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Case No: CH-2023-000059

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
APPEALS (ChD)

7 Rolls Building,
Fetter Lane,
London, EC4A 1NL

Date: 18 September 2023

BETWEEN

THE PERSON OR PERSONS RESPONSIBLE FOR THE OPERATION AND PUBLICATION OF THE WEBSITE www.bitcoin.org (INCLUDING THE PERSON OR PERSONS USING THE PSEUDONYM "CØBRA")

Defendant/ Appellant

and

DR. CRAIG STEVEN WRIGHT

Claimant/ Respondent

Before:

THE HONOURABLE MR JUSTICE RICHARD SMITH

Erica Bedford of Counsel (instructed by **Mackenzie Costs Limited**) appeared for the **Appellant**

Shaman Kapoor of Counsel (instructed by **Travers Smith LLP**) appeared for the **Respondent**

Hearing date: 19 June 2023

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 18 September 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

Mr Justice Richard Smith:

Introduction

1. The Claimant/ Appellant says he is the person known by the pseudonym, Satoshi Nakamoto (**Satoshi**), and creator of the cryptocurrency, Bitcoin, who published the White Paper entitled "*Bitcoin: A Peer to Peer Electronic Cash System*" on the Bitcoin.org website. To prove his claim to be Satoshi, the Claimant has instigated litigation internationally. The Defendant/ Respondent is responsible for hosting the Bitcoin.org website.

2. The underlying litigation in this case arose from alleged UK copyright infringement following the Claimant's request that the Defendant cease ongoing publication of the White Paper on the website in England and Wales, a request refused by the Defendant. The Defendant says it is important to note that these proceedings are not said to arise from anonymous defamation or from any criminal activity.

3. The Claimant made a without notice application to serve these proceedings out of the jurisdiction on the Defendant in the descriptive or pseudonymous capacities of "*THE PERSON OR PERSONS RESPONSIBLE FOR THE OPERATION AND PUBLICATION OF THE WEBSITE www.bitcoin.org (INCLUDING THE PERSONS USING THE PSEUDONYM 'CØBRA')*". Permission was granted by Mann J on 21 April 2021. He also allowed service by an alternative method to the domain@bitcoin.org e-mail address.

4. The Defendant says it is notable that permission was granted in respect of both the broader entity responsible for the publication of the Bitcoin.org website but also the identifiable pseudonym *CØBRA* used by the person listed as the domain owner of the website. Moreover, Mann J did not order the Defendant to identify itself at that stage, determining instead that the appropriate time would be when the Defendant acknowledged service or challenged jurisdiction (para 9). The Defendant also notes that, in giving permission, Mann J did not hear argument as to the jurisdictional issue of identification as it arose on this appeal.

5. The Order of Mann J and Claim Form were served on the Defendant on 26 April 2021. The Defendant did not acknowledge service due to the precondition to waive anonymity. The Claimant subsequently applied for default judgment. This was heard by HHJ Hodge QC (sitting as a Judge of the High Court) on 28 June 2021, the hearing also attended (remotely) by someone identifying as a representative of *CØBRA*. HHJ Hodge QC entered judgment against the Defendant, albeit he declined summarily to assess the costs of the action due to the "*staggering*" sum claimed, including £75,000 for the judgment application. The Defendant notes that the Claimant did not indicate then any objection to the order for detailed assessment based on the Defendant's suggested lack of identification.

6. Detailed assessment commenced on 7 October 2021, with the Claimant serving a bill of costs in the sum of £568,516.42. The Defendant served points of dispute on 2 November 2022. Again, no point was taken concerning identification, with the Claimant serving replies to the points of dispute on 24 November 2021. On 28 March 2022, Mr William

Mackenzie, a costs lawyer, filed a Notice of Acting for the Defendant. A detailed assessment hearing was listed for 26 May 2022.

7. Two days before the detailed assessment hearing, the Claimant filed his skeleton argument, taking issue for the first time with the Defendant's ability to participate in the proceedings without having first identified itself. Costs Judge Rowley allowed the Claimant to make a related application, which he did on 12 July 2022. Having heard that application on 6 October 2022, the Judge ordered that (a) the further detailed assessment hearing scheduled for 28 November 2022 be vacated (para 1) (b) unless it identify itself by 29 December 2022, the Defendant be debarred from participating in the detailed assessment and its points of dispute be disregarded (para 2) and (c) permission to appeal be granted in respect of paragraph 2 of his order (para 3).

The Judge's decision

8. The Judge considered the authorities cited to him on the application to be of limited assistance, neither party having found a reported decision in which the relevant 'person unknown' had sought (in that capacity) to take an active role in the proceedings. In this case, however, the Claimant having obtained substantive relief as a result of the Defendant's default, the latter apparently took exception to the level of costs incurred and served points of dispute to which, the Claimant, rather surprisingly, simply responded by serving replies. This led to a somewhat odd procedural position, the paying party not being required under CPR, Part 47 to set out its name and address in its points of dispute.

9. Despite that oddity, the Judge considered that the rules expect parties to identify themselves at the outset of proceedings. It is a rare case in which defendants subject to a default judgment would involve themselves in the costs aspects, with a default costs certificate the likely outcome. As such, the absence of a requirement in CPR, Part 47 for the points of dispute to provide the paying party's name and address for service was not a pointer when considering the expectation of the rules regarding identification. In his view, the first active involvement of a party in proceedings was the trigger for its identification, as made clear by the rules on the commencement of a claim and the filing of a response.

10. The Judge also referred to the comments of Mann J when giving permission to serve out as to the need for the Defendant to identify itself as indicative that any active participation in the proceedings came at the price of self-identification, going on to observe that "*until that identification has occurred, in my judgment, the defendant cannot say that they have submitted to the jurisdiction of the court*." If the Defendant had provided the court with a name and address, the service of the points of dispute would indicate such submission but, absent that information, the court could not sanction the Defendant in various ways provided by the rules. The most that could be said is that the Defendant was participating within the jurisdiction of the court but that would be insufficient given the limitations in that event on the court's ability to control its own proceedings. If a party was not prepared to name itself, it cannot participate in proceedings.

11. Where a party had concerns about identifying itself, it can apply to anonymise its name and address. Although that does not generally prevent the opponent from knowing who the party is, that is the extent to which a party can be involved in proceedings and limit its identification. The Judge therefore concluded that, if the Defendant wished to challenge the Claimant's bill of costs, it had to identify itself. Until then, the court could not take account of the points of dispute served.

12. Finally, the Judge said he would give permission to appeal his decision, having already indicated he would likely do so given the parties' inability to locate any authority directly relevant to the case, albeit also acknowledging that the Defendant may encounter difficulties participating in the appeal without identifying itself.

Applications in the appeal

13. Indeed, the Claimant applied in the Respondent's Notice to strike out the Appellant's Notice on the basis of the Defendant's failure to identify its name and address for the purpose of the appeal, the Defendant having already applied in its Appellant's Notice to be heard on the appeal "*in its current guise as stated on the Claim Form*". The Claimant also applied to set aside the permission to appeal granted by the Judge on the basis it was (wrongly) given by the court of its own motion. However, the parties were agreed that these applications should be argued as part and parcel of the substantive appeal rather than as matters arising for prior determination. The hearing proceeded accordingly.

Overarching arguments

14. The Defendant advanced two overarching grounds of appeal, namely the Judge's suggested errors in:-

(i) failing to apply the principles indicated in *Cameron* v *Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6 and *Porter* v *Freudenberg* [1915] 1 KB 857; and

(ii) placing too little or too much weight on, or failing to apply, certain factors said to be material (or otherwise) to the exercise of his discretion.

Cameron/ Porter

15. As to the former ground, the Defendant described *Cameron* and *Porter* as having set out the "*universal principles of English law in respect of how an anonymous but identifiable defendant is made subject to jurisdiction and what rights such a party has once they are so subjected*". According to the Defendant, that was exactly the issue before the Judge who ought to have found himself bound by those principles and applied them.

16. *Cameron* was concerned with the circumstances in which it was permissible to sue an unnamed defendant. In that case, the unknown driver of a vehicle was purportedly sued by the victim of an accident under the description "*the person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013*", the Court of Appeal permitting service of the claim form on the insurer of the vehicle even though neither the driver nor the registered keeper was an insured.

17. Lord Sumption considered the history of the court's jurisdiction to sue persons unknown, the case being the first in which it had been considered by the House of Lords or the UK Supreme Court. He distinguished (at [13]) two types of case in which the defendant cannot be named: the first category comprised anonymous defendants who are identifiable (for example, by location) but whose names are unknown (such as squatters occupying a property); the second comprised defendants who are not only anonymous but who cannot be identified (such as most hit and run drivers).

18. Although an action is normally properly constituted when the claim form is issued, the general rule is that "*service of originating process is the act by which the defendant is subjected to the court's jurisdiction*" (*Barton* v *Wright Hassall LLP* [2018] 1 WLR 1119 (at [8])). An identifiable but anonymous defendant in the first category above can be served with the claim form, if necessary by alternative service under CPR 6.15. This is because it is possible to locate or communicate with and to identify him as the person described in the claim form. However, an unknown person is not identified simply by referring (as in *Cameron*) to something that he has done in the past. In such a case, service is impossible. It matters not that the wrongdoer himself knows who he is.

19. Lord Sumption described (at [17]) as self-evident the fundamental principle of justice that a person cannot be made subject to the court's jurisdiction without first having such notice of the proceedings to enable him to be heard. In the same vein, a specially constituted Court of Appeal in *Porter* held that substituted service served the same function as personal service and therefore had to be such as could be expected to bring the proceedings to the defendant's attention. In that case, the defendants were enemy aliens resident in Germany during the First World War, in relation to which, Lord Reading CJ held (at [883]):-

> "Once the conclusion is reached that the alien enemy can be sued, it follows that he can appear and be heard in his defence and may take all such steps as may be deemed necessary for the proper presentment of his defence. If he is brought at the suit of a party before a court of justice he must have the right of submitting his answer to the court. To deny him that right would be to deny him justice and would be quite contrary to the basic principles guiding the King's courts in the administration of justice."

20. As Lord Reading went on to observe (at [887-888]), since the defendant was entitled to effective notice of proceedings in accordance with the fundamental principles of English law, for substituted service to be granted, it must clearly be shown that personal service cannot be effected and that the writ is likely to reach the defendant or come to his knowledge. In *Cameron*, Lord Sumption considered (at [21]) that *Porter* "gave effect to a basic principle of natural justice which had been the foundation of English litigation procedure for centuries" and went on to find that service on the vehicle's insurer could not be expected to reach the driver and, as such, was no service at all, concluding (at [26]) that:-

> "…. a person, such as the driver of the Micra in the present case, who is not just anonymous but cannot be identified with any particular person, cannot be sued under a pseudonym or description, unless the circumstances are such that the service of the claim form can be effected or properly dispensed with."

21. The Defendant says that these fundamental principles of natural justice support its position and, yet, were dismissed by the Judge who asked the wrong question of whether the positive act of self-identification was a fundamental requirement of the Defendant's submission to jurisdiction. According to the Defendant's written argument, the correct questions the Judge should have asked were:-

(i) Was the Defendant subject to jurisdiction?

(ii) If so, what fundamental rights did the Defendant have in consequence?

(iii) Do any statutory provisions apply to fetter any such rights?

The court's jurisdiction

22. In light of the position indicated by the Claimant in written argument, the Defendant refined in oral submission the salient questions said to arise on the appeal. However, in relation to the first question above, although the Judge did refer in his judgment (at [14]; [32] and [33]) to the Defendant's (non)-submission to the jurisdiction, I did not understand him to be saying that the Defendant was not properly subject to the jurisdiction of the court. Rather, I took that term as used by him to mean the taking (or not) of appropriate steps required of a party in accordance with the relevant rules of court. This may have been an inaccurate use of that expression but that this was the understanding is indicated by the parties' submissions summarised by the Judge (at [14) (Claimant); [33] (Defendant)). However, whatever the precise meaning of that term as used in the judgment, I am satisfied that the parties and the Judge were proceeding correctly on the basis that the Defendant was properly subject to the court's jurisdiction, the Defendant being unnamed but identifiable (as the person(s) responsible for the website www.bitcoin.org and the user(s) of the pseudonym *'CØBRA'*) and, therefore, amenable to the court's jurisdiction and, having been served by alternative means by e-mail, as to which, there is no dispute this was effective, then subject thereto. As such, I reject the suggestion that the Judge fell into error by failing to ask himself the first question above.

Fundamental rights

23. The Defendant says the answer to the second question above - whether defendants enjoy any fundamental rights following service - is also to be found in *Cameron*, the decision of Lord Sumption itself drawing on *Porter* and *Jacobson* v *Frachon* [1927] LT 386 and the following universal principles based on the rules of natural justice indicated by those cases:-

(i) a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard (*Cameron* at [17]);

(ii) such notice affords the defendant an opportunity of substantially presenting his case before the court (*Jacobson* at [392]); and

(iii) once it is decided a person can be sued, he can appear and be heard in his defence and take all such necessary steps for its proper presentation (*Porter* at [883]).

24. The Defendant says that, once subject to jurisdiction, "*a party has the fundamental right to be heard in the capacity in which they are sued without facing the further hurdle of identification*" absent an express statutory requirement. To deny a party that right is to deny access to justice. Permitting a pseudonymous party to be subject to jurisdiction on the basis of a more expansive concept of 'identification' of unnamed parties as confirmed in *Cameron*, but then forcing that party to choose between their right to anonymity in the capacity in which they are sued and their right to be heard and serve documents from the address granted for alternative service, would be unfair and contrary to these principles, risking the court being used for collateral and abusive purposes to unmask a legitimate pseudonymous entity.

25. The Defendant placed particular emphasis on the distinction in *Cameron* (at [13]) already noted between "*anonymous defendants who are identifiable but whose names are unknown*" and those "*who are not only anonymous but cannot even be identified*", the former being amenable to the court's jurisdiction through service of the claim form, if necessary by alternative service, the latter not. The rationale for that distinction was that natural justice could be served in the former because it was still possible to give the unnamed party notice of the proceedings and, therefore, ensure he could be heard in his defence. The Defendant says that this shows the 'symbiotic' relationship between the right to serve an unnamed defendant within that more expansive concept of identification and the right which then follows for that defendant to be heard and present his case in the same capacity without any further requirement for self-identification.

26. The critical question in *Cameron* was the basis of the court's jurisdiction over, and in what (if any) circumstances jurisdiction can be exercised on that basis against, parties who cannot be named (*Cameron* at [12]). Although the rationale for the distinction drawn by Lord Sumption was the ability to ensure the relevant defendant could properly exercise his right to be heard, the case was not concerned with what that right entailed nor how the proceedings should be conducted once the court's jurisdiction had been properly invoked. In *Cameron*, jurisdiction was not invoked. *Porter* too was concerned with the prior question of whether a defendant could be subjected to the jurisdiction, albeit in that case by way of substituted service on a (named) alien defendant. *Jacobson* was concerned with whether a French judgment afforded a defence to a claim in English proceedings. Although the court did consider whether the French action had been conducted in breach of English principles of natural justice, no issue arose as to the capacity in which the case could be defended, the identity of the parties again being known.

27. These authorities therefore do not provide support for the Defendant's proposition that the right of the unnamed but identifiable defendant to be heard is to be enjoyed in the same pseudonymous capacity in which he is sued, let alone that such defendant enjoys a *right* to anonymity. In my judgment, the Judge was therefore correct to say that these cases were not directly relevant to, and did not bear on, the situation before him. Nor does the Defendant's proposition follow on its own terms. In principle, an identifiable defendant sued pseudonymously can still exercise his right to be heard and present its case, including in a detailed assessment, in accordance with the fundamental principles indicated above

even if that defendant is required to disclose his identity once jurisdiction has been established over him through service. As such, without more, no question of the denial of access to justice, unfairness or abuse arises. The Defendant has extrapolated impermissibly from Lord Sumption's answer to the important, but limited, jurisdictional question that actually arose for determination in *Cameron*.

Absence of 'fetters'

28. The Defendant also points to the absence of any requirement in CPR, Part 47 (and related Practice Direction) for the paying party's name to be stated on its points of dispute. By contrast, the rules for acknowledgement of service do contain such requirements under CPR Part 10.5. Although there is no express transposition between the two regimes, the Defendant says the Judge read impermissibly between them. Like the Judge, I did not consider this point persuasive. I found it unremarkable that the rules do not contain a specific provision for the naming of the paying party in points of dispute. Although comprehensive, the CPR do not purport to be an exhaustive code as to the conduct of proceedings, nor do they purport to address every specific situation that might arise. They do, however, contain broad case management powers, affording the court the flexibility to ensure their proper conduct in accordance with the overriding objective and the law more generally. Nor did I find persuasive the Defendant's reliance on *Plevin* v *Paragon Finance Ltd and another (2)* [2017] UKSC23 (at [20]) to the effect that detailed assessment proceedings are deemed to be separate from the substantive action. As Lord Sumption himself made clear in that case, whether costs proceedings are to be treated in that manner depends on the specific context in which the issue arises.

29. In general terms, however, I did consider instructive the provisions of CPR, Part 10.5 concerning the contents of the acknowledgement of service form, requiring the defendant's full name and address for service to be set out and the correction of the former if incorrectly stated in the claim form. In cases where the claim is defended from the outset, it therefore seems that CPR 10.5 would act as an express fetter in the manner envisaged by the third of the Defendant's original questions. This begs the further question why the CPR would treat differently claims in which an acknowledgement of service form had been filed from those in which the Defendant only sought to participate belatedly, in this case in the detailed assessment process. To my mind, such a distinction would not be meaningful.

30. The Defendant sought to square these circles by relating back to the basis of the court's jurisdiction over, and the claimant's ability to proceed against, unnamed persons within the wider concept of identification indicated in *Cameron*, with the suggested corresponding right of the defendant to defend the claim in the same capacity. However, this was again unpersuasive. First, as already noted, Lord Sumption's critical question concerned the ability to bring such persons before the court in the first place, not the capacity in which the defendant may then defend the claim and be heard. Second, CPR 10.5 is explicit in its terms as to the requirement for the defendant to provide his full name in the acknowledgement of service, seemingly not admitting of pseudonym or description. Third, I explored in argument with the Defendant what the position would be if, for example, a pseudonymously sued defendant defended the substantive proceedings and was required to give disclosure which had the effect of identifying him by name. I understood the

Defendant's position to be that the defendant would have the right not to be put in that position such that disclosure should not be ordered. However, the idea that disclosure should be withheld from the claimant to preserve the anonymity of the defendant seemed to me not only unworkable but also risked undermining the very principles of natural justice on which the Defendant's arguments on this appeal are said to be founded.

31. For these reasons, whether viewed at a procedural level or level of principle, the suggested absence of a 'fetter' on the Defendant's right to be heard again did not advance matters.

Open justice/ CPR, Part 39.2(4)

32. Critically, the Defendant's approach did not have sufficient regard to another fundamental principle which *is*, in my view, directly engaged in this case, namely that of 'open justice' as explained by Lady Hale in *R (on the application of C)* v *Secretary of State for Justice* [2016] UKSC 2 (at [1]) in the following terms:-

> "The principle of open justice is one of the most precious in our law. It is there to reassure the public and the parties that our courts are indeed doing justice according to law. In fact, there are two aspects to this principle. The first is that justice should be done in open court, so that the people interested in the case, the wider public and the media can know what is going on. The court should not hear and take into account evidence and arguments that they have not heard or seen. The second is that the names of the people whose cases are being decided, and others involved in the hearing, should be public knowledge."

33. Lady Hale explained (at [18]) the rationale for the second aspect by reference to the *dictum* of Lord Rodger in *In re Guardian News and Media Ltd* [2010] UKSC 1 (at [63]) in which he explained "what's in a name?", namely the search by the media for stories of public interest, including how particular (named) individuals are affected and the interests of the public. CPR, Part 39.2 reflects this principle of open justice, with Part 39.2(4) specifically addressing party anonymity in the following terms:-

> "The court must order that the identity of any person shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that person."

34. As *R (on the application of C)* indicates, persons commonly seeking anonymity include minors and incapacious adults, with Lady Hale observing (at [26]) that such publicity restrictions involve "striking a balance between the right to respect for the private life of the individuals concerned, protected by article 8 of the European Convention on Human Rights, and the right to freedom of expression, protected by article 10 of the Convention". As she put it in more granular terms in the context of that case (at [36]), the balance was between the public's right to know, not only what is going on in the courts, but also who the principal actors are, and the risk to the therapeutic enterprise through disclosure of information enabling the public to identify the incapacious patient concerned. Accordingly, the common law principle of open justice, and the rules seeking to give effect to it, contain no right to, or presumption of, anonymity. To the contrary, the derogation from this aspect of the open justice principle in CPR, Part 39.2(4) is narrowly circumscribed.

35. The fact that the Defendant was sued pseudonymously does not alter the analysis. That state of affairs is simply an incident of the Defendant's name being unknown, with the court's concern (as noted in *Cameron*) being to ensure that, if a defendant is to be subjected to the court's jurisdiction, he has effective notice of the claim. There is no dispute that the Defendant did have notice in this case. If the Defendant considers it has some interest requiring protection by anonymity, it can seek to persuade the court that the balance of its rights outweighs those of the public by making an application under CPR, Part 39.2(4). Lady Hale mentioned articles 8 and 10 of the ECHR in the context of the case before her but, depending on the circumstances, other rights might be engaged. An extreme case would be the right to life under article 2 if, for example, a person would be exposed to the risk of violence upon being named in the proceedings. These and other circumstances might also engage article 6 of the Convention and/ or common law issues of procedural fairness. However, there is no evidence in this case that the Defendant has any such interest in its anonymity in the detailed assessment process.

36. The Defendant sought to meet the open justice principle with various arguments. Again, it prayed in aid *Cameron* to suggest that the concept of identification was satisfied by pseudonym or description such that there was no question of any derogation from the principle or need to fall within the narrow exception at CPR, Part 39.2(4). However, as I have noted more than once now, the potential for pseudonymous identification in *Cameron* arose in a jurisdictional context, not on the wider basis contended for by the Defendant.

37. The Defendant also sought to draw a distinction between anonymity (with which CPR, Part 39.2(4) was concerned) and identification by pseudonym or description. However, to repeat Lord Sumption's observations in *Cameron* (at [26]), these concepts are not mutually exclusive and may co-exist:-

> "I conclude that a person, such as the driver of the Micra in the present case, who is not just anonymous but cannot be identified with any particular person, cannot be sued under a pseudonym or description, unless the circumstances are such that the service of the claim form can be effected or properly dispensed with.

38. In this case, the Defendant <u>is</u> anonymous regardless of the capacity in which the claim was brought. The Defendant also argued that CPR, Part 39.2(4) does not force a party to identify itself rather than permitting him to request anonymisation. Although that is how the issue most often arises, of greater significance is that the rule embodies the open justice principle, one aspect of which, as noted, requires the name of parties to be public knowledge. Indeed, the framing of the narrow exception to the principle in CPR, Part 39.2(4) in terms that the identity of the relevant person "*shall not be disclosed*" clearly reflects the starting point that, ordinarily, it will be.

39. Finally, the Defendant says that *R (on the application of C)*, involving as it does an incapacious adult convicted of homicide, is 'light years' away from this case on the facts. Moreover, although the Claimant emphasises the apparent importance that case places on the disclosure of a party's name, "*name*" was not used as a term of art but encompasses the broader concept of identification (indicated in *Cameron*), consistent with Lady Hale's later

use of the (different) word "*actors*". Only in this way can the principles of natural justice emphasised in *Cameron* be reconciled with principles of open justice.

40. I found these arguments unavailing. Although the facts of this case are different from those in *R (on the application of C)*, the overarching principle of open justice it embodies is squarely engaged in both. It was not engaged or considered in *Cameron*, that case being concerned with the prior jurisdictional question discussed above. As such, no 'clash' of principle arises. Moreover, based on Lady Hale's analysis and the authorities cited by her, it is also clear that the word "*name*" bears its ordinary meaning for the purpose of the open justice principle. In this regard, CPR 39.2(4) is not concerned with whether someone is *identifiable* (as discussed in *Cameron*) but with the disclosure of a person's *identity*, the latter encompassing his name and other information that, if disclosed, might reveal *who that person is*, the very thing the Defendant seeks to avoid.

41. Accordingly, to the extent it might have been suggested that there was any harm to its interests in this case, it was open to, and incumbent on, the Defendant to apply for anonymity under CPR, Part 39.2(4). The Judge was correct to reach the same conclusion in the succinct terms he did (at [35]).

The Defendant's position vis a vis the court

42. This leads to me a further and final point which, although it went largely unsaid at the appeal hearing, is also fundamental, namely that CPR, Part 39.2(4) assumes that the court and the other parties are already aware of the identity of the person who seeks to avoid its disclosure, with anonymity being sought against the outside world. In this case, however, the Defendant seeks not only anonymity against the public at large, but against the Claimant and the court as well.

43. Although it has been told that the Defendant is associated with a particular website and Twitter handle, and is supposedly a 'significant player' in its field, the court still has no idea who the Defendant actually is. Whatever the Defendant's (undisclosed) motive for wanting to keep its identity hidden, were the court to sanction such a state of affairs in proceedings before it, including on costs, the risks would be multiple and obvious, including:-

(i) The inability to verify that the person participating (pseudonymously) in the proceedings was, in fact, the person he purported to be;

(ii) The increased risk of the use of court proceedings for illicit purposes such as money laundering;

(iii) The reduced ability to secure compliance with court orders and/ or increased cost of necessary steps to that end;

(iv) The court's inability properly to apply its own rules where the identity of the party claiming anonymity is critical (for example, whether a company or an individual);

(v) The inability to ensure that the parties are treated on an equal footing consistent with the overriding objective; and

(vi) The inability to discern individual characteristics or vulnerabilities requiring, for example, the adoption of special measures.

44. There are many other potential risks and shortcomings but, on any view, the court would have a much diminished ability to supervise and control its own proceedings and to conduct them fairly, raising the very prospect of the denial of justice, unfairness and abuse canvassed by the Defendant itself. The court cannot entertain that state of affairs.

Conclusions and disposal

45. Accordingly, although I have had the opportunity to consider the issues arising on this appeal more broadly, for the reasons stated, there was no error of law by the Judge. Nor does the question of error in the exercise of the Judge's discretion arise. The Judge adjourned the detailed assessment hearing to permit the Claimant to make his application. It was also open to the Defendant then, if so advised, to cross-apply for an anonymity order under CPR, Part 39.2(4). Not having done so, there was no proper basis upon which the detailed assessment could take place with the Defendant's involvement unless and until it disclosed its identity. The Judge was therefore perfectly entitled – in fact, in my view, required – to make the orders he did, the jurisdiction under CPR 39.2(4) not being engaged in this case.

46. As for the Claimant's ancillary applications, I decline to set aside the Judge's order for permission to appeal. Although CPR, Part 52(2)(a) envisages an application being made by the person seeking permission (rather than its grant of the court's own motion), the judgment states (at [35]) that the Judge had already indicated he would likely grant permission, then confirmed in the judgment itself (at [36]). I consider it would be an inappropriate exercise of my discretion to set aside that permission when the Defendant may well have been proceeding on the basis an application was not required and, by the time the point was taken, any permission application may have been out of time.

47. I also decline the Claimant's application to strike out the Appellant's Notice on the basis of the Defendant's failure to state therein its name and address. Although the Judge was correct to find that the Defendant was required to disclose its identity for the purpose of the detailed assessment, and the same obviously holds good for the purpose of this appeal, it was necessary for me first, as both parties were agreed, to hear full argument on the appeal before I could reach that conclusion. Having done so, the appropriate disposal of both parties' related applications is to require the Defendant to regularise its position before the court by now disclosing its identity.

48. Finally, for all the reasons given above, the appeal is dismissed.