



Neutral Citation Number: [2019] EWHC 2409 (QB)

Case No: HQ17M03348

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13th September 2019

Before :

MR. JUSTICE SWIFT

Between :

(1) AL-KO KOBER LIMITED (2) PAUL JONES

Claimant

- and -

BALVINDER SAMBHI

Defendant

Mr. Gervase de Wilde (instructed by **Wright Hassal LLP**) for the **Claimants**

Mr. Balvinder Sambhi appeared in person

Hearing date: 18th July 2019

Approved Judgment

MR. JUSTICE SWIFT

A.

Introduction

1. By this application the Claimants: (a) seek to strike out the Defendant’s defence on the ground that the document relied on by the Defendant as his defence (a witness statement dated 3 October 2017, and exhibits), does not meet the either requirements listed in CPR 16.5, or those at paragraph 2 of the Practice Direction for CPR Part 53; and (b) apply for summary judgment on their claims.
2. The First Claimant (“AKKL”) is part of the AL-KO Kober Group of companies, and indirectly, is a subsidiary of a German registered company, Alois Kober GmbH. Al-Ko Kober GmbH has a number of other subsidiary companies, including AL-KO International Pty Limited, a company registered in Australia. AKKL manufactures and sells transport and other equipment. One of its products is a stabiliser coupling referred to variously as the AL-KO Stabiliser and the AKS Stabiliser. There are two models of this product, the AKS 1300 and the AKS 3004. The stabiliser is a device which can be fitted to the towball of a caravan or trailer, which once fitted is used to connect the caravan or trailer to the towbar of a car. The purpose of the stabiliser is to control and limit instability when a caravan or trailer is being towed. When a caravan or trailer is being towed it is susceptible to sway from side to side, this swaying motion is also referred to as “snaking”. The Second Claimant, Paul Jones is AKKL’s Marketing Manager. The Defendant, Balvinder Sambhi, is the designer of the “Torquebar”, a competing stabilising device.
3. In these proceedings both Claimants make defamation claims, AKKL also raises a claim of malicious falsehood, and Mr Jones raises a claim based on sections 10 and 13 of the Data Protection Act 1998 (“the DPA 1998”). (Although the DPA 1998 has now been superseded by the Data Protection Act 2018, the matters Mr Jones complains of all occurred in 2017.) All the claims raised in these proceedings arise from videos published by Mr Sambhi on his YouTube channel (called “Torquebars”). The YouTube channel contained a series of 84 videos which refer to AKKL and/or Mr Jones. The Claimants contend that all the videos contain defamatory and false statements about them. Mr Jones contends that at least 35 of them contain information which is his personal data, as defined at section 1(1) of the DPA 1998. Four videos are relied on as a representative sample (“the four videos”). Mr Sambhi has not disputed that these videos are representative of the content of all the videos on the channel. The four videos are described in the Particulars of Claim as follows.

“Publication I

7. On 16 May 2017, the Defendant published a YouTube Video at the URL https://www.youtube.com/watch?v=mRIdkjD_K8E under the headline “THE REAL AL KO STABILISER SCAM!” which, as at 6 October 2017, had been viewed 4,803 times. The video shows footage of caravan accidents, and footage of a car towing a trailer which appears to be being towed using the Torquebar. The video contains the following words defamatory and seriously harmful of the First Claimant:

*AL KO REAL TRUTH!
AL KO DOES NOT WORK
AL KO = ACCIDENTS
AL KO = RISKING LIVES
THINK AL KO! THINK ACCIDENTS!
DON'T TRUST AL KO!
AL KO SAFETY!*

(“the Scam Video”)

Publication II

8. On 26 May 2017, the Defendant published a YouTube Video at <https://www.youtube.com/watch?v=yGqoGgYMHPk> under the headline “*AL-KO UK CONCEDES ALKO STABILISERS DO NOT WORK!*” which, as at 6 October 2017, had been viewed 2214 times. The video shows footage of caravan accidents, footage of a car which appears to be towing a trailer using the Torquebar, and an image of the First Claimant’s AKS stabiliser range, taken from the First Claimant’s website. The video contains the following words defamatory and seriously harmful of the reputation of the First and Second Claimants:

*THE GREAT ALKO STABILISER SCAM
PAUL JONES AL KO UK KOBER LTD ALKO STABILISERS
DO NOT PREVENT ACCIDENTS*

...
*PAUL JONES CONFIRMS ALKO STABILISERS DOES NOT
PREVENT SNAKING OR STOP SNAKING!*

...
*“And the proof is in the videos what I have shown on the
YouTube Channel that when you go down a straight line, your
product doesn’t work, because obviously, why are caravans
toppling over on a straight line of motorway?”*

...
*“What are you trying to do Paul, you won’t risk your life, that
you’re selling a product, you’re saying that you’re not risking
your life...”*

...
*PAUL JONES ALKO UK WILL NOT RISK HIS LIFE! BUT
YOU ARE RISKING YOUR LIVES!*

*“Then why don’t you do this test, then? If you’re not risking
your life, you’re asking people, millions of people to risk their
lives, in buying one of your products, but you won’t take this
test.”*

...
*“How many accidents on YouTube, they’re all showing your
stabiliser. All of them, showing your stabiliser. Do a real life
test, you do the test, and then you prove that you’re not risking*

your life, then why are you asking people to risk their lives, the public, if you're not willing to do a real life test, and you can test the conditions."

...

"The public have got a false perception that your stabiliser is safe, and it's not safe. And what I am saying to you is you're risking the public's lives. And by not doing this test, you have declined to do a test, you can check the vehicle, you can check the stabiliser, you can check the caravan, so everything's right, do a live test, you're not risking your life, cos you're asking people to risk their lives, but you ain't going to risk your life, that's what you're trying to say to me. If it's stable, you wouldn't risk your life."

PAUL JONES ALKO UK WILL NOT RISK HIS LIFE! BUT YOU ARE RISKING YOUR LIVES!

...

"No, but it's not the case. You're prepared to let the public risk their lives, by your selling the product, but you won't prepared to risk your life, because you're saying it's stable and safe, and so your life is not at risk, so why not take the test? It's for security, because this is why I put the videos up in the first place, Paul, because it is for security, you're going down a straight stretch of motorway and you're having an accident."

...

**AL KO STABILISERS DOES NOT PREVENT SNAKING!
SNAKING=ACCIDENTS AND CRASHES! CONFIRMATION
BY PAUL JONES AL KO KOBER UK
LTDWWW.TORQUEBARS.COM WWW.YOUTUBE.COM
TORQUEBARS**

("the Paul Jones video").

9. On 3 August 2017, the Defendant published a YouTube Video at the URL <https://www.youtube.com/watch?v=Se4GUIEKelc> under the headline "*AL KO STABILISER FRAUD! PT2*" which, as at 6 October 2017, had been viewed 707 times. The video shows footage of caravan accidents, and footage of the Second Claimant describing the First Claimant's AKS stabiliser range at two trade shows. The video contains the following words defamatory and seriously harmful of the reputation of the First and Second Claimants:

**THE GREAT ALKO STABILISER SCAM
PAUL JONES AL KO UK KOBER LTD ALKO STABILISERS
DO NOT PREVENT ACCIDENTS**

...

**PAUL JONES CONFIRMS ALKO STABILISERS DOES NOT
PREVENT SNAKING OR STOP SNAKING**

"No, no, you're not... it doesn't prevent snaking..."

...

PAUL JONES CONFIRMS ALKO STABILISERS DOES NOT PREVENT SNAKING OR STOP SNAKING

“No, no, you’re not... it doesn’t prevent snaking...”

*AL KO STABILISERS DOES NOT PREVENT SNAKING!
SNAKING = ACCIDENTS AND CRASHES! CONFRIMATION
BY PAUL JONES AL KO KOBER UK LTD WWW.
TORQUEBARS.COM WWW.YOUTUBE.COM*

(“the Fraud Video”)

10. On 4 August 2017, the Defendant published a YouTube Video at the URL <https://www.youtube.com/watch?v=sSnsUDXBC4k> under the headline “AL KO STABILISER FRAUD! PAUL JONES, WOULD I LIE TO YOU REMIX” which, as at 6 October 2017, had been viewed 360 times. The video shows footage of caravan accidents, and footage of the Second Claimant describing the First Claimant’s AKS stabiliser range at two trade shows. The video contains the following words defamatory and seriously harmful of the reputation of the First and Second Claimants:

*THE GREAT ALKO STABILISER SCAM
PAUL JONES AL KO UK KOBER LTD ALKO STABILISERS
DO NOT PREVENT ACCIDENTS*

“It all starts with the stabiliser on the front which is probably the most iconic of products which we have manufactured in the past. It’s a stability device which basically helps with the prevention of snaking.” - WOULD I LIE TO YOU?

PAUL JONES CONFIRMS ALKO STABILISERS DOES NOT PREVENT SNAKING OR STOP SNAKING – “No, no, you’re not... it doesn’t prevent snaking...”

“Helps with the prevention of snaking” - WOULD I LIE TO YOU?

PAUL JONES CONFIRMS ALKO STABILISERS DOES NOT PREVENT SNAKING OR STOP SNAKING – “No, no, you’re not... it doesn’t prevent snaking...”

“Helps with the prevention of snaking” - WOULD I LIE TO YOU?

PAUL JONES CONFIRMS ALKO STABILISERS DOES NOT PREVENT SNAKING OR STOP SNAKING – “No, no, you’re not... it doesn’t prevent snaking...”

*AL KO STABILISERS DOES NOT PREVENT SNAKING!
SNAKING = ACCIDENTS AND CRASHES! CONFRIMATION
BY PAUL JONES AL KO KOBER UK LTD
WWW.TORQUEBARS.COM WWW.YOUTUBE.COM*

(“the Lie Video”)

B. The proceedings to date

4. These proceedings were commenced on 14 September 2017. On 18 September 2017 the Claimants applied on notice, for interim relief seeking orders preventing Mr Sambhi from further publishing various statements about them and the AKS Stabiliser. The application for interim relief was heard by Mrs Justice Whipple on 22 September 2017. At the time of the application, Particulars of Claim had not yet been served. The application for interim relief was made on the basis that the four videos subsequently referred to in the Particulars of Claim gave rise to a claim in malicious falsehood, and a claim under sections 10 and 13 of the DPA 1998. (The Particulars of Claim which include the further claim in defamation are dated 9 October 2017, and were served on Mr Sambhi on the same day.)
5. On 6 October 2017, Whipple J handed down judgment on the application for interim relief ([2017] EWHC 2474 (QB)). She granted the application, and made an order which restrains Mr Sambhi from publishing various statements (specified at paragraph 2 of the Order) about AKKL, Mr Jones and the AKS Stabiliser, and from processing personal data relating to Mr Jones. It is well-known that the standard that an applicant for an interim injunction that impinges on freedom of expression must meet, is a high one. At paragraphs 5 – 7 of her judgment, Whipple J stated as follows.

“5. Section 12(3) of the Human Rights Act 1998 provides that interim relief that might affect the exercise to the freedom of expression will only be granted before a full trial if the court is satisfied that the applicant is likely to establish at trial that publication of the information in question should not be allowed.

6. In determining the outcome of this application, made before trial, I am bound by the rule in *Bonnard v Perryman*, which establishes that an interim injunction will not be granted restraining publication of allegedly defamatory material if the Defendant proposes to justify the publication at trial, unless it is plain that the plea of justification is bound to fail. The principle in *Bonnard v Perryman* applies equally to claims of malicious falsehood, see *Bestobell Paints Ltd v Bigg* [1975] FSR 421.

7. In other words, I could only grant the injunction sought in relation to malicious falsehood if I was satisfied that no judge or jury could reasonably conclude that the statements made by the Defendant were true (see *Gatley on Libel and Slander* 12th Ed, at paragraph 25.12 and Fn 59). However, in assessing whether the statements might be true, I am not bound simply to accept the Defendant's assertion that they are true and leave the matter to trial. In *Sunderland Housing Company Limited and another v John Baines and others* [2006] EWHC 2359 (QB), the Court (Eady J) held, in the context of defamation but in a passage which can readily be transposed to malicious falsehood, that the Court would

expect, as the “very minimum”, that the Defendant seeking to rely on a statement as true would file a witness statement verified by a statement of truth that he believes in the truth of the statements; and that although the Defendant is not bound at that stage to submit full evidence to support his contentions, “it will not do simply to put in a blanket statement of intention or hope and leave it at that” (see [18]). I interpret this as meaning that the Defendant has, at least, to explain the basis for his assertion that the statements are true, so that the Court is in a position to assess whether the Claimants' case on falsity might be controverted at trial.”

Nevertheless, as she went on to explain in the remainder of her judgment, she was satisfied on the evidence before her that the requirements for an interim injunction were met.

6. Before Whipple J, the Claimants' case was that one or more of four meanings could be attributed to each of the four videos: (1) that the AKS stabiliser is an inherently unsafe product which has caused the caravan accidents depicted in the videos; (2) that the AKS stabiliser is a “killer” and that AKKL is knowingly risking the lives of the public by selling it; (3) that AKKL is a fraudulent business and is conning or scamming its customers; and (4) that Mr Jones has been exposed as having told lies about the stabiliser which AKKL has then instructed solicitors to try to hush up. Whipple J's conclusion on this point (reached on the basis of the rule in *Cruddas v Calvert* [2013] EWCA Civ 748 that the question is whether a substantial number of people would reasonably understand the words to have the meaning contended for) was as follows:

“15. I am satisfied that a substantial number of persons would reasonably have understood the statements complained of to bear one or other of these meanings. Indeed, Mr Sambhi does not suggest otherwise. When I asked him what he meant in these videos, he said he meant to say exactly what the Claimants suggest ... He goes on to say, however, that he believes the statements, understood in those ways, to be true. That then is the real issue in this case: are these statements false?”

As to whether the statements were false, Whipple J stated as follows (at paragraphs 16 – 20 of her judgment):

“16. Mr Sambhi has not filed a witness statement. He has not put before the Court any evidence to support his statements or his assertion that they are true. He has not done the “very minimum” which Eady J suggested is required. That is a poor start.

17. When I asked him what evidence he relied on in asserting that these statements are true, this is the answer he gave (I summarise). He said that it all came down to the lies that Mr Jones and the Company had told. Those lies, he said, related to what the Company and Mr Jones had said about the AKS stabilisers’

effectiveness in preventing “snaking”. Snaking is when a caravan starts to veer to left and right behind the towing vehicle; in serious cases, the towing vehicle can lose control resulting in an accident. Mr Sambhi pointed to some assertions made by the Company and by Mr Jones (for example in the Trade Show Footage) to the effect that the AKS stabiliser “helps to prevent snaking”; then he pointed to others to the effect that the product is “not preventative” or “does not prevent snaking” (for example, in [a recording made by Mr Sambhi of a phone conversation between him and Mr Jones]). Mr Sambhi handed up various print outs from websites belonging to third parties (for example, other caravan retailers) which referred to the AKS stabilisers in different ways, some of them saying that the products “prevent” snaking, others that the products “help to prevent snaking”, and he argued that these references should be attributed to the Company and Mr Jones as further evidence of their dishonesty. He argued that the Company and Mr Jones have lied in suggesting that the AKS stabilisers are guaranteed to prevent snaking, and that each has acknowledged those lies by accepting that the AKS stabilisers in fact offer no such guarantee and merely help to reduce the risk of snaking. This lie, he says, is a deceit on the Company’s customers and justifies (as true) the various statements that he has made in his videos.

18. As is immediately apparent to anyone reading this judgment, none of the assertions by the Company, Mr Jones, or any third-party amounts to a guarantee that snaking will not occur if the AKS stabiliser is fitted. The various descriptions of the AKS stabilisers made by the Company, Mr Jones and third parties are broadly consistent, and convey a very different message from that which Mr Sambhi urges on me. The message is that the stabilisers will help to prevent snaking. There is no guarantee against snaking offered. Thus, the whole of Mr Sambhi’s case appears to be built on a false premise. There is no lie.

19. Against that background, I come to ask myself whether any judge or jury, properly directed, could reasonably conclude that Mr Sambhi’s various statements with the meanings we are agreed on, could be true. The answer is no. As I have said, there is no lie. There is, in consequence, no reason to suggest that the Company is fraudulent, that it is scamming or conning its customers, that the Company and Mr Jones are killers, or that either is engaged in knowingly risking the lives of customers. These are the most extreme statements. There is no foundation for any of them. They are obviously untrue.

20. I have paused to consider carefully whether I should reach the same conclusion in relation to the statement that the AKS stabiliser is defective, because this is a less extreme statement, the converse of which is to determine that the AKS stabilisers are indeed safe products – which goes beyond what a court is usually

willing to do at the interim stage. But here too, Mr Sambhi has provided no evidence at all to support his claim that the AKS stabiliser is defective. Further, his explanation for this statement is also based on the premise that the Company and Mr Jones have lied, a premise which I have determined to be entirely false.”

Thus, Whipple J concluded that there was no possible basis on which any judge or any jury could do anything other than conclude that Mr Sambhi’s statements were “groundless” and that “all the statements made in the videos are untrue”.

7. Whipple J did not reach any conclusion as to whether Mr Sambhi had made the statements maliciously – i.e., without any *bona fide* belief that they were true. She accepted that there was evidence which supported an inference of malice (see her judgment at paragraphs 28 and 29), but concluded that, for the purposes of the interim relief application, she did not need to reach any final conclusion on this matter. It was sufficient for her purposes that any future repetition of the statements made in the four videos would, in light of the matters ventilated in the course of the interim relief application, be malicious: see her judgment at paragraphs 31 – 32.
8. In respect of the application for interim relief on the claim under the DPA 1998, Whipple J concluded that Mr Sambhi had without good reason, failed to comply with a request made by Mr Jones under section 10 DPA 1998 to cease processing his personal data (processing for this purpose taking the form of publishing the statements about Mr Jones contained in the four videos). At paragraph 43 – 45 of her judgment, she stated as follows:

“43. It is clear from Mr Jones’s witness statement that he is suffering substantial damage and distress as a result of the processing of his personal data by Mr Sambhi, in the various uses to which Mr Sambhi has put the Recording, the Trade Show Footage, and other images of Mr Jones. The use of his personal data extends far beyond the sort of criticism which a senior employee of a large commercial organisation might have to put up with in the ordinary course. Mr Jones is being vilified and menaced by the way in which his personal data has been used and manipulated in the videos. This is an unwarranted attack on him personally.

44. I am therefore persuaded that this is an appropriate case in which to order the Defendant to take steps to comply with the notice. Mr Rushbrooke invites me to do so by simply requiring the Defendant to cease processing any personal data in respect of which Mr Jones is the subject. He showed me *Law Society v Kordowski* [2011] EWHC 3185 (QB) where Tugendhat J granted a perpetual injunction following a final hearing, on such terms. I agree that the order should provide that Mr Sambhi must not process, further process or cause or permit to be processed any audio recording, video recording, still photograph or other information, including by disclosing the same to the public,

amounting to Mr Jones's personal data for the purposes of the DPA.

45. It is perhaps a footnote to this part of the Claimants' application that Mr Sambhi is not, in any event, registered with the Information Commissioner. He should not be processing anyone's data at all. See *Sunderland Housing Company* at [25]."

9. I have set out the conclusions reached by Whipple J at some length because they are material for the purposes of the application for summary judgment that is now before me. *First*, the effect of section 12(3) of the Human Rights Act 1998, is that the standard Whipple J had to apply is not dissimilar the standard required by CPR 24.2 (i.e., that the defendant has "no real prospect of successfully defending the claim"). *Second*, despite the passage of time since September 2017, Mr Sambhi's case on the facts has not materially changed. There is evidence now before me from Mr Sambhi that was not available to Whipple J. This comprises (a) his witness statement of 3 October 2017 and the exhibits to it; (b) further documents served by him on 24 January 2018; and (c) a witness statement dated 8 April 2019 and further exhibits). However, this evidence does not materially go beyond the case Mr Sambhi advanced (without the benefit of the documents now exhibited) when the interim relief application was made.
10. The applications to strike out and for interim relief were issued on 10 May 2019 more than 18 months after the judgment on the interim relief application. The intervening period has been taken up by contempt proceedings which followed publication by Mr Sambhi of further videos, apparently within hours of Whipple J's Order. On 15 February 2018 Mr Justice Nicklin committed Mr Sambhi to prison for 6 months but suspended the sentence for 18 months on condition that Mr Sambhi complied with Whipple J's Order. Mr Sambhi then published further videos. A further application to commit came before Mr Justice Nicol, who on 30 November 2018 committed Mr Sambhi to prison for 4 months. On 15 April 2019, a CMC took place before Master Davison. His order contained directions for service of the applications now before me, and recorded an undertaking given by Mr Sambhi that he would not further publish videos attacking the Claimants' legal advisers.

C. The application for summary judgment

(1) The defamation claim

11. Mr de Wilde, who appears for the Claimants has referred me to the judgment of Mr Justice Warby in *Suresh v Samad* [2016] EWHC 2704 (QB) at paragraphs 26 to 28. In those paragraphs, Warby J pointed out that while on an application for summary judgment the elements of the cause of action had to be made out to the standard required, there may be no need to reach definitive conclusions on every factual issue; he observed that it was open to a court to grant summary judgment on individual issues even if not on liability generally; he noted, following the judgment of the Court of Appeal in *Simpson v MGN Limited* [2016] EWCA Civ 772 that where in a

defamation claim the defence was one of truth, summary judgment should be granted only if the court was satisfied that “no reasonable fact finder could conclude that proof of the particulars of justification would prove the truth of the words complained of in the meaning found by the judge”; and he pointed out that it was open to a court to grant summary judgment on liability and leave matters relevant to relief, such as the precise extent or valuation of the serious harm, to be decided at a remedies hearing.

12. As to the five elements of the defamation cause of action, there is no dispute on the facts of this case as to the first three: (1) that the words complained of were published, or (2) that Mr Sambhi was responsible for the publication, or (3) that the words refer to the Claimants. As to the fourth element, there is no dispute that the words relied on by AKKL and Mr Jones bear the meaning they attribute to them. However, Mr Sambhi’s contention is that what he said on the four videos was true because AKKL and Mr Jones had previously lied by suggesting that AKS Stabilisers prevent snaking. Mr Sambhi’s position has not changed since the interim relief hearing; the witness statements and documents he has produced since that hearing seek to support the case he made then, that AKKL and Mr Jones had claimed that the AKS Stabiliser prevents snaking. What is in dispute is whether any such claim had ever been made. AKKL and Mr Jones deny having made any such claim. In his witness statement dated 15 September 2017, Mr Jones describes the AKS Stabiliser as a device designed to seek to control and limit the build-up of instability (snaking) when a caravan or trailer is towed, and to suppress such instability before it becomes dangerous. He is clear that neither he nor AKKL has ever claimed that the AKS Stabiliser prevents snaking or makes it impossible. At paragraph 57 of his statement he says as follows:

“Mr Sambhi’s justification for his extravagant claims seems to rest entirely on the proposition that AL-KO has guaranteed that once a caravan is used with one of its stabilisers there will never be any snaking or instability. But the Company has made no such claims and it is absurd to suggest that the average caravan owner would understand the claims made by the Company as amounting to some sort of absolute guarantee that snaking will never occur with an AKS stabiliser, far less that no accident will ever occur. It is self-evident that the sort of external factors I have set out above could all cause snaking to occur, and that whilst no stabiliser product could ever prevent or completely eliminate all snaking or similar instability, the AKS stabiliser would be seen as a product which helps to suppress snaking when it does occur and to assist in restoring stability. Ultimately, however, there will always be occasions when, for reasons of, for example, improper loading, or dangerous driving, or extreme weather conditions, even a stabiliser cannot prevent a caravan accident.”

13. Mr Sambhi has taken me to a number of documents, all either print-outs from websites, or extracts from brochures published by companies who manufacture and sell caravans, and/or related products. He contends that these documents make good his argument that AKKL has said that the AKS Stabiliser prevents snaking. Mr Sambhi places particular reliance on statements made on the website www.withoutahitch.com.au, which is a website maintained by AL-KO International

Pty Limited, the Australian subsidiary of AL-KO Kober GmbH. On that website the AKS Stabiliser is described as an “anti-sway stabiliser coupling”. Mr Sambhi contends that the description of the device as “anti-sway” amounts to a claim that the device prevents snaking. The website also contains the following statements:

“A stabiliser coupling reduces your trailer’s tendency to sway by automatically clamping down on the tow ball before swaying can develop.”

“For those with larger trailers or caravans, AL-KO has developed a specialised coupling designed to help minimise and reduce trailer sway. The coupling incorporates a clamping system that grips the sides of a specially designed 50mm towball and resists movement of the trailer. In a nutshell, it slows down any tendency for the trailer to sway or veer from its straight trajectory which helps catch and correct trailer sway before it escalates.”

Mr Sambhi further relies on the fact that that other companies (the caravan manufacturers, and those who make or sell related products) either on their websites or in their brochures, also describe the AKS Stabiliser as an anti-sway coupling. He has taken me to a large number of websites and brochures where the AKS Stabiliser is described in this way. He submits that AKKL ought to have required any such statement to be corrected, and further that because AKKL has not done this, the statements on these other websites and in the brochures are to be regarded as representations by AKKL that the AKS Stabiliser will prevent snaking.

14. I do not accept these submissions. *First*, I cannot see that there is any real prospect that a court would conclude that AKKL or Mr Jones is responsible either for statements made by AL-KO International Pty Limited on its website, or for what is said about the AKS Stabiliser by the various caravan manufacturers and others on their own websites and in their own brochures. Mr Sambhi’s argument that AKKL ought to have policed any statement made about the AKS Stabiliser by any third party is entirely unrealistic. His implicit further point that, absent such policing, AKKL is to be taken as having adopted all such statements as its own is far-fetched. I can see no evidence capable of supporting any argument that either AKKL or Mr Jones has adopted or endorsed any of the statements made on the websites or in the brochures that Mr Sambhi relies on¹.
15. *Second*, even if the first point is disregarded, when the statements that Mr Sambhi relies on are considered on their own terms they are not capable of making good the contention they assert that the AKS Stabiliser prevents snaking. I will focus on what is said on the “withoutahitch” website since it is likely that that was a, if not the,

¹ Following the hearing of this application, and at my request, AKKL provided me with a copy of the pages from its own website relating to the AKS Stabiliser. This describes the AKS 3004 as a device that “noticeably suppresses snaking and pitching movements for a safe and relaxed journey”. However, since it is not clear to me whether the text on pages supplied to me which are from 2019, were the same as the text on the website in 2017, I have placed no reliance on this for the purposes of my decision on the application for summary judgment.

source of the references in the other documents to the AKS Stabiliser being an “anti-sway” or anti-snaking device (certainly, there is nothing in any of the other websites or in the brochures that goes further than the statements made on the “withoutahitch” website). I do not agree that describing the device as “anti-sway” could reasonably be understood as an assertion that it prevents snaking. Certainly, no such conclusion could reasonably be reached if regard is had to the whole of the passage on the “withoutahitch” website. The text that follows the anti-sway heading states that the AKS Stabiliser “reduces your trailer’s tendency to sway”, is “designed to minimise and help reduce trailer sway”, and “slows down any tendency for the trailer to sway”. No reasonable reader could conclude that it is being claimed that the AKS Stabiliser will prevent snaking in all circumstances. Even if the words “anti-sway” are taken on their own, I do not consider that there is any prospect that Mr Sambhi will succeed in his argument that the words can reasonably be understood as claims that the AKS Stabiliser prevents, rather than simply militates against, snaking. This is much the more natural meaning of the words. I accept the point made by Mr Jones in his witness statement that no reasonable reader would understand these words to mean that the AKS Stabiliser would prevent snaking, regardless of all other circumstances, including the actions of the driver towing the caravan, and weather or road conditions.

16. Thus, on this point I have come to much the same point as was reached by Whipple J. The statements made by Mr Sambhi in his videos rest on a false premise, namely that AKKL and Mr Jones had lied about the AKS Stabiliser, claiming that it prevented snaking. Since the premise is false, and since I do not consider that any reasonable finder of fact could reach a different conclusion, Mr Sambhi has no real prospect of succeeding on his defence that the statements he made about AKKL and Mr Jones were true.
17. The final element of the defamation cause of action is that publication of the statements has caused or is likely to cause serious harm to the reputation of the claimant; i.e., the requirement arising from section 1 of the Defamation Act 2013, as explained in the judgment of the Supreme Court in *Lachaux Independent Print Media* [2019] 3 WLR 18. In this case no substantial argument was made to the effect that this requirement was not met. The statements made in the four videos were extreme: that by using the AKS Stabiliser drivers were risking their lives; running the risk of being involved in road accidents; that AKKL was involved in a scam on its customers; and that Mr Jones was himself involved in lying to customers and perpetrating a fraud on them. The Claimants do not advance evidence of any specific financial loss to date. However, the likely effect of Mr Sambhi’s statements on AKKL and Mr Jones, respectively, in this regard is obvious.
18. Overall, I am satisfied that there is no reasonable prospect that Mr Sambhi will succeed in his defence to the defamation claim. The Claimants should have an order for summary judgment on that claim.

(2) *Malicious Falsehood*

19. This is the further claim pursued by AKKL. The elements of the malicious falsehood cause of action are: that the defendant has published words which are false; that the words refer to the claimant or his property or his business; that the words were

published maliciously; and that special damage has followed as a direct and natural result of their publication.

20. The first element of the cause of action, that false statements have been published by Mr Sambhi, is addressed by the conclusions I have already reached on the defamation claim. There is no dispute that Mr Sambhi published the four videos; there is no dispute as to the meaning of what he published; and for the reasons set out above there is no real prospect that Mr Sambhi could satisfy any reasonable finder of fact that AKKL through Mr Jones or otherwise, had lied about the capabilities of the AKS Stabiliser. The second element of the cause of action is not in dispute. The words published by Mr Sambhi clearly do relate to AKKL and its business.
21. The third element of the cause of action is that the publication was malicious, not publication in good-faith. The position on this issue is much the same as it was at the time of the hearing of the application for interim relief. Mr Sambhi does not accept that he acted in bad faith, but the circumstantial case against him on this issue is compelling. The language used in the videos is extreme – for example, the statements that users of the AKS Stabiliser are risking being in accidents, and are risking their own lives. I accept that although the videos assert that accidents shown have been caused by AKS Stabilisers, there is simply no way of telling from the videos whether or not that is true, and that in some instances it does not even appear that the caravan involved in the accident was being towed using an AKS Stabiliser. The conclusion I have reached above, to the effect that there is no reasonable basis for believing that AKKL had claimed that the AKS Stabiliser prevents snaking, is also material since this too tends to support the conclusion that Mr Sambhi was not acting in good faith. I can see no reason why it was not equally apparent to him (as it would have been to any other reasonable reader), that the description “anti-sway” is not a claim that the AKS Stabiliser prevents snaking. Finally, it is highly significant that Mr Sambhi’s statements about the AKS Stabiliser were made in the context of promoting the Torquebar, his own competing product. Taken together, these matters provide a compelling basis for the inference that Mr Sambhi acted in bad faith. There is no real prospect that any other conclusion would be reached were this matter to go to trial.
22. The final element of the cause of action is special damage. As Whipple J pointed out, the meaning of special damage is qualified by section 3 of the Defamation Act 1952:

“(1) In an action for ... malicious falsehood, it shall not be necessary to prove special damage –

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the claimant ...”

In her judgment at paragraph 11, Whipple J stated as follows:

“... To establish “calculated damage”, a party must show that the statement of which complaint is made is calculated, i.e., more likely than not, to cause him pecuniary damage: see *Tesla Motors Ltd v BBC* [2013] EWCA Civ 152 at [27]. In the ordinary course of things, derogatory statements about a commercial product are likely to put off some potential

customers, with a consequent loss of revenue from sales and increases in costs, see *Tesla* [37]. Mr Sambhi does not suggest that the effect of his statements would not be to put off some potential customers; indeed, his avowed specific purpose in publishing these statements is to do precisely that. It is self-evidently likely that the Company has suffered or will suffer pecuniary loss by way of lost sales as a result of the publication of the videos. These elements are therefore established.”

The standard that a claimant must meet on an application for summary judgment is higher. But even applying that standard, the same logic is compelling. I can see no realistic prospect that a court would conclude that this element of the cause of action was not made out.

23. In the premises, I allow AKKL’s application for summary judgment on the malicious falsehood claim.

(3) *The Data Protection Act claim*

24. This is the further claim made by Mr Jones. He contends that publication of three of the four videos (those published on 26 May 2017, 3 August 2017, and 4 August 2018) entailed processing of his personal data because the videos identify him by name, and as the Marketing Manager of AKKL and refer to his opinions about the AKS Stabiliser. Mr Jones further contends: (a) that that processing was unlawful because contrary to section 4(4) of the DPA 1998 the processing took place in breach of the first data protection principle; and (b) that the processing causes him distress and damage which is both substantial and unwarranted, such that it should be prevented by an order made pursuant to section 10(4) of the DPA 1998. Mr Jones further claims damages under section 13 of the DPA 1998.
25. There can be no doubt that publishing personal data is a form of processing within the definition at section 1 of the DPA 1998. I accept that the videos relied on did contain personal data relating to Mr Jones. “Personal data” as defined at section 1(1) of the DPA 1998, includes any expression of opinion about the data subject. It is beyond argument that what Mr Sambhi said about Mr Jones falls within the scope of that aspect of the definition. The first data protection principle requires personal data to be processed fairly and lawfully and only if one of the conditions in Schedule 2 to the DPA 1998 is met. The case for Mr Jones is that the processing was contrary to the first data protection principle both because the information published was defamatory of Mr Jones, and because in any event, no Schedule 2 condition applied. I accept the latter part of this submission – I cannot see that there is any realistic scope for a conclusion that publication of the personal data contained in the videos was consistent with any of the Schedule 2 conditions. This conclusion is sufficient for me to conclude that Mr Jones should have summary judgment on his claim under section 4 of the DPA 1998. I do not reach any conclusion on the argument that the processing was in breach of the first data protection principle because it was unlawful. The substance of that submission is that any act of defamation which involves processing personal data must also be contrary to the requirements of the DPA 1998. I was not

referred to any authority for that proposition. Whilst I can see significant force in it, had it been the only (or decisive) matter in this case I would have concluded that it was not appropriate for it to be determined on an application for summary judgment; it is a point of wider importance appropriately considered at a trial.

26. For these reasons, I grant the application made by Mr Jones for summary judgment on his claims under sections 4 and 10 of the DPA 1998. I do not have information sufficient to reach any conclusion on the claim for damages under section 13 of the DPA 1998. If Mr. Jones wishes to pursue that claim for compensation, it will need to be considered at a further hearing.

D. The application to strike out

27. Given the conclusion I have reached on the application for summary judgment, detailed consideration of the application to strike out the defence would serve little purpose. Since that is so, I will set out my views on this application only shortly.
28. I do not consider that Mr Sambhi's defence complies with the requirements set out in CPR 3.4, CPR 16.5 and Practice Direction 53. The defence comprises the witness statement dated 3 October 2017 and its exhibits. The statement contains Mr Sambhi's explanation of some of the events leading up to the issue of proceedings against him; comments on some aspects of the pre-action correspondence; and comments on some of the points contained in Mr Jones' witness statement made in support of the application for interim relief. The statement is in no sense a coherent response to the Claimants' case as pleaded in the Particulars of Claim. I recognise, of course, that the witness statement was made on 3 October 2017 and pre-dates the Particulars of Claim (which were not served until 9 October 2017). However, by his letter of 6 November 2017 Mr Sambhi made it clear that he wished his witness statement to be treated as his defence. He stated that notwithstanding the Claimants' solicitors' attempts in earlier correspondence to explain that he should provide a specific response to the Particulars of Claim. It is readily apparent both from the correspondence and from the actions that prompted the first of the contempt proceedings, that at this time Mr Sambhi was treating the litigation in a cavalier fashion. I do not consider that his failure to provide a coherent response to the Particulars of Claim, which met the requirements of the CPR to be the consequence of the fact he was acting as a litigant in person or is otherwise excusable. Mr Sambhi is without doubt a capable person; he simply declined to comply with the requirements set out in the CPR.
29. Had it been necessary for me to decide what action to take in response to Mr Sambhi's failure to file and serve a defence that complied with the requirements of the CPR, I would have decided that Mr Sambhi's response to the claim be struck out. He has had ample opportunity both in October and November 2017, and subsequently to prepare and file a defence. He has taken no steps to do so, even in response to the Claimants' application to strike out.

E. Conclusion

30. I allow the Claimants' application for summary judgment on the defamation claim; AKKL's application for summary judgment on the malicious falsehood claim; and Mr Jones' application for summary judgment on his claims under sections 4 and 10 of the DPA 1998.
31. I consider that a final injunction should be made in the terms of paragraph 2 of the Order made by Whipple J sealed on 6 October 2017. However, based on the evidence available to me, I am not in a position to determine what, if any, orders should be made in respect of the various claims for damages. If the Claimants wish to pursue those aspects of their claims, they will need to make a further application providing evidence in support of any claim made for damages (whether for financial loss or non-financial loss).
32. I would be grateful if the parties could seek to agree the terms of an order that reflects the conclusions at paragraphs 31 and 32 above, and deals with any other consequential matters.