefore be set aside.

(ii): *The section 10 ground*

Relevant statutory provisions

82. The 2013 Act, s.10 provides as follows

“10. Action against a person who was not the author, editor etc

(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.

83. For the purposes of s.10(1), “author” means “the originator of the statement, but does not include a person who did not intend that his statement be published at all”; “editor” means “a person having editorial or equivalent responsibility for the content of the statement or the decision to publish it”; and “publisher” means “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”: see s.10(2), which incorporates the definitions in the 1996 Act, s.1(2).

84. Further, by the 1996 Act s.1(3)(e) a person shall not be considered the author, editor or publisher of a statement if he is only involved as “the operator of or provider of access to a communications system by means of which the statement is transmitted, or made available, by a person over whom he has no effective control”.

Submissions and analysis

85. Ms Thomas’ evidence as summarised at [50]-[53] above shows that D4 is a Domain Name Registrar which does not host or operate a website. Accordingly it is not an author, editor or publisher within the wording of the applicable definitions set out at [83] above. However if there was any doubt about this, the exclusion in s.1(3)(e) confirms the position. D4, as a Domain Name Registrar, is therefore within the first part of s.10(1).

86. On that basis, the next question is whether, under the second part of s.10(1), the court can be satisfied that it is not reasonably practicable for the Claimants to bring a claim against the author, editor or publisher. That question must be answered in the negative here, because the Claimants have not only been able to bring a claim against the author/publisher of the posts, D1, but have obtained default judgment against him on their defamation and other claims. On that basis s.10 provides that the court does not have jurisdiction.

87. In submissions, C3 argued that there may have been authors/publishers other than D1. The posts complained of on <https://fishandchips.fans> appear to have come from four usernames; and accordingly the Claimants could not rule out D1 having worked with

“additional accomplices”. Although this point was the subject of limited argument, I consider that it provides the Claimants with limited assistance for the following reasons.

88. *First*, the Claimants’ Particulars of Claim acknowledge that there were multiple accounts involved in the posts but contend at paragraph 23(3) that D1 was responsible for them all. They have obtained default judgment against D1 on that case. Accordingly, it is no longer open to D1 to argue that he was not responsible for all the posts (if indeed that was ever his case). Rather, the court will make what orders as to remedy are appropriate against D1 on the basis that he was responsible for them all.
89. *Second*, I am doubtful that the proper interpretation of s.10 is that to the effect that the court must be satisfied that it is not reasonably practicable for an action to be brought against *all potential* authors, editors or publishers in circumstances where one such person has not only been successfully sued but where judgment has been obtained against them.
90. *Third*, even if the s.10 issue is not resolved in D4’s favour, their success on the ‘publisher at common law’ issue above is sufficient for their jurisdiction challenge to succeed overall.

Conclusion on the Jurisdiction Applications

91. For all these reasons D4’s jurisdiction application dated 27 November 2024 succeeds. D4 is entitled to declarations of non-jurisdiction under CPR 11(1) and consequential relief in the form of an order setting aside service of the Claim Form under CPR 11(6). It follows that the Claimants’ application dated 5 December 2024 is dismissed. It was, in any event, unnecessary: the Claimants could merely have filed evidence in response to D4’s application and made submissions to the effect that the application should not only be dismissed but was totally without merit.

The Section 13 Application

Relevant statutory provisions

92. The 2013 Act, s.13 provides as follows:

“13. Order to remove statement or cease distribution etc

(1) Where a court gives judgment for the claimant in an action for defamation the court may order –

(a) the operator of a website on which the defamatory statement is posted to remove the statement, or

(b) any person who was not the author, editor or publisher of the defamatory statement

to stop distributing, selling or exhibiting material containing the statement”.

93. The 2013 Act, s.5 introduced a new defence for operators of websites, to reflect the fact that many people were operating websites where third parties were able to post statements. Under s.5(2) it is a defence for the operator to show that they had not themselves posted the statement. However, under s.5(3) the defence is defeated if the claimant shows that it was not possible to identify the third party who posted the statement; that they sent a notice to the operator; and that the operator failed to respond to the notice in line with regulations. Under ss.5(11)-(12), the defence is also defeated by the operator's malice, but not merely on the basis that the operator moderates comments.

Submissions and analysis

94. The court has given judgment for the Claimants in their action for defamation against D1. However, D4 contended that an order under s.13 could not be made against it for the following reasons.
95. *First*, as far as s.13(1)(a) is concerned, if a person is not the "operator of a website" theoretically able to enjoy a defence under s.5, they will not be an "operator of a website" for the purposes of s.13. Website operators are those with some editorial or hosting control over the contents of a particular website. This could be, for example, a Domain Name Registrant or a web hosting service that has been put on notice of the defamatory words, or some other person who is capable of identifying the actual author of the words on the website, so as to avail themselves of the defence set out in the 2013 Act, s.5.
96. However, here, D4 has no such editorial or hosting control over the contents of the <https://fishandchips.fans> website, for the reasons given in Ms Thomas's first witness statement. As the Domain Name Registrar only, D4 has no ability to identify the poster of the defamatory statements on the website, let alone the power to remove the defamatory material. D4 could never avail itself of the s.5 defence and so cannot be the subject of an order under s.13(1)(a).
97. Accordingly this case is to be distinguished from those where orders under s.13(1)(a) have been made against website operators, such as *Summerfield Brown Ltd v Waymouth* [2021] EWHC 85 (QB) (regarding the Trustpilot site) *Blackledge v Persons Unknown* [2021] EWHC 1994 (QB) (regarding Google LLC, in its capacity as the operator of [blogspot.com](https://www.blogspot.com)), *Dudley v Phillips* [2022] EWHC 930 (QB) (regarding Consumer Opinion LLC, the operator of www.pissedconsumer.com); and *Northcott v Hundeyin* [2024] EWHC 2704 (KB) (regarding Substack and X, formerly Twitter).
98. *Second*, although it appears that an order under s.13(1)(b) is yet to be made by the courts, it would seem that it is intended to apply to secondary publishers at common law. This interpretation is consistent with the observation made by the authors of *Gatley on Libel & Slander* (13th edition, 2022) at paragraph 10-047 to the effect that the enactment of s.13 was complementary to the enactment of ss.5 and 10, to ensure that a claimant is not deprived of an effective remedy. As set out at [66]-[69] above, a secondary publisher is someone who participates in publication with both knowledge of, and control over, the defamatory statement's continued publication. That does not apply to D4 who lacks such knowledge and control.

99. This much is made clear by the language of s.13(1)(b): D4 is not currently “distributing, selling or exhibiting material containing the statement” and so cannot be ordered to cease so doing.
100. For these reasons I accept D4’s submission that it would not be rational or appropriate to exercise the court’s discretion to make any s.13 order against D4.

Conclusion on the Section 13 Application

101. The Section 13 Application was made within the currency of these proceedings against D4 as a defendant on the Claim Form, and both were served out on the basis of Master Stevens’ 23 October 2023 order granting permission to serve the Claim Form on D4 out of the jurisdiction. I have decided that that order must be set aside for the reasons given at [48]-[91] above.
102. However, even if the court does have jurisdiction, a s.13 order would not be appropriate on the merits, for the reasons given at [95]-[100] above.

The Part 18 Application

103. Under CPR 18.1(1), the court may at any time order a party to (a) clarify any matter which is in dispute in the proceedings; or (b) give additional information in relation to any such matter, whether or not the matter is contained or referred to in a statement of case.
104. The Claimants’ Part 18 Application was made within the currency of these proceedings against D4 and so the court has no jurisdiction to determine it, in light of the setting aside of the order granting permission to serve the Claim Form on D4 out of the jurisdiction.
105. However, even if the court did have jurisdiction, a Part 18 order would not be appropriate on the merits.
106. This application seeks “any and all” information from D4 that could lead to the identification of the “poster” of the defamatory material. For the reasons given in Ms Thomas’ first statement, D4 does not have the power to identify the “poster” such that an order of this kind would serve no purpose and should not be made.
107. C1 contended that D4 did know who the posters of the information were and that one of D4’s American legal advisers had told C3 that. That is inconsistent with Ms Thomas’ evidence. C1’s submission may reflect a misunderstanding of the fact that D4 presumably knows the identity of the Domain Name Registrant, having sold the Domain Name to them, and C3 having been told that D4 could investigate suspending the Domain Name.
108. The Claimants also relied on the third witness statement of C3 dated 2 January 2025. The Claimants had no permission to file this statement but D4 has not raised an objection to it being taken into account, and I am content to do so.

109. In this statement C3 sought to reframe the Part 18 Application as, in fact, an application against a non-party to compel the disclosure of the identity of a wrongdoer so that proceedings may be brought against the proper defendant, applying the principles in *Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133 at 175. C3 argued that the application extended to the three users of the <http://fishandchips.fans> website other than D1, again making the point that the Claimants “do not have conclusive evidence to determine that all the posts were published by D1”.
110. To re-interpret a Part 18 application as a *Norwich Pharmacal* one, and to change the nature of the material sought from one poster to “all posters”, requires a very generous interpretation to the application. However, even if the Claimants were permitted that procedural latitude, the answer would still be the same: D4 simply has no power to identify who posted the material in question, however many people were involved.
111. C3 also alluded to an argument that the application should be re-interpreted even more generously to be considered as one to seek disclosure of the Domain Name Registrant, with a view to seeing if they could assist in identifying who was directly responsible for the posts. As to this, as Ms Thomas explained in her first witness statement, it appears that the Domain Name Registrant merely posted a social media site on the domain name for others to post comments on and engage in conversations on. She therefore contended that it seems very unlikely that details about the Domain Name Registrant would inform the Claimants in any material way as to who was posting material about them on the website.
112. In addition, any order aimed at assisting the Claimants in identifying any additional posters of the defamatory material over and above D1 would have limited utility given that default judgment has been obtained against him, on the basis of the Claimants’ pleaded case that he was the sole author or publisher. As noted at [88] above, an appropriate order on remedy will be made on that basis. It is therefore hard to see what purpose any fresh claims by the Claimants against further individuals would achieve. That is a further factor militating against making either a Part 18 or *Norwich Pharmacal* order against D4.

Summary of the outcome of the Applications

113. Accordingly, for all these reasons, I:
- (i) Allow D4’s Relief from Sanctions Application;
 - (ii) Allow D4’s application dated 27 November 2024 challenging jurisdiction under CPR Part 11;
 - (iii) Dismiss the Claimants’ application dated 5 December 2024 to dismiss D4’s CPR Part 11 application as being totally without merit;
 - (iv) Dismiss the Claimants’ Section 13 Application against D4; and
 - (v) Dismiss the Claimants’ Part 18 Application against D4.

Costs

Whether to make a costs order and if so what order to make

114. As the successful party on the applications, D4 sought an order that the Claimants pay their costs, in accordance with the general rule in CPR 44.2(2)(a) to the effect that the unsuccessful party will be ordered to pay the costs of the successful party.
115. The Claimants opposed this course and sought a different order from one in accordance with the general rule, under CPR 44.2(2)(b). Their primary position was that no order for costs should be made, meaning either party would bear their own costs in full. Alternatively, they argued that they should only be ordered to pay a nominal element of D4's costs.
116. Under CPR 44.2(4), in deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including (a) the conduct of all the parties and (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
117. As to (a), the Claimants argued that D4's jurisdiction challenge was procedurally defective and substantively lacking merit. The Claimants were right to highlight the delay in D4 filing their Acknowledgment of Service but that was remedied by the application for relief from sanctions, which the Claimants strenuously opposed and lost. I consider that the jurisdiction challenge did have merit, for the reasons given above.
118. The Claimants contended that D4's conduct has "unnecessarily burdened" the Claimants and the court and "unnecessarily increased costs". I cannot accept that submission. D4 has, in my overall assessment, responded promptly and efficiently to the applications and provided effective and proportionate assistance to the court. The descriptions used by the Claimants in this respect are more apposite to their own conduct, as noted at [20] above. The Claimants' conduct has undoubtedly increased costs to D4. It also makes allotting to the case "an appropriate share of the court's resources, while taking into account the need to allot resources to other cases" challenging. This is a relevant factor as part of the overriding objective under CPR 1.1(2)(e).
119. D4 relied on the fact that on 20 November 2024, before making their CPR Part 11 application, D4 wrote to the Claimants setting out their position on the jurisdiction issues in detail and offering not to pursue the Claimants for their costs if they discontinued the claim against D4. The Claimants responded by filing their counter-application dated 5 December 2024, supported by voluminous evidence, and fully contested the application at the hearing and in further submissions and evidence filed after it. D4's 20 November 2024 letter constitutes an admissible offer to settle which is relevant to the costs discretion under CPR 44.2(4)(c).
120. Moreover I was shown correspondence indicating that as long ago as 9 April 2024, the limits of D4's role as a Domain Name Registrant were explained to C3: he was told in terms "we don't have the ability to remove specific content from the site".
121. For these reasons, application of both CPR 44.2(4)(a) and (c) militate in favour of applying the general rule and thus support the making of a costs order in D4's favour. In light of these two factors, and considering all the circumstances of the case, I order

that the Claimants shall pay D4's costs of these applications, to be assessed on a standard basis.

The level of costs

122. Under CPR 44.3(2), where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred.
123. D4's costs schedule sought £58,185.50. The Claimants did not advance any arguments about the detail of the costs sought but the figure is, on any view, high, for work done in just over a month and for a one-day hearing.
124. However the figure sought reflects the time taken to understand the complex procedural history of the case; correspondence with the Claimants including the attempt to settle matters by the 20 November 2024 letter; the work needed to prepare the 27 November 2024 application once it became clear that the Claimants would not accept the 20 November 2024 offer; the drafting of a chronology and a detailed skeleton argument by counsel; the preparation of a properly indexed bundle of authorities; and the hearing itself. Only certain work was done by a Grade A fee earner; otherwise it was done by a Grade C fee earner. The instruction of specialist counsel was appropriate and proportionate given the complexities of the issues before the court.
125. It is also relevant that the Claimants' claim form seeks £950,000 in damages, and contends that D2, D3 and D4 should share responsibility for payment of this sum with D1.
126. Overall, I consider that D4's costs as claimed were proportionate to the matters in issue. The work done by D4 in respect of these applications has had the effect of bringing to an end the entirety of the case against D4, thus saving costs for the future. I do not consider that any individual item of the costs incurred was unreasonably or unnecessarily incurred or that any are otherwise disproportionate in amount.
127. Accordingly, I summarily assess D4's costs in the sum of £58,185.50. That is the amount the Claimants will have to pay D4.

Time to pay

128. Under CPR 44.7(1)(a) a party must comply with an order for the payment of costs within 14 days of the date of the judgment or order which states the amount of those costs, unless under CPR 44.7(1)(c) the court specifies another date.
129. The Claimants sought an extension of time for them to pay any costs order against D4 until such time as their claims against the other Defendants had been resolved. Presumably their hope is to meet any costs order against D4 with damages awarded against the other Defendants.
130. While in some circumstances the court might be persuaded to "set off" costs and damages between the same parties, I do not consider that the same approach should

apply here. I am not persuaded, as a point of principle, that it is fair to deny D4 their costs until such time as a damages award is made against D1, D2 or D3 and that those damages are paid to the Claimants.

131. Further, the Claimants have not yet established any liability against D2 and D3 and are some way off doing so: they are still engaged in interlocutory applications and D3 has applied to strike out the claim against them. The Claimants have obtained judgment in default against D1, and it is anticipated that the disposal hearing in respect of that claim will take place in the next few months. Accordingly, a judgment after that hearing is in reasonable contemplation. However, there is no way of knowing whether D1 will meet any award of damages made against him. His lack of engagement with the litigation so far suggests he might not.
132. The Claimants also argued that having to pay costs now would deprive them of the resources necessary to pursue their claims against the other Defendants, contravening the principles of fairness and access to justice enshrined in the overriding objective. With respect, I cannot see that it will: as the Claimants represent themselves, they are not paying lawyers. To the extent that they need to pay court fees in respect of applications and the like, that has not dissuaded them from making a vast number of applications. Financial help with court fees is available for those of very limited means, though it does not appear that the Claimants require this.
133. The Claimants implied that they did not have the means to pay any immediate costs order, stating that their limited financial means explained why they were representing themselves. The Particulars of Claim pleads that they own three properties. While of course property ownership is not the same as access to liquid assets, the Claimants provided no evidence of their wider financial position. In any event, a person's means are not necessarily a reason for not making a costs order against them: this is not a specific factor to which the court must have regard in exercising its discretion under CPR 44. The courts are regularly required to make costs orders against those of modest means, if correct application of the principles in CPR 44 requires that.
134. That said, I am conscious that this is, as far as I am aware, the first adverse costs order that has been made against the Claimants, and that it is for a significant amount. I indicated in the draft of this judgment that I was prepared to extend the time for the payment of D4's costs to 28 days, under CPR 44.7(1)(c).
135. In responding to the draft judgment, the Claimants asked for the hand down of the judgment to be delayed for a week due to it being the Chinese New Year until 4 February 2025. They made it clear that they sought the additional time to assist them in making arrangements to comply with the costs order.
136. While it was not appropriate to delay the hand down of the judgment, I am content to grant the Claimants an additional week to pay the costs. D4 agreed to this course. Accordingly, the time for the Claimants to pay D4's costs is extended to 35 days, under CPR 44.7(1)(c).

Conclusion

137. Accordingly, for all these reasons, I allow both of D4's applications; dismiss the Claimants' three applications; and order the Claimants to pay D4's costs in the sum of £58,185.50 within 35 days of the date of my order. Accordingly the costs must be paid by 4.30 pm GMT on 7 March 2025.