



Neutral Citation Number: [2021] EWHC 818 (Ch)

Claim No. BL-2018-001982

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

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

Date: Thursday, 1 April 2021

Before:
MR. ROBIN VOS
(Sitting as a judge of the Chancery Division)
(Remotely via Microsoft Teams)

Between:

**BERKELEY SQUARE HOLDINGS LIMITED &
OTHERS
- and -
(1) LANCER PROPERTY ASSETS MANAGEMENT
LIMITED
(2) JOHN TOWNLEY KEVILL
(3) DUNCAN ROBERT FERGUSON
(4) ANDREW JOHN WINDLE LAX
(5) BYRON HOWARD PULL
(6) LANCER PROPERTY HOLDINGS LIMITED**

**Claimant/
Applicants**

**Defendants/
Respondents**

MR. PHILIP MARSHALL QC, MR. JONATHAN HARRIS QC (HON.), MR. JUSTIN HIGGO QC, MR. OLIVER JONES and MR. JAMIE RANDALL (instructed by **Eversheds**) appeared for the **Claimants/Respondents**.

MR. ADRIAN BELTRAMI QC, MR. RICHARD MOTT and MR. OSCAR SCHONFELD (instructed by **Reynolds Porter Chamberlain LLP**) appeared for the **Defendants/Applicants**

Hearing Date: 23-25 March 2021

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.

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 1 April 2021 at 10.30am.

MR ROBIN VOS:

Background

1. The claimants applied on 23 February 2021 to strike out paragraph 8 of the Defendants' re-amended defence and counterclaim. I heard the application, together with several other applications made by the parties between 23-25 March 2021.
2. Having heard the parties' arguments in relation to the strike out application, I decided to allow the application and to strike out the relevant paragraph. However, as there were a number of other applications to deal with, at least two of which were expected to be quite time consuming, it was agreed that I would give my reasons after the hearing. This judgment contains those reasons.
3. I do not need to say much about the background to the underlying claim. The claimants are BVI companies which own or have owned properties in the UK. The ultimate beneficial owner of those companies is His Highness Sheikh Khalifa bin Zayed Al Nahyan, the President of the United Arab Emirates (or in one case, a family member).
4. The first defendant, Lancer, was appointed to manage the portfolio of properties owned by the claimant companies; the second to fifth defendants are the directors of Lancer; the sixth defendant was until sometime in 2017 or 2018 Lancer's parent company.
5. The claimants appointed Dr. Al Ahababi as their representative in relation to the property portfolio owned by them. Dr. Al Ahababi was the chairman of the Department of the President's Affairs in Abu Dhabi. He was assisted by Mr. Ismail.
6. The claims relate to payments made by Lancer to two BVI companies, Becker and Reilly, which are said to be beneficially owned by Dr. Al Ahababi and Mr. Ismail respectively. The claimants say these payments were arranged dishonestly by Dr. Al Ahababi and Mr. Ismail without the knowledge or approval of either the claimants or Sheikh Khalifa. The defendants, on the other hand, say that the claimants and/or Sheikh Khalifa knew and approved of the payments and the circumstances giving rise to them.

Procedural Background

7. Turning to the procedural background, the claim was served on 13th December 2018. The defendants requested further information which was provided on 1st April 2019 and then provided their defence on 24th April 2019. The claimants' reply was served on 6th June 2019. They also requested further information which was provided by the defendants on 1st July 2019. The claimants served amended particulars of claim on 7th November 2019.
8. In advance of the first case management conference, which took place on 14th January 2020, the defendants produced a draft amended defence and counterclaim which was approved by the claimants in December 2019. The amended defence and counterclaim was served on 6th May 2020 with further amendments on 26th May 2020. The claimants served an amended reply on 27th May 2020.

9. Disclosure took place on 11th September 2020, although as a result of correspondence this process is ongoing, with further documents recently having been provided by the defendants to the claimants, and both parties having made applications for further disclosure.
10. On 25th February 2021 Green J allowed an extension of time for filing witness statements to 1st April 2021. The claimants are due to serve expert evidence relating to accounting issues on the same day. Both parties are to serve expert reports from chartered surveyors by 7th April 2021. The pre-trial review is listed for a three-day window starting on 4th May and the trial itself is listed for 18 days in a five-day window starting on 8th June 2021.

Paragraph 8 of the Defence

11. The original defence simply stated at paragraph 8 that Sheikh Khalifa was reported to have suffered a stroke in January 2014. An amended defence was served on 6 May 2020 which significantly expanded paragraph 8, alleging that Sheikh Khalifa has been incapacitated since January 2014 with the result that documents (including an Emiri decree) signed by him are not valid, that the claimants' solicitors were not properly authorised to commence and conduct the present proceedings and that those individuals who are giving instructions on behalf of the claimants are unable to confirm whether or not Sheikh Khalifa authorised and approved the matters now complained of.
12. As mentioned above, the draft of the amended defence and counterclaim was provided to the claimants prior to the case management conference in January 2020 and the claimants consented to the proposed amendments (including the revised paragraph 8) in December 2019.
13. The question of Sheikh Khalifa's capacity does not appear in the parties' agreed list of issues. However, the question "has Sheikh Khalifa been incapacitated since January 2014 such that other family members now control the claimants and/or the property portfolio owned by them" was, at the case management conference, ordered by the judge, John Male QC, to be one of the key issues for disclosure, despite opposition from the claimants.
14. On 11 March 2021, the defendants issued an application to amend their re-amended defence and counterclaim. This includes significant amendments to paragraph 8 which remove the allegations relating to the invalidity of documents/decrees and the authority of the claimants' solicitors to commence/conduct the present proceedings. Following the proposed amendments, paragraph 8 of the re-amended defence and counterclaim would read as follows:-

"Sheikh Khalifa is reported to have suffered a stroke in January 2014, which the defendants believe to be gravely debilitating of his mental faculties. Further, those persons who are giving instructions on behalf of the Claimants in this matter do not have direct knowledge of whether Sheikh Khalifa authorised and approved the matters now complained of and the Defendants believe those persons are prevented by the mental incapacity of Sheikh Khalifa from seeking such confirmation from him now."

15. As can be seen, the only remaining allegation is that the claimants cannot confirm with Sheikh Khalifa whether he in fact knew about or authorised the payments to Becker and Reilly and/or the circumstances giving rise to those payments.
16. The strike out application therefore proceeded on the basis that the proposed amended paragraph 8 would be the relevant version to be considered, the other allegations effectively having been withdrawn as a result of the defendants' application to amend.

Striking out pleadings and the basis for the application

17. The strike out application is made under CPR Rule 3.4(2)(a) and (b). This provides that:-
 - “(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;
 - b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;”
18. It is clear from CPR Rule 3.4(1) that a reference to a statement of case includes reference to any part of a statement of case.
19. Included in the strike out application was an alternative application for summary judgment under CPR Part 24. However, this related only to the allegation that the claimants' solicitors had no authority to commence or conduct the proceedings. As this allegation has been withdrawn, the summary judgment application is no longer relevant.
20. The claimants put forward three reasons why paragraph 8 should be struck out:
 - i) The remaining allegation does not constitute a defence to the claim.
 - ii) The real reason for the allegation of incapacity is to court publicity with a view to embarrassing Sheikh Khalifa (and his family more generally), hoping that this will exert pressure resulting in a settlement of the claim. This, they say, is an abuse of process within CPR Rule 3.4(2)(b).
 - iii) The allegation of incapacity offends various rules relating to state immunity, the act of state doctrine and comity including, in particular, that the allegation of incapacity is an attack on the dignity of a head of state in contravention of Article 29 of the Vienna Convention on Diplomatic Relations 1961. The argument is that, on the basis of one or more of these principles, the question of Sheikh Khalifa's incapacity is not one which can be determined by an English court.
21. With a view to a possible saving of time, I agreed to Mr Marshall's proposal that I should initially hear submissions on the first two grounds for the strike out application (no grounds for defence and abuse of process) and only hear submissions on the third ground (non-justiciability) should the strike out application fail on the first two

grounds. In the event, I allowed the strike out application based on the first ground and so no submissions were made in relation to the third ground.

Does paragraph 8 disclose a reasonable ground for defending the claim?

22. Mr Marshall's submissions on this point were succinct. He points out that the claim is that Sheikh Khalifa did not know of and/or approve the payments to Becker and Reilly. The key events put forward by the defendants as evidence of Sheikh Khalifa's knowledge and/or approval took place in 2005, 2011 and 2012. On that basis, he submits that the alleged incapacity of Sheikh Khalifa in 2014 cannot be a defence to the claim.
23. Mr Marshall accepts that Sheikh Khalifa's possible incapacity is a point which the defendants might make in submissions or put to witnesses in cross-examination should there be a sufficient evidential base for them to do so, but argues that this would only be relevant to the weight which might be placed on any evidence purporting to show that Sheikh Khalifa had confirmed his lack of knowledge or approval after January 2014.
24. In support of his submission, Mr Marshall referred to the decision of Leggatt J in *Tchenguiz v Grant Thornton UK LLP* [2015] EWHC 404 (Comm) which opened [at 1 – 2] with the following paragraphs:-
 - “(1) Statements of case must be concise. They must plead only material facts, meaning those necessary for the purpose of formulating a cause of action or defence, and not background facts or evidence. Still less should they contain arguments, reasons or rhetoric. These basic rules were developed long ago and have stood the test of time because they serve the vital purpose of identifying the matters which each party will need to prove by evidence at trial.
 - (2) As commercial transactions have become more complex and more heavily documented (including electronically), adhering to the basic rules of pleading has become both increasingly difficult and all the more important. It is increasingly difficult because it is harder for pleaders to distil what is essential from the material with which they are provided and because they can feel pressure to show their mettle and enthusiasm for their client's case by treating the pleadings as an opening salvo of submissions in the litigation. It is all the more important because prolixity adds substantial unnecessary costs to litigation at a time when it is harder than ever to keep such costs under control.”
25. Mr Marshall suggests that, at the most, paragraph 8 represents “background facts or evidence”.
26. In response, Mr Beltrami emphasises the procedural history relating to paragraph 8 and the allegation of incapacity. In particular, he notes that the claimants consented to the existing version of paragraph 8 (ie. before the proposed changes in the defendants' current application to amend) and that, following argument at the case management conference, John Male QC decided that the question of incapacity should be a key issue for disclosure. In relation to this, Mr Beltrami observes that paragraph 7.3 of Practice Direction 51U defines the issues for disclosure as “those key issues in dispute”.

In this case, he submits that the question of Sheikh Khalifa's capacity goes directly to the defendants' case in respect of his knowledge and approval of the payments to Becker and Reilly and the circumstances giving rise to those payments.

27. In addition, Mr Beltrami points out that the claimants have specifically pleaded to the allegation of incapacity in their amended reply which denies that Sheikh Khalifa is suffering from any mental incapacity.
28. A critical issue which Mr Beltrami suggests the court needs to take into account is that none of Sheikh Khalifa, Dr Al Ahababi nor Mr Ismail will be giving evidence. On the basis that there is no documentary evidence which confirms Sheikh Khalifa's lack of knowledge/approval, the only way this can be proved is, he says, by way of oral evidence.
29. Whilst Mr Beltrami accepts that pleadings should not contain matters which are irrelevant, he does not accept that this means that pleadings cannot contain any material which is not itself a defence to the claim. This, he says, is evident from CPR Rule 16.5(2) which requires a defendant to state in his defence his reasons for denying any allegation in the particulars of claim.
30. Mr Beltrami also draws support from paragraph 10.9 of the Chancery Guide which requires a pleading to refer to "any matter which if not stated might take another party by surprise". He submits that the clear policy behind this is to enable the other party to understand the issues and to prevent any ambush at trial. This, he says, is apparent from the comments made by Teare J in *Towler v Wills* [2010] EWHC 1209 (Comm) [at 18] that:-

"The purpose of a pleading or statement of case is to inform the other party what the case is that is being brought against him. It is necessary that the other party understands the case which is being brought against him so that he may plead to it in response, disclose those of his documents which are relevant to that case and prepare witness statements which support his defence. It is also necessary for the Court to understand the case which is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense."

31. Mr Beltrami further relies on the decision of Neuberger J in *BCCI v Morris* [1999] B.C.C. 943. That case related to a claim in respect of fraudulent trading. The particulars of claim included general allegations of the dishonest way in which BCCI's business had been carried out but which were separate from the acts which were said to constitute the fraudulent trading. Neuberger J observed [at 949E] that:-

"One should not strike out allegations on the ground of irrelevance unless they are, to use Rattee J's words, 'so clearly irrelevant to justify their being struck out'."

32. Neuberger J's conclusion [at 951G] was that:-

"What I am concerned with is the question of whether the allegations in those paragraphs do or may properly bear on the issues between the parties. For the

reasons I have given, I think they, at least arguably, do as a matter of principle and therefore it would be wrong to strike them out.”

33. Whilst I accept that not everything contained in a defence must itself constitute a defence to the claim, they must in my view be relevant to the matters which are said to amount to a defence. This was, for example, clearly the case in *BCCI* where the previous allegations of dishonest trading were potentially relevant to the actual claim of subsequent fraudulent trading.
34. The situation here is however very different. The question of Sheikh Khalifa’s subsequent capacity is entirely irrelevant to the question as to whether, at the relevant time, he knew or approved of the payments to Becker and Reilly or the circumstances giving rise to those payments. The facts put forward by the defendants in relation to Sheikh Khalifa’s knowledge or approval all relate, as Mr Marshall has pointed out, to events which are said to have taken place before Sheikh Khalifa’s reported stroke in January 2014. Therefore, even if the defendants are able to make good their allegation of incapacity from January 2014 onwards, this would not represent any defence to the claim which has been made and sheds no light on whether Sheikh Khalifa in fact knew or approved of the relevant matters.
35. The only possible relevance of Sheikh Khalifa’s capacity from 2014 onwards is whether or not he may have been able to confirm (had he been asked to do so) after that date that he did not know or approve of the relevant payments. Mr Beltrami’s concern appears to be that the claimants may produce a witness who would give evidence at the trial that Sheikh Khalifa has confirmed (after January 2014) that he did not know or approve of the payments concerned. This, however, is speculation.
36. Whilst Mr Beltrami suggests that this aspect of the claimants’ case can only be proved by oral evidence, I cannot accept this. Even on the basis of the little evidence I have seen in the bundles prepared for the purposes of this application and the other applications which were before me, it is apparent that there is material based on which the claimants may well want to ask the trial judge to infer that Sheikh Khalifa did not have the relevant knowledge or approval. Of course, I express no view as to whether such a submission would be successful but it would certainly not be out of the question that it could be made.
37. The comments of Teare J in *Towler v Wills* do not in my view assist Mr Beltrami. What he says is uncontroversial and is simply that a pleading must state clearly what case a party is putting forward. In that case the conclusion was that the pleadings were “unreasonably vague or incoherent” so as to amount to an abuse of process. It was not addressing the question as to whether the matters pleaded amounted to a defence.
38. Mr Beltrami sought to distinguish *Tchenguiz* on the basis that the facts in that case were extreme. There is no doubt that this was the case. The particulars of claim were 94 pages long and were described [at 5] by the judge as follows:-

“They include background facts, evidence and polemic in a way which makes it hard to identify the material facts and complicates, instead of simplifying, the issues. The phrasing is often not just contentious but tendentious. For example, the defined term used to refer to three of the defendants is “the Conspirators”. Nor can headings such as “the plot” and “the plot evolves” be

supposed to be “in a form that will enable them to be adopted without issue by the other party”.”

39. However, this does not in my view detract from the general applicability of the opening words of Leggatt J’s judgment emphasising that the pleadings should only plead those facts necessary for the purpose of formulating a cause of action or defence and not background facts for evidence. Whilst there is some tension between this statement and the decision in *BCCI* (which was decided under the old Rules of the Supreme Court) given that the facts pleaded in *BCCI* were very much background facts, the reality is that Sheikh Khalifa’s incapacity is not even a background fact in relation to this claim. It is nothing more than a fact which might cast doubt on the credibility of evidence which might be given by a witness where there is no certainty that any such evidence will in fact be given. I agree with Mr Marshall that this is an issue for cross-examination or submissions and not for pleading.
40. I do agree with Mr Beltrami that an important function of the pleadings is to ensure that all relevant elements of a party’s case are succinctly and clearly articulated so that the other party is not taken by surprise or ambushed at trial and knows the case which they have to meet. However, for the reasons I have already given, the question as to Sheikh Khalifa’s capacity is not part of the case put forward by the defendants in their defence to the claim.
41. I am of course conscious as Mr Beltrami has pointed out, that John Male QC considered the question of Sheikh Khalifa’s capacity to be a key issue for disclosure at the case management conference. I was provided with a transcript of his judgment in relation to this. He quite rightly observed [at 15] at the start of his consideration of this issue that:-
- “I need to just consider this in the light of the pleadings”.
42. It must be remembered that, at that time, the pleadings contained the important allegation that the claimants’ solicitors had no authority to commence or conduct the proceedings. The judge’s conclusion [at 17] was that:-
- “It seems to me that plainly, on the face of the pleadings, and there is no suggestion this is going to be admitted, this is a key issue. I agree with what is summarised on page 14, where it is said:-
- “This is an important issue which, amongst other things, explains why the present litigation has been commenced notwithstanding the fact that Sheikh Khalifa’s is still alive”.”
43. It is therefore apparent that the judge reached his conclusion based on the much more significant allegations contained in the version of the proposed amended defence and counterclaim which he had in front of him. This included the suggestion that various documents were invalid, that wider family members had taken control of Sheikh Khalifa’s property and that the claimants’ solicitors were not authorised to commence and conduct the proceedings, as well as the allegation which now remains that those who were giving instructions on behalf of the claimants do not know whether Sheikh Khalifa knew or approved of the payments and, as a result of his incapacity, are now

unable to confirm whether or not that was the case. In the light of that, I do not find the judge's conclusion surprising.

44. It is of course regrettable that the claimants have only now chosen to apply to strike out paragraph 8 of the re-amended defence and counterclaim. As Mr Beltrami has pointed out, there is little doubt that the reason for this is as a way of resisting the defendants' application for further disclosure in relation to Sheikh Khalifa's incapacity. However, the fact that the claimants could have applied to strike out the allegations of incapacity at an earlier stage is not, in my view, a reason for refusing the application, particularly in circumstances where the defendants have themselves agreed to withdraw the vast majority of the allegations and where the only remaining allegations are not relevant to the defence which they have put forward.
45. I should briefly mention a further point put forward on behalf of the claimants in Mr Marshall's skeleton argument and to which Mr Beltrami responded. This relates to the evidential basis for the defendants' assertion that Sheikh Khalifa lacks capacity. Given that I have decided to strike out paragraph 8 on the basis that it is not relevant to the grounds which the defendants put forward in defence of the claim, I need only deal with this briefly.
46. The defendants have commissioned a report from Alaco Limited, a business intelligence and investigations consultancy based in the UK. Alaco have obtained information from around 20 un-named individuals who have given their views on Sheikh Khalifa's health, some based on hearsay and some based on personal contact with Sheikh Khalifa. The report also references various published media and academic sources which make comments on Sheikh Khalifa's health.
47. The claimants describe the report as "scurrilous gossip". In his skeleton argument, Mr Marshall stated that the report is inadmissible although, at the hearing, he accepted that it could be admitted into evidence but suggested that, even if permission were given, it should be given no weight at all.
48. Mr Beltrami submits that the correct test in the context of a strike out application is whether the fact or assertion being put forward is incapable of being established and so the pleading is therefore bound to fail. Mr Marshall did not disagree with this and I agree that it is an accurate statement.
49. Mr Beltrami accepts that the report is hearsay and that much of it represents the opinion of individuals who are not medical experts. He also accepts that this affects the weight which should be given to the report. However, given that the claimants have rejected any possibility of an expert carrying out an assessment of Sheikh Khalifa's capacity, he submits that the report provides sufficient evidence, in the sense that the allegation is not bound to fail, particularly in circumstances where there is no contrary evidence put forward by the claimants.
50. I would accept this. There is no doubt that little weight would normally be given to hearsay evidence from unidentified sources (and in this context Mr Marshall referred to the requirements of paragraph 18.2 of Practice Direction 32) and the opinion of individuals who are not medical experts. However, in the light of the numerous published reports speculating on Sheikh Khalifa's health and the factual evidence contained in the report (for example who has hosted official visits to the UAE by

foreign dignitaries and the relatively few public appearances by Sheikh Khalifa since January 2014), it cannot be said that the defendants' assertion in relation to Sheikh Khalifa's capacity is bound to fail.

Abuse of process

51. Again, given my decision to strike out paragraph 8 on the basis that it discloses no reasonable grounds for defending the claim and is not relevant to any of the grounds which have been put forward in defence of the claim, I will deal only briefly with the submissions in relation to abuse of process.
52. As I have said, Mr Marshall suggests that the real reason for making a plea as to the potential incapacity of Sheikh Khalifa is to generate publicity which will embarrass him or his family with a view to putting pressure on the claimants to reach a settlement. As part of this, Mr Marshall suggests that the defendants are trying to obtain disclosure of sensitive information which will give them further ammunition to further their ends.
53. On 9th February 2021, the defendants received an application for further disclosure. This includes a proposed order for disclosure relating to Sheikh Khalifa's incapacity based on the fact that, despite this being one of the key issues for disclosure contained in the disclosure review document, only one document was disclosed by the claimants which has any relevance to Sheikh Khalifa's health. It is against this background that Mr Marshall makes his suggestion that the real purpose of paragraph 8 of the re-amended defence and counterclaim is to obtain disclosure rather than to defend the claim. In this context, he referred to the decision of Akenhead J in *Charter UK Limited v Nationwide Building Society* [2009] EWHC 1002 (TCC) who observed [at 15(6)]:

“It would be wrong in principle to plead a matter which is immaterial to the claim or claims made or relief sought for the purpose of securing disclosure of documentation relating to such immaterial matter.”
54. As far as publicity is concerned, Mr Marshall referred to the decision of Hildyard J in *Hosking v Apax Partners LLP* [2019] 1 WLR 3347. That case in fact related to costs and, in particular, whether an award of indemnity costs was justified given the way in which the claimants had courted publicity. The judge referred [at 50] to cases which:

“have been high risk, and apparently pursued, and usually publicised, to exert pressure in the hope of extracting a settlement, with frail evidential support and little regard to their prospects of success at trial or any real and realistic objective of securing vindication by adjudication”.
55. Adding [at 51]:

“Whilst that may not technically amount to abuse, it is close to it, since the court is intentionally, though in the event, unsuccessfully, being used as an anvil for settlement rather than as an adjudicator;”

56. Mr Marshall did accept that encouraging publicity on its own does not amount to abuse but submitted that this should be treated as abuse in circumstances where the pleading does not amount to a defence to the claim, there is no evidence supporting the allegation and part of the purpose of the assertion is simply to obtain disclosure which may contain more embarrassing material.
57. I was referred to a number of emails by Mr Marshall which show that the defendants are not averse to considering publicity as a way of achieving their goals in relation to this particular matter. It is also apparent that there have been numerous press reports relating to these proceedings, including in relation to the question of Sheikh Khalifa's capacity.
58. Mr Beltrami does not deny that the pleading could lead to publicity, nor that the defendants would be unhappy if it were to do so. However, he submits that, as long as there is a genuine purpose to the pleading, the fact that there may be a collateral purpose does not constitute an abuse of process.
59. In support of this submission, Mr Beltrami refers to the decision of Teare J in *JSC BTA Bank v Albyazov* [2011] 1 WLR 2996. In that case, the claimant bank brought proceedings to recover assets allegedly misappropriated by Mr Albyazov. The defendant argued that the real purpose of the proceedings was to eliminate him as a political opponent of the President of Kazakhstan.
60. Having reviewed the authorities, Teare J concluded [at 22(4)] that, where there are two purposes for a claim, one of them legitimate and the other one an illegitimate, collateral purpose, the claimant should be entitled to proceed with his claim even if the illegitimate purpose is the predominant purpose.
61. This is not of course a case where a claim is being made for more than one purpose. Instead, what is being alleged, is that the pleading in relation to Sheikh Khalifa's capacity has an illegitimate purpose. However, had I found that the pleading was relevant to the defendants' defence of the claim, it would clearly have had a legitimate purpose as well. In these circumstances, it seems to me that the conclusion reached by Teare J in *JSC BTA* sets out the right principles to apply so that it would not be appropriate to strike out the pleading as an abuse of process.
62. In any event, I would agree with Hildyard J in *Hosking v Apax* that courting publicity on its own does not amount to an abuse of process. The fact that the pleading does not amount to a defence to the claim or that there is no evidence for the pleading cannot in my view be combined with an intention to gain publicity in order to turn the pleading into an abuse of process. Instead, either of those two factors will themselves be sufficient to justify the pleading being struck out.
63. As mentioned above, Mr Marshall also suggests that the combination of seeking publicity together with making the allegation in order to obtain disclosure amounts to an abuse of process. However, again, if the fact which is pleaded is relevant to the defence, it is difficult to see how this follows. As Akenhead J states in *Charter v Nationwide*, it is only wrong to plead a matter for the purposes of securing disclosure if that matter is immaterial to the claim made or the relief sought.

64. The reason why paragraph 8 must be struck out is because Sheikh Khalifa's capacity is not relevant to the defence which has been put forward. Had it been relevant, it would not in my view have been an abuse of process even if the defendants were hoping that it would also have the effect of generating adverse or embarrassing publicity or enabling them to obtain disclosure of further sensitive or embarrassing material.
