



Neutral Citation Number: [2018] EWHC 3593 (QB)

Case No: HQ18M02486

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2018

Before :

MR JUSTICE NICOL

Between :

WAFIC RIDA SAÏD
- and -
(1) GROUPE L'EXPRESS
(2) GUILLAUME DUBOIS

Claimant

Defendants

Justin Rushbrooke QC and Victoria Simon-Shore (instructed by **Carter-Ruck**) for the
Claimant
Greg Callus (instructed by **Atkins Thomson**) for the **Defendants**

Hearing date: 28th November 2018

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE NICOL

Mr Justice Nicol :

1. This is an application by the Defendants putting in issue the jurisdiction of the Court to determine all or part of the claims by the Claimant against them. Although it is the Defendants' application, Mr Rushbooke QC, for the Claimants, accepted that it was for the Claimant to establish that the Court did indeed have jurisdiction.
2. The 1st Defendant is the publisher of the French language magazine *L'Express* ('the magazine'). The 2nd Defendant is described as the 'directeur de la publication, directeur de la redaction' of the magazine and is said to have editorial responsibility for it.
3. Originally, the claim was based in libel and rights under the Data Protection Act 1998 and the General Data Protection Regulation. However the data protection claims have been abandoned and the action is now exclusively in libel.
4. The article said to have contained the libel was published on 2nd May 2018 under the title 'Le Diplomate aux mallettes de cash', translated as 'The Diplomat with Briefcases full of cash'.
5. The Claimant's Amended Particulars of Claim allege that the Article had the following meanings:
 - i) That the Claimant was improperly maintaining financial dealings with Syria notwithstanding and/or in breach of the international sanctions that restricted relations with that country;
 - ii) That the Claimant had had his accounts with Barclays abruptly closed because of the Claimant's aforesaid improper dealings with Syria;
 - iii) That there were reasonable grounds to suspect that the Claimant was regularly smuggling large sums of cash across the French border for money-laundering or other improper purposes; and
 - iv) That there were reasonable grounds to suspect that the Claimant used the protection provided by his position as Ambassador of St Vincent and the Grenadines to perpetrate and/or cover up his wrongdoing or otherwise evade justice.
6. The magazine circulates principally in France, but some copies (also in French) circulate in England and Wales and are therefore published (for the purposes of the law of libel) in this jurisdiction. In her witness statement of 17th August 2018 Madame Gaëlle Delhomme, an employee in the legal department of the 1st Defendant, says that 214 copies are sold to subscribers in the UK. That does not include one-off sales at newsagents or kiosks, but, she says, about 65 copies of the magazine are sold in that way each month in the UK. These are figures for the whole of United Kingdom and therefore include Scotland and Northern Ireland, but Mr Rushbrooke submitted (without contradiction for present purposes from Mr Callus, for the Defendants) that the UK market for *L'Express* was likely to be principally in England and Wales. Mr Rushbrooke also submitted that, to reach the approximate number of readers, the number of copies sold should be multiplied by about 2 or 3. Thus, the number of persons

to whom the print version of the article was published in England Wales was approximately 500-800.

7. In addition to distributing hard copies of the magazine, the Defendants operate a website on which a version of the magazine is also distributed (also in French). From 2nd May 2018 the website published a very similar (although not identical) article ('the online article'). The online article continues to be available. While it may be that interest in the online version of the magazine was also principally in France, it is alleged that some people in England and Wales also accessed it and therefore, it, too, was published to readers in this jurisdiction. Madame Delhomme says that there were 252 website visits to the article from within the UK. There may be some double counting here since, as I understand it, subscribers to the print edition were also entitled to view the online version and therefore some of the UK hits on the article may have been from those who had already received the print copy.
8. Madame Delhomme contrasts the UK circulation of the article with the global circulation of the print version of the magazine (about 300,000) and the global number of visitors to the online article (over 32,000).

The legal background to the jurisdiction challenge

9. The parties are agreed that the principal law governing this issue is the Recast Judgments Regulation i.e. Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12th December 2012 ('the Recast Brussels Regulation'). As an EU Regulation, it has direct effect and necessarily takes precedence over any conflicting domestic legislation. The Recast Brussels Regulation replaced an earlier Regulation – Council Regulation (EC) No 44/2001 - which in turn replaced the Brussels Convention 1968 which had been given the force of law in the UK by the Civil Jurisdiction and Judgments Act 1982, as supplemented and amended from time to time. Some of the authorities concern one or other of the earlier generations of the present Regulation, but neither party suggested that this had any significance.
10. The starting point under the Recast Brussels Regulation is Article 4(1) which says,

‘Subject to this Regulation, persons domiciled in a Member State, whatever their nationality, shall be sued in the courts of that Member State.’
11. There is no dispute that both Defendants in this case are domiciled in France. France, is, of course, a Member State. Unless another provision of the Regulation applies, therefore, it is in France and France alone that they should be sued.
12. However, Article 7(2) of the Regulation says,

‘A person domiciled in a Member State may be sued in another Member State...
(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.’
13. The location of the harmful event can be both the place where the damage is sustained and the place where the event occurs which precipitates loss: *Handelskwekerij G.J. Bier B.V. v Mines de Potasse d'Alsace S.A.* (Case 21/76) [1978] QB 708.

14. In *Shevill v Presse Alliance S.A.* (Case C-68/93) [1995] 2 A.C. 18 the Court of Justice of the E.U. considered the provision of the Brussels Convention equivalent to Article 7(2) of the Recast Brussels Regulation (i.e. Brussels Convention Article 5(3)). However, as I have said, there is no material difference between that and the Recast Brussels Regulation. One of the Plaintiffs in that case was a woman resident in Yorkshire. She brought libel proceedings regarding an article in an issue of *France Soir*. The newspaper was mainly sold in France, but a few copies were sold elsewhere including in England. The Plaintiffs sought compensation only in relation to the copies sold in England. The Defendants alleged that the English court had no jurisdiction and the House of Lords made a reference to the CJEU.
15. The European Court decided that, in the case of a libel distributed in several contracting states, the place of the event giving rise to the damage was the place where the publisher of the newspaper was established. That would normally be the place of the publisher's domicile i.e. the state which would have jurisdiction under the general rule (Article 2(1) of the Brussels Convention, the equivalent of Article 4(1) of the Recast Brussels Regulation).
16. However, as the Court said,

‘[29] In the case of an international libel through the press, the injury caused by a defamatory publication to the honour, reputation and good name of a natural or legal person occurs in the places where the publication is distributed, when the victim is known in those places.

[30] It follows that the courts of each contracting state in which the defamatory publication was distributed and in which the victim claims to have suffered injury to his reputation have jurisdiction to rule on the injury caused in that state to the victim's reputation.’
17. Accordingly, the alleged victim of an international libel had a choice. In the courts of the contracting state where the publisher was established, she or he could sue for compensation for all of the loss suffered. Alternatively, in any particular contracting state where the publication had been distributed, she or he could sue for the injury caused in that state. This second alternative may mean the victim bringing several actions in several different jurisdictions before all of the loss can be compensated. It is, therefore, sometime described as the ‘mosaic alternative’.
18. When the *Shevill* litigation returned to the House of Lords, it decided that the issue of whether a harmful event had occurred here was to be decided by our domestic substantive law of libel – see *Shevill v Presse Alliance S.A.* [1996] AC 959 (HL). At the time, English law presumed that the publication of a defamatory article was harmful to the reputation of the person defamed and therefore, without further proof of its effect, the English court had jurisdiction.
19. In *eDate Advertising GmbH v X; Martinez v MGN Ltd* Joined Cases C-509/09 and C-161/10 (*eDate*) [2012] QB 654 the Grand Chamber of the CJEU considered the position where the complaint was of libel published via the internet. The governing Regulation at the time of these cases was Council Regulation (EC) No 44/2001, but again nothing turns on this. The Court said at [45] that this type of publication,

‘is to be distinguished from the regional distribution of media such as printed matter in that it is intended to ensure the ubiquity of that content.’

20. In respect of internet publications, the Court said that the claimant had three choices – see [52].
 - i) He (or she) could sue for all of the damage suffered in the courts of the state where the publisher was established (i.e. by following the primary attribution of jurisdiction under what is now Article 4(1) of the Recast Brussels Regulation).
 - ii) He could sue for all of the damage suffered in the courts of the state where the claimant has his ‘centre of interests’.
 - iii) Or, he could sue in the courts of each Member State in the territory of which the content placed online is accessible for the loss suffered in that jurisdiction alone (the mosaic alternative).

21. The Court discussed the meaning of the phrase ‘centre of interests’ at [45]-[50] from which I take the following propositions:
 - i) The content of online publications is in principal universal and it is difficult to identify with certainty, what distribution occurred in any particular Member State. Yet, because of the wide reach of the Internet, the impact may be particularly injurious.
 - ii) The impact which material placed online has had on an individual’s personality rights might best be assessed by the court of the place where the alleged victim has his centre of interests.
 - iii) The centre of interests is in general likely to correspond to the person’s habitual residence.
 - iv) But the centre of interests of the claimant may be somewhere else ‘in so far as other factors, such as the pursuit of a professional activity may establish the existence of a particularly close link with that state.’ – [49].
 - v) Rules governing jurisdiction ought to be predictable. The publisher of harmful content is, at the time the content is placed online, in a position to know the centres of interests of the persons who are the subject of that content. Thus, both the alleged victim and the putative defendant will be able easily to identify the court in which suit may be brought.
 - vi) I agree with Mr Callus (without serious opposition from Mr Rushbrooke) that the Court refers to *the* centre of interests, implying that any individual can have but one centre of interests. I also agree with Mr Callus that, in principle at least, a person’s interests may be so diffuse that it is not possible to identify a single centre of his or her interests. Further, the state which is the claimant’s centre of interests will only be relevant if it is a Member State (or party to the Lugano Convention).

22. In reaching its decision, the Court adopted and built on the views of Advocate-General Cruz Villalon. He spoke of the 'centre of gravity of the dispute' as a synonym for the Claimant's centre of interests. He said at [59] of his opinion,
- 'It is not sufficient for the victim merely to be known. On the contrary, it is necessary to identify the place (and therefore the member state) where the individual concerned, in the enjoyment of his personality rights, essentially carries out his life plan, if this exists.'
23. Both the Advocate-General and the Court were concerned exclusively with internet publications. I detect no suggestion that, in respect of print copies, a claimant has the option of suing for compensation for all of the loss in the member state where he has his centre of interests.
24. The next development in the jurisprudence was the judgment of the Grand Chamber of the European Court of Justice in *Bolagsupplysningen OÜ v Svensk Handel AB* (Case C-194/16) [2018] QB 963. The Claimants in that case were an Estonian company and one of its employees. They sued a Swedish trade association in relation to an item on the association's website and subsequent comments in a discussion forum on the same website. The Defendant had included the Claimant company on its blacklist on its website, saying that the company had carried out acts of fraud and deceit. About 1,000 comments followed, some of which called for acts of violence against both Claimants. The claim was brought in Estonia. The Claimants sought compensation and also orders that the Defendant should rectify the information and remove the comments. The Estonian court of first instance had held the claim inadmissible. It noted that the publications had been in Swedish and was incomprehensible to people in Estonia without a translation. Damage in Estonia had not been proved. The Court of Appeal had dismissed an appeal. The Supreme Court of Estonia had allowed the individual's claim to proceed. It had, however, referred certain questions regarding the company's claim to the ECJ.
25. In summary, the Estonian Court asked the following questions (see judgment [21] for their full text);
- i) Whether a claim concerning alleged infringements by internet publications and seeking correction and/or removal of those publications could be brought in the courts of any Member State in which the information on the internet was accessible in respect of harm suffered in that Member State.
 - ii) Whether a legal person (rather than an individual) could bring a claim for losses for the entire harm caused by publications on the internet in the courts of the State where it has its centre of interests.
 - iii) If question (ii) is to be answered in the affirmative how the legal person's centre of interests is to be determined.
26. The second and third questions are not material to the present claim since the Claimant in the present proceedings is an individual.
27. As to the first question, the Court ruled that a person who alleged that his personality rights had been infringed by the publication of incorrect information about him on the

internet could not bring a claim for rectification of that information and removal of the comments before the courts of each Member State in which the information published on the internet is, or was, accessible. A claim for such relief could be brought *only* in the courts of Member State where the defendant was domiciled or in the courts of the Member State where the claimant had his, her or its centre of interests.

28. The Court quoted the following paragraphs from the preamble to the Recast Brussels Regulation,

‘(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile. Jurisdiction should always be available on this ground save in a few well-defined situations where the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. ...

(16) In addition to the defendant’s domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality including defamation.’

29. At [33] the Court said,

‘Thus the criterion of the “victim’s centre of interests” reflects the place where, in principle, the damage caused by online material occurs most significantly, for the purposes of art. 7(2) of regulation no. 1215/2012.’

30. At [39] the Court added,

‘The criterion of the centre of interests is intended to determine the place in which damage caused by online content occurs and, consequently, the Member State whose courts are best able to hear and to rule upon the dispute.’

31. I take from *Bolagsupplysningen* the following:

- i) So far as internet publications are concerned, a claimant who is seeking relief such as an injunction may do so only (a) in a Member State where the defendant is domiciled (so that the Courts of that Member State have jurisdiction under Article 4(1)); or (b) in the Member State where Claimant has his centre of interests.
- ii) Although by the time of the reference the Supreme Court of Estonia was concerned only with the corporate claimant, there is nothing in the judgment to suggest that the outcome in relation to the third question would have been different in relation to the individual claimant.
- iii) The Court was concerned exclusively with publications on the internet. So far as remedies for print publications are concerned, a claimant’s options as set out in *Shevill* remain the same.

- iv) Likewise, the Court was concerned exclusively with remedies for the rectification or removal of information from the internet. So far as other remedies, such as damages are concerned (even damages for internet publications) the Court appears to have made no change to the previous position. The Court's judgment appears to be in contrast with the opinion of the Advocate-General (Bobek) whose preferred course was to restrict a claimant complaining of an internet publication, to those fora which had full power to deal with all copies of the publication so that the mosaic option would not be available in such cases (see [97] of his opinion) whatever remedies were being sought. This was my provisional reaction when I first read the opinion of the Advocate-General after the hearing in the ICLR. However, since the Advocate-General's opinion had not been included in the copy of the decision in the Entertainment and Media Law Reports which had been provided at the hearing, I invited further written submissions from the parties, which I received. I am grateful for these, but my provisional view remains the same.
32. The present Claim Form identifies the relief which the Claimant is seeking. Ignoring the now abandoned claims for data protection, it is as follows:
- ‘1. Damages, including aggravated damages, for libel in respect of publication *within the jurisdiction of England and Wales* of (i) an article entitled “Le Diplomate aux mallettes de cash” published or caused to be published by the Defendants in the hard copy edition of L'Express magazine for 2 May 2018, and (ii) online publication *within the jurisdiction of England and Wales*, which publication is ongoing, of a substantially similar article first made available to the public on or around 2 May 2018, at the url <https://www.lexpress.fr/actualite/societe/le-diplomate-aux-mallettes-de-cash> 2002864.html;...
4. An injunction restraining the First Defendant, whether by its directors, officers, employees, agents or otherwise howsoever, and the 2nd Defendant, whether by himself, his agents or otherwise howsoever, from publishing or causing to be published the same or similar words defamatory of the Claimant.’ [emphasis added]
33. Service of the Claim Form and the other required documents took place on 31st July 2018.
34. The Amended Particulars of Claim dated 13th July 2018 still plead the claim for data protection as well as the claim in libel, but in view of Mr Rushbrooke's confirmation that the data protection claim is to be abandoned, I can disregard that aspect of them. The libel claim (as in the Claim Form) pleads the print version of the article and the online version published on the same website of the Defendants as had been mentioned in the Claim Form. Like the Claim Form, as well, paragraph 8 of the Amended Particulars of Claim says,
- ‘The Claimant limits his claim to publication of the Articles within the jurisdiction of England and Wales.’
- Likewise, Paragraph 9 of the Amended Particulars of Claim says,

‘Pending disclosure and/or further information from the 1st Defendant, it is to be inferred from the widespread availability for purchase of the Magazine in hard copy within the jurisdiction, the distribution of the Magazine within the jurisdiction via the UK’s largest online magazine distributor (Newsstand) which promotes it as “The number 1 French weekly news magazine”, the very large number of French nationals and other French-speaking persons with an interest in French current affairs living in the jurisdiction, and the general availability of the Web article to internet users based in the jurisdiction, that the words complained of were read by and thereby published to a very substantial (but presently unquantifiable) number of French-speaking readers within the jurisdiction of England and Wales, including hard copy and Online subscribers based in this jurisdiction.’

35. As is standard in a libel claim, paragraph 14 of the Amended Particulars of Claim pleads,

‘Unless restrained by this Honourable Court, the Defendants will further publish or cause to be published the said or similar words defamatory of the Claimant.’

36. The Claimant intended to serve the Defendants in France. By CPR r.6.33(2)(b)(i) he did not require permission to do so where each claim is one that the Court had power to determine under the Recast Brussels Regulation and no proceedings concerning the same claim were pending in the courts of any other Member State and the defendant was domiciled in a Member State. By CPR r.6.34(1) a Claimant, who intends to serve out of the jurisdiction under r.6.33, is obliged to file and serve with the Claim Form a certificate ‘containing a statement of the grounds on which the Claimant is entitled to serve the Claim Form out of the jurisdiction’. There is a standard form for such purposes. In this case, the Claimant’s solicitors ticked the box which said the claim was one to which r.6.33(b)(i) applied and explained that the Defendants were domiciled in France.

37. It will be noticed that the form does not require a claimant who is bringing libel proceedings to specify on which of the *Shevill/ eDate/ Bolagsupplysningen* options he is relying.

38. In view of the Claim Form and paragraphs 8 and 9 of the Amended Particulars of Claim, the Defendants could reasonably have understood that the Claimant had opted for the mosaic alternative.

39. In his skeleton argument for the present hearing (dated 27th November 2018) Mr Rushbrooke, however, explained that it was the Claimant’s case that his centre of interests was in England and therefore, consistent with *Bolagsupplysningen*, the Claimant was entitled to an internet injunction.

The Procedure for challenging the Court’s jurisdiction

40. CPR Part 11 prescribes the procedure for challenging the Court’s jurisdiction. The defendant must first enter an Acknowledgement of Service. The Defendants did so on 3rd August 2018.

41. The defendant who contests the Court’s jurisdiction must then issue an application notice within 14 days – r.11(4). CPR r.23.5 says that where an application must be made

within a specified time, it is so made if the application is received by the Court within that time. The Defendants' application was dated by their solicitors as 17th August 2018 (and so within the 14 day period). It was not sealed by the court until 20th August 2018 (3 days after the 14 day period). The commentary at paragraph 23.5.1 in the White Book notes

'If an application is received by the court on one day, but not date stamped until the next, it is received by the court on the earlier day (*Hallam Estates Ltd v Baker* [2014] EWCA Civ 661 at [25]).'

No point on this was taken by Mr Rushbrooke. Even if there had been a delay, no prejudice has been suffered by the Claimant and I would have been inclined to give the Defendants relief from sanctions, since the breach (if such it was) was neither serious nor significant c.f. *Denton v T.H. White Ltd - Practice Note* [2014] 1 WLR 3926 at [24].

42. The application must be supported by evidence – r.11(4)(b) – and it was in support of this application that Madame Delhomme made her witness statement of 17th August 2018.

43. Madame Delhomme says that the Defendants believe that the information contained in the article was both true and in the public interest. She provides the information as to the numbers of likely print sales and hits on the online version of the article to which I have already referred. She says that the 1st Defendant has no offices or staff members in the U.K. She says that the original pre-action letters from the Claimant's solicitors of 9th and 18th May 2018 were not received until 25th June 2018. She says also,

'I can confirm that the Defendants have no intention of sending further copies of the article to the UK nor reprint that edition of the magazine, or to reprint the Article in hard copy at all. The Article will however remain online.'

44. As I have said, Mr Rushbrooke accepted that it was for the Claimant to establish that the Court had jurisdiction to determine the libel claim. He would discharge that burden if he could show a 'good arguable case' for his claim – see *Canada Trust v Stolzenberg (No.2)* [1998] 1 All ER 318, [1998] 1 WLR 547 CA. Sometimes this is equated with whether the Claimant has 'a much better argument on the material available' – see *Four Seasons Hotel v Brownlie* [2018] 1 WLR 192 (SC) at [7] and [33]. For the sake of simplicity, when I refer to the 'good arguable case' test, it should be understood as meaning no less than 'a much better argument on the material available.' It is not my function on such an application as this to conduct a mini-trial to decide the issues on the balance of probabilities.

45. It is axiomatic that a claimant suing for libel must show that there has been a publication about him to at least one third party and that the publication was defamatory of him. Since the Defamation Act 2013 s.1(1),

'a statement will not be regarded as defamatory of an individual unless its publication has caused or would be likely to cause serious harm to the reputation of the claimant'.

46. In order to be granted an injunction, a claimant must also show that, unless restrained the defendant is likely to publish the same or similar defamatory allegations about him. As I have shown, in the case of an online publication an injunction will not be granted against a defendant domiciled in another Member State unless the Claimant's centre of interests is in England and Wales.
47. On 26th November 2018 the Claimant made a witness statement in reply to the application.
- i) He referred to the pre-action correspondence sent by his solicitors to the Defendants by post, by email and by courier (the latter being signed for on receipt).
 - ii) He denied the allegations made in the Article.
 - iii) There had been no confirmation that the Defendants would not publish the same or similar words. The Claimant infers that the Defendants intend to reserve the right to re-publish the same or similar allegations. He also notes in this regard that the Defendants maintain that the words they published are true and in the public interest.
 - iv) He was distressed by the articles and the Defendants' attitude to the pre-action correspondence.
 - v) He gives some information about his background. He was born in Syria. He describes himself as an investor and a philanthropist. He ran a major business in Saudi Arabia. He has established and was formerly the chair of Saïd Holdings Ltd. ('SHL'), a company incorporated in Bermuda. It holds investments including in real estate and securities in Europe, North America and the Far East. SHL uses lawyers, accountants, banks and investment managers in the UK. He, and his family-owned companies continue to be major investors in the UK.
 - vi) He founded the Saïd Business School at Oxford University to which he has given more than £100 million. In recognition the University gave him the Sheldon Medal because of the strategic difference he had made to the University. He is a member of the University's Court of benefactors and an honorary fellow of Trinity College, Oxford.
 - vii) He is the founder and chair of the Saïd Foundation, a registered charity in England and Wales, which has its headquarters in London. It supports the basic needs of displaced and refugee Syrian children.
 - viii) The Saïd Foundation funds the Saïd Business School Foundation which is also a registered charity in England and Wales.
 - ix) He has made smaller philanthropic donations in Canada, the USA and France. However, he says

'I have a particular affection for the UK as it is the country whose people received me with kindness and understanding when I could no longer live in Syria, the country of my birth. The UK is also where my wife is from and

where my children and grandchildren were all born and educated. I felt I owed the country something and that is why I have made those charitable gifts and established charities in this jurisdiction. I also have a high regard for the legal system which governs charities in the UK.'

x) He says he currently lives in Monaco (and I note that the Claim Form gives his address in Monaco). Before then, he had lived in the United Kingdom (from 1984-1991) and Canada. He says that his children and grandchildren all reside in the UK and he maintains close family and personal ties with the UK. He says he has bank accounts in London and he spends between 3 – 4 months of the year in the UK. He also has a considerable number of friends in the UK.

xi) He says,

'I consider London to be an important personal, family and business hub. I own a number of properties in London. My wife also owns property in London and both my children own houses in London. My son and his family are the beneficiaries of family trusts which own a substantial estate property (Tusmore Park) in Oxfordshire. I largely spend my time in London and Oxfordshire when in the UK. Whilst I am in the UK, I would regard Tusmore Park as my principal residence.'

xii) He says that he maintains an office in London for his work as Chair of the Saïd Foundation. Some 50 individuals work for him in the UK, including those employed through the Saïd Foundation. He also uses UK based lawyers, accountants, investment advisers, architects engineers and other consultants.

xiii) Although SHL is based in Bermuda it has many UK connections.

xiv) He adds,

'Although I currently reside in Monaco my ties with the Principality are limited to visits to see friends and business associates. I would say that my personal and business links to the UK are unquestionably stronger and more important than those I have in France, Monaco or Canada. While I am proud to be a Canadian citizen, I do not have a home in Canada, although through SHL, we do have some real estate and other investments in that country. The Paris property owned the family is currently being marketed for sale. I have no other real property in Paris.'

xv) The Claimant refers to an alternative means by which some people may have accessed the article, or a summary of it, namely through an Application. However, in the course of his oral submissions, Mr Rushbrooke acknowledged that the Claim Form and Amended Particulars of Claim relied exclusively on the print version and publication of the online version through the *L'Express* website. He accepted that any additional publications via the Application were not therefore material.

xvi) The Claimant argues that he has suffered serious harm as a result of the publications of the Article in print and online within the jurisdiction. He refers in particular to the following:

- a) Banking and financial institutions are required to conduct due diligence exercises. These are likely to include a review of globally recognised press databases. The article of which he complains will be thrown up by such searches. He gives the example of Swisscard through which his Swiss Amex card was operated. Shortly after publication he was told that the account would be closed. He was also told that HSBC would close the accounts of the Beaumont Hotel in London whose acquisition SHL had recently financed. Further, he had learned that Barclays were to close the accounts of the British Honey Company Ltd in which his family interests had just acquired a 25% shareholding. He says he fears that these actions may have resulted from compliance officers having formed an adverse opinion of him as a result of publication of the article.
 - b) He describes a similar difficulty which he had had in 2016 with Barclays which he had been concerned was due to other inaccuracies published about him.
 - c) He says that he caused inquiries to be made of Thomson Reuters (which operate the World-Check service) and Dow Jones (who operate the Factiva database). He alleges that both drew attention, either directly or indirectly, to the article.
 - d) This reinforces his view that future due diligence exercises would be likely to refer to the allegations in the *L'Express* article.
 - e) He gives further information in support of his claim that the allegations are untrue. He had ceased all business dealings with Syria in 2011. His only financial dealings with that country were now in connection with the humanitarian work of the Saïd Foundation. The action of Barclays in closing certain accounts had nothing to do with any wrongdoing by him. He had never been involved in money-laundering. He had never abused the position of Ambassador at UNESCO and to the Holy See for St Vincent and the Grenadines. He was not an associate of Mr Takieddine, who was mentioned in the article.
48. Mr Callus submits that the Claimant has failed to show that he has a good arguable case. In summary he argues:
- i) The Claimant has not shown that he has a good arguable case that his reputation has been seriously harmed by the article.
 - ii) The claim is vulnerable to being struck out or stayed as an abuse of process because no serious tort has been committed in the jurisdiction c.f. *Jameel v Dow Jones Inc.* [1995] QB 946 (CA).
 - iii) Since the Defendants have disavowed an intention to repeat the article the Claimant cannot show the necessary foundation for any injunction.
 - iv) So far as the online publication is concerned, the Claimant has not shown a good arguable case that his centre of interests is England and Wales.

- v) Since the Claimant cannot obtain an injunction against the online publication it would not be 'just and convenient' (the test for the grant of any injunction – see Senior Courts Act 1981 s.37(1)) to grant an injunction limited to printed matters, or, alternatively, such an injunction would not be a proportionate interference with the Defendants' rights to freedom of expression under Article 10 of the European Convention on Human Rights.

Serious harm to reputation

49. For all the reasons set out in the Claimant's witness statement, Mr Rushbrooke argues that he does have a reputation in England and Wales despite his international activities. He argues that the Claimant has a good arguable case that the article had each of the four meanings which the Amended Particulars of Claim attribute to it. He took me through the article to make good that contention. The precise meaning of the printed article and the online article may need to be determined in due course, but, in accordance with what was said in *Canada Trust v Stozenberg (No.2)* it is not my function to determine those meanings now. I note that meanings (i) and (ii) are what are sometimes described as *Chase* level 1 meanings (after *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772; [2003] EMLR 11). A Level 1 meaning implies actual guilt of the wrongdoing, by contrast to a Level 2 meaning which implies reasonable grounds to suspect or a Level 3 meaning which implies a basis for investigating whether the Claimant is guilty of the wrongdoing. Mr Callus observes that the Claimant's solicitors, Carter-Ruck, in their letter before claim of 9th May 2018 alleged no more than *Chase* Level 2 meanings. Mr Rushbrooke candidly accepted that the Claimant's advisers had re-thought their position. I accept that they are entitled to do so. The Defendants can make the forensic point that the advisers' first thoughts were correct, but, having heard Mr Rushbrooke develop his submissions (as well as Mr Callus's response), I accept that the Claimant has a good arguable case that each of the printed and online articles bore each of the pleaded meanings.
50. As for serious harm, Mr Rushbrooke submits:
- i) The imputations are each serious and each will have caused harm to the reputation which the Claimant has in the jurisdiction. This is not, therefore, an attempt to do what Warby J. said in *Sube v News Group Newspapers Ltd*. [2018] EWHC 1961 (QB) at [34] was impermissible, namely aggregate two or more meanings which did not themselves satisfy the 'serious harm' requirement.
 - ii) The number of readers of the printed article and the online article, while not large, was also not minimal. There was something in the order of 500—800 readers of the print article in the UK and about 250 hits on the online article from the UK.
 - iii) The articles were in French, but a French-speaking audience in England is likely to be significant for the Claimant's reputation. These days the ready availability of internet translation services mean that the language of the original is less significant.
 - iv) Furthermore, the test in s.1(1) is satisfied if the publication 'has caused *or is likely to cause* serious harm to the reputation of the claimant.' [emphasis added]. The evidence of the Claimant is that due diligence exercises on him have already

led to searches of databases which have thrown up the article and they are also likely to do so again in the future. The phrase 'likely to' does not require the Claimant to prove that the outcome is more likely than not - *Lachaux v Independent Print Ltd.* [2018] QB 594 (CA) at [68]¹.

- v) The nature of the likely readership is also important. On the Claimant's evidence, the article is likely to be thrown up by database searches conducted by those carrying out due diligence research and an adverse impact on the Claimant's reputation to such an audience is likely to be particularly serious c.f. *McLaughlin v London Borough of Lambeth* [2010] EWHC 2726 (QB), [2011] EMLR 8 at [112].
 - vi) From the seriousness of the imputations and the scale and nature of the past and likely future readership, the Claimant has a good arguable case that serious harm to his reputation will be inferred in line with *Lachaux* at [70]-[73].
 - vii) If the Claimant establishes that the publications in this jurisdiction have caused or are likely to cause serious harm to his reputation, it is irrelevant that his reputation has also been harmed by publications elsewhere in the world.
51. Mr Callus submitted that the Claimant had not surmounted the hurdle of showing a good arguable case that the articles' publication in England and Wales had caused, or would be likely to cause, serious harm to his reputation. He argued:
- i) The Claimant had not referred to any single publishee who had thought the less of him because of the publication here.
 - ii) Any adverse impact on his banking arrangements could not be attributed to the publications in this jurisdiction. There has been no plea of special damage in this (or any other regard).
 - iii) The scale of publication within England and Wales, by comparison with that in France and elsewhere in the world is tiny and less than 1%. (Mr Callus estimated about 0.16%). Any damages awarded to the Claimant would need to reflect that reality.
 - iv) The claim was comparable to *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB); [2016] EMLR 12 where Dingemans J. had held that the publication within the jurisdiction of a few copies of the Defendant's Portuguese newspaper, *Expresso*, had not caused serious harm to that claimant.
52. In my judgment, on this issue Mr Rushbrooke's arguments are to be preferred. It is not necessary for a libel claimant to identify any publishee who has thought the less of him as a result of the publication. A claimant may sometimes do so, but this is not necessary. He or she may alternatively, as *Lachaux* showed, invite the Court to draw an inference that their reputation had been, or was likely to be, seriously harmed because of the nature of the allegations and the scope and nature of the publications within the jurisdiction. A plea of special damage is not a necessary component of establishing

¹ The decision of the Court of Appeal in *Lachaux* has been appealed to the Supreme Court. At the time of preparing this judgment, oral argument in the Supreme Court has taken place but the reserved judgment has yet to be delivered. In the meantime, the Court of Appeal's decision remains authoritative.

'serious harm'. The Claimant is an individual. He does not therefore have to satisfy the test in Defamation Act 2013 s.1(2) of 'serious financial harm', but even in that context special damage is not essential – see my judgment in *EuroEco (Fuels) Poland Ltd v Szczecin and Swinoujscie Seaports Authority SA* [2018] EWHC 1081 (QB), [2018] 4 WLR 133 at [71]. I accept Mr Rushbrooke's argument that the scale of publication within the jurisdiction, on the present evidence is not minimal and, on the Claimant's evidence, has, or is likely in the future, to include publishees who are of particular importance for his reputation. The value of comparing the facts of one case with another is often likely to be limited: the totality of the facts of the two cases will almost invariably differ. *Sobrinho* concerned a claimant who, as the Judge said, had been able to put the record straight in his evidence to the Portuguese Parliamentary Inquiry, evidence which had been covered by the Portuguese media in London – see [97]. There is nothing comparable in the present case. The facts of *Sobrinho* were, therefore, materially different. I address Mr Callus's argument based on the small proportion of readers in this jurisdiction compared with those worldwide later in this judgment.

Injunction: General

53. Mr Callus is right to say that a claimant seeking an injunction must show some grounds for the assertion that, absent such relief, his rights will be infringed. He observes that Madame Delhomme has said in her witness statement that the Defendants have no intention to republish the article in question and there is no reason to question that evidence.
54. I agree with Mr Rushbrooke that this is an insufficient response. First, the online article continues to be available. Every time it is accessed, in principle there will be a further publication to that internet user and the publication will take place in England if that is where the user is located. Secondly, the Claimant's concern is not restricted to republication of the very same article. Conventionally, the Claimant has pleaded in paragraph 14 of the Amended Particulars of Claim,

'Unless restrained by this Honourable Court, the Defendants will further publish or cause be published the said *or similar words defamatory of the Claimant.*' [emphasis added].

The Defendants' intention not to re-publish the article itself simply does not meet this concern. Mr Rushbrooke is also entitled to say that the Defendants' belief that the words complained of are true and in the public interest adds fuel to that concern.

Injunction: internet

55. Since the Defendants are not domiciled in England, as I have shown, in consequence of *Bolagsupplysningen* the Claimant will not be entitled to an injunction from the English courts to restrain continued publication of the online article unless his centre of interests is in England. Normally, an individual's centre of interests will be the state of his habitual residence – see *eDate* at [49]. In their letter of 12th July 2018, Carter-Ruck said that the Claimant's main or permanent residence was in Monaco and that was why his Monaco address was given for him in the Claim Form. Monaco is not a Member State of the EU and is not a party to the Lugano Convention.

56. I recognise that *eDate* says that 'in general' a person's habitual residence will be his centre of interests. I accept, therefore, that it is open to a Claimant to show that his centre of interests is somewhere other than the country where he has his principal residence. In this case, Mr Rushbrooke submits that the Claimant's centre of interests is England. He relies on the following:

- i) The Claimant has close connections with England. His family live here. The Saïd Foundation is based here. It has offices and employees in London. The Claimant has donated generously to many English institutions, notably Oxford University. SHL, although incorporated in Bermuda, has substantial connections with the UK. His family's trusts own property in London and Oxfordshire and the latter he regards as his home when he is in the UK. He spends 3 – 4 months of the year in the U.K.
- ii) He is a resident of Monaco; he is a Canadian citizen and he either owns or has recently owned property in France, but, as I have quoted from his statement he regards his connection with England as stronger than that to Monaco, Canada or France. Mr Rushbrooke asks rhetorically, if England is not the centre of the Claimant's interests, where is?

57. There are, though, the following difficulties with Mr Rushbrooke's argument.

- i) As I have said, the ECJ speaks of *the* centre of interests of a claimant. The repeated use of the definite article strongly implies, as Mr Rushbrooke was inclined to accept, that an individual cannot have more than one centre of interests. I also agree with Mr Callus that for any particular individual there may not be any single centre of interests. That is because, in principle at least, it is possible to envisage a person with such diffuse international connections that it is impossible to identify any single country which could be described as his centre of interests.
- ii) The issue is not, therefore, whether the Claimant has some connections with this jurisdiction, nor whether he has a reputation here. I accept that the witness statement from the Claimant shows that he has a good arguable case as to both of these matters. Rather, though, the issue is whether England and Wales is *the* centre of his interests such as to displace the country of his habitual residence, Monaco.
- iii) Paragraph 22 of the Claimant's witness statement begins,

'I consider London to be *an* important personal, family and business hub.'
[emphasis added].

However, as I have said, that is not the issue. Rather it is whether England is *the* centre of his interests. Similarly, paragraph 22 continues,

'I largely spend my time in London and Oxfordshire *when I am in the United Kingdom. Whilst I am in the UK*, I would regard Tusmore Park in Oxfordshire as my principal residence.'
[emphasis added].

The witness statement tells us that he spends 3-4 months a year in the U.K., but does not say that this is more than any other place.

- iv) The Claimant does say in paragraph 25 of his witness statement that his ties with Monaco 'are limited to visits to see friends and business associates.', but these are not quantified and so the ability to make a meaningful comparison is hampered.
- v) I recognise that paragraph 25 continues,

'I would say that my personal and business links to the UK are unquestionably stronger and more important than those I have in France, Monaco or Canada.'

However, as a bare assertion, this takes the matter little further. It also brushes over other possibilities: it says nothing of other countries with which the Claimant is known to have, at least, some connection. Thus, for instance, he was born in Syria, his holding company is registered in Bermuda and he is, or has been, the diplomatic representative of St Vincent and the Grenadines. Secondly, it assumes that a country which is his centre of interests must be capable of identification, but for an international businessman and philanthropist, such as the Claimant, that may not necessarily be so.

- vi) I agree with Mr Callus that the Claimant's reliance on him having his centre of interests in England is something of a late addition to the way in which the Claimant puts his case. The letter from Carter-Ruck of 12th July 2018 said,

'Finally, our client has a substantial connection to England and Wales and undoubtedly has a right to sue a defendant domiciled in another member state of the European Union in the English courts for damage to his reputation caused by publication of defamatory material within England and Wales. That is plainly established as a matter of European law (see eg the case of Shevill v Presse Alliance SA (Case C-69/93), CJEU).'

As I have already shown, the Claim Form limited the claim to damages to the publications which had taken place in England and Wales and paragraphs 8 and 9 of the Amended Particulars of Claim expressly confined the claim to publications which had taken place within this jurisdiction. All of these are consistent with the Claimant opting for the mosaic alternative. The first express reference to the Claimant relying on his centre of interests being England and Wales came in Mr Rushbrooke's skeleton argument dated 27th November 2018, the day before the hearing.

- 58. Mr Rushbrooke argued that an explanation for the Claimant confining his claim to damages to publications in the jurisdiction was because he would not then be at risk of having to establish that the publications in other countries was actionable according to their domestic law. By contrast, injunctive relief was not so contingent. This asserted distinction between a claim for damages for publication which took place in, say France, and an injunction to prevent publication in France may or may not be correct, but the absence of any indication earlier than Mr Rushbrooke's skeleton argument was a sufficient reason for the Defendants not to address the issue of the Claimant's centre of interests in their evidence.

59. At the hearing, I raised with Mr Rushbrooke whether the Claimant did need to re-amend the Particulars of Claim to plead that his centre of interests was in England and Wales. He submitted that there was no obligation on a Claimant to plead such jurisdictional matters. I am not sure about this. It is the function of pleadings to set out the facts on which the litigant will ask the Court to rule in his favour. I am not sure that factual averments relevant to jurisdiction are any different in this regard. In a note sent after the hearing Mr Rushbrooke said that he was unaware of any authority on the subject, but he drew my attention to Part 58 of the CPR which concerns claims in the Commercial Court list. R.58.7(3) says that, if the defendant files an acknowledgement of service indicating an intention to dispute the Court's jurisdiction, the claimant need not serve particulars of claim. In my provisional view, that establishes rather the opposite: *in the Commercial Court* special provision is made. For cases which are not in the Commercial Court, the general provisions of CPR r.7.4(1) & (2) apply and particulars of claim, if not contained in or served with the claim form must be served within 14 days of service of the claim form and no later than the latest time for serving the claim form. The note at paragraph 7.4.3 of the White Book draws attention to the different rules which operate in the Commercial Court (and Admiralty claims *in rem*). Mr Rushbrooke also submits that it would be contrary to the overriding objective for the claimant to be obliged to plead matters as to which the defendant may raise no jurisdictional objection. I do not find that a satisfactory argument, for two reasons. First, the parties cannot by consent give the court a jurisdiction which it does not have. Second, it is clear by their application notice of 17th August 2018 that the Defendants were taking the point that the Court had no jurisdiction to grant the Claimant non-pecuniary relief. *Bolagsupplysningen* was cited. By then at the latest, it may be said, the Claimant knew that the facts and matters on which he wished to rely to show that his centre of interests was England and Wales would need to be proved. If that was the case, I am at a loss to see why the Claimant should not also be obliged to plead those facts and matters.
60. On the other hand, none of this may matter since Mr Rushbrooke indicated a willingness on the part of the Claimant to re-amend the Particulars of Claim if that was necessary. I accept that, at the stage of a jurisdiction application, pleading deficiencies which are capable of being cured by amendment should not be determinative.
61. But, while I do not decide this aspect of the application on any omission from the pleadings, the Claimant has not persuaded me on the evidence currently before the Court that he has a good arguable case that England and Wales is his centre of interests as opposed to the state of his habitual residence, namely Monaco.
62. Mr Rushbrooke cited to me the judgment of Karen Steyn QC sitting as a Deputy High Court Judge in *BVC v EWF* [2018] EWHC 2674 (QB). This was a claim for misuse of private information and harassment. The Claimant was a British citizen, although currently living in a South-East Asian country. The Defendant gave evidence that he lived in Switzerland. He challenged the jurisdiction of the English court. Switzerland is not a member State of the EU, but it is a party to the Lugano Convention which has closely comparable provisions to the Recast Brussels Regulation. At the hearing of the jurisdictional challenge, the Claimant argued that he was able to invoke the jurisdiction of the English court in part because his centre of interests was in England. Although the Defendant had submitted evidence on the issue, he was neither present nor represented at the hearing. At [43] Ms Steyn said as follows,

‘In essence, the Defendant’s submission amount to a contention that the Claimant’s centre of interests is in State B [the country of the Claimant’s present permanent residence], or perhaps State A [the country of the Claimant’s birth], rather than in this jurisdiction. However, the focus of the Lugano Convention is on the allocation of jurisdiction in Lugano Convention States. It is common ground that the Defendant is domiciled in a Lugano Convention State. In those circumstances, the question is whether he should be sued in Switzerland (pursuant to the general rule) or whether the Claimant is entitled to bring proceedings in another Lugano Convention State (pursuant to the specific jurisdiction rules). This focus is apparent in paragraphs 49 and 52 of *eDate* and in paragraphs 40 and 42 of *Bolagsupplysningen*.’

I am, with respect, not quite sure of the proposition that Ms Steyn was stating, or the reliance which Mr Rushbrooke was placing on it. If it was to the effect that a Claimant’s centre of interests must be in *a* member State (at least where the Defendant is domiciled in a Member State or a Lugano Convention State) then I respectfully disagree. *eDate* gives a claimant a choice of suing in a particular state *if* his centre of interests is in that state and *if* that state is a Member State. I do not understand either *eDate* or *Bolagsupplysningen* to say that the Defendant’s residence has any bearing on whether those two conditions are satisfied.

Injunction: non-internet publication

63. As I have explained, the decision in *Bolagsupplysningen* was all about non-pecuniary relief for the correction or removal of publications on the internet. Even if, as I have held, the Claimant has not shown a good arguable case as to why the English courts have jurisdiction to grant him an injunction against further publications of the web version of the article, that does not, in principle, preclude the Claimant from pursuing a claim for an injunction regarding publication in printed form of the same or similar words defamatory of him.
64. Mr Callus argued, however, that the Claimant’s inability to obtain an internet injunction did have indirect consequences for the relief sought in relation to printed words. He argued that any injunction would be a curtailment of the Defendants’ freedom of expression. In consequence of the Human Rights Act 1998, the Claimant would have to establish that such a restriction was ‘necessary in a democratic society’ – see Article 10(2) of the European Convention on Human Rights (‘ECHR’) which in turn would mean he would have to show that an injunction was a proportionate restriction on their rights. The Claimant, Mr Callus argues, could not establish these matters in relation to a printed version of the words complained of if, at the same time, the Defendants would remain free to repeat the same words over the internet. An injunction limited to non-internet publications would not be ‘just and convenient’ which is the governing criterion under Senior Courts Act 1981 s.37(1).
65. However, whatever superficial attraction such an argument might have, it will not bear further analysis. I remind myself, that this is not a case where the Claimant is seeking an interim injunction. It is not a case, therefore, where the special vigilance before imposing a prior restraint is called for. The injunction which the Claimant is seeking will only be granted if he has succeeded on his claim at trial. The Defendants have said through Madame Delhomme that the article was true and in the public interest, but I have to contemplate a situation where a defence of truth under Defamation Act 2013

s.2 or any other defence to the claim has not succeeded. Where a libel claimant succeeds at trial, ordinarily a final injunction will be granted. The injunction may not be completely effective because, for instance, the publication may be repeated in foreign publications which the English court cannot control. On the hypothesis which I am being asked to consider, the efficacy of an injunction would also be limited because the Defendants could (if they chose) continue to make the article available via the internet. But I am not persuaded that is a significant difference.

66. I am conscious that my task at this stage is not to take a final decision on whether the Claimant would be granted an injunction if his libel claim is successful. It is to decide whether he has a good arguable case in that regard so far as the non-internet publications are concerned. In my judgment he does.

Abuse of process: no real or substantial tort

67. Mr Callus has also submitted that there is no jurisdiction because there has been no real or substantial tort committed in the jurisdiction and the libel claim would accordingly be amenable to being struck out or stayed in accordance with the case law following *Jameel v Dow Jones Inc* [2005] QB 946 (CA). I have some doubt as to whether this is properly to be treated as a challenge to the jurisdiction and whether, in this respect, as well it is for the Claimant to establish a good arguable case. But I shall assume in the Defendants' favour that it can be raised as part of the present application and that it is for the Claimant to show a good arguable case that there is a real and substantial tort.
68. Mr Callus's argument proceeds thus: (1) the Claimant has chosen to limit his claim to the tiny proportion of the global publication of the article which has taken place in England and Wales; (2) there is effectively a cap on damages which can be recovered in libel in order that such awards of compensation do not constitute a disproportionate restriction on freedom of expression; (3) at most therefore the Claimant can only recover a tiny proportion of that maximum amount; (4) the non-pecuniary relief which the Claimant will be able to maintain is also limited (see above); (5) therefore, put shortly 'the game will not be worth the candle'.
69. I do not accept that stage (3) in Mr Callus's chain of reasoning will necessarily be correct. Since the Claimant has limited himself to the mosaic alternative his damage will be limited to harm to his reputation in consequence of the publications in the jurisdiction. That will necessarily be less than the total loss which he has suffered (I am, of course here assuming that the Claimant succeeds on his libel claim). But it does not necessarily follow that his loss in consequence of publications here will be in the same proportion as the publications here bear to the global circulation of the article. The Claimant has provided evidence of the particular importance of his reputation in England. If that evidence is accepted at trial, it may lead to the conclusion that, while the circulation in England may have been a small fraction of the global circulation, it had a greater or disproportionate impact.
70. Mr Callus argued that his 'proportionate' approach was necessary because otherwise the Claimant would be over-compensated. But that would only be the case if the Claimant sought and recovered damages in other jurisdictions which took no account of his recovery in England for publications which had occurred in this jurisdiction. There is no evidence that he has begun any other actions. This objection is therefore only hypothetical.

71. For the avoidance of doubt, I have also borne in mind for the purposes of the *Jameel* challenge that, in accordance with the earlier part of this judgment, the Claimant will not be entitled to an injunction in relation to internet publications. That will mean that, at least in theory, the Defendants could continue to publish the web article even if they are unsuccessful at trial. While that will make the claim a less efficacious means of vindicating his reputation, the Claimant would still be entitled to consider a judgment in his favour on the balance of his claim as a useful step in that regard.
72. In *Lachaux* at [79] the Court of Appeal described the *Jameel* principle as potentially overlapping with the test of 'serious harm', although it acknowledged that it had not been wholly subsumed into s.1 of the 2013 Act. I have already found that the Claimant has a good arguable case that he can satisfy the serious harm test. In my judgment, so far as there is any scope for the independent application of the *Jameel* test on the present facts and so far as it is necessary for the Claimant to do, he has also shown a good arguable case that there has been a serious tort committed against him and that the 'game is worth the candle' – see *Schellenberg v BBC* [2000] EMLR 296.

Conclusion

73. The Claimant has not shown a good arguable case that his centre of interests is in England and Wales. As is agreed, the Defendants are not domiciled in the jurisdiction. Accordingly and in accordance with *Bolagsupplysningen*, this Court does not have jurisdiction to grant an injunction to restrain publication of the article on the internet. To that extent, the Defendants' application succeeds.
74. Otherwise, the Claimant has shown a good arguable case for the cause of action and other relief which he seeks. The remainder of the Defendants' application is therefore refused.