Neutral Citation Number: [2016] EWHC 2521 (Ch)

Case No: HC-2014-000819

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/10/2016

Before :

MR JUSTICE NORRIS

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Between :

Mohammad Reza Ghadami	**Appellant and Claimant**
- and -	
(1) Paul Bloomfield **(2) Philip James Saunders** **(3) Paresh Kantilal Chohan** **(4) Jan Bonde Nielsen** **(5) Peter Bonde Neilsen** **(6) Saif Durbar** **(7) Mark Rhodes** **(8) Mahendra Narottam Bakhda** **(9) David John Risbey** **(10) Kenneth John Fincken** **(11) Larios Properties Ltd** **(12) Festio Investments Limited** **(13) Belgrave Capital Limited** **(14) Braxa Investments International Corporation** **(15) Beacon Industries Corporation** **(16) Lynn Properties Limited** **(17) Vitala Investment Holding Limited** **(18) Merix International Ventures Limited** **(19) 41 UGS Inc**	**Respondents and Defendants**

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Mohammad Reza Ghadami in person (assisted by Joseph Ghadami)
Helen Galley (instructed on Direct Access) for the Second Defendant
Ben Hubble QC (instructed by **Mills & Reeve LLP**) for the Third Defendant

Helen Galley (instructed by **Barker Gillette LLP**) for the Sixth Defendant
Gabriel Buttimore (instructed by **Healeys LLP**) for the Fourth, Fifth, Seventh and Eighth Defendants
Adam Rosenthal (instructed by **Reed Smith LLP**) for the Sixteenth, Seventeenth and Eighteenth Defendants
The Other Defendants neither appeared nor were represented

Hearing dates: 14-18 and 21 December 2015 and 7 April 2016

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Approved Judgment

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

MR JUSTICE NORRIS :

1. It is necessary to begin by setting out the tortuous tale out of which the appeal and applications before me arise in this claim for £100 million. The account is drawn from material provided by Mr Ghadami (principally his Particulars of Claim and annexures, some 475 pages in length). These Particulars of Claim are most certainly *not* a concise statement of the facts on which Mr Ghadami relies; indeed as the Master observed "it is difficult to form any coherent picture of events from the Particulars of Claim". What follows is a description of the origins of the litigation: and of the part the many defendants play. It does not involve any findings of fact (although I shall refer to documents that are not in dispute).

2. So tortured is the tale I should provide some signposts. Mr Ghadami participated in some speculative property ventures. He negotiated for himself some benefits even if the venture did not succeed. There were changes in the benefits and there were changes in the source of the benefits. As to the benefits Mr Ghadami says he was promised 4 properties in London W1. As to the source of the benefits, Mr Ghadami says that although nominally promised by one person, the promise was really made by others: and yet other people (who became involved in the sale and purchase of the 4 properties) are liable to him for the fact that the benefits have not been received.

3. Mr Ghadami owned some land in Harlow. In 2005 he became involved with Mr Fincken (D10) (who represented North Western Estates plc ("NWE")) in a proposal to redevelop Harlow centre. A Joint Venture Agreement was signed in April 2005 between Mr Ghadami and NWE. Mr Ghadami was going to sell

his Harlow land to the joint venture (being paid a non-refundable deposit of £350,000 straight away) and get a profit share from the development. NWE breached the joint venture immediately by failing to pay the non-refundable deposit. So there was a varied agreement for phased payment. Mr Ghadami received £200,000: but not all of his money. This agreement is not sued upon.

4. Then Mr Bloomfield (D1)(who Mr Ghadami says is simply a "front man" for and agent of Jan Bonde Neilsen (D4) and Saif Durbar (D6), but has been described in the property press as "the veteran property dealmaker" and "one of the best-known property dealmakers of the 1980s") proposed a different joint venture (which it appears was to supercede the NWE joint venture). On 7 October 2005 Mr Ghadami entered an agreement with Blackraven Developments Ltd (at that point Mr Bloomfield's company) ("the Blackraven Agreement"). This time Mr Ghadami was get £450,000 for the Harlow land straightaway, an equal share of the profits if the key development parcel was acquired and the project went ahead, and a fee of £5 million if the joint venture had not acquired the key development parcel by 31 March 2006. Mr Bloomfield entered into a Guarantee of Blackraven's obligations. (Oddly the Guarantee appears to predate the creation of the obligations which it secures). It is clear that there were explicitly obligations owed by Blackraven, and obligations owed by Mr Bloomfield. The Blackraven Agreement and the Guarantee are not sued upon.

5. Mr Ghadami says that in connection with this joint venture he entered into yet another agreement, this time with Mr Bloomfield personally entering the primary payment obligations. This was a Management Agreement dated 17

December 2005 ("the 2005 Management Agreement"). It recorded an obligation on the part of Mr Bloomfield to pay £6 million to Mr Ghadami at a convenient time (apparently out of Blackraven's share of the development profits): and Mr Bloomfield was to provide 100% of the funding requirement for the purchase by Mr Ghadami of a property in Hertfordshire (for £11 million), a flat in Mayfair (either at 3 Belgrave Place or 17/18 Upper Grosvenor Street) (for £5 million) and a villa in Spain. If the redevelopment project was successful then the funding would be repaid out of Mr Ghadami's share of the development profits. If it was not, then Mr Ghadami would not have to pay anything by way of discharge of the funding (so getting property worth £16 million plus for nothing). The document itself says that it was "signed and agreed irrevocably by Mo & PB, agreed over a period of a few months in 2005".

6. Paragraph 34 of Mr Ghadami's Particulars of Claim (in its revised form) alleges:

> "In oral discussions Mr Bloomfield agreed that instead of the 3 properties he would transfer ownership of 42 [Upper Grosvenor Street] and 42 [Reeves Mews] and 41 [Upper Grosvenor Street] and 41 [Reeves Mews] to Mr [Ghadami]."

These are properties in which (according to Mr Ghadami) Jan Bonde Nielsen and/or Saif Durbar had an interest. The date of this agreement is unspecified.

7. Then on 13 January 2006 there was a "Memorandum of Agreement to reflect Breach of Contract of Blackraven Developments Ltd". This confirmed the obligations of Mr Bloomfield (including an oblique reference to the 2005 Management Agreement but without mention of any oral variation) and added to them.

8. One month later on 12 February 2006 Mr Bloomfield signed a Promissory Note ("the 2006 Note") whereby he conditionally promised to pay £24,350,000 to Mr Ghadami on 30 June 2007 plus interest and associated costs. This appears to have been an estimate of the sum total of the obligations which Mr Bloomfield and Blackraven had entered into with Mr Ghadami. The 2006 Note is not sued upon.

9. Mr Ghadami says that later in 2006 Mr Bloomfield informed him (i) that in June 2006 he had acquired 42 Upper Grosvenor Street and 42 Reeves Mews (ii) that if those properties were to be sold then Mr Bloomfield would be entitled to "a 25% commission of the sale price" (iii) that Jan Bonde Neilsen would receive 50% and Saif Durbar the remaining 25%. He says that Mr Bloomfield offered him half of his 25% share, to which Mr Ghadami agreed "because it would result in his receiving some monies rather than nothing" (to quote paragraph 48 of the Particulars of Claim). I will call this "the 2006 Commission Split Agreement".

10. In fact, says Mr Ghadami, the true position was that (a) Festio Investments Ltd (D12) (a company belonging to Jan Bonde Neilsen) owned 42 Upper Grosvenor Street, (b) that Saif Durbar had an interest in it and in 42 Reeves Mews (c) by February 2007 42 Upper Grosvenor Street was being sold and (d) Mr Saunders (D2) was acting for Saif Durbar. (When Mr Ghadami says that Festio "owned" 42 Upper Grosvenor Street it is not clear what he means: it seems to be common ground that the registered proprietor of the long lease of 42 Upper Grosvenor Street and 42 Reeves Mews was (and had since about 2002 been) Larios Properties Ltd, and that by reason of dealings in its shares it

had become a subsidiary of Festio). Mr Ghadami says that two promises were made for his benefit.

11. First, on 9 February 2007 Mr Rhodes (D7) (who was concerned in the management of Festio's affairs) gave an undertaking to some solicitors ("M") that out of the proceeds of sale the sum of £100,000 would be put on one side to be held to the order of Mr Ghadami and Mr Bloomfield. Mr Ghadami says that in the following month (and before any sale) £100,000 was sent to M by Beacon Industries Corporation (D15) (a company which Mr Ghadami says is in the legal ownership of Mr Rhodes and Mr Bakhda (D8) but under the control of Jan Bonde Neilsen) with instructions from Mr Bloomfield to send it straight to Mr Ghadami. Mr Ghadami received it on 15 March 2007. So Mr Ghadami got £100,000.

12. Second, Mr Ghadami says Jan Bonde Neilsen promised to give him the commission that was supposed to go to Mr Bloomfield. So far as I can tell the case is that this promise was made in a telephone conversation in March 2007: but otherwise the circumstances are not spelled out. It is not said that Mr Bloomfield was party to this agreement (and he subsequently made promises inconsistent with it, since they proceed on the footing that he was still entitled to the commission).

13. At all events, notwithstanding (i) Mr Bloomfield's promise to share his commission, (ii) the actual payment of £100,000 arranged by Mr Rhodes, and (iii) Jan Bonde Neilsen's promise to give Mr Bloomfield's commission to Mr Ghadami, on 19 March 2007 Mr Ghadami entered a unilateral notice on the title to 42 Grosvenor Street and 42 Reeves Mews held by Larios Properties

Ltd claiming a proprietary interest in the land. In his form UN1 he set out the basis, asserting an equity by estoppel and apparently saying that Mr Bloomfield was acting as agent of Larios Properties Ltd when he made the promise about 42 Upper Grosvenor Street and 42 Reeves Mews. (In these proceedings Mr Ghadami bases his case in contract, not upon an equitable estoppel: and he does not allege that Mr Bloomfield was the agent of Larios Properties Ltd).

14. In support of that legal claim to an interest deriving from an estoppel Mr Ghadami referred to the Blackraven Agreement, the 2005 Management Agreement, and to a "verbal" agreement

> "that Mr Bloomfield, acting as an agent of the proprietor, will acquire 42 Grosvenor Street and 42 Reeves Mews, London, after March 2006 and will then transfer the ownership of the said premises to Mr Ghadami"

there is then a reference to a further "promise of ownership", and an allegation that Mr Bloomfield is now acting contrary to the 2006 Note.

15. Larios Properties Limited (D11) was at this time the registered proprietor of 42 Grosvenor Street. It was in negotiation to sell 42 Upper Grosvenor Street and 42 Reeves Mews. Mr Ghadami says that the controlling minds of Larios must be either Jan Bonde Neilsen or Saif Durbar. Mr Saunders (on its or their behalf) sought cancellation of the unilateral notice by an application dated 27th of March 2007.

16. Mr Ghadami says that in order to secure his cooperation in removing the unilateral notice various promises were made. First on 10 April 2007 Mr Bloomfield entered into another promissory note ("the First 2007 Note")

promising to pay £200,000 to Mr Ghadami by no later than 28 May 2007 if Mr Ghadami would remove the unilateral notice by 13 April 2007 plus interest if the payment was late. Second by a document apparently dated 12 April 2007 and called a "promissory note" ("the Second 2007 Note") Mr Bloomfield confirmed that in the event of the sale of 42 Upper Grosvenor Street (including 42 Reeves Mews)

> "the commission is to be 25% of the net profit and this is to be split evenly with yourself 50/50 over and above monies received i.e. £100,000. The remainder will be split as agreed, 50/50 upon payment and completion of sale"

Mr Ghadami consented to the removal of the notice.

17. The promised £200,000 did not arrive: so Mr Ghadami reinstated his notice on 16 June 2007.

18. Shortly thereafter (on 30 June 2007) Mr Ghadami was due to receive payment of £24,350,000 under the 2006 Note. Mr Ghadami says that Mr Bloomfield tried to negotiate payment terms, and he accepted payment by instalments, but the instalments were not kept up. However, he did receive a payment of £220,000. Mr Ghadami says that this was not a late payment of the promised £200,000 due under the First 2007 Note but was a payment on account of instalments due under the arrangement relating to the 2006 Note.

19. The outstanding obligations under the 2006 Note led to the signature on 12 September 2007 of yet another promissory note ("the Third 2007 Note") this time Mr Bloomfield conditionally promising to pay £33,904,940 on 12 February 2008. The condition was:-

> "… If the terms and conditions mutually agreed are not fulfilled i.e. the mutual contracts on the joint-venture and the agreement reached with [Mr Bloomfield] and his associates namely [Mr Fincken] and Saif Durbar and others in 2005 and 2006 on the basis of which the payment is due."

20. Mr Ghadami says that he circulated copies of the Third 2007 Note to Mr Fincken and to Saif Durbar asserting that they had acknowledged that they would be jointly and severally liable with Mr Bloomfield on it: he says he has never received any denial from them that this is so.

21. Just to complete the account of the sale of 42 Upper Grosvenor Street and 42 Reeves Mews, on 5 October 2007 they were split into separate titles (I slightly simplify a more complex transaction). 42 Grosvenor Street was transferred by Larios to Vitala Investment Holding Limited (D17) for £11,926,250 and 42 Reeves Mews was transferred by Larios to a company called Lynn Properties Ltd (which may be D16) for £8,350,000. To achieve that transfer the unilateral notice had to be removed. Mr Saunders (who acted for Larios) obtained the removal, purporting to act for Mr Ghadami. Mr Chohan (D3),of Magwells acted for both of the purchasers.

22. The complaint in this action is principally about 42 Upper Grosvenor Street/42 Reeves Mews. But mention is made of the other properties and I ought briefly to record what is said by Mr Ghadami about them. 41 Upper Grosvenor Street and 41 Reeves Mews were also being sold. The registered proprietor appears to have been 41 UGS Inc., of which Mr Saunders was a director. The transferee was Merix International Ventures Ltd (D18): they were represented in the transaction by Mr Chohan. The purchase price was £25,850,000. The deal appears to have completed on 30 March 2007. According to Mr Ghadami,

Merix International Ventures Ltd is a wholly-owned subsidiary of a BVI company called Kipros Ltd whose ultimate beneficial owner is asserted to be Timur Kulibayev (the son-in-law of the President of Kazakhstan).

23. Mr Ghadami says that because he did not receive what was due to him in respect of the Blackraven Agreement (as varied) Mr Bloomfield orally agreed on 29 April 2009 that Mr Ghadami would receive 25% of the net profits of the sale of 41 Upper Grosvenor Street/41 Reeves Mews ("the 2009 Oral Agreement"). It is not clear how this promise concerning 25% of the "net profit" relates to Mr Bloomfield's promise to share the 25% "commission" he was said to be due or to the promise Jan Bonde Nielsen is said to have made about the diversion of Mr Bloomfield's 25% "commission" (insofar as these promises extended to 41 Upper Grosvenor Street).

24. Other events occurred before the issue of the Claim Form on 9 April 2013: but I do not think that they are material to the issues I have to address.

25. The Claim Form, first, seeks damages against Mr Bloomfield, Jan Bonde Neilsen and Saif Durbar for breach of contract. The contracts relied on are (a) the 2005 Management Agreement (about transferring 3 properties) (b) the First 2007 Note (to pay £200,000) (c) the Second 2007 Note (to split the 25% commission 50/50) and (d) the Third 2007 Note (the conditional promise to pay £33.9 million). In the alternative, second, it seeks specific performance of the 2005 Management Agreement by the transfer of 42 Upper Grosvenor Street/42 Reeves Mews. Thirdly, it seeks damages from all of the Defendants other than Mr Bloomfield "for breach of the economic torts conspiracy and/or

interference with a contract or business and/or inducing or procuring a breach of contract and/or causing loss by unlawful means".

26. The Particulars of Claim enlarge upon those economic torts in the following way:-

> " …all the property transactions as set out above were sham transactions – they involved the same solicitors, the same buyers and sellers (who were often owned by the same human owner)… The effect of the said transactions was to deprive the claimant of the ownership of 42 [Upper Grosvenor Street] and 42 [Reeves Mews]…… The persons behind the company defendants (and therefore also the companies) as well as the other Defendants knew that the Claimant was entitled to 42 [Upper Grosvenor Street] and 42 [Reeves Mews] and/or the monies in the various agreements above. This is because they are all employees or agents of Mr Jan Bonde Nielsen…. The same persons knew that the effect of their actions would be to deprive the Claimant of the ownership of 42 [Upper Grosvenor Street] and 42 [Reeves Mews] and/or deprive him of the monies arising from the various agreements… They are thus all liable for breach of the economic torts relied on…"

27. Mr Ghadami obtained judgment in default against Mr Bloomfield, Mr Risbey (D9) and Mr Fincken on these claims. But Mr Saunders, Mr Chohan, Jan Bonde Nielsen, Peter Bonde Nielsen (his son), Saif Durbar, Mr Rhodes, Mr Bakhda, Lynn Properties Ltd, Vitala Investment Holding Ltd, and Merix International Ventures Ltd all applied for these claims against them to be struck out or alternatively for summary judgment to be given in their favour. Mr Risbey and Mr Fincken applied for the default judgments against them to be set aside.

28. The strike out and summary judgment applications came before Deputy Master Mark ("the Master") on the 19 February 2014. On 13 February 2014 Mr Ghadami had lodged three lever arch files of documents additional to those annexed to the Particulars of Claim or exhibited to his witness statement.

There was no witness statement explaining what they were or what was their relevance to the case.

29. Mr Ghadami did not attend the hearing before the Master but sent his son to make an application for an adjournment. The Master declined to adjourn the applications. He considered the entire claim to be "manifest nonsense". He said that although Mr Ghadami produced many hundreds of pages of documents show connections between defendants, none of it suggested that Mr Bloomfield was acting as the agent of any other party, and that the suggestion that everybody knew everything (because they had some connection with Jan Bonde Neilsen) was "irrational". He said that it was clear that there was no enforceable contract for the transfer of 42 Upper Grosvenor Street and 42 Reeves Mews claim against anybody as guarantor of Mr Bloomfield's obligations. He said:-

> " I can only express my astonishment that such serious allegations of conspiracy appearing pleading bearing counsel's name without any arguable grounds for them ".

Apart from the claims against Mr Bloomfield the Master considered the only other arguable claim to be that founded on the apparent agreement of Jan Bonde Nielsen that whatever was due to Mr Bloomfield in relation to 42 Upper Grosvenor Street and 42 Reeves Mews should be paid to Mr Ghadami (so that there may be a claim for an account of that commission). Accordingly the Master struck out all claims other than that against Mr Bloomfield ,but gave Mr Ghadami "a short time to consider formulating a claim against [Jan Bond Neilsen] and Larios to ascertain what [Mr Bloomfield] was entitled to from either of them and what became of it". He also of his own motion set

aside the judgments against Mr Risbey and Mr Fincken since they were founded upon the same causes of action which the Master had considered unarguable in relation to other defendants.

30. On 28 February 2014 Mr Ghadami sought to persuade the Master to withdraw his judgment, relying on Re Barrell [1973] 1 WLR 19: but the Master said he would proceed with a hearing to determine the form of his order.

31. So on 14 March 2014 Mr Ghadami made his application to set-aside "the decision" made by the Master ("the Application"). In support of the Application he lodged a witness statement and 4 lever arch files of documents (to which he later added).

32. By his order dated 28 March 2014 the Master

    a) Struck out the Particulars of Claim save for those paragraphs that related to Mr Bloomfield by way of background or by way of direct claim against him (those paragraphs being specifically identified);

    b) Struck out all allegations that Mr Bloomfield was the agent of Jan Bonde Nielsen or Saif Durbar;

    c) Of his own motion set aside the judgments that had been entered against Mr Risbey and Mr Fincken;

    d) Struck out as totally without merit the claims against Mr Saunders, Mr Chohan, Mr Peter Bonde Nielsen, Saif Durbar,

Mr Rhodes, Mr Bakhda, Mr Risbey, Mr Fincken, and Festio Investments Ltd;

e) Struck out the claims against Jan Bonde Nielsen and Larios Properties Ltd, but gave Mr Ghadami permission (within 28 days after the determination of his application to set-aside the Master's order) to amend the Particulars of Claim to seek an account of what was due to Mr Bloomfield in relation to the sale of 42 Upper Grosvenor Street and 42 Reeves Mews.

f) Awarded costs in favour of the 2nd to the 10th Defendants and the 16th to the 18th Defendants on the indemnity basis, and ordered payments on account (payments becoming due on a date fixed by reference to the determination of Mr Ghadami's application to set-aside).

33. Following the Order Mr Ghadami (a) on 31 March 2014 made an application the Master should recuse himself from all further dealings; and (b) on 22 April 2014 filed an Appellant's Notice ("the Appeal"). It is important to note that the Appellant's Notice only challenges the decision of the Master not to adjourn the hearing of the summary disposal applications. It does not seek to say that the Master erred in law in the substantive decision that he took about striking out the cases (including his decision to consider the position of D9 and D10). Not unnaturally that caused some puzzlement to those considering the grant of permission to appeal: but on 31 July 2014 Arnold J granted permission to appeal (although he expressed himself unable to understand the point in the Appeal) and he directed that the "set-aside" Application be heard

before the same judge who was hearing the Appeal. Those are the matters that came before me on 14 December 2015.

34. In the afternoon of the working day before the hearing Mr Ghadami lodged a further 15 lever-arch files of documents together with (a) an application (supported by a witness statement dated 11 December 2015) to adduce them at the hearing and (b) an application to bring contempt proceedings against Mr Saunders, Jan Bonde Nielsen, Peter Bonde Nielsen, Saif Durbar, Mr Rhodes and Mr Bakhda. This evidence did not direct attention any particular documents as being relevant to any particular issue arising on either the Appeal or the Application. These documents represented 10% of the product of a dozen or so applications which Mr Ghadami had made in the Applications Court (and elsewhere) against various persons (including many firms of solicitors) for third-party disclosure. (I myself granted one of the first of those in November 2014 on the footing that Mr Ghadami was pursuing judgment against Festio: it does not appear that I was told that the claim against Festio had been struck out in March 2014).

35. I should first note how this huge volume of material was dealt with at the hearing. Rather than use time that could more usefully be spent on the Application and the Appeal in arguing about the admissibility of this material, Counsel for the Respondents agreed that Mr Ghadami could refer to it and they would do their best to cope with what emerged. I concurred in this act of generosity towards a litigant in person.

36. I should next deal with the issue raised by the concurrent hearing of the Appeal and the Application. The relationship between (i) appeals and (ii)

applications to set-aside upon the grounds of non-attendance were considered by the Court of Appeal in Bank of Scotland v Pereira [2011] EWCA Civ 241. That case considered the interrelationship between appeals and applications under CPR 39.3. Two points arise.

37. First, the hearing before the Master was not a trial but an application to dispose of Mr Ghadami's action summarily by striking it out or granting summary judgment. The relevant rule governing applications to set-aside by a non-attending party is CPR 23.11 (with the added gloss provided by CPR 24 PD para 8).

38. In relation to applications by a non-attending party to reopen what are in effect final orders made on applications under CPR 23, I hold that the Court ought (following the guidance given in CPR 1.2) to consider at least the same factors as would fall for consideration under CPR 39.3 (a good reason for non-attendance; an arguable case on the merits; a prompt application to set aside), being careful to treat those simply as factors to be weighed (amongst other relevant circumstances) in the exercise of the discretion conferred by the rule, and not as mandatory requirements (which is the way those factors are treated by CPR 39.3). In fact Mr Ghadami argued his case as if the relevant rule were CPR 39.3: but I shall adopt the more benevolent approach.

39. Second, in Pereira at paragraph [37] the Court held that where a party is seeking a fresh hearing on the ground of non-attendance at the original hearing then (even if there are other grounds of appeal) that party ought first to make an application to set-aside. I propose to follow that guidance when considering the Appeal and the Application. Its good sense is evident in general: it directs

attention to the reality of the underlying case as demonstrated by the material before the Court. But it is particularly apposite where the Appeal is procedural and the Application is substantive. As Arnold J put it to Counsel seeking permission to appeal on Mr Ghadami's behalf:-

> "…if your client has substantive merits, then the order will be set aside. If your client does not have substantive merits, the procedural wrong goes nowhere…"

40. I must next address the causes of action on which Mr Ghadami relies. For the purpose of analysis it is useful to group the causes of action into three categories.

41. First, the breach of contract claim against Mr Bloomfield is (subject to two observations) straightforward. The first of the observations is that the language in which the various contractual obligations are expressed is not always entirely clear: in particular it is not expressly made clear whether later agreements are substitutes for or additional to earlier agreements. The second observation is that there is no enforceable contract for the transfer by Mr Bloomfield of 42 Upper Grosvenor Street and 42 Reeves Mews to Mr Ghadami. Mr Ghadami knows the oral agreement with Mr Bloomfield on which he relies is unenforceable by reason of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. That is why when he put the unilateral notice on the title he relied on estoppel and not on a contract. (See also Ghadami v Donegan [2014] EWHC 4448 for another example of Mr Ghadami's familiarity with this area of the law in 2007). The contractual claim against Mr Bloomfield is based on the First 2007 Note, the Second 2007 Note, the Third 2007 Note and the 2009 Oral Agreement. It cannot be founded on

the Management Agreement read as if the Management Agreement contained promises about 42 Upper Grosvenor Street and 42 Reeves Mews (and that is the only version of the Management Agreement that Mr Ghadami pursues).

42. Second, the breach of contract alleged against Jan Bonde Nielsen and Saif Durbar is (save in one respect) dependent on the proposition that Mr Bloomfield was their agent. So it will be necessary (notwithstanding the complete absence from every contractual document of any suggestion that Mr Bloomfield was acting on behalf of or in the name of Jan the Bonde Nielsen or Saif Durbar) to establish an authority or capacity in Mr Bloomfield to create direct legal relations between Jan Bonde Nielsen/Saif Durbar on the one hand and Mr Ghadami on other the one hand in relation to each of the contracts on which Mr Ghadami relies. (The one exception is the allegedly direct promise by Jan Bonde Neilsen that Mr Ghadami could have Mr Bloomfield's commission which the subject of the oblique pleading in paragraph 99 of the Particulars of Claim that Mr Ghadami "will rely upon the promise made by Jan Bonde Nielsen" that Mr Ghadami would receive the commission to which Mr Bloomfield was entitled). The contracts by which Jan Bonde Nielsen and Saif Durbar are said to have been bound by Mr Bloomfield are (i) the 2005 Management Agreement (which is alleged to relate to 42 Upper Grosvenor Street and 42 Reeves Mews) (ii) the First 2007 Note (iii) the Second 2007 Note (iv) the Third 2007 Note and (v) the 2009 Oral Agreement.

43. Third, there are the economic torts pleaded against all defendants other than Mr Bloomfield (being alternative claims against Jan Bonde Nielsen and Saif Durbar and primary claims against all others).

44. The essence of the tort of conspiracy is an agreement or understanding either (a) to do a lawful act having the predominant purpose of injuring the claimant or (b) to use unlawful means intentionally to injure the claimant. It appears to be alleged that the conspirators were conspiring (i) "to avoid paying [Mr Ghadami] the sums owed" and (ii) not to transfer 42 Upper Grosvenor Street to Mr Ghadami. Conspiracy can be a difficult thing to plead (not least because concealment is frequently part of the modus operandi). But a conspiracy claim inevitably involves allegations of knowledge: and under paragraph 8.2 of Practice Direction 16 a claimant must specifically set out in his Particulars of Claim any allegation of notice or knowledge i.e. upon what basis it is said that the defendant knew the fact alleged. Without that degree of particularity the parties will not have all the information they need to deal efficiently and justly with the matters which are in dispute between them.

45. To be liable for inducing a breach of contract there must obviously be a contract; and the actor must actually know (or be recklessly indifferent to the fact) that he or she is procuring an act by a party to the contract that is a breach of that contract, and must intend that result. Mr Ghadami must show that there was an intentional invasion of his contractual rights and not merely that the breach of contract was the natural consequence of a particular defendant's conduct.

46. The tort of causing loss by lawful means (or interference with business by unlawful means) requires proof that the defendant intentionally damaged the claimant's business by using unlawful means. It is intended to provide a

remedy for intentional economic harm caused by an unacceptable, unlawful means. As Lord Nicholls pointed out in OBG [2008] 1 AC 1 at [154]

> "If a defendant intentionally harms the claimant directly by committing an actionable wrong against him, the usual remedies are available to the claimant. The unlawful interference tort affords the claimant the like remedy if the defendant intentionally damages him by committing an actionable wrong against a third party."

47. Having set the context of the Application I can now address the material deployed by Mr Ghadami, reminding myself that the material is not deployed *to prove* a case, but only for the purposes of enabling an assessment to be made whether Mr Ghadami's case against each Defendant has a real prospect of success or is properly characterised as fanciful. (I adopt the guidance given in paragraph 39.3.7.3 of the White Book). I can proceed immediately to that issue because I accept (as did the Master at a subsequent review hearing) that Mr Ghadami had a good reason for non-attendance (a late attack of shingles) and has brought the Application promptly.

48. Mr Ghadami set out to prove that everyone else in the case has lied (and indeed has brought a contempt application on that basis). But this is a burden he does not have to assume. His submissions, therefore, had a slightly different focus from the issues I am required to address. I will concentrate on what is necessary for the fair disposal of the Application.

49. At the heart of the case is a "promise" Mr Bloomfield made about 42 Upper Grosvenor Street and 42 Reeves Mews: I use the quotation marks as a shorthand for "the alleged promise", because the matter is contentious and because the promise is not directly enforceable (which is why Mr Ghadami has elsewhere argued that it is a representation which founds a proprietary

estoppel). His judgment against Mr Bloomfield has proved useless: so he seeks to enforce the "promise" against Jan Bonde Nielsen and Saif Durbar. Two arguments were deployed to reach that conclusion.

50. The first was that Mr Bloomfield himself had a sufficient interest in 42 Upper Grosvenor Street and 42 Reeves Mews (together "No.42") to make the "promise" capable of fulfilment. The second was that Mr Bloomfield was simply the agent of the real owners who are said to be Jan Bonde Neilsen and Saif Durbar.

51. The short answer to both these points is that if the "promise" about Number 42 is not enforceable then it does not matter what interest Mr Bloomfield had in Number 42 or in what capacity he acted in making the "promise". But Mr Ghadami made lengthy submissions and I ought to address them.

52. The allegation that Mr Bloomfield was the principal in the transactions is (to understate the matter) a "change of emphasis": but Mr Ghadami now says it is "set in concrete". The documents show that the registered proprietor of Number 42 was Larios Properties Ltd. In support of the attempt to remove the first unilateral notice put on the title by Mr Ghadami (which was based on the "promise" by Mr Bloomfield) Mr Bloomfield made a statutory declaration. It said:-

> "I am not an officer of Larios Properties Ltd nor do I have any legal or beneficial interest in Larios Properties Ltd nor have I any authority to bind Larios Properties Ltd nor have I ever represented to anybody that I have authority to bind Larios Properties Ltd. Further, I have no interest whether legal or beneficial in [Number 42]. or any other properties for that matter."

53. Mr Ghadami says he will establish at trial that that was untrue. He relies in part upon a witness statement which Mr Bloomfield signed on 30 April 2009 in which he said:-

> " I made these statements without the benefit of legal advice and having now reviewed the matter in close detail, it appears that my understanding of the facts, as I believed them to be, and my legal rights and interests in the Properties arising therefrom have only just been explained to me and, in the circumstances, I must change that which I had previously stated. "

54. It is common ground that Larios Properties Ltd was at the time of the "promise" the wholly-owned subsidiary of Festio Investments Ltd (a Cypriot company). (Mr Ghadami spent some time in submissions exploring the fact that there are two share certificates, one in BVI form and one in Jersey form, recording this ownership. The one in Jersey form seems to me a mistake by the Jersey directors of the BVI company, and not to be relevant to the issues for decision).

55. Festio acquired the Larios shares with the benefit of bank funding. On 16 June 2006 Mr Bloomfield signed a security document in favour of the bank as a director of Festio; he also signed a Facility Agreement in that capacity, and also a Subordination Agreement (whereby Greenoak Holdings Limited, of which Mr Bakhda was a director and which appears to be the holding company of Festio, postponed its lending to that of the bank). Furthermore on 19 June 2006 Mr Bloomfield (along with Greenoak Holdings Limited) signed a guarantee in support of Festio's borrowing from the bank. These documents do suggest that Mr Bloomfield had an executive role, and the last suggests that he had some economic interest in Number 42.

56. The fact that Mr Bloomfield had an executive role in the holding company of the registered proprietor of the asset goes no way toward showing that Mr Bloomfield himself had any proprietary interest.

57. Mr Ghadami asserted that Mr Bloomfield was "the real purchaser". The assertion does not easily square with all of the documents which refer to Mr Bloomfield's entitlement to "a commission" on sale (which is not something a real owner would pay himself) or with Mr Ghadami's pleaded claim to all or part of that "commission". But I will address the case I understood him to advance.

58. He relied first on an informal reference in an e-mail of 27 January 2006 passing between solicitors engaged in the finance arrangements for a then-current joint venture to "the proposed purchase of 42 Upper Grosvenor Street by Paul Bloomfield". But an account of the then-current joint venture proposal (called "Project Clearbrook") as recorded by the bank in a Credit Committee report of January 2006 and subsequent documents (the initial report is misdated) conclusively shows that this is *not* the transaction that eventuated six months later. The ultimate transaction was not an asset purchase by a joint venture company formed by Mr Bloomfield and Clearbrook, but (according to Mr Ghadami) a purchase of share capital involving different parties (Jan Bonde Nielsen and Saif Durbar) from which Mr Bloomfield was entitled to derive a commission.

59. Then Mr Ghadami relied upon a letter which Mr Bloomfield had signed on 20 April 2009. Addressed to Mr Saunders, it said:-

> "As you are aware I have a beneficial interest in Larios Properties Ltd, the legal owners of the above-mentioned properties…."

This is, of course, an acknowledgement that Mr Bloomfield was *not* the owner of the properties: and insofar as it asserts that Mr Bloomfield personally had a "beneficial interest" in Larios it is inaccurate, since he was not a shareholder. So I do not think this takes Mr Ghadami's case any further.

60. The documents undoubtedly show that in the transaction that eventuated Mr Bloomfield had an executive role to play. I should briefly note here a controversy about whether Mr Bloomfield's executive role was deliberately suppressed. Mr Johnson (a solicitor who originally thought that he had been instructed by Festio) put in evidence material which he said had been provided to him by one of his clients. The exhibit was a photocopy of a certificate from the Cypriot Companies Registry which showed Festio to have been dissolved in 2010: it bore an authentication stamp below the statement of information. Mr Ghadami obtained a copy of a dissolution certificate from another source. This showed that between the information and the authentication stamp there is included a section detailing directors (including the name of Mr Bloomfield). Mr Ghadami exhorted me to find that the document exhibited by Mr Johnson had been fabricated or defaced with the intention of misleading the Court, urged me not "to brush it under the table" and to let him proceed with his contempt application and with this action, because investigation was clearly required.

61. With a diffuse statement of case and a welter of lately produced material it is essential to focus on the Application itself. I have deferred consideration of the

contempt application. My present concern is to assess the merit of Mr Ghadami's claim not the demerits of the conduct of the defence (if such has taken place). As to the merits, Mr Ghadami submitted that if Mr Johnson was willing to go to the lengths of defacing an official search certificate (I should say that there is no evidence he did any such thing) then it must be because it is seen as important to hide the involvement of Mr Bloomfield with Festio: he asked "Why would they say untrue things unless everything I say is right?" But I can assume for the purposes of this application that Mr Bloomfield *was* a director of Festio. However, that does not assist in determining the ownership Number 42.

62. Mr Ghadami argued that in fact Mr Bloomfield was also a 50% shareholder in Festio. He relied on some evidence that Mr Rhodes gave in a Schedule he prepared as part of a disclosure exercise in unrelated Commercial Court proceedings in 2009. Mr Rhodes' understanding of the position was originally challenged by other parties: but in the course of the hearing it became clear that they accepted that Mr Ghadami was right, and that Mr Bloomfield did hold 50% of the shares in Festio. But they continued to maintain (as they had from the outset) that if he did then Mr Bloomfield can only have been a nominee, probably for Saif Durbar. I cannot resolve that dispute on this application. But even if Mr Ghadami is right that Mr Bloomfield was the beneficial and not the fiduciary owner of half of the Festio shares, it is unreal to suggest that Mr Bloomfield had any proprietary interest in Number 42 itself (as Mr Ghadami insisted). A shareholder in and director of a holding company does not have a proprietary interest in the assets of the subsidiary.

63. Mr Ghadami submitted that the simple fact that D4,D5,D7 and D8 had been shown to be wrong in doubting his case that Mr Bloomfield owned shares in Festio meant that his whole case ought to go to trial. I do not agree. Before we get to the defects in the defence we have first to look at whether the case advanced in the claim has a real prospect of success.

64. So I am clear that Mr Ghadami's labours to establish that Mr Bloomfield had some interest in Number 42 capable of supporting the "promise" (assuming it to be enforceable) go nowhere.

65. The second argument is based on agency. Mr Ghadami says it is not his case anymore, but it is the case that is pleaded and is his only route to enforcement of the 2007 Notes against anyone other than Mr Bloomfield. The status of "agent" is not a fact: it is a legal conclusion drawn from primary facts. Mr Ghadami asserts the conclusion (see appendix B section (1) attached to the draft Particulars of Claim) but does not plead any facts directly concerning the Blackraven Agreement or the subsequent transactions on which this conclusion rests. What material did he deploy to prove agency?

66. Amongst a range of highly colourful and entirely tangential allegations concerning connections between various individuals and their participation in sundry transactions the following most closely relate to the question of agency in relation to 42 Upper Grosvenor Street, 42 Reeves Mews, 41 Upper Grosvenor Street and 41 Reeves Mews:-

    a) Mr Ghadami was informed by Mr Rhodes in a conversation in December 2010 that "Mr Bloomfield was Jan Bonde Neilsen's "eyes, ears, agent and dealmaker";

b) Saif Durbar, Mr Bloomfield and Jan Bonde Neilsen were partners in other unrelated property development ventures;

c) In a document prepared by Mr Saunders for his solicitors to assist in his defence in this claim, and mistakenly disclosed by them to Mr Ghadami, Mr Saunders said (in relation to Jan Bonde Neilsen) "Bloomfield was his runner".

d) In the course of a taped telephone conversation with Saif Durbar in December 2008 Mr Ghadami elicited that Saif Durbar had threatened to break Mr Bloomfield legs unless the UN1 was removed (or, more accurately, unless Mr Bloomfield got the money to pay Mr Ghadami so that the UN1 could be removed). Saif Durbar explained that "if somebody going to harm my property I'm going to protect it".

e) In the course of the fund raising for the Harlow joint venture a bank sent some enquiries to "staipan@aol": Mr Ghadami asserts that this is connected with Saif Durbar and that he himself corresponded with the address. He says that Saif Durbar was a participant from the start of the ventures and throughout the attempts to compensate Mr Ghadami for its failure to launch.

f) That Jan Bonde Nielsen promised to give Mr Bloomfield's commission to Mr Ghadami (something that only a principal could do).

g) That in relation to the 2006 Note Mr Ghadami sought from Saif Durbar a guarantee of Mr Bloomfield's obligations, which Saif Durbar promised to give (but never did).

h) That the address of an office used by Jan Bonde Nielsen appears on a promissory note.

67. In my judgment even if Mr Ghadami proved each and every one of those allegations he would have no real prospect of establishing that Mr Bloomfield was the agent of Jan Bonde Nielsen or of Saif Durbar when entering the 2005 Management Agreement, the 2006 Note, the First 2007 Note, the Second 2007 Note or the Third 2007 Note. The use of companies to undertake the underlying transactions is a clear indicator that the economic participants (assuming Jan Bonde Nielsen and Saif Durbar to be such) were in general anxious to avoid personal liability: and there is no material to warrant pursuit of the argument that as regards Mr Ghadami they abandoned that approach and assumed personal liability to him. There is not a hint in any of the transactional documents concerning the dealings of the various companies that Mr Bloomfield was not merely the agent of the company but also the agent of Jan Bonde Nielsen or Saif Durbar. There is not a hint in any of the Notes that Mr Bloomfield, as well as being a principal and primary obligor, was also the agent of other individuals so as to bind them contractually. Indeed, the desire to secure the guarantee of Saif Durbar is a clear recognition by those involved that he was not otherwise personally liable (because you do not seek a guarantee from someone who is, by reason of the acts of his agent, already primarily liable). Nor could statements by Mr Ghadami that he considered

third parties to be liable to him, and their failure to deny that assertion, make them bound as principals to any contractual obligation. Nor could statements by Mr Bloomfield that he would try and get money from, for example, Jan Bonde Nielsen make the latter personally liable to Mr Ghadami to provide it. The possibility that Mr Bloomfield was the nominee of Saif Durbar in relation to a shareholding in Festio cannot sustain an inference of general agency such as Mr Ghadami needs to prove in relation to the documents on which he sues.

68. Of course, Mr Bloomfield may himself have made his promises to Mr Ghadami on the faith of promises of indemnity from others - the legal owners of the properties or those who were economically interested in the ventures or who were otherwise contractually bound to Mr Ghadami. But any such arrangement would not give Mr Ghadami any direct right of action in contract against those others.

69. The "agency" argument is fanciful and goes nowhere. As regards the various agreements Mr Ghadami seeks to enforce it is clear that neither Jan Bonde Nielsen nor Saif Durbar is a primary obligor.

70. This brings me to the "economic torts". One can put on one side "inducing a breach of contract". There was no enforceable contract relating to Number 42. There is no case pleaded against the Defendants that any of them intentionally interfered with the payment obligations under the 2007 Notes on which Mr Ghadami sues. So I focus on the other claims. What does Mr Ghadami say about "combination"? What does he say was the "conspiracy"? What are the "unlawful acts"? What material is there to show that there was a predominant purpose of injuring Mr Ghadami? Or any degree of intention to injure him?

What wrongs were committed against third parties with the intention of damaging Mr Ghadami? In addressing these questions one is not looking for proof: one is looking only for such material as gives such a case a "real" prospect of success.

71. Mr Ghadami relied on two arguments. First, connection between the parties. Second, participation in sham sales.

72. Dealing first with "connection": Mr Ghadami's case is that "given the connections between all the Defendants as set out in Appendix B" and "because they are all employees or agents of Jan Bonde Nielsen" in participating in various property dealings the Defendants "knew that the effect of their actions would be to deprive [Mr Ghadami] of the ownership of [Number 42] and/or deprive him of the monies arising from the various agreements". As a preliminary point, such "knowledge" (even if proven) would not be enough to establish any of the economic torts pleaded. The case cannot be made out. But I ought also to address the "connections".

73. The reference to "Appendix B" is a reference to a 4-page document served with draft Particulars of Claim. The actual Particulars of Claim themselves set out, over 25 paragraphs, various alleged connections between the parties. A sample would be

    a) Mr Saunders who is said to be a director of 41 UGS Limited and the solicitor who acted for Larios (as it is common ground he did in connection with the surrender of the long lease of Number 42 and its split into two titles and in the on-sale to

Vitala and to Lynn Properties). It was he who secured the removal of the UN1 purporting to act for Mr Ghadami.

b) Mr Chohan of Magwells who (it is common ground) was the solicitor who acted for Vitala, Lynn Properties (BVI) and Merix when they bought the properties from Larios and 41UGS Ltd, and who in that capacity had dealings with Mr Saunders. Those dealings continued post-completion when Mr Ghadami put yet another unilateral notice on the title of the new proprietor and 18 months after the transaction date Mr Chohan had to seek from Mr Saunders information about what Mr Ghadami said had occurred. At the hearing Mr Ghadami also asserted that Mr Chohan was a "friend" of Saif Durbar and acted for Saif Durbar on other transactions.

c) Mr Rhodes who appears to have been a director of Beacon Industries Ltd (which far from interfering with payment of monies due to Mr Ghadami actually facilitated payment to him of £100,000): and he seems also to have been involved in the management of Greenoak Holdings Ltd (a corporate vehicle of Jan Bonde Nielsen, whose subsidiary Z acquired the share capital of 41 UGS Ltd prior to the sale to Merix).

d) Mr Risbey is said to be "in charge of" Belgrave Capital Ltd (D13) (a Seychellois company) which is a sub-subsidiary of Braxa Investments International Corp (D14); Mr Saunders may have acted for Belgrave in other commercial matters;

Belgrave's connection with the transactions appears to be that it *may* be the ultimate owner of some shares in Festio (the holding company of the registered proprietor of the long leases). (Mr Ghadami placed reliance on the fact that in unrelated Court proceedings Jan Bonde Nielsen apparently said that that he understood Number 42 was sold by Belgrave Capital Ltd and that Belgrave Capital Ltd received 50% of the sale proceeds: we know that that is factually inaccurate but it would make some loose sense if Belgrave had an economic interest in Festio shares).

e) Mr Fincken was involved in the original Harlow joint venture, and is not said in the Particulars of Claim to have had any other part to play.

f) Peter Bonde Nielsen (the son of Jan Bonde Nielsen) who is not said to have had any active part (whether as direct participator or as principal acting through an agent) in any of the events which Mr Ghadami recounts, but is said by Mr Ghadami to be "the beneficial owner of many of Jan Bonde Nielsen's companies").

74. I have considered Appendix B. I have considered the terms of the Particulars of Claim. To say of the people I have taken as examples that "given his knowledge and actions he must have conspired" (in a statement of case signed by Counsel) is so unsatisfactory as to amount to an abuse of process: compare RGI International [2011] EWHC 3166 at [25] and [26]. (In fairness the

wording is not Mr Ghadami's). Conspiracy is a grave charge that needs to be clearly proved and will at trial require convincing evidence: Jarman & Platt v Barget [1977] FSR 260 at p.267. Nothing Mr Ghadami has produced by way of document (whether coming to him as part of a transaction, provided to him as a result of demands made or obtained by him under third party disclosure orders), nothing in any transcription of secretly recorded conversations (no transcript says "this conversation is being recorded"), nothing obtained by him as the result of all his internet and other searches can begin to sustain the assertion that these Defendants are co-conspirators or that each had the requisite degree of knowledge or intention "to avoid paying the Claimant the sums owed" or to avoid transferring Number 42 to him. The great difficulty is that Mr Ghadami sees himself as central to the concerns of these people, whereas on a more objective view he was (because of his unilateral notice) a peripheral irritant as they sought to exploit an unusual opportunity in the West End property market.

75. In that regard his best target was Mr Saunders to whom he was an undoubted irritant and against whom (stripping away the "mud-slinging" which the Particulars contain) there was the beginnings of a case that Mr Saunders had acted unlawfully in removing Mr Ghadami's unilateral notice. But the fundamental difficulty with such a claim is that nothing in the pleaded case suggests that there was any proper ground for that notice. There was no enforceable contract for the transfer of Number 42 to Mr Ghadami. Even if the UN1 had relied not on contract but on equitable estoppel there was (on the facts pleaded in the Particulars of Claim) simply no ground for it. A bare promise does not create an estoppel.

76. Notwithstanding the enormous use of Court resources in providing Mr Ghadami with material and the equally significant use of Court time in allowing him to deploy it and to assess its significance I am satisfied that the conspiracy claims and those claims based on an intention to cause Mr Ghadami loss simply have no foundation.

77. Before moving to the last issue on the Application I should place on record that Mr Risbey wrote a letter to me which I opened at the end of the hearing (no-one having referred to it in the course of the hearing). It made derogatory comments about Mr Ghadami, and resisted any change to the Master's order. It was not evidence in the case and I have paid no attention to it. I gave Mr Ghadami the chance to answer it (for which he asked). He filed further evidence and further lever arch files of documents. These I have considered. The view expressed above that Mr Ghadami has not adduced material to raise as a real claim the allegation that Mr Risbey was a co-conspirator or had the requisite knowledge and intention to be an economic tortfeasor takes account of this additional voluminous material.

78. I now deal with "sham". It is well to remember what a "sham" is. It is a transaction which is intended by all the parties to it to give to third parties the appearance of creating between the participators legal rights and obligations different from the actual rights and obligations which the participators intend to create between themselves. So "intention" (which may of course be established by inference drawn from primary facts) is again central.

79. Mr Ghadami was anxious to establish the sales by Larios of Number 42 were "shams". As he put it in paragraph 12 (ii) of the Particulars of Claim:-

> "the buyers and sellers of the properties were the same legal entity, or owned by the same legal entity or persons, or by persons with close connections to each other. At the very least it shows that the transaction was a sham and made without a bona fide intention to create legal relations".

80. An example of the material he relies on to prove this allegation is a record of the telephone conversation he had with Saif Durbar on Christmas Eve 2008. Mr Ghadami had suggested that Lynn Properties Ltd (a company with that name acquired a leasehold interest 42 Reeves Mews and sold it to Vitala Investments) got its name

> "like Lynn was because your, one of your ladies one of wives, the Swedish lady was Lynn."

Saif Durbar responded: -

> "No,no, no, Lynn is a name we chose out of a list that we have when we were forming the company".

Mr Ghadami says (a) that the use of the name "Lynn" for one of the purchasing companies shows that vendor company (Larios) in which Saif Durbar may have had some ultimate economic interest through Belgrave Capital was really the same entity; and (b) that the use of the word "we" shows that Lynn Properties Ltd is simply a front for Saif Durbar who (he says) was one of the real owners of the property throughout.

81. Of course, the short answer is that even if two companies are in the same ultimate beneficial ownership the transfer of an asset from one to the other is not thereby rendered a sham, and the "buyer" and the "seller" are not "the same people". A more complicated answer is that a review of the documents to my mind demonstrates that when the original proposal was to hive down the asset to an SPV a UK entity called Lynn Properties was created for that

purpose: but when the form of the transaction changed to an asset sale to a third party the third party created a purchasing company (Lynn Properties (BVI)) with the probable aim of causing the minimum disruption to negotiations with the Grosvenor Estate.

82. The documents appeared to me credibly to show (a) that in the autumn of 2006 there was a proposal by Larios to sever 42 Upper Grosvenor Street from 42 Reeves Mews with a view to obtaining planning permission for change of use and enabling enfranchisement of the newly-created separate leasehold interest in 42 Reeves Mews to take place; (b) that the machinery to be employed was a surrender of the original long leasehold and the grant of fresh separate leases; (c) that the original proposal was that the leasehold interests should be vested in SPVs (one of which was intended to be Lynn Properties (UK)) which would then be sold off: (d) that there was an abortive sale; (e) that in the event the intended transactions had to proceed by way of asset (not share) sales. So it came about that Lynn Properties (BVI) (a company with no connection to Lynn Properties (UK) other than a shared name) took an assignment of the newly created long leasehold interest in 42 Reeves Mews in August 2007: and Vitala took an assignment of the lease of 42 Upper Grosvenor Street at the same time. These transactions had a manifest commercial purpose in which (from the completion statements relating to them) there had been considerable investment of effort and expertise and in which real money changed hands (and in which, incidentally there was plain “arm’s length” dealing). Over his four days of argument Mr Ghadami made a number of points about these transactions.

83. First, on 2 August 2007 Larios Properties Ltd transferred 42 Reeves Mews to Lynn Properties (BVI). The stated consideration was £8,350,000 (though the true consideration is mistyped in some documents as £835,000 or £8,035,000). The transfer was signed by Andrew Duncan. Mr Ghadami noted that Andrew Duncan was not a director of Larios Properties Ltd. But he does appear, so far as I can work out, to be an authorised signatory of Walbrook Directors (No.4) Ltd which company was a director of Larios Properties Ltd. Even if he was not, no-one has challenged the due execution of the transfer. Want of authority would not make the transaction a sham: and the transfer has been registered (and so is legally effective).

84. Second, the certified copy of the TR1 recording the sale of 42 Reeves Mews differs from a surviving signed but undated copy which says that the consideration was £7,250,000. This lower price is the figure referred to in a letter which Mr Saunders wrote to Mr Rhodes in November 2007 giving an account of the transaction, enclosing a vendor's cash statement (which also refers to the sale price for 42 Reeves Mews as being £7,250,000). It was then adopted by Mr Rhodes when he gave evidence in some unrelated proceedings in the Commercial Court in April 2009 against Peter Bonde Nielsen and others (which evidence Mr Ghadami has uncovered). But whatever was in the draft pre-completion documents and whatever Mr Saunders put in the account he rendered to his clients the documents record the consideration actually paid. Mr Saunders' mistakes (and there are several in the course of the conveyancing) do not make the transaction a "sham".

85. Third Mr Ghadami has obtained from evidence given in the unrelated Commercial Court action to which I have referred a copy of a Statement of Account to Lynn Properties Ltd relating to the purchase of 42 Reeves Mews with a stated completion date of 11 July 2007. He contrasts this with a Cash Statement prepared by Mr Saunders relating to the sale of 42 Reeves Mews. He points out that the purchase price mentioned in each statement is different (in the former £8,350,000 and in the latter £7,250,000), that the deposit paid is different, and VAT calculation is different (the latter does not record any VAT payable in respect of 42 Reeves Mews whereas the former calculates it as £1,461,251). He has also obtained a copy of the statement of account to Vitala Investment Holding Ltd and has compared that with Mr Saunders' Cash Statement. The purchase price is consistent but there is a discrepancy in the VAT calculation. Mr Ghadami submitted that these differing statements related to different deals, and asked me to find that there were multiple "sales" by the original owners to themselves. He submitted that without doubt these documents demonstrated that the transactions were sham sales. I do not accept this submission. The documents that Mr Ghadami compares and contrasts were prepared on different sides of the same transaction (not in relation to different transactions). Of course the purchase price, the deposit, and the VAT payable should be consistent whether the statement is prepared for the vendors or for the purchaser. Undoubtedly the statements of Mr Saunders as regards the purchase price of 42 Reeves Mews do not accord with the transaction registered at HM Land Registry. Undoubtedly the figures in Mr Saunders' VAT invoice do not match with what Mr Chohan told his client he had paid. But mistakes made when a solicitor is accounting to his client for funds

received do not in any sense demonstrate that the parties on each side of the transaction were the same and that the whole transaction was sham.

86. Fourth, Mr Ghadami has discovered that on 16 October 2006 Larios Properties Ltd agreed to sell the issued share capital of Lynn Properties Ltd (not D 16 but the English company with the same name) to Goldsky Ventures Ltd. He has got a copy of that contract and spotted that Goldsky Ventures Ltd is described as being a BVI company whereas in fact it is a Seychellois company. He has got another copy of the contract (which correctly identifies Goldsky Ventures Ltd), but this contract is dated 10 January 2007. Mr Ghadami submits that these differences are suspicious and that of itself should prompt the court to embark upon an enquiry into the transactions. I do not agree.

87. The focus of the enquiry has to be whether Mr Ghadami has available to him material of sufficient substance to warrant the case he has pleaded in tort going to trial. There are no doubt many questions that arise on documents within the 28 lever arch files that have been prepared for this application: but that does not mean that Mr Ghadami's own case has merit or that there should be a trial. The matters he relied on at the hearing do not begin to demonstrate that the transactions were a "sham".

88. Mr Ghadami was also anxious to demonstrate that the sale of 41 Upper Grosvenor Street was also a sham (although he does not seek to enforce any promise that it should be transferred to him). The documents seem to me credibly to disclose the following. On 23 March 2007 a Cypriot company (Z) in the Greenoak Group bought the entire share capital of 41 UGS Inc. (a Panamanian company that owned 41 Upper Grosvenor Street and 41 Reeves

Mews) for £17,700,000. Denton Wilde Sapte acted for the vendor shareholders and Mr Saunders acted for Z. That transaction is plainly not a sham. That same day, 23 March 2007, Merix International Ventures Ltd contracted to purchase the properties themselves from 41 UGS Inc for the sum of £22 million plus VAT (note the price differential, which was not disclosed to Merix, and which was distributed as profit). On completion (30 March 2007) the sum of £23,325,162 was required (with the VAT of £3,850,000 to be received on 25 June 2007). These completion monies were raised by Merix obtaining a loan from Handdoxx Investments Limited (a Bahamian company). The VAT was funded in the same way.

89. Mr Ghadami says (a) that Handdoxx Investments is Kazakh money: and (b) that it is important to note that (according to press reports) on the day before exchange there was an announcement by the Greenoak Group that its subsidiary (chaired by Jan Bonde Nielsen) had entered into a joint venture with the Kazakh state oil company for the building of a new oil refinery at Batumi; (c) accordingly a link can be established between Jan Bonde Neilsen and Kazakh interests; and (d) this link leads reasonably to the supposition that although the acquisition of 41 Upper Grosvenor Street and 41 Reeves Mews was apparently by Merix funded by a loan from Handdoxx, in fact these entities were simply lending their names to the real acquirer who was Jan Bonde Neilsen. He supports this by saying that Kazakh interests would not instruct a firm like Magwells (of which Mr Chohan was a partner). I regard this case as fanciful.

90. Then Mr Ghadami refers to a cash statement prepared by Mr Saunders and headed "41 UGS Inc: re 41 Upper Grosvenor Street and 41 Reeves Mews as at 30 March 2007": this includes an entry "30 March 2007 stamp duty" in the sum of £1,034,000. Mr Ghadami says that it was for the buyer to pay the stamp duty and Mr Saunders should not have been paying it, so that this demonstrates that the same people were on both sides of the transaction. But it seems to me that the stamp duty for the payment of which Mr Saunders was accounting to his client was stamp duty payable on the acquisition by Z of the share capital of 41 UGS Inc, not stamp duty in respect of the sales of the long leases to Merix. Mr Saunders' cash statement (which is not easy to follow) deals with payments out in respect of the share purchase and receipts in respect of the lease sales: and that is the way I read it. But even if I am wrong about that (and Mr Saunders *was* telling his client that he had paid the stamp duty on the land sale) it appears from the documents that Merix borrowed a sum equal to the stamp duty and paid it to HMRC, Merix having in its possession the relevant return: so Mr Saunders was simply wrong. I consider Mr Ghadami's analysis (that Mr Saunders paid the stamp duty out of the sale price and thereby demonstrated that the purchase monies did not come from a third party but were simply the vendor's monies employed in a circular transaction) to be fanciful. I do not accept his submission that he has demonstrated that there is something to be tried.

91. Then Mr Ghadami refers to a document (15/694) prepared on behalf 41 UGS Inc and addressed to Merix and to Mr Chohan which he describes as "a completion statement" which tells Merix what it has to do and demonstrates that Mr Saunders was preparing documents on both sides of the transaction

(underpinning his argument that the transaction was a sham). I do not accept this submission. On examination the document is simply a VAT invoice such as one would expect. It does not indicate that there is a case on the merits.

92. Then Mr Ghadami asserts that although 41 UGS Inc collected £3,850,000 of VAT "it does not appear that this was accounted for to HMRC". So Mr Ghadami says of the entire sale

> "At the very least (and if not money laundering or cheating the revenue) this is a transaction which requires explanation."

I do not agree. I may assume that 41UGS Ltd did *not* account to HMRC for the VAT its collected. But a trial is not a public enquiry into the details of a conveying transaction that took place in March 2007. It is an assessment in public of whether Mr Ghadami can establish to the civil standard the matters of fact necessary to sustain the causes of action he has pleaded against the defendants he has selected. What (if anything) became of the VAT is not relevant to that process. Mr Ghadami's argument that any element of fraud cannot be ignored and that there must be a trial is one I do not accept.

93. Finally, Mr Ghadami drew attention to the existence of differing versions of the completion statements. It seems to me that these do not demonstrate that the vendor and the purchaser were the same entity, but rather that completion was delayed from the originally intended date of 11 July to a later date when the documents of title were in order. This does not indicate "sham".

94. The only real analysis is that Lynn, Vitala and Merix genuinely acquired the properties for their own purposes and not with the intention of defeating some lawful claim of Mr Ghadami: and that far from intending to frustrate payment

of money to him that very purchase was the commission-generating event on which Mr Ghadami relies for his payment claims. I do not see how Mr Ghadami can say there was no genuine sale and yet say that the occurrence of event entitles him to payment.

95. Notwithstanding Mr Ghadami's deployment of material from the vast quantity he has garnered I do not consider that his "economic tort" case has any merit. I think the Master got the outcome exactly right. I would leave his order undisturbed and dismiss the Application.

96. In leaving the order "undisturbed" I should draw attention to one matter. Mr Buttimore submitted that the Application amounted to a request for a rehearing: and if I was conducting a "rehearing" then he would seek an order that Mr Ghadami should be prevented from being permitted to amend his Particulars of Claim to pursue any direct contract claim against Jan Bonde Nielsen for the payment of the "commission" that would otherwise be payable to Mr Bloomfield. Jan Bonde Nielsen made no application for that relief: and Mr Ghadami did not have notice of it until it was referred to in a footnote to Mr Buttimore's skeleton argument. Whilst I consider the principal claims in the action to be unmeritorious I do not consider it fair to Mr Ghadami to grant this relief. If he amends that part of the Particulars which have survived the Master's summary disposal order (and the Master has identified what survives) then it will be open to those to whom the claim is directed to apply for summary disposal of the amended claim.

97. It is in these circumstances it is perhaps unnecessary to consider the Appeal. But I should briefly record the factual background and for clarity and certainty express my view.

98. The hearing before the Master was itself an adjourned hearing having been stood over from September 2013. Mr Ghadami wanted it adjourned again. He made his first such application on 24 January 2014, on the ground that he needed time to prepare. That application was refused by a Chancery Master, an appeal against the decision was dismissed, and a further appeal to the Court of Appeal rejected. So on 11 February 2014 Mr Ghadami circulated the other parties to say that his house had flooded on 7 February and that he had become ill and had obtained a doctor's appointment; and he sought an adjournment by consent. The other parties declined to agree an adjournment on that basis, but sought the provision of medical evidence.

99. Mr Ghadami provided a medical certificate dated 14 February 2014 recording that he attended the Ongar Health Centre on the 11 and 13 February complaining of a bad cold with features of sinus congestion. He then provided a medical certificate dated 15 February 2014 confirming the second of those appointments and the diagnosis of acute sinusitis. The other parties declined to agree an adjournment. On 17 February 2014 Mr Ghadami made an application to Stephen Richards LJ for an order adjourning the hearing of the summary disposal applications: but an adjournment was refused, and Mr Ghadami was directed to the Master.

100. Mr Ghadami applied to the Master by email on 17 February 2014 enclosing the two doctor's letters to which I have referred. The Master declined an

adjournment, saying that any application would have to be made at the hearing itself. So Mr Ghadami submitted a third doctor's letter recording a surgery attendance on 18 February 2014 with a rash that was diagnosed as shingles. He circulated all parties and informed them that in the light of this latest letter their attendance may not be required at the hearing. All attended.

101. At the hearing the application for the adjournment was made on Mr Ghadami's behalf (in his absence) by his son Joseph, who said that his father needed a month or two to instruct a legal team.

102. The Master accepted that it was sensible that Mr Ghadami should not personally attend the hearing but said that it did not follow that the hearing should be adjourned, since there were apparent deficiencies in the Particulars of Claim which could be addressed and possible defects in the case advanced rendering it potentially incapable of success: and that if this was indeed the result of the hearing Mr Ghadami could apply to set aside the decision in whole or in part, but with the benefit of the analysis undertaken by the court.

103. Mr Ghadami argued that in so deciding the Master erred in law because the only course open was to adjourn. He relied on the observations of Holman J in Khudados [2007] EWCA Civ at paragraph [59]:-

> "Faced with the doctor's letter (of which the genuineness was not challenged), the judge was bound to grant some period of adjournment. The claimant was acting in person; and if a person is indeed ill and unfit to attend court, then he is ill no matter how many times the case has previously been adjourned. I agree with my Lord's analogy of the claimant being knocked over by a bus on her way to court."

104. In my judgment this passage does not lay down a rule of law: and it does not set in stone the way the undoubted case management discretion must invariably be exercised whenever a doctor's letter is produced.

105. I would dismiss the appeal on the ground identified by Arnold J. If there was a procedural error, then it is of no significance because the underlying case itself lacks merit.

106. I would in the alternative hold that the decision of the Master was not unfair. The Master did not shut out Mr Ghadami: he explicitly recognised that Mr Ghadami could seek to demonstrate merit. This was not a case in which (having regard to the nature of the allegations and the evidence that was before the Master) he who had the burden of the argument had any part to play. The Master correctly identified where the focus of the debate lay: and his view that Mr Ghadami would be assisted in making any "set-aside" application by knowing the weak points in his case was sound. In fact, armed with that knowledge, Mr Ghadami has had the advantage at the hearing of the Application (a) of setting out the parameters of the debate in opening; (b) of introducing material that was not before the Master (and probably could not have been introduced had the adjournment sought by his son been granted); (c) of deploying that material in lengthy argument: and (d) has had the last word. This outcome (most if not all of which the Master contemplated) is not unfair.

107. I therefore dismiss the Appeal.

108. I will hand down this judgment in Leeds on 14 October 2016. I do expect the attendance of any parties. The parties should liaise to fix a date for dealing with consequential matters arising out of this judgment, Mr Ghadami's

application to bring contempt proceedings and the application Mr Ghadami made on the last day of the hearing to amend his Particulars of Claim.