Neutral Citation Number: [2022] EWHC 1095 (QB)

Case No: QB-2020-004091

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/05/2022

Before:

MR JUSTICE JULIAN KNOWLES

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Between :

(1) SVANTE KUMLIN **(2) EEW ECO ENERGY WORLD PLC**	**Claimants**
- and –	
(1) CAMILLA JONSSON **(2) PER AGERMAN** **(3) ANNELIE ÖSTLUND** **(4) REALTID MEDIA AB**	**Defendants**

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Jonathan Price (instructed by **TLT LLP**) for the **Claimants**
Greg Callus and Ben Gallop (instructed by **RPC**) for the **Defendants**

Hearing dates: 24 - 25 March 2021

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Approved Judgment

Mr Justice Julian Knowles:

Introduction

1. This is a claim for libel. The application before me is brought by the four Defendants. Pursuant to CPR Part 11, they challenge the Court's jurisdiction to try the claim. They say I should decline jurisdiction. The matter is factually and legally complex. The Defendants' application raises a number of issues. In particular, it raises some complex cross-jurisdictional questions relating to claims in libel under EU law. I have full transcripts of the hearing which I have consulted when writing this judgment.

2. CPR r 11.1 provides:

> "(1) A defendant who wishes to –
>
> (a) dispute the court's jurisdiction to try the claim; or
>
> (b) argue that the court should not exercise its jurisdiction
>
> may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have."

The parties

The Claimants

3. The following is not necessarily agreed but I think is sufficient to provide the generally relevant background.

4. As pleaded in the Particulars of Claim (PoC), the First Claimant is an entrepreneur, businessman and investor in sustainable and ethical business ventures, resident in Monaco, with business interests in the UK including in the Second Claimant, of which he is the founder, Chairman and Chief Executive Officer. He is a Swedish citizen.

5. The Second Claimant is a public limited company registered in England and Wales with company number 11776841. Its registered office and corporate headquarters is at 13 Hanover Square, London W1S 1HN. It is the apex company of the Eco Energy World (EEW) Group which employs 13 workers in London, and comprises the following subsidiaries, each of which is an English limited company:

   - EEW Eco Energy World UK Holdings Limited (company number 11780412)
   - EEW Eco Energy World Development Holdings Limited (company number 11794857)
   - EEW Eco Energy World IPP Limited (company number 11794805)

6. The organisation chart exhibited in SK2 to the First Claimant's first witness statement shows that below these entities sit EEW Eco Energy World Development Holdings One

BV (a Dutch company), and EEW Holdings 1 APS (a Danish company). Below these, in turn, sit Special Purpose Vehicles (SPVs) to hold particular assets.

7. The Second Claimant asserts that by reason of these facts and matters it enjoys a reputation, including in this jurisdiction, and in particular in the financial and energy sectors, where it is well known.

The Defendants

8. The Fourth Defendant owns and publishes a business news website available worldwide at www.realtid.se (the Website/Realtid).

9. The First Defendant is the editor-in-chief of the Fourth Defendant.

10. The Second and Third Defendants are journalists employed or engaged by the Fourth Defendant.

11. All of the Defendants are Swedish, the First Claimant is Swedish, and all of the publications complained of were written in Swedish. The Defendants say that over 88% of the readership of the Website is in Sweden, as opposed to just 0.85% in the UK, with the balance of the readership being elsewhere.

The publications complained of

12. The Claimants' case is that between 29 September 2020 and 2 November 2020 the Defendants, or some of them, published or caused to be published on the Website eight articles concerning the Claimants (the Articles). There was further publication via Facebook, Twitter, etc, where links to the Articles were posted.

13. The Articles in Swedish and the English translation are contained in an Annex to the Particulars of Claim. They are lengthy and I do not propose to set them out verbatim. I will set out the pleaded defamatory meanings later, but for now it suffices to say that the defamatory meanings alleged include that the Claimants were accused of being part of a criminal network involved in so-called 'ecocrime', by which members of the network profited from the fraudulent marketing and sale of bogus or valueless supposedly ecologically ethical investments; that as part of this criminal activity they received unlawful payments from associates of a suspected fraudster; that they lied about marketing shares in Sweden; and they sought to dishonestly cover the tracks of their misconduct by deleting material from the internet and issuing false denials, as well as other fraudulent and/or dishonest and/or dubious activity.

14. The First Claimant says he has suffered serious harm to his reputation as a consequence. The Second Claimant says it has suffered serious harm in the form of serious financial loss. In particular, in April 2020 it signed an agreement (the Pareto mandate) with Pareto Securities Pte Ltd (Pareto), the Singaporean arm of Pareto Securities, a large Nordic investment bank. The object of the mandate was the raising of finance by the Second Claimant in the total sum of around €570 million to fund the acquisition and construction of solar power plants. The Second Claimant says that as a direct result of the Articles, in November 2020 Pareto cancelled the mandate, causing it serious financial loss.

15. In broad terms the Defendants dispute that any of the Articles has an actionable defamatory meaning, although they accept that two of them were defamatory at common law. They deny either Claimant has suffered serious harm as required by s 1 of the Defamation Act 2013 (DA 2013). I will return to this later.

16. As to responsibility for publication of the Articles on the Website, the Claimants' case is that:

    a. The First and Fourth Defendants are responsible for the publication of all of the Articles;

    b. The Second Defendant is responsible for the publication of the First, Second, Fourth, Fifth, Sixth, Seventh, and Eighth Articles; and

    c. The Third Defendant is responsible for the publication of the Second, Fourth, Fifth, Sixth, Seventh, and Eighth Articles.

Legal framework

17. Before turning to the parties' submissions, I need to set out some legal principles. It is common ground that the question of jurisdiction in this case is primarily governed by EU law, notwithstanding Brexit.

Brussels Recast Regulation (BRR)

18. The BRR is Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) *(*OJ L 351, 20 December 2012, pp1-32). Because the UK has left the EU, the BRR no longer has direct effect in domestic law as a matter of EU law. However, because this claim was issued on 20 November 2020, the BRR remains the operative legal framework in domestic law by virtue of the savings provisions in regs 92 and 93 of the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (SI 2019/479) (the Regulations).

19. Article 4(1) BRR provides that:

> "Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State."

20. This confers general jurisdiction, which is unlimited: in other words, any claim for any remedy can be brought against a defendant in the courts of the Member State where they are domiciled under Article 4(1). The starting point, therefore, in this case, because the Defendants are domiciled in Sweden, is that they should be sued in Sweden.

21. However, Articles 7-26 provide for derogations from this general rule, which permit a defendant domiciled in one Member State to be sued in the courts of another Member State.

22. Relevant for present purposes is Article 7(2). This provides that:

> "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;
>
> …"

23. This exception is sometimes referred to in the case law as 'the special jurisdiction'.

24. Hence, because the Defendants are domiciled outside England and Wales, this claim can only be brought here on the basis of Article 7(2) as a claim in tort. That is common ground. This requires an examination, in relation to libel, of the principles relating to the concept of the place 'where the harmful event occurred'.

25. The meaning of 'the place where the harmful event occurred or may occur', in Article 5(3) of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 299, 31.12.1972, p32–42) (in other words, the same language as Article 7(2) BRR), was considered by the ECJ in *Handelskwekerij G J Bier BV & Stichsting Reinwater v Mines de Potasse d'Alsace SA* [1979] ECC 206. In essence, the Court said the phrase has two limbs: (a) the place where the damage occurred (*locus damni*); and (b) the place of the event giving rise to damage (*locus actus*).

26. *Bier* was considered in the context of defamation in *Shevill v Press Alliance SA* (Case C-68/93) [1995] 2 AC 18 (*Shevill* (ECJ)). It was held the *locus actus* would almost always overlap with where the publisher was domiciled (ie, the acts giving rise to defamatory publication would generally be co-located with the publisher), so to ensure that Article 5(3) was given some effect, the courts of the *locus damni* had to have jurisdiction over damage caused by publication in their territory.

27. Accordingly, under what I will call the 'rule in *Shevill*', a libel claimant can choose either: (a) to sue a defendant in the Member State of the defendant's domicile under Article 4(1) BRR for *global* damages; or (b) to sue the defendant in each/every Member State where there has been actionable publication under Article 7(2) BRR, but in each case she can only recover damages arising from publication within the territory of that Member State (ie, local damages). This latter option is sometime called the 'mosaic option': see eg, *Wright v Granath* [2021] EWCA Civ 28, [22]. In *Mahmudov v Sanzberro* [2021] EWHC 3433 (Admin), [10], Collins Rice J said:

> "10. What became known as the *Shevill* Rule stated that claimants had a choice. They could *either* proceed against defendants where the latter are domiciled, for *global* remedies for all the harm caused; *or* they could proceed in any or all countries where there is actionable publication – a tort committed – for the harm caused by *that* completed tort in *that* country. If the latter choice was taken, it was the national law of that country which determined whether there was a completed tort and if so what could be

> recovered there. So a claimant had two routes to global remedies: the general jurisdiction based on defendant's domicile, or (if *all* of the 'harmful event' did not happen in a different single country) a cumulative mosaic of actions in different countries relying on the special jurisdiction. The latter might or might not be preferable to claimants depending on local defamation laws."

28. With the advent of the internet, the CJEU reconsidered the rule in *Shevill* in *eDate Advertising Gmbh v X/Martinez v MGN Ltd* (Joined Cases C509/09 and C-161/10) [2012] QB 654. Online publication was by then ubiquitous, and so all Member States potentially had simultaneous jurisdiction over an actionable publication on the internet.

29. The CJEU in *eDate* held that in a case concerning publication on an internet website, where a claimant had his 'centre of interests' in a Member State, then *if* that Member State had jurisdiction under Article 7(2) BRR at all (because there had been actionable publication there according to its domestic law), a claimant could now recover global damages from that Court (not just the local damages available under the rule in *Shevill*).

30. Essentially, *eDate* provides that if the 'centre of interests' court has jurisdiction at all, its power to award damages extends to global and not just local damages. But the prior question whether a particular Member State in which there has been internet publication has jurisdiction *at all* still depends on whether that publication is actionable by reference solely to the domestic laws of that Member State: see the decision of the House of Lords following the *Shevill* (ECJ) in *Shevill v Press Alliance (No 2)* [1996] AC 959, 983 (*Shevill* (HL)).

31. The Defendants gave the following examples in their Skeleton Argument, which I think are helpful illustrations of concepts which are not entirely straightforward.

32. Suppose that an online article is published by a Greek publisher on a low-readership website in the German language about a claimant with their centre of interests in Spain. Because of the language, the article is only read in Germany and Austria (with zero actual publication in Spain). The Spanish Court would not have jurisdiction under Article 7(2) BRR at all, because there was no publication there, and so while Spain might be the claimant's centre of interests, that is irrelevant. Jurisdiction would only exist in Greece (where the publisher is domiciled, pursuant to Article 4(1) BRR, for global damages), or Germany and/or Austria (both under Article 7(2) BRR and the rule in *Shevill*, but only for local damages).

33. Next, to extend the example, suppose ten German-speaking people did in fact read the online article in Spain. However, it transpires (in this example) that Spanish domestic law has a *de minimis* threshold for libel claims, such that words are not actionable unless at least 25 people have read them. The Spanish courts would still have no jurisdiction, because (according to Spanish *domestic* law) there is no *actionable* publication in Spain (only non-actionable publication). That Spain is the claimant's centre of interests is still irrelevant: he can still only sue in Greece (for global damages) or Germany and/or Austria (for local damages, under the mosaic option).

34. Now, suppose another 15 German-speaking residents of Madrid read the article, such that the Spanish law 25-person *de minimis* threshold is satisfied. The claimant is now

able to sue in Spain (in addition to Greece, Germany and Austria), and because Spain is the claimant's centre of interests, the rule in *eDate* provides that the Spanish courts can grant him global damages.

35. Therefore, where the basis of jurisdiction is said to be Article 7(2) BRR, there are two main questions:

    a. *First Jurisdictional Question***:** Does the court of a Member State, seised of an online defamation claim under Article 7(2), have jurisdiction *stricto sensu* at all, applying the provisions of its national law?

    b. *Second Jurisdictional Question***:** If so, but only if so, is the court seised of the matter located in the Member State where the claimant has her centre of interests?

36. The importance of the Second Jurisdictional Question increased after the third CJEU case (after *Shevill* and *eDate*) in October 2017: *Bolagsupplysningen OÜ v Svensk Handel AB* (Case C-194/16) [2018] QB 963. The CJEU was asked to consider the centre of interests of a legal (non-natural) person whose economic activity was not in the state in which it was domiciled, but which sued, in its home courts, a foreign defendant from another Member State under Article 7(2) of the BRR.

37. The CJEU in *Bolagsupplysningen* was generally understood to have held that: (a) the centre of interests doctrine in *eDate* applied to legal persons, not just to natural persons, for the recovery of global damages under Article 7(2) BRR, and that the place a company had its registered office was not determinative of its centre of interests; (b) that non-pecuniary remedies (such as injunctions, or court orders to rectify or remove information) in relation to the internet were 'indivisible' and could only be granted by a court with jurisdiction to grant global damages (ie, the courts of either the defendant's domicile or the claimant's centre of interests): so Courts seised under the mosaic option under Article 7(2) BRR could not grant non-pecuniary remedies insofar as they related to internet publication.

38. The preceding paragraph reflected the parties' understanding (and the generally held understanding) of *Bolagsupplysningen* and reflects how they advanced their cases at the hearing. However, shortly before I circulated this judgment in draft, the Court of Appeal considered *Bolagsupplysningen* in *Mincione v Gedi Gruppo Editoriale Spa* [2022] EWCA Civ 557. After circulating my draft judgment I received a helpful agreed note from counsel for the parties about the effect of *Mincione*. The lead judgment was given by Warby LJ, with whom Popplewell and William Davis LJJ agreed.

39. In summary, the *Mincione* decision includes a holding that the 'rule in *Bolagsupplysningen*' is not as broad as had been held (or conceded, or agreed, or assumed) in all domestic cases to-date. All previous decisions have read the CJEU in *Bolagsupplysningen* as saying that non-pecuniary remedies affecting publication on the internet were 'in principle' remedies which were 'indivisible' and as such could only be awarded by a court with global jurisdiction (ie, jurisdiction based upon a defendant's domicile, or a claimant's centre of interests).

40. This former understanding of the rule did not prohibit, for example, a court seised on the mosaic basis from granting an injunction (or order under s.12 DA 2013) by means *other*

than publication on the internet (eg, by email, or by print, or by billboard): a claim for a non-internet injunction was permitted to proceed by Nicol J in *Said v Groupe L'Express* [2019] EMLR 9 at [63]-[66]. However, it was understood to mean that internet injunctions (or other relief concerning publication on the internet) were *per se* unavailable when the basis of jurisdiction was the mosaic basis under Article 7(2) BRR.

41. Warby LJ in *Mincione* disagreed, holding at [57]-[66] that if a non-pecuniary remedy affecting publication on the internet (ie, a prospective injunction against repetition of the defamatory statement, or presumably even a s 13 DA 2013) could be framed such that it only affected prospective internet publications in England and Wales (but not Scotland or Northern Ireland, or other parts of the world) by means such as geo-blocking (ie, a domestic internet injunction) that such a remedy was not prohibited as a matter of principle by the CJEU in *Bolagsupplysningen*.

42. However, ultimately Warby LJ dismissed the appeal in *Mincione* because, on the evidence available in that case, any such 'domestic internet injunction' would take effect on a UK-wide basis (as the facility identified by the defendant was not capable of geo-blocking England and Wales alone) and so have substantive effect in Scotland and Northern Ireland: [67]-[72]. Warby LJ dealt separately with the claim for a s.12 DA 2013 order at [73]-[77], which he considered could be capable of being ordered without having extra-territorial effect.

43. In the present case, the parties were agreed on the effect of *Bolagsupplysningen* (see [38] above), in accordance with the prior understanding that *Mincione* has now rejected. While the Defendants reserve their position as to whether or not *Mincione* is correctly decided, it is clearly binding upon me and the court's order will reflect the judgment in *Mincione*.

44. Therefore, there are three possible outcomes to a jurisdiction challenge to an online libel claim brought under Article 7(2) of the BRR:

    a. No jurisdiction in a strict sense at all (according to whatever jurisdictional rules are imposed under domestic law);

    b. Jurisdiction under the mosaic principle, limited to damages for 'local' online publication, non-pecuniary non-internet relief, but not any non-pecuniary relief affecting the internet that has effect outside England and Wales;

    c. Jurisdiction under the centre of interests principle, for damages for 'global' online publication, and for all forms of non-pecuniary relief.

45. In *Euroeco Fuels (Poland) Ltd v Szczecin Seaports Authority* [2018] 4 WLR 133, [33], Nicol J summarised the position as follows:

> "33. In consequence the parties agree that where a claimant believes himself or herself to have been defamed in a newspaper or internet publication in more than one member state by a defendant domiciled in a member state, s/he has three choices: (i) s/he can sue for all of the loss in the courts of the defendant's domicile; (ii) s/he can sue for all of the loss in the courts of the member state in which

> s/he has his or her centre of interests; or (iii) s/he can sue in the courts of the member state where (according to the national law of that member state) the harmful event occurred, but in those circumstances s/he is limited to the harm which occurred in that member state. This last alternative is sometimes referred to as the 'mosaic alternative' because, to recover for all of the loss suffered, claims must be brought in more than one state."

Burden of proof

46. The burden of proof on both the First and Second Jurisdictional Questions falls upon the Claimants: see *Saïd v Groupe L'Express* [2019] ILPr 429, [44], following *Canada Trust v Stolzenberg (No 2)* [1998] 1 WLR 547, 555-559.

47. Notwithstanding that the burden of proof lay upon him, Mr Price for the Claimants was content for Mr Callus to address me first, with him replying.

The test to be applied on this application

48. The standard of proof on an interlocutory jurisdiction application is whether there is 'a good arguable case'. The claimant must prove to this standard each element of the tort under Article 7(2) BRR in respect of each libel claim under the First Jurisdictional Question.

49. For many years, this standard was said to require the claimant to show that he had 'a much better argument on the material available'. In *Saïd* Nicol J said at [44]:

> "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."

50. In *Brownlie v Four Seasons* [2018] 1 WLR 192, Lord Sumption's minority judgment at [7] (but with which Lady Hale (for the majority) appeared to agree at [33]) said:

> "7. An attempt to clarify the practical implications of these principles [viz, those relating to evidential standard applicable to jurisdictional facts] was made by the Court of Appeal in *Canada Trust Co v Stolzenberg (No 2)* [1998] 1 WLR 547. Waller LJ, delivering the leading judgment observed, at p555:

> "'Good arguable case' reflects … that one side has a much better argument on the material available. It is the concept which the phrase reflects on which it is important to concentrate, i e of the court being satisfied or as satisfied as it can be having regard to the limitations which an interlocutory process imposes that factors exist which allow the court to take jurisdiction."
>
> When the case reached the House of Lords, Waller LJ's analysis was approved in general terms by Lord Steyn, with whom Lord Cooke of Thorndon and Lord Hope of Craighead agreed, but without full argument [2002] 1 AC 1, 13. The passage quoted has, however, been specifically approved twice by the Judicial Committee of the Privy Council: *Bols Distilleries BV (trading as Bols Royal Distilleries) v Superior Yacht Services Ltd* [2007] 1 WLR 12, para 28, and *Altimo Holdings*, loc cit. In my opinion it is a serviceable test, provided that it is correctly understood. The reference to "a much better argument on the material available" is not a reversion to the civil burden of proof which the House of Lords had rejected in *Vitkovice*. What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it. I do not believe that anything is gained by the word "much", which suggests a superior standard of conviction that is both uncertain and unwarranted in this context."

51. This formulation was then re-applied by Lord Sumption (for a unanimous Court) in *Goldman Sachs International v Novo Banco SA* [2018] 1 WLR 3863 at [9]. A good arguable case now means:

> "(i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway;
>
> (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but
>
> (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it.

> It is common ground that the test must be satisfied on the evidence relating to the position as at the date when the proceedings were commenced."

52. The three limbs of the *Brownlie/Goldman Sachs* test were the subject of detailed examination by the Court of Appeal (Green LJ, with whom Davis and Asplin LJJ agreed) in *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV* [2019] 1 WLR 3514, [57]-[79], [117], [118]-[119]. Davis LJ said at [119]:

> "… it is sufficiently clear that the ultimate test is one of good arguable case. For that purpose, however, a court may perfectly properly apply the yardstick of "having the better of the argument" (the additional word "much" can now safely be taken as consigned to the outer darkness). That, overall, confers, in my opinion, a desirable degree of flexibility in the evaluation of the court: desirable, just because the standard is, for the purposes of the evidential analysis in each case, between proof on the balance of probabilities (which is not the test) and the mere raising of an issue (which is not the test either)."

53. In their Skeleton Argument, the Claimants advanced an argument based on *Bolagsupplysningen* that the test on the Second Jurisdictional Question (centre of interests) is a different one, namely, whether it is 'clear from the evidence' that a claimant has its centre of interests in the UK. However, in *Napag Trading Ltd v GEDI Gruppo Editoriale Spa* [2020] EWHC 3034 (QB), [32]-[33], [36]-[40], this submission as to a different evidential standard of proof was expressly rejected by Jay J, who held that the 'good arguable case' applied to the determination of the centre of interests of both natural and legal persons. He said:

> "32. Para 43 of the judgment of the CJEU [in *Bolagsupplysningen*] has given rise to some debate:
>
> > '43. It is also appropriate to point out that, in circumstances where it is not clear from the evidence that the court must consider at the stage when it assesses whether it has jurisdiction that the economic activity of the relevant legal person is carried out mainly in a certain member state, so that the centre of interests of the legal person which is claiming to be the victim of an infringement of its personality rights cannot be identified, that person cannot benefit from the right to sue the alleged perpetrator of the infringement pursuant to article 7(2) of Regulation No 1215/2012 for the entirety of the compensation on the basis of the place where the damage occurred.'
>
> 33. This paragraph is not as clear as it might have been and something may be lost in translation (it is not clear whether the language of the case was English). Messrs Eardley and Callus submitted that the effect of this passage is to intensify the standard of proof to the extent that the First Claimant must satisfy me that it

is *clear* that its "centre of interests" is England and Wales. It is further submitted that para 43 is *per curiam* (at least according to the headnote in the Official Law Report) and therefore part of the *ratio* of the decision. I cannot accept these submissions. Para 43 is not part of the *ratio* of the CJEU's judgment, not least because it does not directly address the questions the court had to answer and in view of the opening wording ("it is also appropriate to point out …"). In his masterly opinion Advocate-General Bobek, who I am sure was writing in English, did not touch on the issue of the standard of proof. That omission is hardly surprising, because this is a matter of national law and may depend on *when* the issue is being decided. In the context of this jurisdictional challenge, the court is making an interim finding, in effect answering the question: have the Claimants proved enough to pass through the door? In the context of the final hearing, should it take place, "centre of interests" would have to be determined definitively, applying well-established standards of proof. All that the CJEU was saying was that in the event that the national court concluded that it could not identify the "centre of interests" because the evidence was unclear, article 7(2) of the RBR could not avail the claimant. The CJEU was not saying that in a case where the legal person's registered office was in country X but it was being contended that its "centre of interests" was not that country, it was incumbent on that legal person to show by clear evidence that its "centre of interests" was in fact in country X.

…

36. The first question is the standard of proof I should be applying to the resolution of this jurisdictional challenge. I have already pointed out that the Claimants do not require from me affirmative findings of fact, proved to the probabilistic standard, in order to win.

37. The relevant principles are located in *Four Seasons Hotel v Brownlie* [2018 1 WLR 192, *Goldman Sachs International v Novo Banco SA* [2018 1 WLR 3683 and *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV* [2019 1 WLR 3514. I note in passing what Nicol J said about this issue at paras 43-44 of his judgment in *Euroeco Fuels (Poland) Ltd v Szczecin & Swinoujscie Seaports Authority SA* [2018 EMLR 21, but his reference to ‘a much better argument on the material available’ has been superseded.

38. It is incumbent on these Claimants to establish a ‘good arguable case’. That applies across the board notwithstanding that the Second Defendant raises points on publication and that there has been no real or substantial tort committed within the jurisdiction. Mr McCormick submitted that the burden of proof in connection with these two matters is on the Second Defendant,

but I am content to adopt the analysis of Nicol J in *Saïd*, at para 67, to the effect that it remains on the Claimants and does not shift. I share Nicol J's doubts as to whether what might be called quasi-*Jameel* arguments are apt to be raised under the umbrella of a challenge to jurisdiction.

39. *Goldman Sachs*, as explained by the Court of Appeal in *Kaefer*, expounds a single test – that of 'good arguable case' – possessing three limbs. This is Lord Sumption's test (he was writing for the whole Supreme Court) in *Goldman*, at para 9:

> "(i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it."

40. It is unnecessary for me to attempt a summary of Green LJ's detailed explanation [in *Kaefer*] of Lord Sumption. It is necessary to make the following brief points in response to the parties' submissions. First, 'plausible evidential basis' means more than 'arguable' and less than 'probable'. It is a relative assessment of the position, on the basis of evidence which is perforce untested, comparing and evaluating the evidence adduced in writing by the Claimants and that adduced in riposte by the Defendants. The task of the court is to say where the better argument on the material available is to be found, not 'much better argument'. If a plausible evidential basis does not exist, the inquiry ends there. Secondly, in performing this exercise it may be possible for the court reliably to take a view, ie, come to an interim conclusion, on the material available; and, if so, the court should do so. Thirdly, in the event that no such assessment can be made, because to make it would be unreliable (having regard to the nature and quality of the available evidence), the court will find that there is a good arguable case provided that it considers that there is a plausible albeit contested basis for that case. At this third stage the 'better argument' on the material available test continues to apply."

54. Jay J took the same approach in *Soriano v Forensic News LLC* [2021] EWHC 56 (QB), [38], as did Tipples J in *Mincione v Gedi Gruppo Editoriale Spa* [2021] EWHC 2006 (Admin), [23] and Collins Rice J in *Mahmudov*, [37]. I will adopt the same approach.

The parties' submissions

The Defendants' case

55. The Defendants advance this application on the following grounds.

56. Ground 1: this Court has no jurisdiction over the claim in relation to publication within England and Wales because the Claimants cannot show to the requisite standard the elements of the tort of libel because: (a) apart from two of the Articles, they are not defamatory at common law; (b) further and in any event, the Claimants cannot show they have suffered serious harm as defined in s 1(1) and s 1(2) of the DA 2013 given, in particular, the small extent of publication in England and Wales and, in the case of the Second Claimant, the absence of any sufficient evidence of serious financial harm caused by publication in England and Wales.

57. Ground 2: further or alternatively, the Claimants cannot sue for damages in respect of global publication outside of England and Wales, unless England and Wales is a particular Claimant's centre of interests (pursuant to the rule in *eDate*). The evidence does not establish that either Claimant's centre of interests is England and Wales. This also means neither Claimant is entitled to any non-pecuniary relief. Hence, if either Claimant has a viable claim at all, it is limited to local damages caused by publication in England and Wales.

58. Ground 3: further or alternatively, insofar as this Court has jurisdiction under Article 7(2) BRR, and insofar as either Claimant proves to the requisite standard that the UK is its centre of interests (ie, either or both Claimants succeed on Grounds 1 and 2), any surviving claims would then embrace global publication on the internet but all of the Second Claimant's claim and all of the First Claimant's claim against the Second and Third Defendants would be barred by operation of Swedish Law.

59. Libel claims continue to be governed by the common law rule of double-actionability, meaning the publication complained of must be actionable under both *lex fori* (ie, English law) and the *lex loci delicti* (in libel, the law of the place of publication) (ie, Swedish law).

60. In the present case, between 85% and 90% of the Fourth Defendant's Swedish-language publication is in Sweden, and less than 1% is in the UK. However, there has potentially been publication in all Member States and jurisdictions where the internet is available. Double-actionability would provide that English law (as the *lex fori*) would apply to the whole claim, but that each Member State's law would apply to publication in that jurisdiction.

61. Swedish law will apply to these claims in one of two ways under this ground:

    a. double-actionability in respect of Swedish publication: if and insofar as Swedish publication is within this Court's jurisdiction (because either or both of the Claimants can show their centre of interests is in England and Wales), the claims must be actionable (to the standard of a 'good arguable case') under both English *and* Swedish law under the double-actionability rule;

b. pursuant to the *Chaplin v Boys* exception: there is a common law exception to the rule of double-actionability, first articulated by the House of Lords in *Chaplin v Boys* [1971] AC 356 and codified in s 10(b) of the Private International Law (Miscellaneous Provisions) Act 1995, that exceptionally a court may apply just a single country's law for the purposes of determining an issue (or all issues) in a claim.

62. Because this is a case where all publication was in Swedish by Swedish defendants in respect of a Swedish natural-person claimant on the internet and the overwhelming majority of global publication took place in Sweden, the Defendants submit that this Court should apply Swedish law alone to the totality of the claims.

63. The Defendants rely on two propositions of Swedish law (which they say they will prove by expert evidence if not conceded by the Claimants) to establish that several of these libel claims are not actionable as a matter of Swedish law: (a) first, the rule that legal persons (who are not natural persons) do not have the capacity to sue in the tort of defamation at all; (b) second, the rule that – if available to be sued – a libel action must be brought against the media publisher (here the Fourth Defendant and/or its statutory responsible editor (here, the First Defendant), and cannot be brought against other persons (here the Second and Third Defendants) if either the First or the Fourth Defendant are available to be sued.

64. Hence, whether, and to the extent that, Swedish law applies under either the double-actionability Rule or the *Chaplin v Boys* exception: (a) it precludes the claim by the Second Claimant entirely; and (b) it precludes the claims by both Claimants against the Second and Third Defendants.

The Claimants' case

65. On behalf of the Claimants, Mr Price submitted as follows.

66. The Claimants' overall contention is that the 'sustained attack' in the Articles upon their honesty and business practices has caused them reputational harm, and in the case of the Second Claimant, has caused it serious financial loss. They say in each case the harm is serious within the meaning of s 1 of the DA 2013.

67. The Claimants encapsulate the Defendants' challenge to jurisdiction as follows:

a. neither Claimant is able to establish a good arguable case;

b. any claim must be confined to publication in England and Wales because neither Claimant has England and Wales as their centre of interests; and

c. the applicable law is (or includes) Swedish law, which prevents the Second Claimant from suing at all, and shields the Second and Third Defendants, on the particular facts.

68. The Claimants' responses, in summary, are that:

a. their claims are at least arguable. The Articles are plainly defamatory at common law. On the question of serious harm under s 1 of the DA 2013, they rely on: (i) the serious nature of the allegations in the Articles, which include fraud and dishonesty; (ii) that publication, however limited in this jurisdiction, was to people known to the Claimants and/or to potential business partners or their potential agents; (iii) very serious financial harm has been caused to the Second Claimant, by reason of the cancellation of the Pareto mandate.

b. in relation to both Claimants, their centres of interest are in England and Wales, so their claims may proceed in relation to global publication in accordance with *eDate*; but if the First Claimant's centre of interests is held not to lie here, he may in any event claim a remedy based on publication in this jurisdiction;

c. the Second Claimant undoubtedly has its centre of interests in London. It is a UK plc and its headquarters and most of its projects are here. That is enough to show a good arguable case for concluding that its centre of interests is here. It also says that EEW Group, the apex of which it forms, has undertaken more projects in England and Wales than in all other countries;

d. the Defendants' arguments on double-actionability are wrong in law but even if correct, cannot prevent this court from applying English law and awarding damages and any other appropriate remedy for harm caused by publication in this jurisdiction in relation to all of the claims, and in any event (as Defendants themselves accept) do not prevent the First Claimant from proceeding against the First and Fourth Defendants according to Swedish law.

Discussion

Ground 1: the First Jurisdictional Question

69. The Defendants' first ground of challenge to this Court's jurisdiction is that the Claimants cannot make out, to the requisite standard, the elements of the tort of libel in relation to any of the eight Articles complained of. Those elements are: (a) publication by a defendant to third parties of the words complained of, who understood them in the language they were published; (b) that those words referred to the Claimants, and bore a defamatory meaning of them at common law; and (c) that the publication has caused or is likely to cause serious harm as defined in s 1 of the DA 2013.

70. I accept on the evidence that there has been some publication in this jurisdiction of the words complained of in a language which the reader understood. I will discuss the extent of publication later in relation to the question of serious harm.

71. I turn to the question of whether the Articles were defamatory at common law. A statement is defamatory at common law if it substantially affects in an adverse manner the attitude of other people towards him, or has a tendency so to do. In *Allen v Times Newspapers* [2019] EWHC 1235 (QB), [19], Warby J summarised the common law test as follows:

> "(1) At common law, a statement is defamatory of the claimant if, but only if, (a) it imputes conduct which would tend to lower the

> claimant in the estimation of right-thinking people generally, and (b) the imputation crosses the common law threshold of seriousness, which is that it '[substantially] affects in an adverse manner the attitude of other people towards him or has a tendency so to do': *Thornton v Telegraph Media Group Limited* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J).
>
> (2) 'Although the word 'affects' in this formulation might suggest otherwise, it is not necessary to establish that the attitude of any individual person towards the claimant has in fact been adversely affected to a substantial extent, or at all. It is only necessary to prove that the meaning conveyed by the words has a tendency to cause such a consequence': *Lachaux v Independent Print Limited* [2015] EWHC 2242 (QB) [2016] QB 402 [15(5)]."

72. The time-honoured bane and antidote principle must also be borne in mind in deciding whether an article is defamatory. In *Chalmers v Payne* (1835) 2 Cr M & R 56, 159, Alderson B said:

> "[If] in one part of the publication something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and the antidote must be taken together."

73. Also, in relation to publications containing a headline and text, in *Spicer v Commissioner of Police for the Metropolis* [2019] EWHC 1439 (QB), [18], Warby J explained:

> "Headlines commonly feature in bane and antidote arguments. Experience shows that there is quite often a disconnect between a headline and the body of an article. One reason for that may be that many headlines are written by editors or sub-editors, who aim for something eye-catching and may be less familiar with the nuance of the text than its author(s). A headline can create a libel, even if the text contains none: see *Gatley on Libel and Slander* 12th ed para 3.30, text to n 349. That is especially so, when one bears in mind the (reasonable) tendency of ordinary readers to give weight to that which is most prominent, and most negative. But there are cases in which the text neutralises what would otherwise be a libel in the headline - the headline being the poison, to which the body of the article provides the antidote."

74. The Defendants first invite me to conclude, without formally determining meaning in accordance with the principles in, for example, *Koutsogiannis v The Random House Group Limited* [2020] 4 WLR 25, [11]-[13], and *Stocker v Stocker* [2020] AC 593, [41]-[45], that none of the Articles bears a meaning that is defamatory at common law. Mr Callus described the defamatory meaning of the Articles pleaded by the Claimants as being 'over-juiced'.

75. The Defendants make the general point that the Articles are not particularly clearly translated. The translations are not agreed or conceded by the Defendants to be accurate. They point out, for example, that the headline of Article 1 is translated differently in the

Annex to the PoC ('Review: The Cindrigo-sellers' connection with Falcon Funds and Amarant Mining') as compared with the body of the PoC itself at [10(i)] ('Investigation: Cindrigo sellers' links to Falcon Funds and Amaranth Mining')**.** They say it would appear that in most cases the translation has not been done professionally but by Google Translate. The Defendants say they will rely on this failure to produce proper professional translations of the words and that any ambiguity arising from the poor quality of the translations ought to be resolved in their favour for the purposes of determining the pleaded defamatory meanings.

76. It seems to me that I simply have to work with what I have been supplied with in the form in which it has been supplied, and determine the parties' submissions in light of that material. In so saying, I do bear firmly in mind that this is not a trial of meaning.

77. Beginning with Article 1, the Defendants say that the Claimants do not have a good arguable case that it bears the defamatory meaning pleaded at [11] in the Particulars of Claim:

> "(i) The First Article: 'Investigation: Cindrigo sellers' links to Falcon Funds and Amaranth Mining'
>
> 11. In their natural and ordinary meaning, the words complained of in the First Article meant and were understood to mean that the Claimants are part of a criminal network involved in so called 'ecocrime', by which members profit from the fraudulent marketing and sale of bogus or valueless supposedly ecologically ethical investments, and as part of this criminal activity both have received unlawful payments from associates of Johan Ulander, who is on trial for aggravated fraud."

78. The Defendants say this article identifies a number of individuals involved in marketing shares in Cindrigo and draws attention to those individuals' alleged involvement in 'high-profile eco-crime scams'. But the Defendants say the Article does not allege that either the First Claimant (who is named) nor 'Eco Energy World' (the company referred to) are said to have been involved with or connected to these 'scams'. By contrast, the Article is clear as to which individuals are said to be involved. Hence, say the Defendants, Article 1 does not accuse either Claimant of being involved in, or part of, a criminal network. The way Mr Callus put it orally was this:

> "The problem that this causes for the claimants, we say, is not the belief that they are somehow perpetrators of any scam, but the harm that gets caused, as we will come on to see, is the very fact that their shares were being traded. That causes them particular problems but not from the defamatory meaning of the words."

79. Even without formally determining meaning, I am not persuaded that the Claimants have a good arguable case that this Article is defamatory at common law. Although below the headline there are the words:

> "The corporate network working on the sale of shares in Cindrigo in connection with the stock exchange listing have also sold shares

> in several other companies. Realtid's Per Agerman and Annelie Ostlund's review shows that individuals in the network are involved in high-profile eco-crime scams"

there is only a passing reference in the Article to the First Claimant, who is not identified as a member of the said 'network' and is not, on my reading, accused of any wrongdoing by being connected to the alleged 'scams', or otherwise. Not only that, as I read it, the Article says nothing at all about his knowledge of or participation in the alleged misconduct of others named in the piece. The Article is clear about who is said to have been involved, some of whom are named and some of whom are not.

80. There is no clear reference at all to the Second Claimant (simply a reference to 'British Eco Energy World' and 'EEWorld', and it is likely be understood by a reasonable reader to refer to a trading company (the Second Claimant is a holding company). Whilst Pareto is mentioned, and the company is said to be raising capital in conjunction with it, I agree that reference could only realistically be established if publication was to a third party who *knew* that the Second Claimant was the relevant group company with respect to Pareto. No reference innuendo is pleaded.

81. Overall, what appears to be being said is that a British company connected to one of the individuals allegedly involved in a 'scam' completed transactions with the First Claimant, and that shares in 'British Eco Energy World' were marketed by someone connected to 'one of Peter Lindh's shareholder colleagues' and a company run by 'Thony Norelli' (sic). I do not consider there to be a good arguable case that a reasonable reader would infer, from those assertions, that either the First Claimant' or 'Eco Energy World' had knowledge of, or were complicit in, their alleged illegality.

82. Hence in relation to Article 1, I accept the Defendants' submission that it says nothing at all about the Claimants' knowledge of or participation in the alleged misconduct of others named in the piece.

83. The pleaded defamatory meaning of Article 2 is at [12] of the PoC:

> "(ii) The Second Article: 'Question marks over Pareto's new major customer EEW'
>
> 12. In their natural and ordinary meaning, the words complained of in the Second Article meant and were understood to mean that the Claimants (the First Claimant himself and the Second Claimant through the First Claimant) have lied about marketing shares in Sweden, and sought to cover up that activity by instructing people to delete incriminating material from the internet, and instructing lawyers to suppress legitimate investigation and reporting about it."

84. The Defendants do not accept that the Claimants have a good arguable case that the Article bears this meaning. They say that, at the highest, this Article raises the possibility that the Claimants have been untruthful in their denials of involvement in the marketing of shares by a third-party reseller in Sweden, and so the imputation could not properly be pleaded above *Chase* level 3 (reasonable grounds for investigation) or perhaps *Chase*

level 2 (reasonable grounds to suspect. In those circumstances, they say it is doubtful that the allegation reaches the *Thornton* threshold of seriousness.

85. I am satisfied the Claimants have a good arguable case that this Article is defamatory at common law. First, I note the Defendants do not say this Article could not reasonably be read as referring to the Second Claimant (as opposed to another company in the group). No doubt that is because 'EEW Eco Energy World PLC' is specifically named. On my 'light' reading of this Article (ie, without formally determining meaning), the overall message it conveys is that different stories are being told by, for, and on behalf of the Claimants about the marketing of shares, and other matters, and that there have been coverups and wrongdoing. The First Claimant is named as being involved in the disposal of shares. For example, there is the sentence under the heading 'Who is selling shares?', 'The marketing of EEW shares to Swedish investors in 2019 and 2020 is a sensitive area. According to the lawyers, this didn't happen. When we continue our research, we find several pieces of evidence to the contrary'. There is then a reference to material being deleted.

86. A reasonable reader would understand lawyers act on instructions, and therefore that what the Article is saying is that what the lawyers were being told by their clients was not true (especially, as I have said, because the First Claimant is named as being personally involved in the disposal of shares). It is quite right, as the Defendants point out, that the Article expressly states the authors did not know who deleted the material. However the plain inference can be drawn it was a person or persons connected with the Second Claimant. I am satisfied, overall, that this Article passes the *Thornton* test.

87. The pleaded meaning of Article 3, headlined 'Why we are publishing the investigation into EEW despite threat of legal action' is that:

> "… the words complained of in the Third Article meant and were understood to mean that the First Claimant is seeking to hide his misconduct by hiring lawyers to suppress any and all investigation or reporting about him."

88. This Article is not subject to a claim by the Second Claimant.

89. The Defendants deny that the First Claimant has a good arguable case that Article 3 bears this meaning (or any common law defamatory meaning). They say there is nothing in this article which suggests Realtid are investigating misconduct by the First Claimant. By contrast, they say the factors which are said to prompt the investigation in the introductory and sixth paragraphs (for example, 'a complex corporate structure', 'a Nordic corporate finance heavyweight') are essentially anodyne and not indicative of misconduct at all. They say there is nothing disreputable, *per se*, in hiring lawyers and making legal threats to try to prevent publication. An individual might be publicity shy for reasons of personal privacy, or because they feel coverage adds an unwelcome distraction to or is disruptive of their commercial activities, or for other good reason.

90. I agree with the essential thrust of the Defendants' submission. I agree that the pleaded defamatory meaning could only be arrived at in the mind of a reasonable reader by inferring that the only reason the First Claimant might have for not wanting publicity is because he is engaged in wrongdoing. But it seems to me that is obviously not the only

inference open to the reasonable reader, as the Defendants submit, and it would be wrong to conclude that that is the meaning she would settle on. As was said in *Koutsogiannis,* [12(iii)]:

> "The hypothetical reasonable reader is not naïve but he is not unduly suspicious … he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available."

91. Hence, there is no reason why (particularly where the Article is explicit that Realtid is not alleging any criminality – 'And no, Realtid is not claiming anywhere that anyone is doing anything criminal. Realtid is describing a complex corporate structure and a very large capital raising') that a reasonable reader would opt for the defamatory meaning where other non-defamatory meanings are available.

92. Overall, it seems to me that this Article is simply a defence of journalism and journalistic practices and in particular Realtid's work on this matter. I agree with Mr Callus' characterisation of this Article orally:

> "The third article, our submission, is not defamatory at common law at all. It does not link to the other articles. It is literally just an editorial by the First Defendant, who is the editor in chief, saying 'We have been threatened with legal action, but we think this is really important and in the public interest.'"

93. The Fourth Article is headlined, 'EEW's Swedish solar sellers' then, underneath:

> "Since at least the start of 2019, shares in EEW Eco Energy World have been marketed to Swedish investors. However, the company now denies any involvement and documents are now being deleted from the internet. Read the second part of Realtid's review."

94. The defamatory pleaded meaning is that this Article alleged that:

> "… the Claimants are falsely marketing existing shares in the Second Claimant as if they were new shares issued as part of an imminent or intended public listing when they were not, and using falsely inflated valuations based upon the Second Claimant's own internal management accounts and forecasts dressed up to look independent;
>
> b. the Claimants are part of a network of shady businessmen and bankrupt businesses; and
>
> c. the Claimants have sought to dishonestly cover the tracks of their misconduct by deleting material from the internet and issuing false denials."

95. The Defendants do not accept that the Claimants have a good arguable case that this Article bears this pleaded defamatory meaning. The article reports that a number of third parties (principally Lars Nicholls and his company Elln Invest) have marketed shares in the Second Claimant to Swedish investors. The Article reports that lawyers for both Claimants have denied that they are involved in or associated with such promotions. The Defendants say that nowhere in the Article is it said that those denials were false or dishonest. The Article says that on two occasions where Realtid had asked questions of individuals claiming to be working with the Claimants in the marketing of shares, information was deleted from the internet. However, the Defendants say that is equally consistent with their recognising that the statements were false, as with the Claimants being conspirators in a dishonest cover-up as pleaded.

96. The Defendants accept that the number of examples of third party selling, and the suggestion that the website Börsvärlden had access to non-public information about Pareto's involvement at the time its article was published, raises questions about whether the Claimants may know more about the activity of these individuals than is suggested in their denials. However, they say the reasonable reader would not go from there to an allegation of guilt of direct involvement in the false marketing of shares, nor to a conclusion that the Claimants' denials were dishonest. They say that at most, the Article suggests there are grounds to *investigate* whether the Claimants are knowingly involved in the promotions described.

97. Again, I cannot readily read the Article in the way suggested by the Claimants. It is not wholly easy to follow mainly because of the poor quality translation but there are clear denials in the Article by the First Claimant that 'there is no collaboration or agreement' about the marketing or sale of EEW shares, and there are other denials eg, 'Svante Kumlin's lawyers say this is a false statement …' and '…Svante Kumlin and EEW again deny via their lawyers that any marketing of EEW shares has taken place. The information available and reported above and in a previous article is rejected as false information.' I agree the not overly-suspicious reader would not conclude from these Articles that the Claimants have been involved in the pleaded wrongdoing; that their denials are false or dishonest; or that they are part of the pleaded 'shady' network. The overall meaning conveyed by this Article is that marketing of EEW shares may have gone on, and offers made, but these have not been authorised by the First Claimant or the company, which through its lawyers have denied any connection or authorisation.

98. The Fifth Article is headlined, 'After Realdtid's investigation – Pareto asks Svante Kumlin questions about EEW'. Underneath, the Article states:

> "The Norwegian investment bank Pareto Securities has asked for information on the sale of shares in EEW to Swedish investors. In addition, Pareto states that the financing project with a value of 6 billion has not yet been formally approved."

99. The pleaded defamatory meaning of this Article is that:

> "… the words complained of in the Fifth Article meant and were understood to mean that there are strong grounds to suspect that the Claimants (the First Claimant himself and the Second Claimant through the First Claimant) have dishonestly not disclosed to

> Pareto Bank that they (the Claimants) have been marketing shares in the Second Claimant in Sweden."

100. The Defendants submit that the claim that this Article imputes dishonesty to either or both Claimants is not arguable. They say the Article simply reported that Pareto had asked the First Claimant to comment on information contained in other articles published by Realtid about EEW shares sold in Sweden by third parties. The Defendants point out that those articles do not form part of the words complained of in respect of this Article and there is no innuendo meaning pleaded.

101. My reading of this Article is that it reports that following earlier Realtid articles about EEW, Pareto had sought clarification from the First Claimant about the position regarding the marketing of the shares. The central concern appears to have been that the shares were being marketed on the basis that EEW had actually arranged financing with Pareto, and an IPO was imminent, when in fact the process was still ongoing and had not been completed. There is reference to an assertion by Lars Nicholls at a meeting to the effect that financing had been arranged and an IPO was imminent ('Pareto is working on the capitalisation … the goal is to list the company on the Oslo Stock Exchange during the month of November, Lars Nicholls explained …'). However the Article went on to say:

> "Via their lawyer in London, EEW has denied on repeated occasions that any marketing of EEW shares is ongoing, to the company's knowledge. Accordingly, we cannot confirm that Lars Nicholls's statements are correct. It has not been possible to reach Lars Nicholls for a comment, despite repeated enquiries …
>
> EEW states that the company cannot provide any further details about the Pareto-project at this stage. Henry Wilson at the British PR agency Buchanan writes in a message to Realtid:
>
> > "The preparations for the public listing is comprehensive in a transaction of this nature. We cannot provide an update on financial close (*sic*) at this stage but is also proceeding as planned during Covid-19 capital markets."

102. The Article does not assert that the Claimants are actually involved in the selling of these shares whilst denying doing so to Pareto: their 'repeated' denials are reported, and the Article acknowledges that its authors cannot know whether what had been said by Mr Nicholls in his sales pitch was true.

103. In light of the approach I set out earlier, in my judgment it would not properly be open to the reasonable reader to imply from the fact that Pareto was requesting answers from the First Claimant, that he or the Second Claimant had been dishonest by culpable non-disclosure to Pareto. Whilst the Article does make clear that Pareto were not aware of the share sale – hence its desire to put questions to the First Claimant - the overall impression created by this Article is of confusion and uncertainty. I reject the contention there is a good arguable case that this Article is defamatory at common law.

104. The subject matter of the Sixth Article, as Mr Callus observed, sits slightly apart from the other Articles. It is headlined 'EEW: EKN, Swedbank and the dispute about the guarantee'. The sub-headline is:

> "Eight years after the bankruptcy of Eco Suppliers, Swedbank and the National Exports Credit Guarantee Board are still waiting for money from Svante Kumlin. The dispute about a personal guarantee of SEK 20 million is ongoing in a Swedish court, and a final judgment is a long way away."

105. The pleaded defamatory meaning is this this Article alleged:

> "In their natural and ordinary meaning, the words complained of in the Sixth Article meant and were understood to mean that the First Claimant has, through a series of sham and otherwise dubious transactions, successfully hidden assets from liquidators and improperly withheld monies due to the Swedish Credit Agency, thereby defrauding creditors of companies in the First Claimant's now defunct EOS Group, leaving them out of pocket to the tune of tens of millions of Swedish Krone."

106. The Defendants accept for the purpose of this application (Skeleton Argument, [77]), but without prejudice to arguments they may wish to raise later, that the pleaded meanings in relation to the First Claimant are arguable. This Article is not the subject of a claim by the Second Claimant.

107. The Seventh Article is headlined, 'How EEW shares can be spread without authorisation from FI'. The sub-headline is:

> "They call themselves corporate finance firms and financial consultants, and spread shares in unlisted companies such as EEW and Cindrigo. However, none of them are authorised by Finansinspektionen and the regulations designed to protect investors do not apply."

108. I understand Finansinspektionen to be the government agency responsible for financial regulation in Sweden. It is responsible for the oversight, regulation and authorisation of financial markets and their participants.

109. The pleaded defamatory meaning is that this Article meant and was understood to mean that:

> "… the First Claimant has knowingly permitted the marketing and sale of shares in the Second Claimant through unlicensed Swedish brokers to Swedish investors, which is illegal in Sweden and poses a significant risk to investors; and that he has knowingly permitted the marketing of such shares on the false basis that the Second Claimant would soon be undertaking an IPO."

110. The Defendants deny this Article carried this, or any, defamatory meaning in relation to the First Claimant. There is no claim by the Second Claimant in relation to this Article. They say the Article says nothing about the First Claimant's knowledge of the marketing of the shares, and that its focus is 'squarely' on third party brokers who claim to have obtained shares from the First Claimant. The inference to be drawn from the Article, therefore, is that any responsibility for any breach of law is theirs, and not the First Claimant's.

111. I agree with the thrust of the Defendants' submission. The First Claimant does not have a good arguable case that this Article is defamatory at common law. There are a number of points. Firstly, I agree the focus of the Article is on the activity of named third parties who have either acquired EEW shares or else (as it is translated) have 'spread information on EEW … in the Swedish market'. These are Elln Invest; Repairasgus; Eder Fövaltning; Global Crowdproject; Alpha Nordic; Raise Reach by Sprinkle (*sic*) (including by Aktiebladet); and Finanspro Sweden. There is no direct accusation that the First Claimant was involved in, or authorised, their activities. Second, whether their activities are, in fact, illegal seems to be an uncertain issue. The Article sets out quotes from the Swedish regulator which do not unequivocally assert that the law has been broken. Claims by the third parties that what they have done/are doing is legal are also reported.

112. In my judgment, the quotation from the website Börsvärlden is not a sufficient basis for the pleaded meaning. The website stated that 'The principal shareholder [ie, the First Claimant] is seeking to widen the shareholder base in connection with the future public listing by more than doubling the current 240 shareholders …'. Firstly, even if this might properly be interpreted to refer to the First Claimant's involvement in third-party share sales – the bane - it is met by the 'antidote' in the footnote:

> "Svente Kumlin and EEW have explained via their lawyers that the article in Börsvärlden is untrue and that the information therefore is partly incorrect. According to the lawyers, Svante Kumlin has neither participated in any interview, nor does he have any knowledge about the article. According to the company, there is no agreement to disperse the EEW share to Swedish investors who have been approved by the company."

113. Second, it would not, in any event, follow that the First Claimant must know that the method of selling the shares was unlawful where the comments from Magnus Bjorkman, the Deputy Director of Finansinspektionen, demonstrate, as I have said, that there is uncertainty over the legal position.

114. Finally, the Eighth Article is headlined 'EEW: The loans and the internal deals' and sub-headlined:

> "EEW and Pareto plan to raise 6 billion for a new solar energy company, but already one year ago, EEW had access to a large financing packing through a bond raised via a company formed especially for this purpose. What really happened subsequently? When Realtid started asking questions, information about the bond was deleted from EEW's website and nobody was willing to answer questions."

115. The defamatory pleaded meaning in [18] of the PoC is that the words complained of:

> "… meant and were understood to mean that the Claimants have been involved in a series of shady deals intended to profit the First Claimant, including by artificially inflating the value of his assets, and they have sought to cover the tracks of that misconduct and frustrate the Defendants' investigation of it by deleting material from the internet."

116. For the purpose of this application, the Defendants accept (Skeleton Argument, [81]) that this Article arguably bore the meaning of a sort contended for by the Claimants, save that they will contend that meaning cannot be higher than *Chase* level 2 (reasonable grounds to suspect).

117. In summary, therefore, I conclude that the Claimants have established a good arguable case that Articles 2, 6 and 8 are defamatory at common law, but I reject their pleaded case in relation to the other Articles.

118. I turn to the question of serious harm. The Defendants said this was likely to be the 'main battleground' in relation to Ground 1. Given the Defendants have conceded at least two of the Articles to be defamatory at common law, that is probably right. Notwithstanding those concessions, the Defendants maintain that the Claimants cannot show a good arguable case on serious harm and hence there are no actionable claims.

119. The requirement for serious harm was added to the ingredients of a defamatory statement by s 1 of the DA 2013, which provides:

> "(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.
>
> (2) For the purposes of this section, harm to the reputation of a body that trades for profit is not 'serious harm' unless it has caused or is likely to cause the body serious financial loss."

120. In *Monroe v Hopkins* [2017] EWHC 433 (QB), [23(4)], Warby J succinctly explained the effect of s 1 as follows:

> "This provision … means that it is not enough to prove that a statement had a defamatory tendency. A claimant must prove as a matter of fact that their reputation suffered, or is likely to suffer, serious harm as a result of the publication complained of."

121. In *Napag* Jay J said:

> "41. The second issue concerns 'serious harm' within s.1 of the Defamation Act 2013. It is common ground that this has intensified the common law and requires proof of harm which is actually or likely to be serious rather than proof of substantial harm and a tendency to cause it. 'Serious harm' may be established by inference from such matters as the extent of the publication, the gravity of the allegation, and whether the statement was read by people who knew the claimant or will come to know him in the future.

> 42. These basic principles are well-established following the decision of the Supreme Court in *Lachaux v Independent Print Ltd* [2020] AC 612. This was an authority on s 1(1) and not on s 1(2) of the 2013 Act, which provides:
>
> …
>
> In my view, all that sub-s.(2) does is to state that in the case of an entity trading for profit (eg, these corporate Claimants) there is no 'serious harm' unless the publication at issue has caused or is likely to cause 'serious financial loss': in other words, the 'serious harm' threshold is intensified."

122. The principles relating to serious harm were recently summarised by Richard Spearman QC sitting as a Deputy High Court Judge in *Hills v Tabe* [2022] EWHC 316 (QB), [19]-[23], from which the following is gratefully adapted. I do not think any of them is controversial.

123. Lord Sumption explained in *Lachaux v Independent Print Ltd* [2020] AC 612, [14], that whether a statement has caused serious harm falls to be established 'by reference to the impact which the statement is shown actually to have had', and that, in turn, 'depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated'. Further, as appears from [16] of his judgment, in light of the wording of s 1(1) of the DA 2013, a statement may not be defamatory even if it amounts to 'a grave allegation against the claimant' if (for example) it is 'published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed.' He said:

> "16. Finally, if serious harm can be demonstrated only by reference to the inherent tendency of the words, it is difficult to see that any substantial change to the law of defamation has been achieved by what was evidently intended as a significant amendment. The main reason why harm which was less than "serious" had given rise to liability before the Act was that damage to reputation was presumed from the words alone and might therefore be very different from any damage which could be established in fact. If, as Ms Page submits, the presumption still works in that way, then this anomaly has been carried through into the Act. Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement."

124. At the same time, as has often been said, the assessment of harm of a defamatory statement in not simply 'a numbers game': *Mardas v New York Times Co* [2009] EMLR 8, [15], per Eady J. Indeed. 'reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person': *Sobrinho v Impresa Publishing SA* [2016] EMLR 12, Dingemans J at [47].

125. That said, the scale of publication in this jurisdiction – even if non-zero, such that the Claimants succeed in proving a 'good arguable case' that there has been *some* publication in England and Wales - whilst not determinative, is a relevant factor in the assessment of the likelihood of serious harm or serious financial loss being caused by publication in this jurisdiction. In *Napag* at [96]-[97], Jay J said:

> "96. My conclusion on the issue of publication is as follows. The Claimants have a good arguable case that there was limited publication of these four articles in England and Wales although the number of visitors to the Second Defendant's website who actually read as far as they would need to have done to receive mention of the Claimants was probably confined to a handful. The case on innuendo meaning in relation to the Second Claimant (see the first, third and fourth articles) has not been made out to the requisite standard. The case on publication against the Second Claimant is therefore limited to the second article.
>
> 97. Although the Claimants have got the better of the argument on the issue of publication – to the modest extent that I have set out – the fact remains that it was very limited, both in absolute and relative terms. This is highly relevant to the issue of 'serious harm'."

126. Other points which arise from the *Sobrinho* case include the following:

> "46 …. [F]irst … 'serious' is an ordinary word in common usage. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant's reputation …
>
> 47. Secondly, it is open to the claimant to call evidence in support of his case on serious harm and it is open to the defendant to call evidence to demonstrate that no serious has occurred or is likely to do so. However, a Court determining the issue of serious harm is, as in all cases, entitled to draw inferences based on the admitted evidence …
>
> 48. Thirdly, there are obvious difficulties in getting witnesses to say that they read the words and thought badly of the claimant, compare *Ames v The Spamhouse Project* [2015] EWHC 127 (QB) at [55]. This is because the claimant will have an understandable desire not to spread the contents of the article complained of by asking persons if they have read it and what they think of the claimant, and because persons who think badly of the claimant are not likely to co-operate in providing evidence."

127. In *Doyle v Smith* [2019] EMLR 15, [116], Warby J cited these passages with approval at [116]. He went on to emphasise the importance of the point about inference, and (among other things) approved at [117] the following words of HHJ Moloney QC in *Theedom v Nourish Training (trading as CSP Recruitment)* [2016] EMLR 10:

> "Depending on the circumstances of the case, the claimant may be able to satisfy section 1 without calling any evidence, by relying on the inferences of serious harm to reputation properly to be drawn from the level of the defamatory meaning of the words and the nature and extent of their publication."

128. Although the Supreme Court stated the law differently from the Court of Appeal in *Lachaux v Independent Print Ltd* [2018] QB 594, the following passages from the judgment of Davis LJ are consonant with the correct legal analysis of s 1 as set out in the judgment of Lord Sumption:

> "72. … serious reputational harm is capable of being proved by a process of inference from the seriousness of the defamatory meaning … there is no reason in libel cases for precluding or restricting the drawing of an inference of serious reputational harm derived from an (objective) appraisal of the seriousness of the imputation to be gathered from the words used.
>
> 73. … The seriousness of the reputational harm is … evaluated having regard to the seriousness of the imputation conveyed by the words used: coupled, where necessary or appropriate, with the context in which the words are used (for example, in a newspaper article or widely accessed blog).
>
> 79. There may, for instance, be cases where the evidence shows that no serious reputational harm has been caused or is likely for reasons unrelated to the meaning conveyed by the defamatory statement complained of. One example could, for instance, perhaps be where the defendant considers that he has irrefutable evidence that the number of publishees was very limited, that there has been no grapevine percolation and that there is firm evidence that no one thought any the less of the claimant by reason of the publication …"

129. In *Dhir v Saddler* [2018] 4 WLR 1, [55] Nicklin J said at [55]:

> "In my judgment, the authorities demonstrate that it is the *quality* of the publishees not their *quantity* that is likely to determine the issue of serious harm in cases involving relatively small-scale publication. What matters is not the extent of publication, but to whom the words are published. A significant factor is likely to be whether the claimant is identified in the minds of the publishee(s) so that the allegation 'sticks' …
>
> (ii) A feature of the 'sticking power' of a defamatory allegation that has potential relevance to the assessment of serious harm is the likelihood of percolation/repetition of the allegation beyond the original publishees ('the grapevine effect') (*Slipper v BBC* [1991] 1 QB 283, 300 *per* Bingham LJ). In *Sloutsker v Romanova* [2015] EWHC 545 (QB); [2015] 2 Costs LR 321, Warby J said at [69]:

> '… It has to be borne in mind that the assessment of whether there is a real and substantial tort is not a mere numbers game, and also that the reach of a defamatory imputation is not limited to the immediate readership. The gravity of the imputations complained of… is a relevant consideration when assessing whether the tort, if that is what it is, is real and substantial enough to justify the invocation of the English court's jurisdiction. The graver the imputation the more likely it is to spread, and to cause serious harm It is beyond dispute that the imputations complained of are all extremely serious …'"

130. Drawing the threads together, in *Riley v Murray* [2021] EWHC 3437 (QB), [34], Nicklin J set out the approach by reference to what was said in *Turley v Unite the Union* [2019] EWHC 3547 (QB), [107]-[108]:

> "[107] … The Supreme Court [in *Lachaux*] held:
>
> (i) s.1 raised the threshold of seriousness above the tendency of defamatory words to cause damage to reputation; the application of the test of serious harm must be determined 'by reference to actual facts about its impact and not just to the meaning of the words': [12]-[13].
>
> (ii) Reference to the situation where the statement 'has caused' serious harm is to the consequences of publication, and not the publication itself [14]:
>
> > 'It points to some historic harm which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated.'
>
> (iii) Reference to the situation where the statement 'is likely to cause' serious harm was not the synonym of 'liable to cause' in the sense of the inherent tendency of defamatory words to cause damage to reputation: [14].
>
> (iv) The conditions under s.1 must be established as facts [14] and 'necessarily calls for an investigation of the actual impact of the statement': [15]; a claimant must demonstrate as a fact that the harm caused by the publication complained of was serious [21].
>
> (v) If serious harm could be demonstrated simply by the inherent tendency of statements to damage reputation, little substantive change would have been effected by the Act [16]:

> "The main reason why harm which was less than serious had given rise to liability before the Act was that damage to reputation was presumed from the words alone and might therefore be very different from any damage which could be established in fact. If, as Ms Page submits, the presumption still works in that way, then this anomaly has been carried through into the Act. Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement."

(vi) A claimant may produce evidence from publishees of the statement complained of about its impact on them, but his/her case does not necessarily fail for want of such evidence; inferences of fact as to the seriousness of harm done to reputation may be drawn from the evidence as a whole [21].

(vii) In Mr Lachaux's case, the finding that serious harm had been proved was based on a combination of (a) the meaning of the words; (b) the situation of the claimant; (c) the circumstances of publication; and (d) the inherent probabilities.

(viii) A judge's task is to evaluate the material before him/her and arrive at a conclusion, recognising that this is an issue on which precision will rarely be possible [21].

(ix) The judge can consider the impact of the publication upon people who do not presently know the claimant but might get to know him/her in the future [25].

[108] At first instance in *Lachaus* Warby J expressed his conclusion on s.1 as follows:

> [65] In summary, my conclusion is that by section 1(1) of the 2013 Act Parliament intended to and did provide that a statement is not defamatory of a person unless it has caused or will probably cause serious harm to that person's reputation, these being matters that must be proved by the claimant on the balance of probabilities. The court is not confined, when deciding this question, to considering only the defamatory meaning of the words and the harmful tendency of that meaning. It may have regard to all the relevant circumstances, including evidence of what has actually happened after publication. Serious harm may be proved by inference, but the evidence may or may not justify such an inference.

[109] Finally, and consistently with Lord Sumption's analysis in *Lachaux* there are three further relevant principles:

> "… the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs."
>
> (ii) It is well-recognised that a claimant may struggle to identify, or to produce evidence from, all those to whom an article was published and in whose eyes the claimant's reputation was damaged: *Doyle v Smith* [2019] EMLR 15 [122(iv)]; *Sobrinho v Impresa Publishing SA* [2016] EMLR 12 [48]; *Ames v Spamhaus* [2015] 1 WLR 3409 [55].
>
> (iii) Assessment of harm to reputation has never been just a 'numbers game': 'one well-directed arrow [may] hit the bull's eye of reputation' and cause more damage than indiscriminate firing: *King v Grundon* [2012] EWHC 2719 (QB) [40] *per* Sharp J. Very serious harm to reputation can be caused by publication to a relatively small number of publishees: *Sobrinho* [47]; *Dhir v Sadler* [2018] EWHC 2935 (QB) [55(i)]; *Monir v Wood* [2018] EWHC 3525 (QB) [196]."

131. I also bear in mind what was said in *Sube v News Group Newspapers* [2018] 1 WLR 5767, [22], [31], that, generally and absent some special closeness or 'inter-weaving' of articles, imputations in separate articles cannot be 'added together' to produce serious harm; the effect of each article must be assessed separately.

132. The Claimants point out that a plea of special damage is not a necessary component of serious harm for the purpose of s 1(2): see *Lachaux*, [15], where Lord Sumption explained that the financial loss envisaged in s 1(2) is not the same as special damage, in the sense in which that term is used in the law of defamation. Section 1 is concerned with harm to reputation, whereas special damage represents pecuniary loss to interests other than reputation.

133. By way of introduction, Mr Price said:

> "We have provided evidence that there was readership here, readership important to the individual claimant, because they are known to him and do business with him, and that it has caused him prejudice. He does not have to prove any particular kind of loss. If there is going to be an issue about whether or not he, on the balance of probabilities, can establish serious harm, that will have to be held over for the substantive action."

134. The Claimants' case on serious harm is as follows. First, the allegations are serious, including fraud. Second, publication, however limited it was in this jurisdiction, was to people known to the Claimants, and/or to potential business partners or their potential

agents. They rely on the First Claimant's first witness statement at [54]-[57], where he makes a number of points, including that the relatively low number of hits for the Articles as reported by Google Analytics (and evidenced in the Defendants' solicitor's (Mr Cowper-Coles') witness statement) does not necessarily reflect the readership because many businesses employ agencies to sweep the internet for stories which are then reported to them; hence one hit may in fact lead to the Article being read by many people. He also says that there will have been a 'grapevine' effect, and that the solar industry is small and niche and therefore information (including the Articles) is likely to be readily shared by those in the field. The Claimants rely on evidence from an anonymous investment banker reported to the Claimants' solicitor Mr Thompson, and contained in a witness statement from him, to the effect that the publicity in the Articles 'could be very damaging' for the First Claimant and his businesses.

135. Specifically in relation to the extent of publication in this jurisdiction, the Claimants say that the Defendants do not have specific figures for readership of each Article, but have determined that the Website attracted c 3,700 visitors from England and Wales in the relatively short relevant period. I will set out Mr Cowper-Coles' evidence on the extent of readership later, but the Claimants say that evidence is 'purely speculative'. They say that that the Defendants' campaign against the Claimants became something of a *cause célèbre* for Realtid, and the Claimants invite the inference that the readership figures offered by the Defendants are unrealistically low, given the attention paid to the Articles by the Defendants. They say that the precise extent of publication will be a matter for proper disclosure and if necessary expert evidence in due course, but that for present purposes I can properly conclude there was sufficient publication that, coupled with the seriousness of what is alleged in the Articles, there is a good arguable case on serious harm.

136. They say that very serious financial harm has been suffered by the Second Claimant. They rely on the First Claimant's first witness statement at [33]-[46], where he asserts that the mandate agreement with Pareto was terminated by Pareto as a result of the Articles, with the consequence that the Second Claimant suffered serious financial harm.

137. The Claimants also rely upon evidence in relation to serious harm from Jakob Kinde and Iek van Cruyningen.

138. Mr Kinde has had a long career in the City in various capacities, including the renewables sector. He says that the allegations made in the Articles are potentially very damaging and that news travels fast in what is a small industry, and that the material in the Articles would be picked up on due diligence in any event. He said that he had heard from contacts in Sweden that there are rumours in Stockholm that EEW is a fraudulent company and these are based entirely on the Realtid articles.

139. Mr van Cruyningen works for a merchant bank in London. His bank was considering an engagement with EEW Group in January 2021. They involved another finance house, Peterhouse Corporate Finance, who discovered the Articles when conducting due diligence. They drew Mr van Cruyningen's attention to them. They caused him concern. He sought, and received, reassurance from Mr Kinde, but goes on to say that they are the sort of material which would be uncovered on due diligence.

140. In addition, in relation to wider publication, in his first witness statement at [49], the First Claimant says ([49]):

> "Philip Hale and Pepa Tinkova [who work for a company in the EEW Group] are both based in England and Wales and have spoken with me regarding the articles and how this could impact on our business, and in particular its impact on future projects, any listing or fund raising. Both Pepa and Philip were contacted by the Guardian newspaper regarding the matter and in his discussion with me Philip raised concerns as to how damaging the articles published by Realtid were."

141. Mr Callus made a point about the word 'based' and said it was to a degree ambiguous, but I accept the broader point being made that this shows a degree of percolation of the Articles in this jurisdiction.

142. The Claimants therefore say that they have more than met the requirement for a good arguable case on the question of serious harm.

143. In response on this issue, the Defendants rely on the limited number of 'hits', as reported by Mr Cowper-Coles. His evidence and methodology is set out in his first witness statement at [12]-[14]. In broad summary, taking the numbers from Google Analytics: (a) he took the unique number of 'page views' globally for each Article complained of; (b) he multiplied that figure by 0.0085 (0.85%) to obtain the approximate number of unique page views of each article in the UK (the figures showing that only 0.85% of visitors to the Website were from the UK); (c) multiplying the approximate number of unique page views in the UK by 0.8433 (84% of viewers in the UK being in England and Wales) to obtain the approximate number of unique page views in England and Wales.

144. Having done this exercise, Mr Cowper-Coles produces the following figures for unique page views: the First Article, 20.68; the Second Article, 41.47; the Third Article, 24.06, the Fourth Article, 20.82; the Fifth Article, 14.50; the Sixth Article, 14.87; the Seventh Article, 12.66; the Eighth Article, 8.09.

145. Mr Cowper-Coles says these figures may overestimate the number of readers, in that some people may have accessed the Articles on two different devices with different IP addresses (registering more than one hit), or they may include people connected with the Claimants who would not be adversely influenced by the Articles.

146. The Defendants therefore submit that given the small-scale publication in this jurisdiction, and the fact that only the inherent severity of the alleged defamatory meanings (which are described as 'overblown') is relied upon, the First Claimant has not shown a good arguable case, or the better of the argument, on serious harm.

147. I turn to my conclusions on serious harm. Mr Callus said the First Claimant's case on serious harm was 'weak' and 'fanciful'. I do not agree.

148. So far as the First Claimant is concerned, I am satisfied that he has shown at this stage that he has a good arguable case on serious harm, assessing each defamatory Article separately. I base that finding mainly on the straightforward basis that the Articles which I have found to be defamatory have a tendency to cause actual harm to the First Claimant's reputation in the eyes of third parties of a kind that would be serious for him because of the nature of what is alleged.

149. The Articles in question contain serious allegations of wrongdoing, including defrauding creditors, misconduct, 'sham transactions', 'shady deals', and destroying and deleting evidence. For any businessman, such allegations are extremely serious and are likely to cause serious harm. They fall into that category of defamatory imputation from which it can readily be inferred as a matter of fact even in the absence of evidence that serious harm is likely to be caused. In general, people do not do business with people who they think may be dishonest. It can readily be envisaged that they could result, for example, in potential counter-parties being not willing to do business with him, or banks not willing to lend, or in deals being cancelled.

150. I broadly accept the Defendants' evidence that the number of views according to Google Analytics of the various Articles may have been comparatively small. Mr Price used the word 'slight'. But equally I accept the Claimants' evidence that the figures produced by Mr Cowper-Coles may well underestimate the extent of the Articles' readership. I do not consider at this stage that I can accept his numbers as an accurate reflection of how many people have read the Articles. That is for the following reasons. The figures do not take account of those who may have read the Articles then forwarded them to others in a way which may not register on Google Analytics, eg, by way of email attachment. I also accept the point that many companies use agencies to carry out media monitoring, so that one 'hit' by such an agency may lead in turn to the Article being read by many of their clients. Nor do they take account of discovery and dissemination during due diligence. Mr van Cruyningen's evidence is a good example of how that could happen. Whilst he was able to, and did, receive reassurances from Mr Kinde (one of the situations envisaged by Lord Sumption in *Lachaux*, [16], where a serious allegation would not cause serious harm), there might well be others who were not so satisfied.

151. Also, there is the cancellation of the Pareto mandate. I cannot place undue weight upon this because I cannot determine that it was the defamatory Articles in particular which caused its cancellation as opposed to, for example, the tenor of the Articles overall, but it does show in general terms, I think, the potentially serious consequences for the First Claimant's reputation.

152. There is also the point, as I have explained, that the question of serious harm is not a 'numbers game' and serious harm to a person's reputation can be caused by publication of serious allegations to a relatively small number of publishees. Mr Callus expressly accepted this, and that it is perfectly possible to have serious harm caused by publication to just a couple of publishees, if they are important enough. I also bear in mind the evidence that the field in which the Claimants operate is a small one.

153. I attach weight to the evidence of Mr Kinde and Mr van Cruyningen. I attach little or no weight to the anonymous hearsay evidence given by Mr Thompson (whilst not doubting that he has accurately reported what he was told).

154. Looking at the evidence as a whole, I am satisfied that there is at least a good arguable case (in the sense I explained earlier) the Articles have been read by a significant number of people and that there has been some 'percolation' through the renewables industry and that the First Claimant has or is likely to suffer serious harm to his reputation as a consequence.

155. I turn to the Second Claimant's case. Beyond the inherent seriousness of the allegations, it is right, as the Defendants observe, that the Second Claimant's pleaded case on serious harm is almost entirely founded on the impact of the termination of the Pareto mandate.

As Mr Callus rightly said ‘it all hinges on Pareto’. This is pleaded at [19]-[22] of the Particulars of Claim:

> “19. The publication by the Defendants of the words complained of in the Articles has caused serious harm to the Claimants, including serious financial harm to the Second Claimant. The Claimants will rely upon the following facts and matters in support of their plea of serious harm:
>
> a. The allegations against the Claimants are of such severity as to invite the inference that they have caused serious harm to their reputation.
>
> b. In any event and as set out below, Pareto has materially and very significantly changed its position in relation to its dealings with the Second Claimant as a result of the allegations, such change caused by the severity of the harm caused to the Claimants’ reputations by the publication of the words complained of; and
>
> c. Pareto Securities’ response to the publication of the words complained of has caused serious financial harm to the Second Claimant.
>
> 20. On 24 April 2020 the Second Claimant entered into (through the signature of the First Claimant) a mandate agreement ("the Mandate Agreement") with Pareto Securities Pte Ltd ("Pareto"), a Singaporean entity in the Norwegian Pareto Banking Group of companies. The object of the Mandate Agreement was the raising of finance by the Second Claimant in the total sum of around EUR €570 million to fund the acquisitions and construction of solar power plants. The funds were to be raised by a combination of a share capital increase through a private investment or public offering of shares in the Second Claimant or its subsidiaries; and/or by bank debt or bond financing. By the Mandate Agreement Pareto agreed to provide, on an exclusive basis, financial advisory assistance in support of the said fundraising, for a success fee.
>
> 21. By a letter and email dated 7 November 2020 Pareto, lawfully and in accordance with the Mandate Agreement, terminated the Mandate Agreement with immediate effect, stating as follows:
>
> > “Reference is made to the mandate agreement entered into between E.E.W. Eco Energy World Plc. ("EEW") and Pareto Securities Pte Ltd ("Pareto") dated 24th April 2020 (the "Mandate Agreement").
> >
> > “As EEW is aware the Swedish online publication Realtid has published a series of articles raising questions regarding EEW and its majority owner

> Svante Kumlin's business activities. Pareto is not in a position where we can reject or investigate the various questions and allegations raised by Realtid. "However, with the uncertainty created by the media coverage Pareto is of the opinion that the Transactions (as defined in the Mandate Letter) will be difficult to complete as intended. We therefore believe it will be beneficial for EEW to work with other advisors.
>
> "On this basis and in accordance with section 5.2 of the Mandate Agreement Pareto has decided to terminate the Mandate Agreement with immediate effect.'"

22. The termination by Pareto of the Mandate Agreement has caused and is likely to further cause serious financial harm to the Second Claimant, including as follows:

a. The termination by Pareto of the Mandate Agreement has brought to an immediate halt the Second Claimant's planned investment in plant and associated infrastructure with an estimated total capacity of 600 MW;

b. Pareto's decision to pull out of the project marks the end of a 2-year period of project development and negotiation between the Second Claimant and Pareto, which association has cost the Second Claimant a considerable amount of time and money that now constitutes a lost investment. The Second Claimant is urgently seeking to value that lost investment, but estimates that in internal and external costs its loss is around EUR €150,000 over the 2-year period;

c. Further the cessation of the relationship with Pareto has deprived the Second Claimant of profit-making opportunities arising from the intended relationship, including by way of example the anticipated sale of a solar project in Spain by which the Second Claimant was set to profit in the amount of around EUR €14.5 million. The Second Claimant is currently urgently seeking to evaluate and particularise its position since Pareto's termination of the Mandate Agreement, and to ascertain the value of the lost opportunities and/or the costs of the delay; and

d. The abrupt cessation of the Second Claimant's said relationship with Pareto in the circumstances set out above has caused further serious harm to the Claimants' reputations in what is a relatively small industry."

156. To the extent that the First Claimant seeks to suggest in his evidence (see eg, first witness statement, [47]-[53]), that there may be other financial consequences for the Second Claimant in the form of lost future opportunities and the like, these have not been pleaded and I reject the evidence as vague and speculative.

157. The Defendants submit that the Second Claimant has not established a good arguable case under s 1(2), and on that basis cannot show a completed tort so as to establish jurisdiction under Article 7(2) BRR.

158. The Defendants make two principal arguments:

a. only serious financial loss in England and Wales arising out of publication here will be sufficient to confer jurisdiction on the English Court under Article 7(2) BRR and by virtue of the decision of the CJEU in *Marinari v Lloyds Bank plc* [1996] QB 217.

b. the Second Claimant is a holding company, does not trade, and cannot therefore be shown to have been injured in its pocket. The Defendants say that the evidence shows that the Second Claimant has no trading reputation in England and Wales and has adduced no evidence capable of discharging the burden of proving a 'good arguable case' that it had a reputation 'capable of being damaged'. At the time of publication, it did not trade and cannot therefore have been injured 'in its pocket'. The Defendants therefore say that the Second Claimant's claim for libel fails on this basis alone. In relation to serious harm, the Defendants say that even if the Second Claimant were able to persuade the Court that it has a good arguable case to a trading reputation capable of being injured, it must still show it has a good arguable case of serious harm under s 1(2) of the DA 2013 (which it must prove as a matter of fact (*Lachaux*, [15])), and that it cannot do so.

159. In *Marinari* the plaintiff sued in Italy for economic losses allegedly resulting from actions by employees of Lloyds Bank in England who had reported him to the police in England over suspect promissory notes, leading to his arrest here. Both the causal event (namely the conduct imputed to the employees of Lloyds Bank) and the initial damage, (sequestration of the promissory notes and his arrest and detention) occurred in the UK. Only the alleged consequential damage, ie, financial losses were suffered in Italy.

160. The headnote of the decision in *Marinari* reads:

> "… while the term 'place where the harmful event occurred,' in the meaning of article 5(3) [as noted earlier, the same language as Article 7(2) of the BRR], could cover both the place where the damage occurred and the place of the event giving rise to it, it could not be construed so extensively as to encompass any place where the adverse consequences of an event that had already caused actual damage elsewhere could be felt, and it did not include the place where the victim claimed to have suffered financial loss consequential on initial damage arising and suffered by him in another contracting state."

161. In *FS Cairo (Nile Plaza) v Brownlie* [2020] EWCA Civ 996, McCombe LJ (with whom Underhill LJ agreed) said at [39] in relation to *Marinari*:

> "39. As this was the last of the EU cases to which we were referred, it is perhaps helpful to summarise the effect of the

European cases to which reference has already been made in the CJEU's own words, describing the derogation (in article 5(3)) from the general rule (in article 2) that defendants are to be sued in the courts of their domicile:

> '10. As the court has held on several occasions – in *Mines de Potasse d'Alsace* [1978] QB 708, 729, para. 11 [i.e. *Bier*]: *Dumez France* [1990] ECR I-49, 79, para. 17, and *Shevill v. Presses Alliance S.A. (Case C-68/93)* [1995] 2 AC 18, 61, para. 19 – that rule of special jurisdiction, the choice of which is a matter for the plaintiff, is based on the existence of a particularly close connecting factor between the dispute and courts other than those of the state of the defendant's domicile which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings.
>
> 11. In *Mines de Potasse d'Alsace* [1978] QB 708, 7131, paras. 24 and 25, and *Shevill* [1995] 2 AC 18, 61, para. 20, the court held that where the place of the happening of the event which may give rise to liability in tort, delict or quasi-delict and the place where that event results in damage are not identical, the expression 'place where the harmful event occurred' in article 5(3) of the Convention must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the plaintiff, in the courts for either of those places.
>
> 12. In those two judgments, the court considered that the place of the event giving rise to the damage no less than the place where the damage occurred could constitute a significant connecting factor from the point of view of jurisdiction. It added that to decide in favour only of the place of the event giving rise to the damage would, in an appreciable number of cases, cause confusion between the heads of jurisdiction laid down by articles 2 and 5(3) of the Convention, so that the latter provision would, to that extent, lose its effectiveness.
>
> 13. The choice thus available to the plaintiff cannot however be extended beyond the particular circumstances which justify it: such an extension would negate the general principle laid down in the first paragraph of article 2 of the Convention that the courts of the contracting state where the defendant is domiciled are to have jurisdiction and would lead to recognition, in cases other than those expressly indicated, of the jurisdiction of the courts for the plaintiff's domicile, which the Convention militates against by excluding, in the second paragraph of article 3, the

> application of national provisions which make such jurisdiction available for proceedings against defendants domiciled in the territory of a contracting state.
>
> 14. Whilst it is thus recognised that the term 'place where the harmful event occurred' within the meaning of article 5(3) of the Convention may cover both the place where the damage occurred and the place of the event giving rise to it, that term cannot, however, be construed so extensively as to encompass any place where the adverse consequences of an event that has already caused actual damage elsewhere can be felt.
>
> 15. Consequently, that term cannot be construed as including the place where, as in the present case, the victim claims to have suffered financial damage consequential on initial damage arising and suffered by him in another contracting state.'"

162. As summarised by Lord Hodge JSC in *AMT Futures Ltd v Marzillier mbH* [2018] AC 439 at [15]:

> "The CJEU has ruled on the correct approach to article 5(3). It has interpreted the phrase 'the place where the harmful event occurred' (a) to give the claimant the option of commencing proceedings in the courts of the place where the event occurred which gave rise to the damage or in the courts of the place where the damage occurred (if the event and damage were in different member states): *Handelskwekerj GJ Bier BV v Mines de Potasse d' Alsace SA* (Case C-21/76) [1978] QB 708, para 24; (b) as "the place where the event giving rise to the damage, and entailing tortious … liability, directly produced its harmful effect upon the person who is the immediate victim of the event" and thus not the place where an indirect victim, such as the parent company of the immediate victim, suffered financial loss as a result: *Dumez France and Tracoba Sarl v Hessische Landesbank (Helaba)* (above), para 20; and (c) consistently with (b) above, where a victim suffered harm in one member state and consequential financial loss in another, as referring to the place where the initial damage occurred: *Marinari v Lloyd's Bank Plc* (Case C-364/93) [1996] QB 217, paras 14 and 15. The focus in (b) and (c) is thus on where the direct and immediate damage occurred."

163. *Marinari* can therefore be understood as a decision which places limits on Article 5(3) (and given the similar wording, Article 7(2) BRR) by providing that a victim cannot sue in the courts of any state in which economic loss or some other indirect loss is said to have occurred as the result of, or flowing from, direct damage arising in another Member State.

164. *Marinari* was applied by Jay J in *Napag,*. At [26] he said:

> "… as a prior condition it would have to be established that there has been publication in England and Wales and that the First Claimant has suffered 'serious harm' (including "serious financial loss") here, both being matters of domestic law: see the decision of the CJEU in *Marinari v Lloyds Bank Plc* [1996] QB 217."

165. In *Mahmudov*, [12], Collins Rice J said (original emphasis):

> "The position was further clarified in *Marinari v Lloyds Bank* [1996] QB 217. There the CJEU held that the *Shevill* rule did not extend the special jurisdiction to each and every place where *any* adverse consequence of the libel could be felt. It did not, in particular, include a country where a claimant had suffered financial loss *consequential* to damage arising elsewhere. The special jurisdiction in defamation, in other words, was limited to places where *direct* reputational damage caused by reading the libel occurred."

166. Applying these principles, I accept the Defendants' submission that the Second Claimant has to show that it suffered serious financial loss in this jurisdiction as a result of publication of defamatory Articles in this jurisdiction. The Defendants said it cannot show this. I agree. For the following reasons, I have concluded that the Second Claimant does not have a good arguable case on this question, and hence that its claim must fail.

167. As I have said, everything turns on the cancellation of the Pareto mandate. The evidence of publication of the Articles to individuals within Pareto is very limited. The principal evidence is two emails and a letter exhibited to the First Claimant's first witness statement. These show that:

    a. On 24 October 2020, Petter Haavik of Pareto emailed the First Claimant asking, 'Guess you've seen the article in Realtid. Do you know Lars Nicholls?' and forwarded three questions from Pareto's compliance team in 'Oslo/Stockholm';

    b. On 25 October 2020, Mr Haavik emailed the First Claimant a further detailed list of questions from Pareto's compliance team in Oslo about the 'article';

    c. On 7 November 2020, Mr Haavik signed the letter terminating the mandate agreement. The letter refers to 'a series of articles'**.** The letter was signed in, and sent from, Singapore

168. Mr Callus put the point this way in oral submissions:

> "So what *Marinari* decides is that, where you have what I am going to call direct damage as a result of a tort, so an act is committed in, say, for present purposes, Sweden, someone puts something online in Sweden, that is the act giving rise to the damage. The harm to reputation, which is under both section -- both claimants under s.1, the serious harm to reputation, which takes place in the minds of readers, because it is harm to reputation. Where the harm to

> reputation, we say, here is caused in the head of Petter Haavik in Singapore or is caused in the minds of the compliance of department in Oslo and Stockholm, so it is outside the jurisdiction, as a consequence there is a cancellation of a contract that then causes financial loss.
>
> …
>
> Therefore, under this first jurisdictional question, where what we are looking for is, has there been serious harm causing serious financial loss, caused by publication in England and Wales, apart from the inherent seriousness of the words in the small publication here, the entirety of the serious financial loss plea is predicated on a publication to Singapore or potentially compliance in Oslo and Stockholm - assuming for present purposes that it has caused serious financial loss here, as opposed to overseas - the direct damage has been caused where the readers were in Oslo, Stockholm or most likely Singapore.
>
> So, for the purposes of applying the rule in *Marinari* to this case, all of the serious financial loss has been caused by extraterritorial publication. There is no publication in England and Wales which is even pleaded, let alone evidenced, as having been caused by publication in England and Wales. On that basis alone, the second claimant's claims against all defendants goes."

169. As I said earlier Pareto is a Singaporean company which is owned by a Norwegian group of banks. This is confirmed by the First Claimant in his first witness statement at [33]. The decision-making individual with whom the First Claimant was dealing (Mr Haavik) is based in Singapore.

170. The First Claimant says in his first witness statement at [35] that he had two meetings with Pareto in their London offices on 3 October 2019 and then on an unspecified date in December 2019. So far as I can see, this is the only connection between Pareto and this jurisdiction in relation to this matter. These meetings took place before publication of the first Article in September 2020, and so can have no relevance to the cancellation of the mandate.

171. It seems to me on the evidence that it is (at least) inherently improbable that publication of the Articles in this jurisdiction were the cause of the cancellation of the mandate in Singapore, from which the Second Claimant's financial loss is said to have flowed. Everything points to all relevant events, namely the reading of the Articles, then the enquiries by the compliance team in Oslo/Stockholm, and then Mr Haavik's enquiries sent from Singapore, and then the cancellation, took place abroad. Those are the places where the direct and immediate damage (if any) to the Second Claimant's reputation took place. The First Claimant's own evidence in his first witness statement at [44] is that it was the compliance team in Oslo which first raised the issue of the Articles. Any financial losses were secondary and indirect.

172. Hence, even on the assumption that the Second Claimant is able to prove that financial harm flowed from the termination of the Pareto mandate (which the Defendants dispute), it cannot show, as it must, that that termination was caused by publication in this jurisdiction. To the contrary, the plain thrust of the evidence is that it was publication abroad which prompted the train of events which led to the cancellation of the mandate in November 2020. Excellent though his submissions were, I think it fair to observe that Mr Price did not really have a substantive answer to this aspect of the Defendants' case.

173. Therefore, even on the Second Claimant's own pleaded case, it has no prospect of satisfying the requirement of s 1(2) of the DA 2013 in respect of publications in this jurisdiction. Accordingly, there is no jurisdiction under Article 7(2) BRR and the Second Claimant's claim must fail.

174. Further, it seems to me that the Second Claimant faces serious causation problems. The termination letter, as I have said, did not isolate any particular Article or Articles as having led to its decision to terminate. Given I have only found three out of the eight Articles to be defamatory at common law, there would be considerable hurdles in the way of the Second Claimant in order for it to show it was *those* Articles which caused the termination. I therefore cannot say it has a good arguable case on causation.

175. Mr Callus made other points on causation and loss, not all of which I need to deal with. One point was that the Second Claimant gave a different reason for the termination of the mandate, namely, it said in a press release on 10 November 2020 that *it* had cancelled the mandate because of 'market conditions'. The First Claimant in his first witness statement at [46] said the press release had been deliberately drafted to avoid making reference to the Article in order to 'limit the damage that had already been caused'.

176. The Defendants also said that another possible reason the mandate was cancelled was because the Second Claimant failed, adequately or at all, to respond to the questions which had been put to it by Pareto at the behest of its Oslo/Stockholm compliance team. They say there is no evidence that the Claimants ever responded to those queries They also point out that in its termination letter Pareto said that, 'Pareto is not in a position where we can reject or investigate the various questions and allegations raised by Realtid'. The Defendants say that an obvious reason why Pareto would have been unable to do so would have been if the First Claimant had either not responded to its questions, responded by refusing to provide a proper answer, or responded by confirming that the suspicions raised in Realtid's articles were true. If so, the Defendants say it would have been the First Claimant's actions which caused the termination of the agreement and not any alleged libel by the Defendants.

177. I need not dwell unduly on these points made by the Defendants save to say they would have provided additional causation difficulties for the Second Claimant at trial and add to my conclusion that the Second Claimant does not have a good arguable case of defamation over which this Court has jurisdiction, and hence that its claim must fail.

178. The Defendants further argue that the Second Claimant has not advanced a proper case as to the actual financial losses it alleges it has suffered as a result of the termination of the Pareto management agreement and thus that it has failed to establish a good arguable case of serious financial loss. First, it points to the averment in [22(b)] of the PoC that it incurred €150,000 in 'internal and external costs' during a two-year period of project

development and negotiation with Pareto and says these 'losses' cannot be relied on in support of the Second Claimant's case. They rely on *Niche Products Ltd v Macdermid Offshore Solutions LLC* [2014] EMLR 9, [40]. I do not read that paragraph as saying such losses can never be recoverable, but rather as being confined to the facts of that case.

179. The Defendants make other forensic points about this alleged loss. They say the €150,000 does not feature in the accounts of the Second Claimant, and on that basis do not, in fact, appear to be losses suffered by it at all. Mr Price disputed this and said that this figure was included in the accounts as part of a figure of €900,000 for 'general administrative expenses'. In addition, the losses are said to have been incurred over a 'two-year' period prior to termination of the mandate agreement on 7 November 2020. The Defendants say that the Second Claimant did not exist prior to 21 January 2019, so it is impossible for it to be the company said to have incurred losses over that two-year period. The Defendants say the obvious inference is that, to the extent these costs were ever incurred, they were costs borne by other EEW Group companies.

180. The Defendants also criticise the pleaded alleged loss of 'profit making opportunities' ([22(c)] of the PoC) 'including by way of example', lost profit from 'the anticipated sale of a solar project in Spain by which the Second Claimant was set to profit in the amount of €14.5 million in the amount of around EUR 14.5m'. I agree it is not legitimate to plead 'by way of example': *HRH Duchess of Sussex v Associated Newspapers Limited* [2020] EMLR 21, [65]. Also, it seems to me this is deficient because this does not amount to a proper or coherent pleading of pecuniary loss for the purpose of a libel claim. In short summary, the pleaded case does not clearly identify: (a) the asset; (b) its value; (c) who owns it; (d) details of the proposed sale; (e), any facts or matters as to causation of the alleged loss: see generally *Collins Stewart v The Financial Times Ltd* [2005] EMLR 5 at [25].

181. The Defendants also say that it is clear from the evidence that the Second Claimant is prevented from recovering the losses referred to, suffered by other companies, by operation of the rule against reflective or derivative loss, which prevents a company's shareholder from recovering losses occasioned by losses suffered by the company: *Prudential Assurance v Newman (No 2)* [1982] Ch 204*; Marex Financial Ltd v Sevilleja* [2021] AC 39.

182. They point to the First Claimant's evidence in his first witness statement at [45(4)] where he asserts that the Second Claimant's damages claim is premised on the fact that it 'ultimately holds the value of EEW Group's investments and these have been severely damaged by the termination of the relationship with Pareto and otherwise'.

183. Hence, the Defendants say that on the evidence the Second Claimant has not in fact suffered any loss directly, any loss is in the form of an alleged diminution in the value of its shareholding in its subsidiary (and that company having suffered a diminution in the valuation of its shareholding in the company below it and so on). They say that this is a clear example of 'reflective loss', it being the Second Claimant's case that losses suffered by those subsidiary companies will be reflected in the value of its investment.

184. The Defendants rely on *Shevill* in the Court of Appeal, where Purchas LJ said at [1996] AC p968C-F

> "I have no difficulty in agreeing with Mr. Tugendhat that, in the case of the holding company, the second plaintiff could have suffered no damage by virtue of its interest as shareholder only in the third plaintiff. Compensation for any injury suffered by the third plaintiff as a result of the libel would be recovered in the action. The third plaintiff would be accountable to the second plaintiff for the damages recovered. Therefore the claim of the second plaintiff should in any event be stayed."

185. Similarly, in dismissing the damages claim in *Gatt v Barclays Bank Plc*, Unreported, 14 January 2013, HHJ Moloney QC explained (emphasis added):

> "[The bank] also takes an overarching point of law, that CG cannot pursue these damages claims because they are claims for "reflective loss". That is, any losses of profit caused by inability to fund promising deals would, at least in the first instance, be losses of profit sustained by one or more of the companies in the GLN group, since it is the companies which engage in the development projects, not the Gatts personally. Further, it is likely that if the deals had been profitable then the companies would, as before, have passed the profits back via a large salary for MG not CG; though she would have benefited from that salary, it would still be his not hers, and therefore she cannot sue for the loss of it any more than she can for losses caused to the companies in which she may have been a shareholder.
>
> CG challenges this as an artificiality. She says she and her husband are a team, who share everything; their business is a joint business and its profits fund their joint lives. If the business has been destroyed by the Bank's misconduct, so that she loses her home and her assets, how can it be said that she has not suffered personal loss, at least to the extent of half the joint losses? It is clear, however, that the law is as the Bank states; see for example *Prudential Assurance v. Newman (No.2)* [1982] Ch 204. For their own good reasons, including no doubt tax and limited liability, the Gatts have always conducted their business not as a partnership but through a corporate structure, and have channelled the profits primarily through MG rather than CG as the disparity in their taxable incomes demonstrates. They cannot now step back from this when it suits them and claim that CG was personally and directly entitled to her share of the profits, so as to have a personal claim for them against the Bank."

186. Mr Price disputed that the reflective loss rule has any application. He said the normal rules of damage, causation and remoteness apply. He took me to the decision of the Supreme Court in *Marex Financial Ltd v Sevilleja* [2021] AC 39, [23] and [41]. In [23] Lord Reed said (italicised words emphasised by Mr Price):

> "In more recent times, the courts have had to consider the position where a shareholder seeks to recover damages in respect of a diminution in the value of his shareholding or in the distributions received from the company, resulting from a loss suffered by the company *in respect of which the company has its own cause of action.*"

187. In [41] Lord Reed set out some propositions from Lord Bingham's speech in *Johnson v Gore Wood & Co* [2002] 2 AC 1:

> "(1) Where a company suffers loss caused by a breach of duty owed to it, only the company may sue in respect of that loss.
>
> …
>
> (2) Where a company suffers loss but has no cause of action to sue to recover that loss, the shareholder in the company may sue in respect of it (if the shareholder has a cause of action to do so), even though the loss is a diminution in the value of the shareholding …"

188. Mr Price said only the Second Claimant and no other company in the Group whose value it held, which had diminished, had a cause of action because only it and no other company had been libelled. Therefore, he said that the Second Claimant could recover its loss. He did not shrink from saying that in light of *Marex, Shevill* and *Gatt* were no longer good law. Mr Price submitted:

> "… translating this just in simple terms before I come to the detail of the evidence into our case, unless it is asserted that one of the other group entities that has suffered loss, because of the reputational harm done to the first and second claimants, has their own cause of action in relation to that harm against these defendants, this rule does not apply.
>
> …
>
> The losses claimed here are losses to the second claimant because of actions from the damage to its reputation. Those actions have damaged other corporate entities owned by the second claimant, but those other corporate entities cannot sue these defendants. They do not have a right of action against these defendants and that is consistent with *Marex*. It offends no principle."

189. I do not think I need to resolve what is a difficult issue. The Second Claimant's case fails in any event on the basis of *Marinari* and on causation for the reasons I have explained.

190. I turn to the position of the Second Claimant as holding company and whether this means it cannot have suffered serious financial loss (all other things being equal) because, say the Defendants, it had no 'trading reputation' in England and Wales. Mr Callus summarised the point this way:

> "… unlike natural person claimants, corporates are not presumed to have a prior reputation, so it is an essential element that they need to prove that they had what is called a trading reputation. My very simple point is that this is a pure holding company, a mere holding company, it does not have a trading reputation and that is enough to knock out C2's claim."

191. Mr Callus is right that unlike an individual, a corporate claimant is not presumed to have a reputation, but it must prove that it has a reputation which is capable of being damaged by the alleged libel. In *Atlantis World Group v Gruppo Editoriale L'Espresso SPA* [2009] EMLR 15, [42], Gray J said:

> "42. I start with a number of propositions of law which I do not believe are controversial. They are as follows.
>
> 1) A corporate claimant, unlike an individual, is not presumed to have a reputation. It must prove that it has a reputation which is capable of being damaged by the alleged libel: see *Jameel v. Wall Street Journal Europe SPRL* [2007] 1 A.C. 359 at 392 per Lord Hope.
>
> 2) Non-trading companies may have particular difficulties in this context: see, for example, M*ultigroup Bulgaria Holding AD v. Oxford Analytica Limited* [2001] EMLR 28.
>
> **…**
>
> 4) Companies can only suffer 'in their pocket' since they have no feelings to be hurt. Any compensation should reflect this and must be focused on the company's trading or business reputation: see *Lewis v. Daily Telegraph Limited* [1964] A.C.234 at 262; *Jameel v. Wall Street Journal* at 14 and *Adelson v. Associated Newspapers Limited* [2007] EWHC 3028 QB at paras.4 and 7.
>
> …
>
> 44. The threshold question on the issue of damages is whether the first claimant can discharge the onus of establishing on the balance of probabilities that it has a trading reputation in England or Wales …"

192. As a company can only sue for defamation if the words have damaged *it* in *its* trading reputation or in the way of its business, the company must be actually engaged in business or about to commence business when the defamatory words are published. *Gatley*, [8.16] states (footnotes omitted):

> "A trading corporation or company 'has a trading character, the defamation of which may ruin it'.

> ‘The reputation of a corporate body is capable of being, and will usually be, not simply something in which its directors and shareholders may take pride, but an asset of positive value to it.’
>
> Accordingly it may maintain an action of libel or slander for any words which have a tendency to damage it in the way of its business and it is not necessary for it to prove special damage. However, by virtue of the Defamation Act 2013, s 1, a statement will only be defamatory when it refers to a “body that trades for profit” where serious financial harm is caused or likely to be caused by the words complained of. Although a company cannot be injured in its feelings, only in its pocket, and an injury must sound in money, the injury need not be confined to accrued loss of income, for the company’s goodwill may be injured.”

193. The only EEW Group company which is a claimant in these proceedings is EEW Eco Energy World Plc (ie, the Second Claimant). Much of the First Claimant’s evidence is taken up with the activities and reputation of other companies in the group: that evidence is irrelevant.

194. As Mr Cowper-Coles says in his first witness statement at [32], the Second Claimant was incorporated on 21 January 2019. It is a holding company, as the First Claimant makes clear in his first witness statement at [11] where he says it is a holding for other companies in the group. I note that he does not suggest that the Second Claimant is in fact engaged in its own economic or trading activity.

195. The First Claimant has exhibited a draft ‘Information Memorandum’ dated February 2021, which contains a corporate structure chart which represents that there is now a further UK based intermediate holdings company called ‘EEW Eco Energy World Development Holdings Ltd’ which sits between the Second Claimant’s subsidiary and the Dutch and Danish holding companies. The First Claimant confirms in his evidence that any actual trading activity (including, eg, purchasing rights to land or holding other assets) is carried out by subsidiaries of one of those two Netherlands-registered companies, referred to as ‘asset SPVs’.

196. The Defendants therefore say that the Second Claimant itself has no turnover, and its accounts show no expenditure or any other evidence of actual commercial activity other than some small administrative expenses (just over €30,000). It has no customers. Its employees are its foreign-registered directors, as Mr Cowper-Coles says in his second witness statement at [23].

197. In fact, the Defendants say that the only evidence of the Second Claimant having engagement with any party outside of the EEW Group is that it was itself a party to the Pareto mandate. In respect of this, the Defendants say it does not evidence any actual trading activity. The purpose of the agreement was to advise on financing Solar IPP Limited Also, they say that in reality, Pareto appears to have been engaged with the Group as opposed to the Second Claimant as any distinct corporate entity. They point to the First Claimant’s first witness statement where he says that he and other Group

companies and the First Claimant were engaged in negotiations (and even a confidentiality agreement) with Pareto before the Second Claimant came into existence.

198. I need not try and untangle all of this or go into the accountancy evidence which Mr Callus took me to. Looked at overall, this material represents a further hurdle for the Second Claimant to overcome to show that it traded for profit and suffered or was likely to suffer serious financial loss as a result of the Articles in question.

199. Therefore in relation to Ground 1, I conclude that:

    a. the First Claimant has shown a good arguable case of serious harm arising from each of Articles 2, 6 and 8 and thus a good arguable case that these Articles were defamatory of him and that this Court has jurisdiction under Article 7(2) BRR.

    b. the Second Claimant does not have a good arguable case and its claim fails. That is principally because of the combination of the following: any loss in England and Wales was secondary to the direct reputational damage it suffered abroad, and is therefore excluded by the rule in *Marinari*; the causation problems I identified; and the fact it is a holding company and there is scant evidence that it traded for profit.

Ground 2: the Second Jurisdictional Question (centre of interests)

200. I turn to the question of 'centre of interests'. Given I have held the claim by the Second Claimant must fail, I need only consider this in relation to the First Claimant. I explained earlier the significance of this question. It determines whether the First Claimant can recover in this court global damages, and non-pecuniary relief, or only local damages. The test, as I also said earlier, is whether he can show he has a good arguable case on this issue. Mr Callus made the general forensic point that the First Claimant's case that England and Wales is his centre of interests only emerged at a comparatively late stage. That may or may not be right, but I do not attach that much weight to it. The issue needs to be evaluated in light of the evidence. He also said, on the basis of *Cherney v Deripaska* [2007] EWHC 965 (Comm), [15], that the relevant date for determining where (if anywhere, as I shall explain) the First Claimant's centre of interests was, is the date the claim was issued, namely 20 November 2020.

201. The 'centre of interests' doctrine was developed by the CJEU in *eDate*, primarily in the Opinion of Advocate General Cruz Villalón at [49]-[67] which the CJEU adopted it in its judgment at [40]-[52]. The centre of interests fulfils two criteria which underpin the BRR: 'proximity' to the centre of gravity of the dispute, and thereby 'predictability' for defendants as to where they will be sued. The CJEU gave the following guidance as to how to identify a claimant's centre of interests' at [49]-[50]:

> "49. The place where a person has the centre of his interests corresponds in general to his habitual residence. However, a person may also have the centre of his interests in a member state in which he does not habitually reside, 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.

> 50. The jurisdiction of the court of the place where the alleged victim has the centre of his interests is in accordance with the aim of predictability of the rules governing jurisdiction (see *Berliner Verkehrsbetriebe (BVG), Anstalt des offentlichen Rechts v JP Morgan Chase Bank NA* (Case C-144/10) [2011] 1 WLR 2087, para 33) also with regard to the defendant, given that the publisher of harmful content is, at the time at which that content is placed online, in a position to know the centres of interests of the persons who are the subject of that content. The view must therefore be taken that the centre of interests criterion allows both the applicant easily to identify the court in which he may sue and the defendant reasonably to foresee before which court he may be sued: see *Falco Privatstiftung v Weller-Lindhorst* (Case C-533/07) [2010] Bus LR 210, para 22 and the caselaw cited."

202. In *Saïd v Groupe L'Express* [2018] EWHC 3593 (QB), Nicol J had to consider a libel claim brought by a Monaco-domiciled tax exile (a natural person) against a French publisher in the English courts. At [21] he took the following propositions relating to 'centre of interests' from [45]-[50] of *eDate:*

    a. 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.

    b. 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.

    c. The centre of interests is in general likely to correspond to the person's habitual residence.

    d. 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'.

    e. 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.

    f. The Court refers to *the* centre of interests, implying that any individual can have but one centre of interests. Nicol J agreed with counsel 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).

203. In summary, the following propositions can, I think, also be taken from *Saïd* at [55]-[62]:

a. *eDate* says that 'in general' a person's habitual residence will be his centre of interests. However, 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 [55]-[56];

b. the centre of interests is unitary: a claimant can have only one state which is the centre of his interests [57(i)];

c. however, not every claimant will have a centre of interests at all: some claimants will have diffuse interests, both professional and personal, which are spread all over the globe, so that there is no 'centre' [57(i)];

d. the issue is not, therefore, whether the claimant has some connections with this jurisdiction, nor whether he has a reputation here. The issue is whether England and Wales is the centre of his interests such as to displace the country of his habitual residence [57(ii)];

e. the centre of interests can be a state that is not a Member State of the RBR or Lugano Convention, but the global consequences of *eDate* and *Bolagsupplysningen* only arise if it is also a Member State;

f. The centre of interests must be pleaded, although pleading deficiencies can be rectified by amendment [59]-[60].

204. In *Napag*, Jay J was considering a claim where one of the three claimants – the corporate First Claimant – had pleaded that its centre of interests was England and Wales. The claims failed on the First Jurisdictional Question (articulated at [26], whether there was jurisdiction *stricto sensu* at all), but Jay J dealt with the First Claimant's centre of interests, setting out his conclusions of law at [27]-[34], and on the facts at [150]-[161]. He said at [27]-[31]:

> "27. There are differences between the parties as to the approach I should adopt in applying the concept of 'centre of interests' to this application.
>
> 28. *eDate* was a case involving natural and not legal persons. The general principles are to be found in paras 49 and 50 of the judgment of the CJEU:
>
> > '49. The place where a person has the centre of his interests corresponds in general to his habitual residence. However, a person may also have the centre of his interests in a Member State in which he does not habitually reside, 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.
> >
> > 50. The jurisdiction of the court of the place where the alleged victim has the centre of his interests is in accordance with the aim of predictability of the rules governing jurisdiction (see Case C-144/10 BVG [2011] ECR I-3961, paragraph 33) also

> with regard to the defendant, given that the publisher of harmful content is, at the time at which that content is placed online, in a position to know the centres of interests of the persons who are the subject of that content. The view must therefore be taken that the centre-of-interests criterion allows both the applicant easily to identify the court in which he may sue and the defendant reasonably to foresee before which court he may be sued (see Case C-533/07 *Falco Privatstiftung and Rabitsch* [2009] ECR I-3327, paragraph 22 and the case-law cited).'

29. What I take from these paragraphs is as follows. First, other things being equal, and certainly in the absence of evidence to the contrary, a natural person's 'centre of interests' will match his or her habitual residence. Whether or not this may accurately be described as an evidential presumption does not I think matter (in my view, no legal presumption is generated); in any case, the CJEU – subject to my second point – is not purporting to assist national courts as to the rules of law that should govern the exercise of ascertainment. Secondly, general considerations of predictability and the need for clarity militate in favour of straightforward and readily accessible criteria rather than any microscopic examination of the detail.

30. In *Bolagsupplysningen OU v Svensk Handel AB* [2018] QB 963, the CJEU made it clear that the concept of 'centre of interests', being the Member State in which the online publication at issue caused the most damage, applies as much in an internet case to the personality rights of legal as it does to natural persons. Paras 41 and 42 of the judgment of the Grand Chamber of the CJEU are obviously germane:

> '41. As regards a legal person pursuing an economic activity the centre of interests of such a person must reflect the place where its commercial reputation is most firmly established and must, therefore, be determined by reference to the place where it carries out the main part of its economic activities. While the centre of interests of a legal person may coincide with the place of its registered office when it carries out all or the main part of its activities in the member state in which that office is situated and the reputation that it enjoys there is consequently greater than in any other member state, the location of that office is, not, however, in itself, a conclusive criterion for the purposes of such an analysis.
>
> 42. Thus, when the relevant legal person carries out the main part of its activities in a member state other than the one in which its registered office is located it is necessary to assume that the commercial reputation of that legal person, which is liable to be affected by the publication at issue, is greater in

> that member state than in any other and that, consequently, any injury to that reputation would be felt most keenly there. To that extent, the courts of that member state are best placed to assess the existence and the potential scope of that alleged injury, particularly given that, in the present instance, the cause of the injury is the publication of information and comments that are allegedly incorrect or defamatory on a professional site managed in the member state in which the relevant legal person carries out the main part of its activities and that are, bearing in mind the language in which they are written, intended, for the most part, to be understood by people living in that member state."
>
> 31. I do not read these paragraphs as altering in any way the general principle set out in *eDate*. The concepts of habitual residence and registered office are to all intents and purposes interchangeable. It is unnecessary for me to consider the possibility that a legal person, as opposed to a natural person, could have *no* 'centre of interests'."

205. He concluded England and Wales was the centre of interests of the First Claimant – a company which traded in petroleum-based products – but made clear this was 'not by a wide margin' ([161]).

206. As a preliminary point, I accept that the First Claimant has not pleaded that England and Wales is his centre of interests. However, as I have said, this is not fatal at this stage and it can be cured by amendment. Mr Price pointed out that in the case of the First Claimant, his case on centre of interests – which begins with the averment in [1] of the PoC that he has 'significant interests in the United Kingdom' – has developed since the PoC were settled, and that case is set out in the evidence adduced on this application. He said that, if necessary, those further particulars could be incorporated into the PoC by amendment.

207. In considering the location of the First Claimant's centre of interests, the starting point is the PoC. Paragraph 1 pleads that he is 'resident in Monaco, with significant business interests in the United Kingdom …' It seems to me, therefore, adopting the approach of the CJEU in *eDate* at [49] and *Napag* at [29] and *Saïd* at [55]-[56], that the question is whether there is evidence to displace Monaco as being his centre of interests, that being his place of residence.

208. The First Claimant's own evidence on this issue is principally at [29]-[32] of his first witness statement. He has had a 35 year career forming and investing in hi-tech environmental companies. He has also traded commodities and worked in retail, technology, property, mining and aviation, In [31] he says that he is a Swedish national and has residences in England and Wales (since 2013); France (since 2000); and Monaco (since 1997). He has been on the electoral roll here since 2015 (second witness statement, [5]). He pays council tax. He says that he stays in London 'a few days a week' to carry out business there. He spends 25%-30% of his time in London, with the rest of his time split between Monaco, France, Sweden and Switzerland. He also comments that because of the pandemic his travel to England and Wales has been more restricted.

209. In [32] he sets out the evidence about his reputation in the UK. He describes his work developing projects in the UK since 2011, many with partners 'with a strong UK presence' and says he has been a director of around 30 companies incorporated in the UK. He says he has more business contacts 'by far' in the UK than in any other country because 'this is the centre of my business interests and where I run my business from'. He is well-known in the sector in which he operates.

210. Accordingly, Mr Price relies on these matters as showing a good arguable case that England and Wales is the First Claimant's centre of interests.

211. The Defendants' position is that the First Claimant does not have a good arguable case that England and Wales is his centre of interests. They say he does not have a centre of interests at all or, if he does, it is Monaco, his place of residence.

212. They say although the First Claimant has given an estimate of the proportion of the time he spends in London, no indication has been given of how his time is split between these four other countries, which might indicate that he spends more time in one or two of them than he does in London. They draw a comparison with *Saïd* at [57(iii)], where the claimant – also a Monaco resident who claimed to spend 90-110 days in the UK – had failed to say how much time he spent elsewhere.

213. They also point out that the Claimant makes no mention of paying income tax in the UK.

214. In his second witness statement, Mr Cowper-Coles takes issue with various aspects of the First Claimant's evidence. He sets out evidence upon which the Defendants submit that if the First Claimant has a centre of interests at all, it is not in England and Wales. At [8] Mr Cowper-Coles challenges whether First Claimant is indeed on the electoral register. He says that Exhibit SK3 to the First Claimant's second witness statement shows that he is registered to vote (as an EU citizen, only in local elections) but only since December 2020. His previous electoral registration at a flat in Cadogan Place, London SW1 expired in March 2020. The 'relevant date' for the purposes of determining 'centre of interests' (like domicile) is the date that the Claim Form was issued: *Cherney v Deripaska* [2007] EWHC 965 (Comm) at [15]; *Goldman Sachs* at [9]. In this case, the relevant date is 20 November 2020 which is a date at which time the Claimant was not on the electoral register.

215. At [9]-[11], the veracity of the First Claimant's estimate to have spent 25-30% of his time in the UK is questioned. This would equate to 91-110 days per annum, which Mr Cowper-Coles says would almost certainly qualify him to be domiciled in the UK for tax purposes, and yet he omits to mention any tax he pays here except council tax. Notably, the presumption of domicile after three months of residency would not see the First Claimant presumed to be domiciled on 20 November 2020: even if he first 'held' his new flat on 1 September 2020, he would not be presumed domiciled in the UK until 1 December 2020 (pursuant to s 41(6), Civil Jurisdiction & Judgments Act 1982).

216. At [12]-[13], Mr Cowper-Coles sets out the publicly-available evidence as to the location of the First Claimant's professional interests. The phone numbers are all French (+33 telephone international dialling code) or Monégasque (+377), and his LinkedIn profile (published by the First Claimant himself) lists a 30-year career (ie, since 1991) with roles in Monaco, Russia and eight different EU Member States (Sweden, Germany, France,

Holland, Hungary, Ireland, Austria and Cyprus). His LinkedIn profile mentions his work with the EEW Group, but Mr Cowper-Coles says no mention is made of any professional roles in the last 3 decades being based in the UK. He says this casts significant doubt on the veracity of the First Claimant's evidence that 'this [jurisdiction] is the centre of my business interests and where I run my business from'. Mr Callus said this orally about the LinkedIn profile:

> "Somehow, my Lord, and I think that we have put it in the skeleton argument, he manages to mention Monaco, Russia and eight different EU member states on his Linkedin profile without ever once mentioning any connection to the United Kingdom at all. In the face of that evidence, my Lord, I question if the reason that no case on centre of interest has been pleaded is because it is not actually pleadable in respect of C1."

217. The Defendants again draw a comparison with *Saïd*, where Nicol J found England and Wales *not* to be Mr Saïd's centre of interests. That was even though he was able to assert significant links to the UK: his children and grandchildren lived here, as had he for seven years in the past; he spent three-four months of the year in London and at his large country estate in Oxfordshire; he had a charitable foundation here and had endowed many UK institutions (including Oxford University, whose business school is named after him); and he employed somewhere in the region of 50 people in London.

218. The Defendants say that the First Claimant's ties to this jurisdiction are far weaker than those of the claimant in *Saïd*. He mentions no family or personal friends or other interests in England and Wales in his statement. He gives no indication of ties to other places (except much longer-standing ownership of properties in France and Monaco). The positive evidence of his residency and connections as at 20 November 2020 (date of issue of the claim) are, say the Defendants, very thin, when compared to the compendious evidence of his business and professional roles overseas.

219. I have concluded on balance that the Claimant does not have a good arguable case that England and Wales is his centre of interests. I accept at once that the evidence shows that the First Claimant has a good arguable case that he has connections with this jurisdiction, and that he has a reputation here. But as in *Saïd*, [57(ii)], that is not the question. The evidence does not displace the general starting point that his centre of interests is Monaco, his place of residence. If I am wrong about that, then I consider he falls into that category of person whose activities and interests are so diffuse that he does not have a centre of interests at all.

220. It is very relevant, in my judgment, to recognise that the foundation of this libel claim was reporting in Sweden (or at least on a Swedish language news website) about alleged activities of the First and Second Claimant and others vis-à-vis Sweden. There were mentions of British companies but no other connection with England and Wales at all, save that the nature of the internet means that the Articles could be accessed and read here. The Swedish basis for this claim does not provide the firmest foundation for suggesting that the Claimant's centre of interests is England and Wales. It is also significant that the Pareto mandate was an agreement with a Singapore entity which is owned by Norwegian banks, and the work on it was done entirely abroad, as was Pareto's decision to cancel it (as I discussed earlier). I also note that in the PoC a suggested loss

caused by the cancellation of the mandate was a project in Spain. Further, although the Second Claimant is registered in England and Wales, according to the PoC at [2], one of the companies below it in the corporate structure, EEW Eco Energy World IPP Limited 'has branches and operations in multiple countries including the Netherlands, Spain and Australia.

221. I also consider there is force in the point that although the First Claimant spends a significant proportion of his time here, the evidence leaves open the distinct possibility that he spends a greater proportion of his time in another single country. As I have already remarked, he is a Swedish citizen resident abroad. who owns properties in a number of different jurisdictions. He has only had a property in London for eight years (as at the date of issue of this claim), whereas at that date he had had a property in Monaco for 24 years. Also, as the Defendants point out, business aside, the First Claimant's evidence says nothing at all about his life in the United Kingdom by way, for example, of family, friends or other interests here.

222. Another point is that although the First Claimant has had a long career, according to his own evidence (first witness statement, [32.1]), his career in England and Wales only began in the comparatively recent past (2011).

223. Whilst not directly relied upon (at least in their Skeleton Argument), I do not think that the Second Claimant's position provides much assistance to the First Claimant on this question or that it supports his case that England and Wales is his centre of interests. Exhibit SK2 indicates that there are two holding companies beneath the Second Claimant (itself a holding company only incorporated in 2019 to take over from a Cypriot holding company) the second of which owns subsidiary 'development companies' in the Netherlands and Denmark which own actual assets in Special Purpose Vehicles (SPVs). Decisions by the Second Claimant are made by its directors, *wherever they happen to be*. The First Claimant explains at [23] of his first witness statement:

> "the global nature of EEW Group's business inevitably means that the directors travel regularly and can therefore be spread out. However the management team including myself operate the business from London and decisions are taken in London as far as possible"

224. For these reasons, therefore, I have concluded that the First Claimant has failed to displace the general position that his centre of interests is Monaco, where he is habitually resident. He is a man with diffuse international interests spread across a number of countries. It follows that the First Claimant's claim is limited to damages arising from publication in England and Wales, and he is precluded from claiming any non-pecuniary relief relating to the internet which has effect outside England and Wales.

Ground 3: application of Swedish law

225. This issue would only have arisen if the First and/or Second Claimant had succeeded on Grounds 1 and 2. However, as I have concluded that the Second Claimant's claim fails for want of jurisdiction *strictu sensu*, and the First Claimant can only claim for local damages, this issue does not arise.

Conclusion

226. I invite the parties to draw up an order reflecting the terms of this judgment.