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Case No: IL-2020-000109

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

11 May 2021

Before:

DEPUTY MASTER BRIGHTWELL

Between:

(1) CRYPTON DIGITAL ASSETS LIMITED
(2) CRYPTON PARTNER MANAGEMENT LIMITED

Claimants

- and -

(1) BLOCKCHAIN LUXEMBOURG SA
(2) BLOCKCHAIN (GB) LIMITED
(3) STEPHEN JONES
(4) PETROS-ALEXANDROS KOUMPAS
(5) MARK CURTIS
(6) CASTRAMET LIMITED

Defendants

James Sheehan (instructed by **Ashurst LLP**) for the **Claimants**
Sa'ad Hossain QC and Niranjan Venkatesan (instructed by **Goodwin Procter (UK) LLP**)
for the **First and Second Defendants**

Hearing date: 25 March 2021

Approved Judgment

I direct that this approved judgment, sent to the parties by email on 11 May 2021, shall be deemed to be handed down on that date, and copies of this version as handed down may be treated as authentic.

.....

Deputy Master Brightwell:

1. By this application, the first and second defendants, Blockchain Luxembourg SA and Blockchain (GB) Ltd (together, “Blockchain”) apply pursuant to CPR Part 3.4 to strike out stated parts of the particulars of claim with the effect that the causes of action in inducing breach of contract, dishonest assistance, knowing or unconscionable receipt and unlawful means conspiracy be struck out.
2. The other defendants are not parties to the application, and have filed and served defences to the claims against them (and, in the case of the sixth defendant, Castramet Ltd, a counterclaim against the first claimant for services provided). The other defendants were not represented at the hearing of the application.

Background

3. The claimants, Crypton Digital Assets Ltd and Crypton Partner Management Ltd (together, “Crypton”), are described in the particulars of claim as technology and research companies who have used a combination of quantitative data science and artificial intelligence to develop what is itself described at paragraph 9 (and elaborated further later in the document) as “a valuable bespoke institutional-grade multi-asset high-frequency, low latency trading platform using artificial intelligence, with a focus on digital assets, specifically cryptocurrencies (the ‘Crypton Platform’)”. Given the nature of the application, Blockchain has not yet filed a defence to the claim, but I note that the other defendants all take significant issue with paragraph 9.
4. In the particulars of claim, Crypton then summarises the claim. That summary reads as follows:

“10. From August 2019 onwards, Crypton engaged in discussions and negotiations with a number of third parties with a view to attracting investment into Crypton. One such third party was Blockchain SA. In late 2019 the negotiations between Crypton and Blockchain SA developed into a proposed acquisition by Blockchain SA of the entire share capital, business and assets of Crypton, including the Crypton Platform.

11. However, instead of seeing through the negotiations with Crypton to a concluded acquisition, Blockchain instead entered into a wrongful combination with Mr Jones, Mr Koumpas and Mr Curtis (and/or Castramet) pursuant to which these individuals simply purported to resign from Crypton and were engaged by Blockchain almost immediately thereafter.

12. Blockchain and the individual Defendants referred to above then proceeded to solicit other key staff from Crypton, and (it is to be inferred) Blockchain is now exploiting the Crypton Platform, using Crypton's intellectual property, and/or seeking to rebuild that platform using the ideas and concepts used to create it, and the skill, expertise and know-how of those of its employees and contractors who had contributed to its development.
13. Blockchain has made no payment of any kind to Crypton in return.
14. As set out in more detail below, the wrongful combination between the Defendants first involved Mr Jones, Mr Koumpas and Mr Curtis seeking to take control of the process of negotiation between Crypton and Blockchain SA, and of Crypton's technology assets and data. They did so:
 - 14.1. With a view to ensuring that they were able to decide on whether and (if so) on what terms the acquisition took place, purporting in breach of duty to agree terms which were contrary to Crypton's interests and instead favoured Blockchain SA and these individuals. Blockchain SA had offered a bonus pool to transferring employees and, as Mr Jones explained at the time, he wanted to "keep the head count down" so that there was "more money in the pot for us". Mr Jones and Mr Koumpas used these negotiations with Blockchain SA to secure an increase in the salary to be paid to them personally after the acquisition.
 - 14.2. Later, in order to enable them to exploit the opportunity presented by Blockchain SA's interest in Crypton's business, but without Blockchain SA having to acquire that business from Crypton for value.
15. In February 2020 this conduct culminated in the collapse of the acquisition negotiations and in:
 - 15.1. The near-simultaneous resignation from Crypton of Mr Jones, Mr Koumpas and Mr Curtis, together with a number of more junior members of staff who had been solicited by Mr Jones, Mr Koumpas and Blockchain itself;
 - 15.2. The Defendants' pursuit of Crypton's essential business through Blockchain without any payment to Crypton;

15.3. The Defendants gaining control over the code on which the Crypton Platform was built, and Crypton's access to that code and other valuable data being cut off; and

15.4. The resultant destruction of the entire value of Crypton's business.

16. Crypton accordingly claims against each of the Defendants for breach of fiduciary duty, breach of contract, infringement of copyright, breach of confidence, inducing breach of contract, dishonest assistance, unconscionable receipt and unlawful means conspiracy, as set out in more detail below."

5. The particulars of claim then proceed to set out Crypton's pleaded contentions as to the fiduciary and contractual duties owed to Crypton by the defendants (other than Blockchain) and third parties, and their pleaded contentions as to the role of parties other than Blockchain in the development of a trading platform for cryptocurrencies and as to the negotiations that took place between Blockchain and Crypton for the acquisition by the former of Crypton's share capital (and, thus, assets).
6. It is the section of the particulars of claim from paragraph 62 onwards, headed "The Defendants' wrongful appropriation of the Crypton Platform Opportunity", which was the main focus of the parties' submissions at the hearing, together with the pleaded statements of the elements of the various causes of action relied on by Crypton. Each cause of action, set out from paragraph 83 onwards, is particularised by a process of cross-reference back to earlier pleaded allegations of fact. The extent of the reliance on cross-referencing was one of Blockchain's principal criticisms of the particulars of claim.
7. The particulars of claim were settled by Mr Brian Nicholson QC, leading Mr James Sheehan. Mr Sheehan appeared for Crypton at the hearing of the application. Blockchain was represented by Mr Sa'ad Hossain QC, together with Mr Niranjan Venkatesan. I have been assisted by lucid submissions on both sides.
8. As I have noted, Blockchain applies to strike out those parts of the particulars of claim which plead claims against Blockchain in inducing breach of contract, dishonest assistance, (knowing or) unconscionable receipt and unlawful means conspiracy. Blockchain therefore accepts that the claim that it has infringed, and continues to infringe, Crypton's intellectual property rights (defined in paragraphs 38 to 44 as copyright works, at least some of which also contained confidential information) should proceed.

Power to strike out statements of case: principles

9. CPR Part 3.4(2)(a) provides as follows:

“(2) The court may strike out a statement of case if it appears to the court –

 - (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim.”

10. Blockchain also relies on paragraph 1.4 of Practice Direction 3A (and, particularly, on sub-paragraphs (2) and (3)):

“The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):

 - (1) those which set out no facts indicating what the claim is about, for example ‘Money owed £5000’,
 - (2) those which are incoherent and make no sense,
 - (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.”

11. I should record that at the hearing Blockchain also put its application on the footing that the applicable causes of action may be struck out pursuant to CPR Part 3.4(2)(b), which refers to the court’s power to strike out statements of case which are an abuse of the court’s process or are otherwise likely to obstruct the just disposal of the proceedings. Mr Hossain clarified that this was with particular regard to the way in which the particulars of claim are cross-referenced. I have in considering the document taken care to ascertain the allegations that are made in relation to each cause of action through this process of cross-referencing, and I state my views on them below.

12. It does seem to me that, to the extent that an allegation is clearly made through a process of cross-referencing, it cannot be an abuse of process or obstruct the just disposal of the proceedings and I do not discern a contrary view in *Kaplan v Super PCS LLP* [2017] EWHC 1165 (Ch), relied on by Blockchain. Rose J at [38] expressed the view that unnecessarily prolix particulars of claim that failed fairly to identify the claims in a way that could be reasonably understood, and where counsel for the claimant there accepted that they “still needed quite a bit of surgery”, would fall foul of CPR Part 3.4(2)(b). The central question is whether the claims, and their proper particulars, are fully ascertainable. If not, the court should not allow them to proceed in their current form.

13. I consider this application on the assumption that the facts averred in the particulars of claim are true, as I am bound to do: see *Marsh v Chief Constable of Lancashire* [2003] EWCA Civ 284 at [2], *per* Potter LJ. Blockchain has made clear its position that if the claims proceed they will be denied, and that it alleges among other things that it was deliberately misled about various aspects of Crypton's corporate structure and business. That, however, is not relevant to the instant application.
14. I was addressed by Mr Hossain on the footing that the adequacy of Crypton's pleading is to be assessed by an essentially granular consideration of the elements of each cause of action relied upon, and of the contents of the particulars of claim, in order to determine whether each cause of action is supported by pleadings of fact which, if established at trial, would enable each element of each claim to succeed. Mr Sheehan did not demur from this approach which is replicated, particularly, in his skeleton argument. He did, however, urge against a formalistic approach, submitting that the claim in conspiracy was unusually compelling, given the (alleged) concealment by Blockchain and the other defendants of the appropriation of Crypton's business.
15. The function of pleadings is, of course, to give the party opposite sufficient notice of the case which is being made against it: *Three Rivers District Council v Bank of England (No.3)* [2003] 2 AC 1 at [185]. Furthermore, each of the claims which are the subject of the present application involve serious allegations of wrongdoing, including claims of dishonesty. It is essential to bear in mind the requirements of a pleading of dishonesty.
16. In the *Three Rivers* case, Lord Millett, having described the function of pleadings as the first principle, went on as follows, at [186]:

“The second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud. It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be *some* fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved.”

17. The requirements of a plea of dishonesty have recently been summarised in the following way, in *Sofer v Swissindependent Trustees SA* [2020] EWCA Civ 699 at [23], *per* Arnold LJ:

“i) Fraud or dishonesty must be specifically alleged and sufficiently particularised, and will not be sufficiently particularised if the facts alleged are consistent with innocence: *Three Rivers*.

ii) Dishonesty can be inferred from primary facts, provided that those primary facts are themselves pleaded. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be pleaded: *Three Rivers* at [186] (Lord Millett).

iii) The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence: *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [20]-[23] (Flaux J, as he then was).

iv) Particulars of dishonesty must be read as a whole and in context: *Walker v Stones* [2001] QB 902 at 944B (Sir Christopher Slade).”

18. Arnold LJ then made two further points at [24]. First, when giving particulars, no more than a concise statement of the facts relied upon is required. Secondly, unless there is some obvious purpose to be served by fighting over the precise terms of a pleading, contests over their terms are to be discouraged. See *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775 at 793B (Lord Woolf MR).

19. Furthermore, it seems to me that the question whether a statement of case discloses a coherent set of facts in support of a legally recognised cause of action is something to be ascertained from the four corners of the document itself. Information available elsewhere, for instance in a witness statement, may justify giving a party the opportunity to apply to amend a deficient statement of case, but it cannot suffice to save a statement of case that would otherwise fall to be struck out. Crypton has served a witness statement, of Mr Neil Staunton, the CEO of the first claimant, in response to the application. Mr Sheehan did not at the hearing refer to Mr Staunton’s evidence (although he did refer to a separate claim brought by Blockchain against Mr Staunton, exhibited to his statement). There are three references to the witness statement in Mr Sheehan’s skeleton argument, but he explicitly eschews reliance on them in saying that it is unnecessary for those points to be pleaded, asserting

instead that they illustrate the dangers of striking out a claim where the defendants are alleged to be concealing relevant facts. I do not consider that point to justify the reliance on facts which could have been, but have not been, pleaded. I have accordingly not further considered Mr Staunton's witness statement.

The particulars of claim

20. Blockchain's complaint in this application is that, in particular given the way in which the particulars of claim have been prepared, with the facts set out first and the causes of action against the various defendants pleaded by cross-reference back to the facts, four of the five claims brought by Crypton against Blockchain do not disclose any legally recognised cause of action.
21. Blockchain contends that the allegations relating to the Blockchain companies, as opposed to the other defendants, are unclear such that there has been a disregard of the rules governing the pleading of dishonesty and of the economic torts, both of which are serious allegations. That overarching contention must be assessed by reference to each cause of action broken down into its constituent elements. Before turning to do so, I have considered the factual allegations in the particulars of claim in detail.
22. The most relevant section, where the factual allegations of wrongdoing are set out, and by reference to which the various causes are then pleaded, begins at paragraph 62, with the allegation (focused on the claim in unlawful means conspiracy, considered last below) that:

“62 On a date or dates prior to 14 February 2020, which Crypton is presently unable to particularise further (but in respect of which it will seek to plead further as appropriate upon provision of further information upon disclosure or otherwise), Mr Jones and Mr Koumpas entered into a combination or agreement to act in their own interests and against Crypton's interests with regard to the Crypton Platform Opportunity and the proposed Blockchain SA acquisition. Mr Curtis (and/or Castramet) and Blockchain were also party to the said combination or agreement....”
23. The allegations in paragraphs 63 to 82 of the particulars of claim develop in the following way, as far as Blockchain is concerned (i.e. without setting out all the allegations against the other defendants, especially Messrs Jones and Koumpas, which are more fully particularised in the document), as I summarise below:
 - i) The third to sixth defendants sought to take control of the negotiations with Blockchain, by taking over negotiations with Blockchain on Crypton's behalf (paragraph 66), seeking to oust members of the board

of the first claimant (paragraph 67), and gaining control of Crypton's assets (paragraph 70), all in the interests of Blockchain. The third and fourth defendants were directors of both claimant companies until 14 February 2020, and the fifth defendant resigned from the first claimant on the same date.

- ii) The combination or agreement evolved into one pursuant to which the Crypton Platform opportunity would be pursued through Blockchain, without any payment to Crypton in return (paragraph 64). Crypton believe that this evolution took place between 10 and 14 February 2020 (paragraph 72).
- iii) Mr Peter Smith, of Blockchain, made a statement on 13 February 2020 that Blockchain would not accept a board which was not controlled by individuals moving to Blockchain, which matter was of no genuine or commercial relevance to Blockchain, as the first defendant was proposing to acquire the entire issued share capital of the first claimant (paragraphs 67.4 and 68).
- iv) The attempts of the other defendants to gain control of the negotiations and to gain control of the board of the first claimant, were supported by Blockchain, and the motivation behind these actions was to act in the interests of, inter alios, Blockchain. The reasons put forward by Mr Smith were not genuine or legitimate (paragraph 69 and 69.1).
- v) Mr Koumpas purported on 10 February 2020 to terminate the contract of a Mr Sewell (the nature of whose employment with Crypton is not explained), a step taken in the interests of Blockchain and/or those of Mr Jones and Mr Koumpas personally (paragraph 69.4).
- vi) Mr Jones and Mr Koumpas falsely represented to Mr Charlie McGarraugh of Blockchain on 10 February 2020 that Mr Staunton had agreed with them that he (Mr Staunton) would not join Blockchain (paragraph 69.5.4).
- vii) Mr Jones signed a term sheet on behalf of the first claimant but without its authority, at or shortly after a meeting attended by him and Mr Koumpas at Blockchain's London offices on 10 February 2020 (paragraph 69.6).
- viii) Blockchain solicited the resignation of key Crypton staff, Messrs Tomáš Jirman, Giuseppe Calvi and Ilya Kisil, who are now employed by Blockchain. The resignations of the third to fifth defendants, on 14 February 2020, "were obviously coordinated with Blockchain itself" (paragraphs 73 to 75).

- ix) Blockchain, after the resignation from Crypton of the said individuals, purported to create the impression of innocently withdrawing from negotiations. The reasons put forward by Mr McGarraugh for withdrawing from negotiations were, it is to be inferred, a false pretext proffered in an attempt to justify its wrongful conduct (paragraph 78).
 - x) The defendants are now exploiting the Crypton Platform opportunity through Blockchain, and are making use of Crypton's intellectual property (paragraphs 80 to 82).
 - xi) As a result of these matters (and others pleaded as against the other defendants) Crypton is unable to exploit the Crypton Platform and its existing business has effectively been destroyed (paragraph 82).
24. While the adequacy of these allegations falls to be considered together with the additional averments in relation to each individual cause of action, I would at the outset comment that it would not be accurate to say that Blockchain's own involvement in the events said to constitute the combination or agreement relied on are wholly unpleaded.

Inducing breach of contract

25. The requirements of the tort of inducing breach of contract were set out by Arden LJ (as she then was) in *Meretz Investments NV v ACP Ltd* [2008] Ch 244 at [114], by reference to the then recent decision of the House of Lords in *OBG Ltd v Allan* [2008] 1 AC 1:
- “For inducing breach of contract the essential elements were knowledge of the contract, intention to induce a breach of the contract and actual breach of contract. Accordingly, to be liable, a person must know that his action will result in a breach of contract....The defendant's conduct must actually have caused a breach of that contract.”
26. The breaches of contract which it is alleged that Blockchain has induced in relation to Mr Jones and Mr Koumpas are pleaded at paragraph 85.6 to 85.8 (the inducement allegations against Blockchain are then found at paragraphs 94 to 96). These refer to the misuse of and failure to deliver up Crypton's intellectual property, a breach of the non-competition clauses in the employment contracts of Mr Jones and Mr Koumpas, and a breach of the non-solicitation and related clauses in those contracts concerning the solicitation of other employees. There is then a separate allegation that Mr Jirman, Mr Calvi and Mr Kisil all breached their service contracts in resigning without notice, and that Blockchain intentionally induced these breaches of contract (see paragraphs 97 to 99).
27. Mr Hossain makes three objections to the pleading of this cause of action.

- i) First, it is said that Crypton has not properly pleaded the conduct said to constitute inducement.
 - ii) Secondly, there is no averment that Blockchain knew the acts it allegedly induced constituted breaches of contract.
 - iii) Thirdly, it is not properly pleaded that Blockchain intended to induce the pleaded breaches of contract.
28. It is established that, for conduct to be capable of constituting inducement, there must be some conduct by A amounting to persuasion, encouragement or assistance of B to break the contract with C. As a matter of causation, A's conduct must also be capable of influencing B's choice whether or not to break the contract: *Kawasaki Kishen Kaisha Ltd v James Kemball Ltd* [2021] EWCA Civ 33 at [32]–[33], *per* Popplewell LJ.
29. Mr Hossain submits that it is difficult if not impossible to discern from the particulars of claim what conduct of Blockchain is said to constitute the inducement of the breaches of contract pleaded at paragraph 85.6 to 85.8. Mr Sheehan responds by saying that Crypton is not able to particularise in detail all the acts of inducement, as they are particularly within the knowledge of the defendants, but that the whole scheme has involved inducement of the pleaded breaches of contract by Mr Jones and Mr Koumpas. He relies on Blockchain allegedly having had dealings with Mr Jones and Mr Koumpas that Blockchain knew to be inconsistent with their contracts with Crypton.
30. In the *Kawasaki Kishen Kaisha* case, at [42], Popplewell LJ said that such inconsistent dealings may be capable of constituting inducement because they amount to the requisite persuasion, encouragement or assistance. He cited and approved the judgment of Lord Hodge (sitting in the Outer House) in *Global Resources Group v Mackay* [2008] SLT 104 at [13]:
- “Fourthly, A must induce B to break his contract with C by persuading, encouraging or assisting him to do so....It is clear from *BMTA v Salvadori* and *BMTA v Gray* that the tort or delict is not confined to circumstances where A has to persuade B to break his contract but can also be committed where A has dealings with B which A knows are inconsistent with the contract between B and C. In either event A induces or assists B to do something (or to refrain from doing something) which involves B breaking his contract with C.”
31. It is in fact expressly pleaded that Blockchain coordinated the resignations of Messrs Jones, Koumpas and Curtis (paragraph 74.2), and that Blockchain solicited the resignation of the other named employees. As a matter of plain language, I consider the allegation that resignations were coordinated or

solicited by Blockchain to constitute a pleading that Blockchain persuaded, encouraged or assisted the relevant resignations in breach of contract. I therefore consider that Crypton has pleaded the conduct on the part of Blockchain said to constitute an inducement to commit the breaches particularised at paragraph 85.7 and 85.8.

32. To the extent that such conduct is not further particularised and as far as paragraph 85.6, the alleged misuse of Crypton's intellectual property, is concerned, I consider that Crypton must rely and is entitled to rely on the allegation of inconsistent dealings, as explained above. Crypton has pleaded a course of conduct in the days around 14 February 2020 according to which Blockchain collaborated with the other defendants in procuring the resignation from Crypton and employment with Blockchain of the various named actors, following which the use of the Crypton Platform, including identified intellectual property rights, would be pursued through Blockchain. Crypton pleads at paragraph 74.2 that none of the individuals concerned would have sought to resign from Crypton without an assurance of future employment from Blockchain, on beneficial terms. I consider these offers of employment, and the use of Crypton's intellectual property, to be a pleaded inconsistent dealing such that Crypton has sufficiently pleaded that Blockchain persuaded, encouraged or assisted the relevant breaches of contract.
33. Secondly, Blockchain submits that, while Crypton's knowledge of the relevant contractual terms is pleaded, its knowledge that the conduct in question was in breach of contract is not alleged. I disagree. The suggestion, that the plea of knowledge of the contractual terms, together with the acts alleged, does not comprise an allegation that there was also subjective knowledge that the conduct allegedly induced constituted a breach of those obligations, seems to me to be wholly unrealistic. As Lord Nicholls of Birkenhead said in *OBG Ltd v Allan* [2008] 1 AC 1 at [192], intentional interference presupposes knowledge of the contract and that the defendant induced the other contracting party to act in a way the defendant knew was a breach of that party's obligations under the contract. There is such a plea of intentional inducement at paragraph 96 of the particulars of claim.
34. Thirdly, it is objected that Crypton does not plead that Blockchain intended to induce the breaches of contract pleaded at paragraph 85.6 to 85.8. It is said that the plea of intentional inducement does not suffice because the specific facts relied on in support of the allegation must be pleaded. What is alleged is that Blockchain coordinated and solicited the resignations of employees, knowing the terms of their contracts with Crypton, which would be breached by such action. It is further alleged that Blockchain engaged in a course of dealing inconsistent with these contracts, as I have already mentioned. Standing back and considering the pleaded allegation of intentional

inducement in the light of these allegations, read in the context of the particulars of claim as a whole, I cannot agree that Crypton has failed to plead the facts upon which they rely in support of their allegation of intention.

35. Mr Sheehan refers also to *CF Partners (UK) LLP v Barclays Bank plc* [2014] EWHC 3049 (Ch) at [869], *per* Hildyard J, where he said (citing *Clerk & Lindsell on Torts*, 20th edn, at 24–15) that, “where knowledge is proved on the part of a defendant who induces one party to break [a contract] intention will readily be inferred”. As a separate point it seems to me properly arguable that intention may be inferred from the primary fact of knowledge, which I consider to be adequately pleaded for reasons I have already given. Put simply, it is hard to imagine any plausible factual scenario where Blockchain acted as alleged, with the knowledge of the contracts alleged, without having intended to bring about a breach of contract.
36. I am equally satisfied that the claim is sufficiently pleaded in relation to the alleged breaches by Messrs Jirman, Calvi and Kisil. The objections taken by Blockchain are essentially the same.
37. Paragraph 75 of the particulars of claim pleads that they all purported to resign from Crypton between 14 and 16 February 2020 after solicitation from Mr Jones, Mr Koumpas and Blockchain. Paragraph 75.6 pleads that none of them would have resigned without an assurance of future employment by Blockchain. The conduct that is alleged to constitute inducement is, therefore, pleaded. Paragraph 99 pleads that in so soliciting them, Mr Jones, Mr Koumpas and Blockchain intentionally induced the alleged breaches of contract. I do not agree that this leaves Blockchain unclear whether each of the named defendants induced all the breaches while others induced only some – it is plainly alleged that Blockchain solicited all three, including by making an offer of employment to all of them, which they each accepted.
38. To the extent that the second and third objections raised against paragraph 85.6 to 85.8 are repeated in relation to the alleged breaches by Messrs Jirman, Calvi and Kisil, I reject them for the reasons given at paragraphs 33 to 35 above.
39. Accordingly, I consider that the particulars of claim disclose reasonable grounds for bringing the claim against Blockchain for inducing breach of contract and I decline to strike it out.

Dishonest assistance

40. Crypton also pursues a claim for dishonest assistance in the breaches of fiduciary duty pleaded against Mr Jones and Mr Koumpas. There must be a breach of trust for this cause of action, but it is well established that the breach

of his fiduciary duties by a company director will cause him to be a constructive trustee of the company's property for these purposes: see *Lewin on Trusts*, 20th edn, at 43–026. The claimant must also plead and prove that the defendant induced or assisted the relevant breach or breaches of trust and that it was dishonest in doing so.

41. Crypton again pleads this cause of action by cross-reference, at paragraphs 100 to 102 of the particulars of claim. The breaches of fiduciary duty on which Crypton relies are set out at paragraph 83. The conduct relied on as constituting inducement or assistance is then pleaded, by reference, at paragraphs 72 to 81.
42. Blockchain submits first that this element of the claim is not properly pleaded because the particulars of claim do not identify which of the alleged breaches Crypton can properly contend that Blockchain assisted.
43. Paragraph 83 pleads three categories of alleged breach of fiduciary duty. It is said that Mr Jones and Mr Koumpas acted in breach of these duties in:
 - i) Seeking to oust other members of the board of the first claimant, and to gain control of Crypton's technology and assets and data, as pleaded in paragraphs 66 to 71.
 - ii) Soliciting Mr Jirman, Mr Calvi and Mr Kisil to join Blockchain, as pleaded in paragraph 75.
 - iii) Generally, in pursuing the Crypton Platform opportunity, as pleaded in paragraphs 72 to 81.
44. There are allegations of Blockchain's actual involvement in the matters pleaded at paragraphs 66 to 71: see the summary at paragraph 23(iii) to (iv) above. Mr Sheehan relies on these allegations in this respect. However, I agree with Mr Hossain that paragraph 101 explicitly refers only to paragraphs 72 to 81 for the acts of assistance relied on, and this does not obviously refer to any assistance with the matters pleaded at paragraphs 66 to 71. I also agree with him that Crypton has not pleaded that Blockchain induced the breaches of contract alleged at paragraph 85.1, which reflect the relevant alleged breaches of fiduciary duty. Whilst it is possible for a defendant to assist in a breach of fiduciary duty without inducing it, it is far from clear to me that this is what Crypton has sought to allege, as far as paragraphs 66 to 71 are concerned.
45. As to the next allegation, that Mr Jones and Mr Koumpas breached their fiduciary duties in soliciting Mr Jirman, Mr Calvi and Mr Kisil to join Blockchain, I consider that Blockchain's inducement or assistance is properly pleaded. Paragraph 75 itself alleges that Blockchain itself solicited these employees, and that it provided them with an assurance of future employment.

The allegation that this was all done as part of a combination also supports the claim that Blockchain was assisting Mr Jones and Mr Koumpas in the breaches of fiduciary duty alleged against them.

46. This leaves the final alleged breach of fiduciary duty, whereby it is claimed that Blockchain generally assisted Mr Jones and Mr Koumpas in pursuing the Crypton Platform opportunity (as set out in paragraph 72 and particularised in the following paragraphs). In this regard, I consider that the acts summarised at paragraph 23(viii) to (x) above are capable of constituting assistance with the alleged breaches of fiduciary duty. These acts are the solicitation of the resignation of other members of staff, and the ongoing use of Crypton's assets and intellectual property. The latter breach of fiduciary duty is alleged by paragraph 83.2 to be ongoing.
47. Accordingly, before considering Blockchain's further objection, that dishonesty is not sufficiently pleaded, I record that I consider that no acts of assistance are properly pleaded in relation to the first category of alleged breach of fiduciary duty, at paragraphs 66 to 71 of the particulars of claim. As I indicate at the conclusion of this judgment, I consider that Crypton should if it is so advised have an opportunity to seek to amend in this regard. If need be, however, the striking out of the relevant allegation of assistance cannot be achieved merely by deleting some words from the particulars of claim, because of the process of cross-referencing adopted.
48. Blockchain then contends that the allegation of dishonesty is not properly pleaded, with regard to the principles concerning pleadings of dishonest conduct, as set out at paragraphs 15 to 18 above. The relevant allegations of dishonesty are found at paragraph 102, as follows:

“102 [The conduct of Blockchain pleaded in paragraphs 72 to 81] was dishonest by ordinary standards. In support of that contention Crypton relies on the following:

102.1 Blockchain had knowledge of, alternatively was reckless as to, the non-solicitation, non-competition and notice obligations to which Mr Jones and Mr Koumpas were subject and the notice obligations under the Contracts for Services.

102.2 Blockchain (including in particular Mr McGarraugh) must have known that it was wrong for Mr Jones and Mr Koumpas as directors of Crypton DA and Crypton PM, having spent significant time and effort developing the Crypton Platform (and overseeing its development by others) and thus creating the Crypton Platform Opportunity, instead to exploit that opportunity outside of Crypton.

102.3 It was in any event dishonest by ordinary standards for Blockchain (acting in particular through Mr McGarraugh), having pursued negotiations for an acquisition of Crypton in return for payments of significant value, for several months and to an advanced stage, to decide instead to exploit the Crypton Platform Opportunity for itself, having been involved in the solicitation of Crypton's staff as pleaded in paragraph 75 above, and without any payment to Crypton.

102.4 Blockchain SA put forward reasons for withdrawing from the negotiations with Crypton which were not genuine commercial reasons but a false pretext put forward in an attempt to justify its conduct, as set out in paragraph 78 above."

49. I remind myself that as dishonesty is usually inferred the claimants must plead primary facts from which such an inference is more likely than an inference of innocence or negligence.
50. I consider that each of the allegations set out at paragraph 102 are allegations which are, read as a whole and in context and if all the factual averments made by Crypton are true, more likely to lead to an inference of dishonesty than an inference of innocence or negligence:
- i) The allegation that Blockchain knew or was reckless as to the relevant contractual obligations of Mr Jones and Mr Koumpas (and the other relevant employees) is not made in vacuo. It is made in the context of an allegation that Blockchain combined to procure breaches of others' employment contracts and to compete with Crypton. I do not agree that this could be read as an allegation that Blockchain merely knew the terms of the employees' previous contracts of employment.
 - ii) The first allegation must be read together with paragraph 102.2, which is an allegation that Blockchain knew that it was wrong for Mr Jones and Mr Koumpas as directors (i.e. as fiduciaries) to exploit an opportunity belonging to Crypton outside of Crypton.
 - iii) The allegation at paragraph 102.3, which is a plain plea of dishonesty, is placed squarely in the context of the alleged assistance of Mr Jones and Mr Koumpas in soliciting staff, and in exploiting the Crypton Platform opportunity together with them. It is not just a plea of primary wrongdoing.
 - iv) The allegation that Blockchain put forward a false pretextual explanation might not justify a finding of dishonesty when divorced from all other allegations, but it is expressly linked to a plea that

Blockchain was not innocently withdrawing from negotiations. If found to be true, that plea would justify an inference of dishonesty not least as it thus clearly refers back to the allegation (pleaded immediately before, in paragraphs 73 to 77) that Blockchain assisted Mr Jones and Mr Koumpas in soliciting the resignation and re-employment by Blockchain of other employees, in what is said to be a breach of fiduciary duty on their part.

51. I therefore consider that the claim in dishonest assistance is sufficiently pleaded in relation to the second and third categories of alleged breach of fiduciary duty set out at paragraph 43 above.

Knowing or unconscionable receipt

52. Paragraph 103 of the particulars of claim reads as follows:

“Insofar as Blockchain has received any of Crypton’s assets (including, without limitation, Crypton’s Intellectual Property) by reason of the breaches of fiduciary duty of Mr Jones and Mr Koumpas pleaded in paragraph 83 above, in the circumstances pleaded above such receipt was unconscionable. Crypton reserves the right to seek to plead further in this respect upon disclosure or otherwise.”

53. This is the extent of the plea for relief for Blockchain’s alleged knowing or unconscionable receipt. When I first read this paragraph, I did not understand it to pursue a remedy at present, but to reserve the right to do so in the event that Crypton later became aware that they were able to do so. Mr Sheehan has, however, indicated that this is a claim which is presently maintained.
54. It is clear that one of the elements of this cause of action, which must be pleaded and proved by a claimant, is that the defendants have received property subject to a trust. This may include property owned by a company but subject to the fiduciary duties of the directors: see *Lewin on Trusts*, 20th edn, at 42–036.
55. I do not consider that paragraph 103 of the particulars of claim contains a plea that property subject to a trust in this sense has been received by Blockchain. Furthermore, the absence of any such pleading means that it is not possible, by reference to allegations elsewhere in the document, to identify whether it is alleged that any receipts are sufficiently connected to the pleaded breaches of fiduciary duty and to Blockchain’s knowledge of them.
56. Accordingly, paragraph 103 as pleaded does not disclose reasonable grounds for bringing a claim in knowing or unconscionable receipt.

Unlawful means conspiracy

57. A conspiracy to injure by unlawful means is actionable where the claimant proves that it has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure it by unlawful means, whether or not it is the predominant purpose of the defendant to do so: *Kuwait Oil Tanker SAK v Al Bader* [2000] 2 All ER (Comm) 271 at [108], *per* Nourse LJ. Mr Hossain submits by reference to this test that Crypton must plead (a) a combination or agreement between a defendant and others, (b) an intention of injuring the claimants by the use of unlawful means, (c) the use of unlawful means pursuant to the combination or agreement, and (d) loss caused accordingly. I agree with this statement of the elements of the cause of action. It is now clear, following the very recent decision of the Court of Appeal in *Racing Partnership Ltd v Done Bros (Cash Betting) Ltd* [2021] 2 WLR 469, that a claimant in an unlawful means conspiracy claim does not need to plead and prove that the defendant knew that the means used were unlawful.
58. Crypton's pleading as to unlawful means conspiracy is contained within paragraphs 104 to 106 of the particulars of claim, which cross-refer back to paragraphs 62 to 81 as to the combination or agreement and the acts carried out pursuant to it, and to paragraphs 69.5 and 83 to 103 as to the unlawful acts alleged to have been carried out. There is also the following plea at paragraph 105:
- “The Defendants intended by such combination or agreement to injure Crypton, in particular in that such injury was the obverse side of the coin to the financial gain which they sought for themselves by the exploitation of the Crypton Platform Opportunity.”
59. Blockchain submits that there are five essential flaws in this plea of unlawful means conspiracy:
- i) First, it says that there is no proper plea that Blockchain was party to a combination.
 - ii) Secondly, there is no proper plea that Blockchain shared the two alleged objects of the combination.
 - iii) Thirdly, it is not alleged that it was an object of the combination to injure Crypton by the use of unlawful means.
 - iv) Fourthly, it is not alleged that Blockchain knew of and agreed to the use of the unlawful means, or that it knew of the facts that rendered the use of those means unlawful.

- v) Finally, it is said that the unlawful acts themselves are not properly pleaded or particularised.
60. The adequacy of the pleading of this cause of action needs to be considered with particular reference to the underlying facts that are alleged. I have set out at paragraph 23 above what I consider to be the most pertinent factual allegations relating particularly to Blockchain in connection with the alleged combination or agreement.
61. The acts said to be unlawful means are then pleaded as follows:
- i) Those pleaded at paragraph 69.5 are false representations allegedly made by Mr Jones and Mr Koumpas. It appears from the opening words of paragraph 69 that Blockchain is alleged to have supported the attempts of Mr Jones and Mr Koumpas to gain control of negotiations, and that paragraph 69.5 contains some of the particulars made in support of this allegation.
 - ii) Mr Jones and Mr Koumpas are alleged to have breached their fiduciary duties to the claimant companies (paragraph 83). Blockchain had knowledge of at least some of the fiduciary obligations to which they were subjected (paragraph 102.1 and 102.2).
 - iii) It is alleged that Mr Jones and Mr Koumpas acted in breach of their contracts of employment (paragraphs 17 to 21, 84 and 85), likewise Mr Curtis (or Castramet Ltd) (paragraphs 23 and 24, 86 to 89). There is a plea that their wrongful actions were done in combination with Blockchain. Blockchain had knowledge of the said contractual obligations and/or was reckless as to whether they existed (paragraphs 95 and 98).
 - iv) It is then alleged that the defendants have individually and/or as part of a common design infringed Crypton's intellectual property rights.
 - v) Crypton then rely on the other causes of action pleaded against Blockchain, namely inducing breach of contract, dishonest assistance and unconscionable receipt (as discussed above).
62. Returning to Blockchain's five objections to the pleading of unlawful means conspiracy, the first was that there is no proper plea that Blockchain was party to a combination. When considering the pleaded allegations that I have summarised at paragraph 23 above, I cannot accept Blockchain's submission that it is wholly unparticularised beyond the mere allegation that there was a combination or agreement.

63. Mr Sheehan refers me to the judgment of Nourse LJ in the *Kuwait Oil Tanker* case, at [111], where he said that the very existence of an agreement can only be inferred from overt acts. Furthermore, the judge said that, for there to be an actionable conspiracy, “the parties to [the combination or agreement] must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of”. I consider that the overt acts which it is alleged Blockchain carried out before and after 14 February 2020 are acts from which a combination involving Blockchain could be inferred. It is pleaded that at least some of the relevant pleaded acts were coordinated with Blockchain. I further consider that a trial judge could find that the matters pleaded by Crypton as to Blockchain’s involvement lead, in the absence of satisfactory explanation, to the necessary inference that Blockchain was a member of the combination: see *Bird v O’Neal* [1960] AC 907 at 920–921.
64. The second objection taken by Blockchain is that it is not pleaded that it shared the alleged objects of the combination. The pleaded common ends are in relation to a combination or agreement “to act in [Mr Jones’ and Mr Koumpas’] interests and against Crypton’s interests with regard to the Crypton Platform Opportunity and the proposed Blockchain SA acquisition”. It is pleaded in the particulars of claim at paragraphs 63 onwards that Blockchain in several ways supported Mr Jones and Mr Koumpas (and to a lesser extent the other defendants) in taking steps which led to Blockchain acquiring Crypton’s assets and business value, and then giving spurious reasons for breaking off negotiations a few days after several key employees had taken up employment with Blockchain. I consider that a court could find that these facts, if proven at trial, are consistent only with a shared object as pleaded at paragraph 62. Indeed, this would be a far more likely inference than one of innocent involvement when one considers the circumstances as pleaded in the particulars of claim as a whole.
65. Blockchain’s third objection is that there is no plea that there was an intention on the part of Blockchain to injure Crypton by unlawful means. I tend to agree with Mr Hossain that the pleading on this point does not emerge as clearly as it might or, indeed, as it should. Nonetheless, I do not consider that the reader of the particulars of claim could be left in any sensible doubt on this point. In particular, the plea at paragraphs 72 to 74 is that the combination sought to achieve the ends of the third to fifth defendants and others leaving Crypton for Blockchain and the pursuit of the Crypton Platform opportunity without payment to Crypton, and was coordinated with Blockchain. When coupled with the pleas as to infringement of intellectual property rights, and as to Blockchain’s knowledge of the employment contracts and of the fiduciary duties owed by Mr Jones and Mr Koumpas (the breaches of which it is alleged

that Blockchain induced or dishonestly assisted), the intention to injure Crypton by the use of unlawful means is, in my view, adequately pleaded.

66. There was some discussion at the hearing about the theoretical possibility of a combination forming initially to carry out some object by lawful means, with the proposed use of unlawful means later being introduced into the equation. In such circumstances, it would have to be pleaded that each defendant was a party to the combination, with the relevant knowledge, at a time when the use of unlawful means was proposed. In this case, it is clearly pleaded that Blockchain was a part of the alleged combination in the form into which it evolved by around 10 to 14 February 2020, when it was alleged to be coordinating resignations. I accept that it is understandable that Crypton is in no position to plead a precise date.
67. The fourth objection raised is that it is not alleged that Blockchain knew of and agreed to the use of unlawful means, or that it knew of the facts that rendered the use of those means unlawful. I reject this submission for the reasons I have given in relation to the third objection. Whilst it is not expressly pleaded in terms that Blockchain knew that there was to be an infringement of Crypton's intellectual property rights, it is so implicit in the pleading (at paragraph 90) that Blockchain entered into a common design to exploit the Crypton Platform opportunity, that it must have known and agreed to the matters that rendered the alleged intellectual property infringements unlawful. I consider that it would defy all reason to suggest otherwise.
68. Blockchain's knowledge of the contractual obligations relating to Crypton's intellectual property rights, and of the non-competition and non-solicitation clauses in the employment contracts of Mr Jones and Mr Koumpas, is pleaded in the particulars of claim at paragraph 95. Furthermore, Blockchain's knowledge of the fiduciary duties said to be owed by them to the claimants, including the fundamental duty to avoid conflicts of interest (see Companies Act 2006, s.175) is pleaded at paragraph 102.2.
69. I consider that the explicit pleas as to Blockchain's knowledge of the pleaded employment contracts and fiduciary duties, and its pleaded involvement in the breach of those duties, constitute a plea that Blockchain knew of and agreed to a combination to use breaches of those contracts and duties in furtherance of the objects of that combination. This is a far cry from the position in *TCP Europe Ltd v Perry* [2012] EWHC 1940 (QB), on which Blockchain relied, where it was not alleged that certain defendants were aware of any certain fiduciary or contractual obligation at all, see at [38].
70. Furthermore, as Mr Sheehan submitted, a plea of knowledge of the unlawful means (which now means knowledge of the means rather than of their unlawfulness) can hardly be necessary in relation to acts which it is alleged

that the defendant in question has itself committed. It is alleged that Blockchain has itself unlawfully infringed Crypton's intellectual property rights and that it has induced breaches of contract and dishonestly assisted in breaches of fiduciary duty. I also agree with Mr Sheehan that once it is pleaded that the relevant defendants were part of the combination to use whatever means might present themselves (to include sufficiently identified unlawful means known to the relevant defendants), it does not need to be pleaded that they were fully aware of the circumstances of each act, as long as it is pleaded that the acts of the other defendants were within the scope of the combination: see *Kuwait Oil Tanker SAK v Al Bader* [2000] 2 All ER (Comm) 271 at [133].

71. The final objection taken by Blockchain is that the allegedly unlawful acts carried out pursuant to the combination are not properly pleaded or particularised. As noted above, paragraph 106 of the particulars of claim cross-refers to paragraph 69.5, which refers to a number of alleged false representations made by Mr Jones and Mr Koumpas (including one to Blockchain as representee) and to paragraphs 83 to 103, where the other causes of action are enumerated and pleaded.
72. As to paragraph 69.5, Mr Hossain submits that no actionable wrong is pleaded, but merely bare fraudulent representations on which nobody relied. He submits that *Stocznia Gdanska SA v Latvian Shipping Co* [2001] 1 Lloyd's Rep 537 at [304], *per* Thomas J, is authority for the proposition that a false statement which is not itself actionable is not a relevant unlawful act. Mr Sheehan responds with reliance on the decision of Andrew Smith J in *Fiona Trust & Holding Corp v Privalov* [2010] EWHC 3199 (Comm), at [69], where he said that the law does not require that the unlawful means should themselves be actionable at the suit of the claimant, commenting that the means may be, *inter alia*, a fraud. It seems to me that both parties' positions are properly arguable and that, where the law appears to be unclear, it would be inappropriate to strike the allegation out.
73. Mr Hossain submits finally that, from the other paragraphs cross-referenced in the particulars of claim at paragraph 106, it is difficult if not impossible to identify precisely which acts are relied upon as the unlawful means. Whilst I again agree that the particulars of claim could perhaps have benefited from clearer signposting, if not less cross-referencing, I do not on analysis find it unduly difficult to identify the relevant unlawful means. They are the breaches of contract and fiduciary duty, to which the other defendants have pleaded a defence, and the causes of action which I have already indicated are sufficiently pleaded, plus the alleged intellectual property infringements which Blockchain does not seek to strike out.

Conclusion

74. For the reasons I have given above, I conclude that the claim in dishonest assistance is not sufficiently particularised to the extent that it does not allege acts of assistance with the breaches of fiduciary duty pleaded at paragraphs 66 to 71 of the particulars of claim, and that the claim in knowing or unconscionable receipt is unsustainable as pleaded. Otherwise, I consider the disputed causes of action to be adequately pleaded. The application therefore succeeds to only a limited extent.
75. I have paid regard in considering the particulars of claim to the principles relating to pleading, especially those concerning the pleading of allegations of dishonest conduct. I agree that the lack of signposting in the document, and the way in which it is cross-referenced, mean that it may not be quite as easy to navigate as it could be. However, I consider that the constituent elements of those causes of action that I permit to continue as they are pleaded do, on a careful reading, emerge with some clarity such that reasonable grounds for pursuing them are disclosed. The particulars of claim are a very long way from being likely to obstruct the just disposal of the proceedings.
76. As far as those elements of the claim which are not sufficiently pleaded are concerned, Crypton should have an opportunity to amend. Where a defect in a statement of case is capable of being cured by amendment, the court should generally refrain from striking out without giving such an opportunity: *Bord Na Mona Horticulture Ltd v British Polythene Industries plc* [2012] EWHC 3346 (Comm) at [29]. If Crypton wishes to avail itself of this opportunity, any proposed amendments should be served on Blockchain within 14 days of the handing down of this judgment, for its agreement or objection.
77. Finally, I would note that I received submissions, by reference to the *Bord Na Mona Horticulture* case and the decisions cited within it, on the question whether the more generous ambit given to claimants in claims for infringements of competition law by cartels, which are by their nature clandestine, applies more generally to claims in conspiracy. For the avoidance of doubt, I have not considered it necessary to decide this point in order to determine the application. The unlawful means conspiracy claim is sufficiently pleaded without the need for separate reliance on this principle.