



Neutral Citation Number: [2021] EWHC 2127 (QB)

Case No: QB-2020-004166

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2021

Before :

THE HONOURABLE MR JUSTICE SAINI

Between :

ALEXANDER AMIR ASLANI

Claimant

- and -

PAULINA SOBIERAJSKA

Defendant

Steven Reed (instructed by **Pinder Reaux Associates Limited**) for the **Claimant**
The **Defendant** did not appear and was not represented

Hearing dates: 26 July 2021

Approved Judgment

.....
MR JUSTICE SAINI

MR JUSTICE SAINI :

This judgment is in 6 parts as follows:

- | | |
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| I. Overview: | paras. [1-3] |
| II. The Facts: | paras. [4-11] |
| III. Legal Principles | paras. [12-15] |
| IV. Quantum: | paras. [16-34] |
| V. Conclusion: | paras. [35-36]. |

Annexe I: the publications.

Annexe II: the pleaded meanings.

I. Overview

1. This is an assessment of damages and ancillary relief in a libel claim brought by Dr Alexander Aslani (“the Claimant”) against Paulina Soberiskja (“the Defendant”). The Claimant is a respected plastic and reconstructive surgeon with particular expertise in a form of buttock augmentation surgery known as Brazilian Butt Lift (“BBL”). The Defendant is a former patient of the Claimant and is a social media “influencer”.
2. BBL surgery was performed by the Claimant on the Defendant on a number of occasions. The Claimant has used social media to libel the Claimant in relation to his conduct and abilities as a surgeon, as I shall describe in more detail below. The claim was issued on 18 November 2020 and relates to four defamatory publications made by the Defendant between 3 August 2020 and 4 October 2020. These publications are attached to this judgment as Annexe I. The Defendant, aside from some preliminary exchanges in correspondence in October 2020, has ignored these proceedings. Default judgment was entered on 6 January 2021 Master Thornett on the failure of the Defendant to serve an acknowledgment of service.
3. In addition to damages for libel, the Defendant seeks injunctive relief and an order under section 12 of the Defamation Act 2013. The Defendant had notice of these proceedings and did not attend the hearing. I was satisfied for the purpose of CPR 39.3(1) that I should proceed with the hearing having considered the guidance in Sloutsker v Romanova [2015] EWHC 2053 (QB) at [26]

II. The Facts

4. The Claimant is a well-known and highly surgeon, who is also the CEO of Cirumed Clinic (“the Clinic”) in Marbella, Spain, where he operates and has specific and targeted expertise in body contouring surgery including BBL. On the evidence before me, I am satisfied that a large proportion of the Claimant’s clients are domiciled in England or Wales.

5. The Defendant is a social media “influencer”, who operates the Instagram profile ‘thegiirlyouhate’. That profile, as at the date of the Particulars of Claim, had more than 52,800 followers and now has over 96,000 followers. It is also appears that the Defendant operated ‘cirumed_clinic_reviews’, which had 673 followers at the time the claim was initiated. The Defendant also operated under the username ‘3unsuccessfulrounds’ on realself.com (“RealSelf”), a website where customers leave user-generated reviews of plastic surgeons and dermatologists.
6. The Defendant is a long-standing patient of the Claimant; he had performed three major surgeries on her in February 2018, June 2019 and March 2020. The Defendant paid for the first two surgeries and the third was carried out free of charge, as a gesture of goodwill. The Defendant had created significant social media interest in both the Claimant and his clinic by posting positively about them and “tagging” them in Instagram posts. Indeed, on the evidence before me, the Defendant continued to post positively about the Claimant after her third surgical procedure had been carried out.
7. Prior to the publications complained of, the Defendant had not complained to the Claimant nor expressed any dissatisfaction with any of the procedures. I turn to those publications in Annexe I followed by a table which sets out the meanings as pleaded in the Particulars of Claim.
8. There are four publications complained of:
 - i) On 14 October 2020, the Defendant published a video on ‘thegiirlyouhate’ Instagram profile. The video was accompanied by prominent onscreen captions referring to ‘Aslani’ or ‘Dr Aslani’ (“the 1st Publication”).
 - ii) On 14 October 2020, the Defendant published a message on the ‘thegiirlyouhate’ Instagram profile which read *‘to the girls who are following me because they want to go to my previous surgeon...DON’T DO IT..’* (“the 2nd Publication”).
 - iii) On 3 August 2020, the Defendant published a review under the username ‘3unsuccessfulrounds’ on RealSelf. On 5 August 2020, the Defendant replied to a comment left by another user on her post (“the 3rd Publication”).
 - iv) On or around 1 September 2020, the Defendant created the Instagram profile ‘cirumed_clinic_reviews’. The ‘bio’ for the profile states: ‘This Instagram account was created to share honest reviews on your surgery experience in Marbella by Dr.A [needle emoji]’. 46 posts had been published at the time of the Particulars of Claim alongside numerous Instagram stories. (“the 4th Publication”).
9. The Claimant complied with the Pre-Action Protocol for Media and Communications claims by a letter dated 14 October 2020 sent to two email addresses for the Defendant, which the Claimant had on file. The Defendant responded from one of those email addresses. After reasonable enquiries, the Defendant made an application on 18 November 2020 for an order for alternative service by email. The Court made an order for alternative service on 4 December 2020 permitting the Claimant to serve

the Defendant at the two email addresses. The order was made pursuant to CPR 6.15 on the basis that the Defendant was within the jurisdiction.

10. In accordance with the order of 4 December 2020, the Claimant served the Defendant with the Claim Form, Particulars of Claim, Response Pack and the Order by alternative service via email on 15 December 2020. The Defendant did not engage or otherwise respond, as I have already indicated. On 6 January 2021 Master Thornett entered default judgment against the Defendant. As explained in New Century Media Limited v Makhlay [2013] EWHC 3556 (QB), at [30], that where default judgment is granted “*The Particulars of Claim are, in effect, a proxy for the judgment, setting out the basis of liability*”.
11. After inspection of the Defendant’s social media profile on Instagram, it became apparent that the Defendant was ostensibly not within the jurisdiction nor was there any indication she would return to settled residency in the near future. Accordingly, to avoid any contention that the Defendant had not been properly served, the Claimant made an application on 11 March 2021 for the Court to order retrospectively that service of the Claim Form was dispensed with and that the service carried out on 15 December 2020 was good service. That order was made on 8 April 2021.

III. Legal Principles

12. I will begin with the relevant legal principles and then turn to the specific facts and findings (including inferential conclusions as to the facts). It is established that libel damages have a threefold purpose namely: (1) to compensate for distress and hurt feelings; (2) to compensate for actual injury to reputation which has been proved or might reasonably be inferred; and (3) to serve as an outward and visible sign of vindication.
13. The relevant principles as to assessing damages in a defamation claim were described in some detail in the Claimant’s submissions by reference to the main cases including Barron v Vines [2016] EWHC 1226 (QB) at [20]-[21]. I was also taken to defamation awards in what were said to be analogous cases. I will not set those cases out and I bear in mind that every case is decided on its own facts and there is no direct comparator.
14. CPR rule 12.11(1) provides that: “*Where the claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case.*” Accordingly, the court proceeds to grant relief on the basis of the unchallenged statement of case unless the claim is for some reason impossible or any required legal threshold has not been met: Sloutsker at [84]-[86] and Suttle v Walker [2019] EWHC 396 (QB) at [36].
15. Besides being satisfied that the claim is sustainable, the court must be satisfied it has jurisdiction pursuant to sections 9 and section 10 of the Defamation Act 2013 to hear the claim (Brett Wilson LLP v Persons Unknown [2016] 4 WLR 69 at [18]-[32] and Al Sadik v Sadik [2019] EWHC 2717 (QB)). These provisions are concerned, respectively, with whether a defendant is responsible for publication and whether England and Wales is an appropriate jurisdiction.

IV. Quantum

16. Whilst the natural and ordinary meanings of the 1st Publication and the 2nd Publication are different, the Claimant accepts that they were published on the same day and from the same Instagram profile and therefore accepts that these should be compensated by one award of damages. However, it was argued on his behalf that the 3rd Publication and the 4th Publication should not be the subject of a single award. I was referred to the facts that they were published on different dates, on different platforms and materially different in content. It was also said that whilst there may have been some crossover in terms of those who viewed the publications, they will also have had separate viewers. Accordingly, it is argued the 3rd Publication and the 4th Publication should be met by separate awards.
17. It was however accepted that it was for me to determine whether a single or separate awards should be made. I have decided that the just approach is to make a single award as regards all publications to reflect my overall view of the facts and evidence. This is a case where the theme of the publications is broadly the same. I will now set out the material parts of the evidence relevant to my assessment.

Gravity of the libels

18. On the evidence before me, the Claimant is a well-established, respected and esteemed surgeon who is a leading expert in the field of BLL. He has undertaken over 14,000 operations and is an accredited member of several organisations including the American Society of Plastic Surgeons and the International Society of Plastic Surgeons. In 2019 alone, more than 150 plastic surgeons travelled to his clinic for training on safe buttock augmentation surgery. The Claimant's surgeries have been subject to peer reviewed and approved scientific reports and he has been awarded the title of Spain's best plastic surgeon. The publications complained of go to the very heart of the Claimant's professional reputation and personal integrity.
19. As to the competence of the Claimant, the meaning of the publications convey that the Claimant has carried out grossly negligent treatment which other surgeons refuse to remedy and that it is likely he will seriously injure or even kill his patients. It is proposed he should be barred from operating ever again. As to his reputation, the meaning of the publications include that he has exaggerated his skillset, that he misrepresents the results of his operations on social media, that he dishonestly purports to be a leader in the field and that he carries out his business fraudulently. With reference to the Claimant's personality, the ordinary meanings are that he "gaslighted", manipulated and bribed female patients.
20. In my judgment, the allegations clearly have the tendency to deter any reasonable or prudent potential patients to avoid engaging the Claimant to provide surgery, and to make others in the medical profession or beyond form an adverse view of the Claimant. No person would use a plastic surgeon accused of incompetence that will cause disfigurement or pain and who is said to be unable or unprepared to put right what had been 'botched'.

Extent of the publications

21. The Claimant's claim is limited to the damage caused to his reputation within the jurisdiction. I am satisfied that the evidence establishes that a reasonably substantial publication of the posts can be inferred to have taken place in England and Wales. The Claimant has approximately 1200 patients attend his clinic each year, 70% of whom attend his clinic from the UK.
22. Social media platforms, especially Instagram with its focus on images, form an important part of the Claimant's advertising of his services. In line with his customer base, a significant proportion of his Instagram followers will be from the UK. Instagram has millions of daily users of the platform, a proportion of whom will be from the UK. Those interested in plastic surgery routinely research posts on Instagram about different patient experiences of plastic surgeons and that platform is a highly influential source of information about surgeons. In his evidence, which I accept, the Claimant says that he believes that around 15 people referred the Defendant's online activities to him. The Defendant is herself an example of someone who researched her choice of the Claimant as her plastic surgeon and travelled from the UK. It is noteworthy that the Defendant wrote about the Claimant in English, not Spanish.

The 1st Publication and the 2nd Publication

23. The 1st Publication and the 2nd Publication were posted on 'thegiirlyouhate' Instagram profile. At the date of the Particulars of Claim, the profile had 52,800 followers. The profile was public at the time of the publications, meaning it could be accessed whether the viewer was a follower of that profile or not. The Defendant is a social media influencer. It follows that her success is premised upon attracting views and followers. The Defendant herself captioned a post "*6 million views [love heart emoji] On my surgery journey!*".
24. The publications were easily accessible and posted on a "stories" function, which means they were available to view, unless deleted, for 24 hours. Publications on Instagram are interactive; unlike in a newspaper or on a static website, they can be shared and liked, allowing widespread distribution in a short time.
25. The nature of the Defendant's followers is also very relevant. The Defendant had developed a reputation as an advocate of BBLs and accordingly followers were likely to have an active interest in this type of surgery and in some cases, in the Claimant himself. The Defendant herself recognised this is one of the publications, when she wrote '*to the girls who are following me because they want to go to my previous surgeon...*'.

The 3rd Publication

26. The 3rd Publication was posted on www.realself.com. As at the date of the Particulars of Claim, the Defendant had not removed the review, although it since appears to have been deleted. RealSelf is a major avenue by which those considering plastic surgery research surgeons and procedures. In 2017, 94 million people from 100

countries used RealSelf. It can be inferred that people using the website may search for a specific surgeon as they are considering engaging their services.

27. As at 22 July 2021, the Claimant has 635 reviews with an average 4.7/5 star rating. However, users can choose to display the reviews by the 'lowest rating' and also by topics (which include Brazilian Butt Lift and Brazilian Butt Lift Revision) meaning the Defendant's review is likely to have been read by prospective clients carrying out due diligence for several months at the very least. The publication attracted 55 comments, with 66 people having interacted to say they found it "helpful".

The 4th Publication

28. The 4th Publication was published on the 'cirumed_clinic_reviews' Instagram profile. At the date of the Particulars of Claim, the account had 673 followers, having nearly tripled since 9 September 2020, when the account had 244 followers. The Defendant published posts over a sustained period, posting approximately 50 posts over three months. Of the 46 posts on the profile, at the date of the Particulars of Claim one video had been viewed 470 times.
29. The profile name contained the name of the Claimant's clinic, meaning that if people were to carry out a simple Instagram search, this would be readily viewable, and it can be inferred that it may appear on a google search results page alongside the Claimant's clinic Instagram profile.
30. Based on the above considerations, in my judgment it can be readily inferred that the publications were able to gain traction quickly and will have been viewed by a substantial number of viewers in the immediate time after they were published and in the months after for those which remained accessible. Some of those viewers will have been clients or prospective clients of the Claimant.
31. As the Claimant clearly has a reputation to protect in England and Wales (including a large client base), and there are facts from which a substantial readership of the posts here can be inferred, section 9 of the Defamation Act 2013 is satisfied. All publication metrics data for the posts is in the knowledge of the Defendant, or possibly Facebook, as operator of Instagram, and not the Claimant. On the basis that no fewer than 70% of his patients come from the UK, his professional reputation and customer base cannot be greater elsewhere.
32. Further, section 10 of the Defamation Act 2013 is satisfied as the Defendant was the 'author' and 'editor' of what was published.

Impact of the libels

33. Having considered the Claimant's two witness statements, I am satisfied that the publications have had a significant impact upon both his professional and personal life. I note that approximately 15 people noted the publications to the Claimant and/or his employees; that the Defendant has been in contact with prospective clients of the Claimant; that there has been a decrease in the Claimant's bookings; that 66 people interacted with the review on RealSelf, a website used by those contemplating surgery

and specific surgeons. The Claimant names six people who did not proceed with surgery, with a contributing factor being the Defendant's campaign against the Claimant. Those undergoing operations of the kind the Claimant carries out may be more vulnerable about their bodies and likely to be influenced not to use the Claimant's services due to the publications. The publications have understandably caused the Claimant hurt and distress.

34. Aggravated damages are sought but I did not consider there was anything particular about the conduct of the Defendant before me that justified such an award.

V. Conclusion

35. Standing back from these facts, I award a combined sum in respect of all publications of £40,000.00 to the Claimant.
36. This substantial sum is intended to reflect and signal the total falsity of the allegations against the Claimant. The Claimant is also entitled to an injunction and an order under section 12 of the Defamation Act 2013.

Annexe I: the publications

Paulina Instagram video transcribed.

I'm so mad right now, I actually got out of bed to record this video. Because I am sick and tired of this man being obsessed with me, like he is obsessed with me. He botched my body, he left me disfigured ok, he left me disfigured. I have serious issues with my head, with my image, with my self-image because of him and he is bringing my name up to pages trying to pinpoint them on to me. He keeps talking about me to his patients, ok, he brings up my name to his patients. I am so tired, like I am tired of this, this is not normal, that is not normal. I have never ever seen a professional surgeon act like this. Just because he messed up my body three times, if I guys, posted pictures, real pictures of what he done to me you would actually be shocked, ok like it's not normal what he's doing to women and what he's done to me, and he is so bitter because I posted a review on real self, he is so fucking bitter right now. Mentioning my name to everyone, trying to pinpoint some pages on me. I am tired of keeping my mouth shut, threats like, no I'm done I'm being evaluated by three separate board certified surgeons which have told me my implants were placed wrong and I need them removed as soon as possible because my butt has gone saggy and pointy, my hips have dents in them on the side, I have dents in my hips, they are uneven (laughs) and the scarring guys, let me not even get into the scarring that he left me with ok, the fact that he done all this to me and he is still trying to play, he is trying to play some sort of victim, trying to do god knows what, trying to blame some pages on me, trying to I don't know make me look stupid in front of his other patients by bringing up my name, like I have to look at myself with the body he left me with every single day in the mirror until I get a reconstructive BBL which is classified as a reconstructive BBL by my surgeon and every other surgeon that I had to go to and that rejected me because they don't want to deal with my case because its so bad. Like you guys actually don't know half of it and its so fucking sad that a grown arse man, literally a grown man he' about 50 probably maybe 60 like I'm literally 23 years of age. He is a bully, he is a bully because his career is hurt right now and because people are starting to talk and people are starting to show pictures, people are starting to expose his setup, competitions, his flagship patients that get his surgeries for free for promotion. He's hurt right now and I am tired of being the victim in this situation, constantly having my name brought up in situations because he has none else to blame it on like leave me alone that's weird you are literally like my grandads age, like weird.





*Treatment results may vary

Extremely Disappointed... Can't Believe This Happened .

3 Aug 2020 · 5 months post



So this will be a long review .

I went to Dr. Aslani 3 times each time hoping he will "fix me" . First time I got BBL with implants , they sagged after few months and I ended up with banana rolls which I never had before surgery .So i went for a second round to get bigger implant with more fat transfer to fix the issue , was told the new technique he is going to use will prevent the sagging from happening again .But then couple of months later I developed sagging once again there wasn't much fat on top of my butt & my hips became droopy . I informed the doctor that this happened AGAIN and I'm not happy . He offered me a revision as my round 3 . I specifically told him to add more fat on top and give me laterals (upper hips)Of course when I woke up I was happy ! Still swollen and everything was holding up great , until I realised one of my butt cheeks is pointy . I pointed it out but was told it was only swelling .I had to have bands wrapped around my legs for compression to avoid lateral sagging . I did that for a month . Compressed . Followed all the instructions in order to get the results I wanted since round 1 . About 3 weeks in I started noticing my hips dropping again , my butt becoming saggy , fat from top of my butt dropped down again. And oh my god .. I'm so upset I went because now I can't even look at myself in the mirror and have to look for a surgeon to fix all the issues . According to the surgeon "this is all in my head" . But according to multiple other surgeons I contacted for a quote in order to fix my body I was told I'm severely disfigured & I need a corrective BBL , of course costs of that are higher and I have to gain weight again , fly out again , prepare mentally for surgery again , spend thousands again , to feel some what decent in my own skin . I'll leave photos attached with this review including photos that were put together for me by the clinic. As weeks go by it's just getting worse and worse .

HELPFUL

56 people found this helpful.



[Sorrynoisorrynoisy](#) • August 5, 2020

Well I'm so sorry to hear about your experiences with this clinic. I've had a similar very unsatisfactory... **SHOW MORE ▼**

[Reply](#)



[spunkcow](#)  • August 5, 2020

Agree with this 100%

[Reply](#)



[3unsuccessfulrounds](#) • August 7, 2020

Totally agree , the gaslighting and manipulation is real , I was stupid & wont be happening again . Totally not worth the money I wish I done my research and didn't do promotion for free revisions . Never again I'll look for a skilled surgeon who can actually do a BUTT LIFT . Not a butt sag . **SHOW LESS ▲**

[Reply](#)

11:26 ↗



CIRUMED_CLINIC_REVIEWS
Posts

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cirumed_clinic_reviews



6 likes

cirumed_clinic_reviews Can you believe this?

View 1 comment

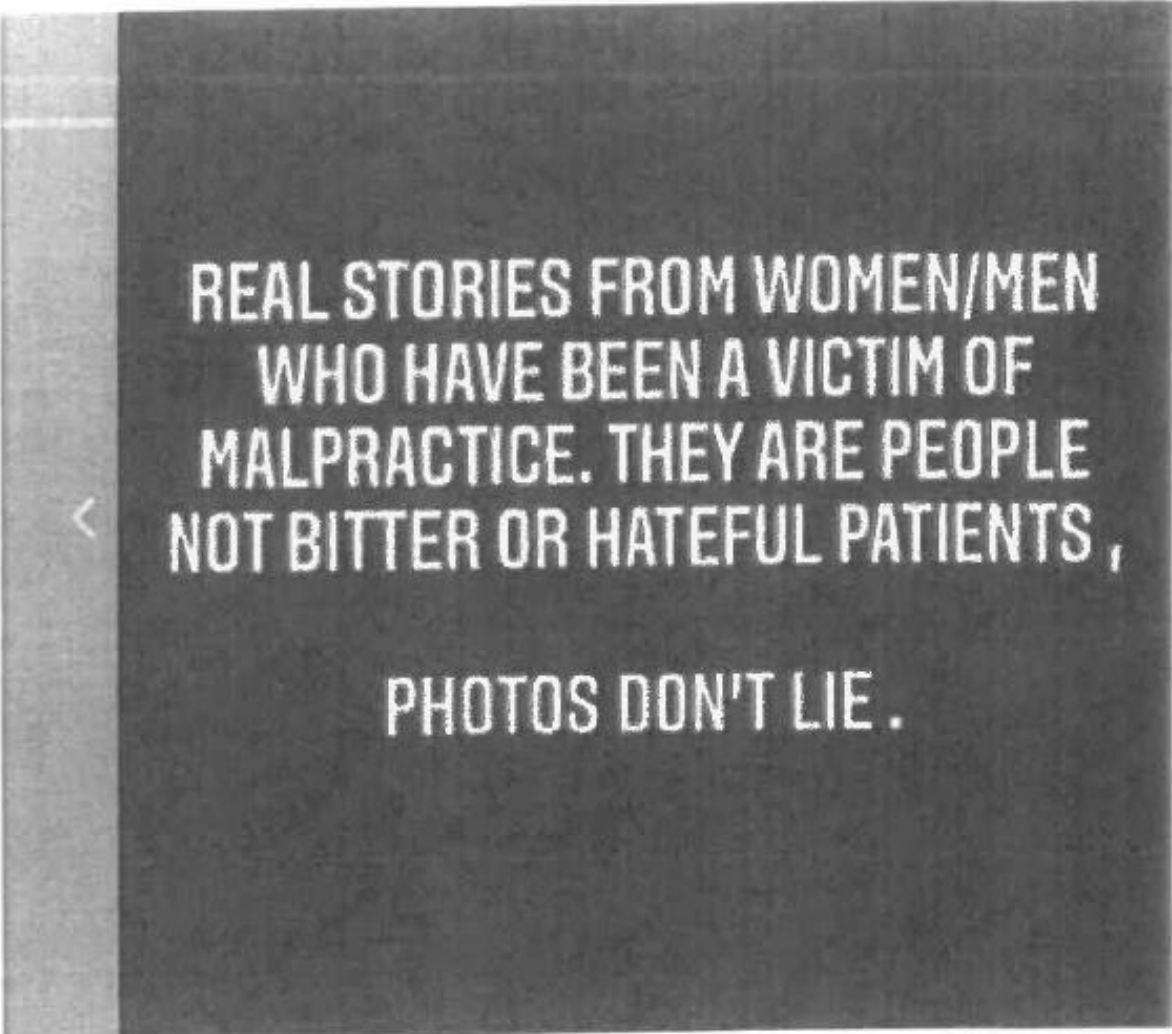
4 September 2020



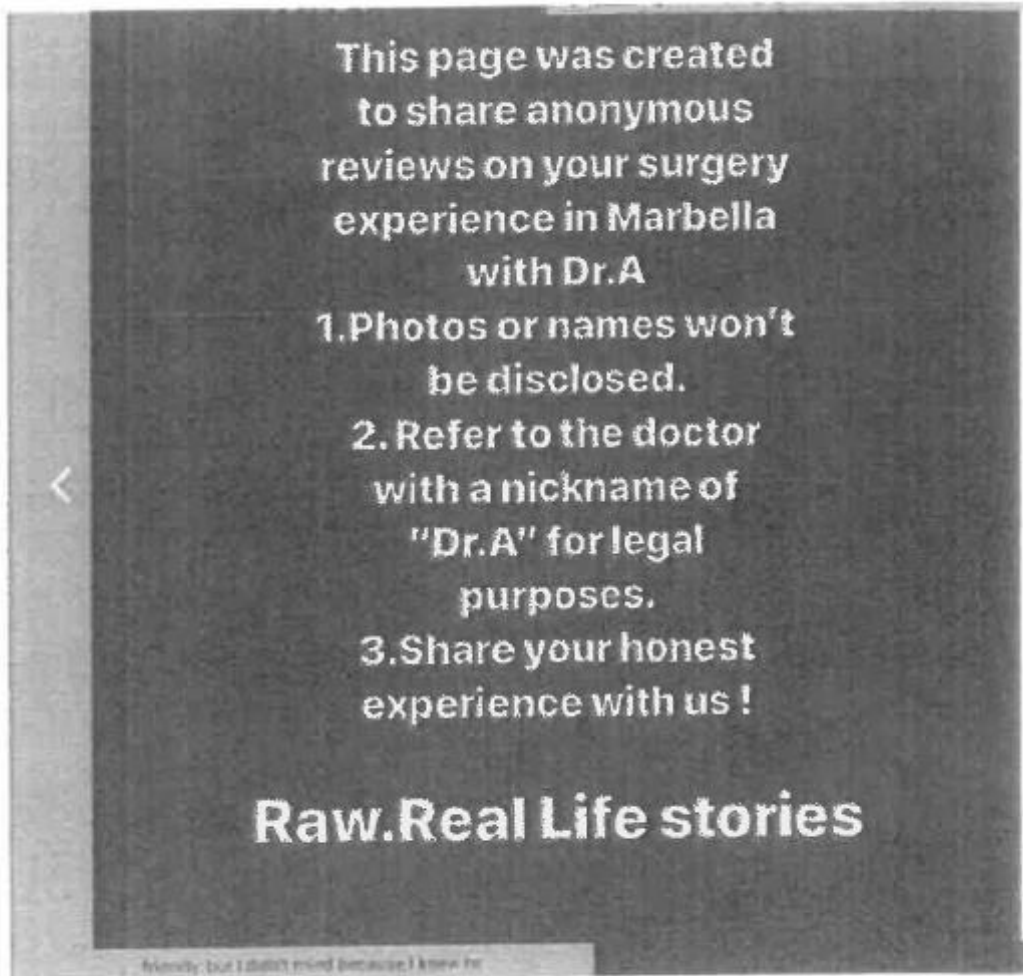
cirumed_clinic_reviews

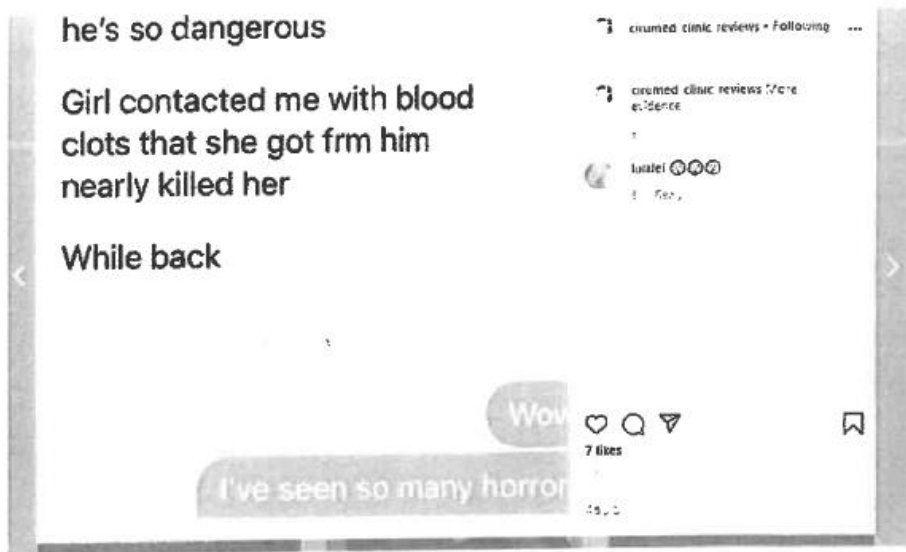


4.



REAL STORIES FROM WOMEN/MEN
WHO HAVE BEEN A VICTIM OF
MALPRACTICE. THEY ARE PEOPLE
NOT BITTER OR HATEFUL PATIENTS ,
PHOTOS DON'T LIE .





Annexe II

Publication	Content	Platform	Meaning
1 st	On 14 October 2020, the Defendant published a video. The video was accompanied by prominent onscreen captions referring to 'Aslani' or 'Dr Aslani'	'thegiirlyouhate' Instagram profile.	<p>In its natural and ordinary and/or inferential meaning, the 1st Publication meant that:</p> <p>The Claimant has committed gross negligence by seriously botching a number of plastic surgery treatments that he purports to be an expert in, causing the Defendant's body to be so severely disfigured that other certified plastic surgeons refuse to take on her case, and leaving her to suffer from mental health issues.</p> <p>The Claimant has acted unprofessionally, and in a manner unbecoming of a doctor by spitefully bullying and victimising the Defendant, a young woman in a position of comparative vulnerability, because she had the courage to post a negative review on RealSelf.</p>

			The Claimant's business is disintegrating because so many of his patients are unhappy with the outcomes of the surgeries that he performs.
2 nd	On 14 October 2020, the Defendant published a message which read 'to the girls who are following me because they want to go to my previous surgeon...DON'T DO IT..''	'thegiirlyouhate' Instagram profile.	The Claimant creates a false and misleading impression of his surgical results on social media, when in reality his procedures are likely to go wrong.
3 rd	On 3 August 2020, the Defendant published a review under the username '3unsuccessfulrounds'. On 5 August 2020, the Defendant replied to a comment left by another user on her post.	RealSelf	In the Defendant's case, the Claimant dishonestly exaggerated his surgical capabilities and made hollow promises as to what he could achieve in order to lure the Defendant into spending more money at his clinic. In the Defendant's case, the Claimant tried to gaslight and manipulated her into thinking that their concerns are 'all in their head', when the negligent quality of the Claimant's work is obvious to reputable surgeons.
4 th	On or around 1 September 2020, the Defendant created the Instagram	'cirumed_clinic_reviews' Instagram profile	The Claimant is guilty of negligent malpractice by

	<p>profile 'cirumed_clinic_reviews'. The 'bio' for the profile states: 'This Instagram account was created to share honest reviews on your surgery experience in Marbella by Dr.A [needle emoji]'. 46 posts had been published at the time of the Particulars of Claim alongside numerous Instagram stories. A copy of the posts are reproduced in Annex 4 of these Particulars of Claim ('4th Publication').</p>	<p>routinely botching the plastic surgeries that he dishonestly purports to be a world leader in providing, will stop at nothing to cover up this malpractice, and should be barred from ever operating again.</p> <p>The Claimant has caused life threatening injuries and infections to his clients and is likely to seriously harm or even kill his patients.</p> <p>The Claimant takes advantage of the desperation of his patients to brainwash and scam them into undergoing unnecessary procedures, including undergoing further surgeries to correct his previously botched operations, and in doing so causes his patients to waste large sums of money and suffer physical and emotional trauma.</p> <p>The Claimant represses fair and honest feedback about his work by aggressively</p>
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			<p>threatening any critics with legal proceedings.</p> <p>The Claimant conducts his business fraudulently by providing celebrities with free surgical procedures in exchange for their promotion on social media, and bribing patients to pay silent about his botched surgical attempts by offering them free or discounted corrective surgeries.</p>
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