



Neutral Citation Number: [2022] EWHC 1099 (Ch)

CR-2018-002335

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

**11 May 2022**

**Before:**

**MR JUSTICE LEECH**

-----  
**IN THE MATTER OF KINGS SOLUTIONS GROUP LIMITED**  
**AND IN THE MATTER OF SECTION 994 OF THE COMPANIES ACT 2006**

**B E T W E E N:**

**(1) ANTHONY KING**  
**(2) JAMES PATRICK KING**  
**(3) SUSAN MAY KING**

**Petitioners**

**- and -**

**(1) KINGS SOLUTIONS GROUP LIMITED**  
**(2) PRIMEKINGS HOLDINGS LIMITED**  
**(3) ROBIN FISHER**  
**(4) BARRY STIEFEL**  
**(5) GEOFFREY ZEIDLER**  
**(6) KINGS SECURITY SYSTEMS LIMITED**

**Respondents**

-----  
**Ms Catherine Addy QC and Mr Joseph Sullivan** (instructed by **Macfarlanes LLP**) appeared on behalf of the Respondents.

**Mr Christopher Newman** (instructed by **Claremont Litigation Ltd**) appeared on behalf of the Petitioners.

Hearing dates: 29, 30 and 31 March 2022

-----  
**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.**

## **I. The Applications**

1. By Application Notice dated 24 September 2021 the Second to Fifth Respondents apply for permission to amend the Points of Defence (the “**Amendment Application**”) and by Application Notice dated 14 January 2022 (the “**Strike Out Application**”) they also apply to strike out certain paragraphs in the Amended Points of Claim (the “**Points of Claim**”) or, alternatively, for reverse summary judgment. They contend that the Court should strike out the contested allegations or grant reverse summary judgment because the pleaded issues have all been determined by the Court in Claim No. HC 2017 002379 (the “**Bribery Claim**”).
2. By Application Notice dated 15 December 2021 the Petitioners seek an order that unless the Sixth Respondent files a Defence to the Points of Claim within 28 days of the application being heard, it should be debarred from defending the unfair prejudice petition (the “**KSSL Application**”). This is a discrete application and requires the Court to consider the appropriate procedure when the company which is the subject of a petition under section 994 of the Companies Act 2006 (or, in this case, its trading subsidiary) is joined as a respondent to the petition.
3. This is the second occasion on which I have considered whether to strike out parts of the Points of Claim. On 29 October 2020 I struck out a number of allegations but permitted a number of contested allegations to go to trial: see [2020] EWHC 2861 (Ch). The Second to Fifth Respondents successfully appealed against that decision and on 17 December 2021 the Court of Appeal struck out further contested allegations: see [2021] EWCA Civ 1943. Although those allegations are not the subject of the applications before me on this occasion, the Court of Appeal gave clear guidance about the way in which the Court should approach statements of case in an unfair prejudice petition both generally and in this particular case: see [63] to [67].
4. In the remainder of this judgment I will adopt the defined terms and abbreviations which Snowden LJ used in his judgment (as supplemented by the additional terms which I used in my first judgment and below). Snowden LJ referred to the Second to Fifth Respondents as the Appellants (as indeed they were). I will adopt the term the “**Applicants**” to refer to them (as I did in my first judgment). I adopt this term because the KSSL Application requires me to decide whether KSSL has an active role in the Petition and should serve

Points of Defence and, if it fails to do so, what the consequence should be. I prefer not to adopt terminology which might give the impression that I have pre-judged that issue.

5. It is necessary for the Court to rule on some of the amendments which form the basis for the Amendment Application whatever the outcome of the Strike Out Application. But the scope of the Amendment Application will be narrowed if the Court strikes out the paragraphs relating to the Bribery Claim. I therefore deal with the Strike Out Application before the Amendment Application even though the latter was issued first.

## **II. Background**

6. As Snowden LJ remarked at the beginning of his judgment the Petition is only one piece of litigation in a long-running and procedurally complex dispute between the shareholders of the Company. The principal claims and their outcomes (so far as they have already been determined) are as follows:

- (1) *The Misrepresentation Claim*: On 15 July 2015 the Petitioners issued proceedings under CPR Part 7 against Primekings, Mr. Fisher and Mr. Swain (the “**Misrepresentation Claim Defendants**”) alleging that they had made fraudulent misrepresentations to the Petitioners about the unwillingness of the Company's bankers, GE, to continue to support the Company. In April 2017 the claim came on for trial but on 15 May 2017 the Petitioners announced to the court that they wished to discontinue the Misrepresentation Claim. Their counsel apologised unreservedly for the serious allegations which they had made and stated that they were unreservedly withdrawn. On 12 June 2017 Marcus Smith J made the Interim Costs Order for £1.7m.

- (2) *The Part 8 Claim*: On 27 October 2017 the Misrepresentation Claim Defendants issued the Part 8 Claim for an order for sale of the Petitioners' shares in the Company (over which they had now obtained charging orders). Deputy Master Cousins refused to stay the sale and shortly before a hearing listed to determine the terms of the sale, the Petitioners paid the Interim Costs Order in full. On 17 December 2018 the Deputy Master gave a reserved judgment ordering the Petitioners to pay the costs of the Part 8 Claim on an indemnity basis.

- (3) *Detailed Costs Assessment*: On 2 April 2019 the Misrepresentation Claim

Defendants also applied for a detailed costs assessment which the Petitioners resisted. On 18 November 2020 final costs certificates were issued for a total of £2,726,154.87 in respect of the Misrepresentation Claim and £411,541.84 in respect of the Part 8 Claim.

- (4) *The Bribery Claim*: On 15 August 2017 KSSL issued the Bribery Claim under CPR Part 7 against Anthony King and Mr Stephen Evans alleging that they had taken a bribe from TCH Leasing and committed breaches of fiduciary duty. In 2018 the claim against Mr Evans was settled. But Anthony King counterclaimed for the tort of abuse of process and on 1 December 2020 both the claim and counterclaim came on for trial before Mr Andrew Lenon QC (sitting as a judge of the High Court). On 18 February 2021 he gave judgment holding that Mr Anthony King had taken bribes and committed breaches of fiduciary duty and he awarded KSSL £45,666.47 in damages or equitable compensation. He also dismissed the counterclaim. On 27 July 2021 the Court of Appeal dismissed an application for permission to appeal after an oral hearing.
- (5) *The Conspiracy Claim*: On 5 February 2020 the Petitioners issued the Conspiracy Claim under CPR Part 7 against Primekings, Mr. Stiefel, Mr. Fisher, Mr. Swain, solicitors and leading counsel who had been involved in the Misrepresentation Claim alleging that they had misled the Petitioners about the total costs incurred by the Misrepresentation Claim Defendants; that they had misled Marcus Smith J into making the Interim Costs Order; and that they had submitted a fraudulently inflated bill of costs for the Misrepresentation Claim. On 26 April 2021 Cockerill J struck the entire claim out: see [2021] EWHC 1045 (Comm). On 26 July 2021 Males LJ dismissed an application for permission to appeal on paper.
- (6) *The Professional Negligence Claim*: On 6 December 2019 the Petitioners issued the Professional Negligence Claim under CPR Part 7 against their solicitors and counsel in the Misrepresentation Claim alleging that negligently and in breach of fiduciary duty they threw away an overwhelmingly strong case. Insurers for their solicitors funded the payment of the Interim Costs Order but the claim itself has yet to be determined.

7. I deal with the Bribery Claim immediately (below). However, I will not set out the wider

factual and procedural background to the Petition or any of the related claims. I set out the necessary background in my first judgment: see [2020] EWHC 2861 (Ch) at [5] to [79]. At that stage, no final costs certificates had been issued and the judgments in the Bribery Claim and the Conspiracy Claim had not been handed down. However, my original judgment is now supplemented by the introduction to the Court of Appeal's decision: see [1] to [33]. Cockerill J also set out the background to the dispute in some detail: see [2021] EWHC 1045 (Comm) at [58] to [145]. There is little benefit in either cutting or pasting this material into this judgment or attempting yet another synthesis of the facts or the litigation.

### **III. The Bribery Claim: Findings**

#### **A. The Principal Judgment**

8. On 20 December 2013 the parties entered into the SPA, the Subscription Agreement and the Rescue Package Agreements which formed the basis of the Transaction and which the Petitioners attempted to set aside in the Misrepresentation Claim. After the Transaction had been completed, Anthony King remained the Chief Executive Officer (“CEO”) and a director of KSSL.

##### *(1) The Claim*

9. In April 2015 KSSL entered into an arrangement to which the judge referred as the “**Range Rover Transaction**” under which TCH Leasing agreed to provide Anthony King with a Range Rover for 36 months and Mr King agreed to pay a rental of £100 per month. Mr Evans was responsible for agreeing the terms of the Range Rover Transaction with TCH Leasing and the judge made the following findings about the transaction at [81] and [82]:

“81. The Range Rover Transaction resulting from the exchanges set out above was, in summary, a tripartite arrangement on the following terms: (1) TCH agreed to provide Mr King with the Range Rover for 36 months; (2) KSSL agreed that TCH could retain KSSL's profit share and that TCH would be its sole supplier for car hire, leasing and fleet management for three years; (3) Mr King agreed to pay TCH rental of £100 per month. 82. It was implicit in the arrangement that TCH would be liable to make up any shortfall between the rental that it would normally have charged for the Range Rover and the income from KSSL's profit share plus the £100 per month payable by Mr King and that it would be entitled to keep any excess, in the event that the

profit share plus £100 rental was more than the anticipated rental. Although it was originally suggested by TCH that KSSL could retain the excess in the third year, ultimately this does not appear to have been agreed.”

10. KSSL’s case was that Anthony King had authorised Mr Evans to enter into the Range Rover Transaction. Anthony King disputed this and asserted that he did not know about the use of the profit share to cover the costs of rentals: see [83]. However, the judge found against him on this issue: see [84] and [85]. In the earlier section of his judgment dealing with the credibility of the witnesses, he also said this at [27]:

“After considering Mr King's evidence, together with the documentary evidence and the evidence of Mr Evans, I have come to the conclusion that Mr King was aware of how the Range Rover Transaction was being funded by KSSL and of the impropriety of the transaction. Mr King came across as an intelligent individual with an eye for detail. His evidence as to his belief that Mr Evans had simply managed to negotiate a "great deal" with TCH at a token level of rental was inherently implausible. The private texts exchanged between Mr King and Mr Evans in 2017 are of particular relevance to the assessment of Mr King's credibility. They provide confirmation that Mr King was aware of the funding arrangements. Mr King's attempts in his evidence to reconcile these texts with his case that he was unaware of those arrangements were unconvincing. In short, I do not regard Mr King's evidence in relation to the Range Rover Transaction as reliable or honest.”

11. Although there was no direct evidence from TCH Leasing of its likely profit share, the judge was satisfied that it provided a benefit to Anthony King under the Range Rover Transaction, that it gave rise to a conflict of interest and that the board of directors of KSSL were unaware of it: see [153], [155] and [156]. Based on those findings he concluded at [157] that the transaction amounted to a bribe:

“In these circumstances, I conclude that the Range Rover Transaction gave rise to a bribe received by Mr King. As noted above, I have reached this conclusion without hearing from TCH. My findings in relation to the bribery claim are relevant to my consideration of the claim for breaches of the general duties to which I now turn.”

12. The judge also found that Mr King had acted in breach of his statutory duties as a director in sections 172 and 175 to 177 of the Companies Act 2006 and he itemised the individual breaches at [163]:

“I consider that the Range Rover Transaction entailed the following breaches of duty on the part of Mr King. (1) By entering the Range Rover Transaction, which was for his own benefit and not that of KSSL but was at KSSL's

expense, Mr King failed to act in good faith and in the best interests of KSSL, contrary to his duty under section 172. (2) By accepting the Range Rover from TCH, Mr King accepted a benefit in his capacity as a director of KSSL contrary to his duty under section 176. As noted above in the context of bribery, the Range Rover was a benefit to him in that TCH assumed the risk of a shortfall on the profit share and agreed exceptionally to a personal lease. It was a luxury car for which he paid a token rent. It was not used by him solely for company purposes. KSSL had no interest in his having a luxury car as opposed to a less luxurious alternative. He received that benefit in his capacity as a director of KSSL. TCH was KSSL's fleet supplier. There was a clear nexus between the granting of the benefit and the fact that he was a director of KSSL in a position to influence the business. (3) Mr King failed to avoid a situation vis a vis TCH in which he had an interest that conflicted with the interests of KSSL, contrary to his duty under section 175. (4) By failing to declare the nature and extent of his interest in the transaction, he acted contrary to his duty under section 177. There were KSSL board meetings on 2 April 2015 and 5 May 2015 at which he ought to have disclosed his interest but he failed to do so. (5) By receiving a bribe and failing to report his own wrong doing, Mr King acted contrary to KSSL's anti-bribery policy and in breach of his contractual duties owed under his employment contract.”

13. Once the Misrepresentation Claim had collapsed, it became difficult for Anthony King to remain the CEO of KSSL or to continue to act as a director. In the Bribery Claim he alleged that Mr Zeidler threatened him and he relied on that threat as evidence that the claim itself had been issued for improper purposes. The judge addressed that issue at [99] to [101]:

“99. Mr King alleges that when discussing his departure from the business, Mr Zeidler stated that if the parties did not reach agreement, KSSL would investigate Mr King’s mismanagement and that this would inevitably result in his dismissal. Mr King alleges that he asked, “what mismanagement?” to which Mr Zeidler replied, “we’ll find something”. Mr King relies on this alleged threat to support his claim that this claim was issued for improper purposes. 100. Mr Zeidler does not recall the precise words he used and in particular whether or not he used the precise words “we’ll find something” but accepts that it is possible that these words were used. He denies that this was a threat to manufacture or concoct material against Mr King. He says that it would not have made a lot of sense for him to have said “we’ll find something” as the various issues had already been communicated to Mr King. When Mr King asked Mr Zeidler to identify the specific mismanagement to which he was referring, Mr Zeidler recalled telling Mr King that, if an agreement was not reached, KSSL was likely to undertake a full investigation which Mr Zeidler expected would set out sufficient evidence to dismiss Mr King. 101. Whatever the precise words used by Mr Zeidler, I am satisfied that he genuinely believed that KSSL would have no difficulty in establishing sufficient grounds for Mr King’s dismissal. I reject Mr King’s contention that the words used by Mr Zeidler indicated that KSSL was prepared to concoct

allegations of mismanagement and/or other impropriety against Mr King, come what may.”

14. On 19 May 2017, however, the parties entered into a compromise under which Anthony King agreed that his employment was terminated with immediate effect (the “**Settlement Agreement**”). The judge recorded its principal terms at [103]:

“Under the terms of the Settlement Agreement KSSL agreed: (1) to make an ex gratia payment of £70,000 less PAYE deductions to Mr King; (2) to release Mr King from any claims under clause 10 of his employment contract which arose as a result of actions of which the board of KSSL or any group company had knowledge of as at the date of the Settlement Agreement; (3) to pay Gordons LLP, Mr King's legal advisers, £2,000 plus VAT; Mr King agreed to a 12 month non-compete provision in return for the payment by KSSL of £5,000.”

15. The judge also found that in the period between 6 June and 13 June 2017 the board of KSSL became aware of the Range Rover Transaction and that on 21 July 2017 a meeting took place between KSSL and TCH Leasing. However, he rejected Anthony King’s case that at this meeting KSSL had accepted an offer of compensation: see [123] to [130]. He preferred Mr Zeidler’s evidence that TCH’s offer of £65,000 was not acceptable at [131] for the following reasons:

“Mr Zeidler explained in his witness statement why he considered that the proposal from TCH to compensate KSSL in the sum of £65,000, on the basis that KSSL's loss was £54,000, was not acceptable. At the time the offer was made, KSSL did not know the full extent of the financial consequences of the arrangements between Mr Evans, Mr King and TCH. He believed that the loss suffered by KSSL was greater than the figure of £54,000 and that it comprised (i) the profit share due to KSSL totalled £40,666.47 and (ii) the payment of an additional £39,900 by KSSL to fund Mr Evans's Range Rover; and (iii) the incremental cost of the exclusivity provided to TCH, limiting KSSL's ability to negotiate improved prices on its fleet in the sum of £73,728. He was also concerned about the tax implications of KSSL's financial assistance for the provision of the Range Rovers. The evidence of Mr Fisher and Mr Stiefel was similarly to the effect that they were concerned that TCH's offer did not cover all the losses incurred by KSSL. Mr Stiefel also considered that it was important to pursue Mr King and Mr Evans in order to demonstrate internally and externally that their behaviour would not be tolerated.”

16. On 13 August 2017 KSSL issued the Bribery Claim seeking rescission of the Settlement Agreement and also damages or equitable compensation. The judge recorded that the decision to bring proceedings was taken by KSSL’s non-executive directors and not by



any of the individual Applicants themselves. He made the following findings at [133] and [134]:

“133. The Claim Form was issued two days later on 15 August 2017. The decision to initiate the present claim was taken by KSSL’s non-executive directors. After the claim had been filed, it was decided that Ms Shaw and Mr Zeidler would have the overall lead on the claim. 134. KSSL did not send a pre-action protocol letter to Mr King. Mr Zeidler’s evidence was that he took the view, based on his experience of Mr King’s conduct, that sending such a letter and engaging in a pre-action process would be a waste of time and money as KSSL could see no honest defence to the claim and wanted to pursue it as quickly as possible. I accept that these were genuine reasons for not sending a pre-action protocol letter and that a pre-action protocol letter would probably not have caused Mr King to react any differently to the claim to the way in which he reacted after the issue of proceedings, which was to put forward what I have concluded was a false case. That does not, however, excuse the failure to send a letter.”

17. The judge also found that when the parties entered into the Settlement Agreement Anthony King impliedly represented that he had not committed any breaches of duty, that this representation was untrue and that it induced KSSL to agree to terms: see [177] and [180]. He also held that KSSL had not affirmed the agreement: see [183]. Finally, he held that KSSL was entitled to recover £40,666.47 in respect of the profit share, £2,126.25 and £5,000 for the legal fees paid under the Settlement Agreement: see [201] and [204].

(2) *The Counterclaim*

18. Anthony King’s case on his counterclaim was that KSSL had commenced and pursued the Bribery Claim for collateral and improper purposes and that it was liable for the tort of abuse of process. The judge recorded the collateral and improper purposes upon which Anthony King relied at [206]:

“These purposes are alleged to be: (1) to enable its ultimate controlling parent company, Primekings, to obtain the shares in KSSL held by Mr King and the family trust, together with the B shares held by Mr King’s parents at a gross and/or very substantial undervalue, by using these proceeding to place stress, distraction, financial and emotional pressure on Mr King whilst simultaneously pursuing charging orders and subsequently Part 8 Proceedings against him, his parents, and the trust for the sale of the King Family Shares; and/or (2) to inflict serious and gratuitous damage to Mr King’s reputation, with the intention of thereby preventing him from obtaining any other employment commensurate with his experience and/or competing

in future with KSSL's business, by using these proceedings to provide a platform for the purpose of publicising the allegations against Mr King herein as widely as possible.”

19. After considering the *Grainger v Hill* tort, the judge found it unnecessary to decide whether a party could be held to have committed an actionable tort where he or she had “mixed purposes” because of his findings on the facts: see [229] to [232]. It is necessary, therefore, for me to set out those findings in full which I take from [233] and [234]:

“233. First, the fact that in 2017 Primekings and its representatives were interested in acquiring the King Family Shares does not support the inference that the purpose of these proceedings was to enable that objective to be achieved, still less to be achieved by obtaining the shares at an undervalue. Following the collapse of the Misrepresentation Proceedings, Primekings and its representatives had the benefit of a costs order in their favour in the sum of £1.7 million with detailed assessment to follow, which they were entitled to enforce. They quite understandably proposed to satisfy that liability by obtaining a transfer of the Kings' only substantial asset apart from their homes, namely the King Family Shares. Having sought unsuccessfully to reach a settlement agreement on terms that the shares were transferred, they obtained a final charging order over the King Family Shares on 3 August 2017. By the time these proceedings were started on 15 August 2017, they were therefore in a position to bring Part 8 proceedings to obtain an order for sale of the shares. The current proceedings were not needed in order to enable Primekings to obtain the King Family Shares and did not further that objective in any way.

234. Second, whilst there is no doubt that costs spent by KSSL on these proceedings, which I understand are in the region of £2.5 million plus VAT, are grossly disproportionate to the relatively small amount at stake, this does not support the contention that the proceedings were brought for the purpose of obtaining the King Family Shares. The evidence of KSSL's witnesses, which I accept, was that when the claim was launched it was anticipated that the claim would be relatively straightforward and swift to resolve. Once the costs had increased substantially, KSSL was not prepared to discontinue and expose itself to an adverse costs order. The costs of proceedings have been significantly increased by Mr King's counterclaim. The willingness of KSSL to spend such large sums on the proceedings and the failure to accept TCH's offer of compensation indicates that these proceedings were not brought for the predominant purpose of obtaining compensation but not that they were brought for the improper purposes alleged by Mr King.”

20. The judge rejected Anthony King's allegation that the Court should find that KSSL's conduct was abusive because it failed to send a Letter of Claim before issuing proceedings and that it was KSSL's purpose to damage his reputation for various different reasons: see [236] and [241] to [246]. He found that Anthony King's case on

both purposes was undermined by offers to settle made by KSSL in June 2020. He made that finding at [247]:

“Mr King's case as to the supposedly improper purposes imputed to KSSL in bringing these proceedings is further undermined by the open offer to settle the proceedings contained in letters dated 9 June and 23 June 2020 from KSSL's solicitors. The offer was along the same lines as the offer made to and accepted by Mr Evans, namely a payment in respect of KSSL's damages claim, a contribution to KSSL's costs and an open acceptance, with hindsight if necessary, that the transaction should have been the subject of disclosure/board approval i.e. not involving Mr King in having to acknowledge any conscious impropriety. This offer was not accepted by Mr King. In the absence of a settlement, the proceedings have been brought to a conclusion, which in itself counts heavily against a finding of an abuse as observed by Lord Wilson in *Crawford v Sagicor* (paragraph 220 above).”

21. Having rejected Anthony King's case on KSSL's purposes, the judge went on to make findings about KSSL's actual purposes and that those purposes did not give rise to an actionable tort. He stated this at [248] to [250]:

“248. KSSL contends that its actual purposes in bringing these proceedings were to obtain compensation, to vindicate KSSL's rights as against Mr King and Mr Evans and to protect KSSL's reputation in the security industry by publicly demonstrating that KSSL would not tolerate conduct of the kind perpetrated by them.

249. I accept that those purposes played some part in KSSL's decision to bring the proceedings although, as noted above, it must have been obvious to KSSL from early on that the irrecoverable costs of the litigation would dwarf any compensation it was awarded and that if recovery of compensation was KSSL's main objective, it would have accepted the compensation offered by TCH and discontinued the proceedings.

250. It is clear to me that, aside from these purposes, the anger felt by Mr Stiefel and Mr Fisher towards Mr King, as a result of what they considered to be the unfounded allegations made against them in the Misrepresentation Proceedings, compounded by anger at what they considered to be his dishonesty and failure to accept responsibility for his actions, must have influenced KSSL's decision to bring these proceedings and also had an effect on the combative, sometimes over-combative, manner in which the proceedings have been conducted. As the authorities cited above make clear, however, motive and personal antagonism are in themselves irrelevant to the question whether proceedings have been brought for an improper purpose.”

## B. The Costs Judgment

22. On 19 March 2021 the judge handed down a judgment on consequential matters: see

[2021] 1 Costs LR 191. He rejected an argument that Anthony King was entitled to counter-restitution. He recorded the argument advanced by Mr Newman on behalf of Anthony King that he should not be liable for costs at [15]:

“The conduct relied upon by Mr Newman in resisting a costs order against Mr King was (i) KSSL's failure to accept the offer of compensation of £65,000 from TCH (referred to at paragraph 127 of the Judgment) and (ii) KSSL's failure to set off the £70,000 payable to Mr King under the Settlement Agreement against its damages claim. Mr Newman submitted that KSSL's conduct in failing to pursue these alternative routes to compensation and instead pursuing Mr King through court proceedings was unreasonable and oppressive. He submitted that KSSL had made the case impossible to settle from the start by incurring hundreds of thousands of pounds in costs before the case was even mentioned to Mr King. Had KSSL pursued the alternative routes to compensation, according to Mr Newman, the claim and the counterclaim would not have happened.”

23. The judge rejected this argument because he was not satisfied that it was unreasonable for KSSL to reject TCH's offer in July 2017. In particular, he found that it would probably have been necessary for KSSL to bring proceedings against Anthony King in order to obtain the relief to which it was entitled and that it was unlikely that he would ever have agreed to make good any shortfall or accept rescission of the Settlement Agreement: see [18]. Equally importantly, the judge found that Anthony King was liable to pay indemnity costs because of his dishonest conduct and his rejection of offers made by KSSL. Again, I must set out those findings in full which can be found at [36] and [37]:

“36. I consider that Mr King's conduct was outside of the norm in the following respects. 36.1 The factual basis of his Defence that he was unaware of the payment arrangements underlying the Range Rover Transaction was untrue. His evidence in connection with the Range Rover transaction was dishonest. 36.2 There was no sound evidential basis for the counterclaim. The fact that permission was given to plead the Grainger v Hill tort does not assist Mr King. The court, having considered the evidence, has concluded that the evidence did not come close to establishing the tort. Furthermore in advancing the counterclaim, Mr King made serious allegations against KSSL and its representatives which were not made out, including an allegation of deliberate concealment of the Master Lease Agreement, an allegation of deliberately advancing a misleading case that Mr King authorised the Range Rover Transaction and an allegation that witness statements had been deliberately drafted in order to mislead. 36.3 Mr King falsely accused Mr Evans of perjuring himself and made unsubstantiated accusations that improper pressure was put on witnesses. 36.4 Mr King failed to make any realistic efforts to settle the claim and appears to have instructed his solicitors peremptorily to dismiss reasonable efforts made by KSSL to negotiate a compromise. Mr King's failure to accept the offers of settlement made by

KSSL included, not only the offer in the letter of 27 June 2019, but also open offers in June 2020 referred to at paragraph 247 of the Judgment.”

“37. Mr Newman submitted that the KSSL offers could never have been accepted because Mr King was impecunious. I do not accept that submission. There was no evidence before me of Mr King's financial position. It is not disputed that during the course of the proceedings Mr King received an interim payment of £1.7 million from DWF arising out of a negligence claim brought by Mr King in connection with the Misrepresentation Proceedings. Impecuniosity does not appear to have been raised by Mr King in correspondence as an obstacle to settlement with KSSL. The solicitors' correspondence in June 2020 indicates that the reason why there was no settlement at that stage was that Mr King, unlike Mr Evans, refused to acknowledge any responsibility or regret for his part in the Range Rover Transaction. KSSL's offer of 9 June 2020 made clear that KSSL was prepared to discuss generous payment terms by way of extended interest-free affordable instalments, an appropriate repayment holiday and an outright suspension of payment pending a change of circumstances, subject to an affidavit of means being provided.”

### C. The Court of Appeal's Judgment

24. Anthony King applied for permission to appeal and the application was considered by a two judge panel at an oral hearing. In an oral judgment (of which there is a written transcript) they rejected all of the Grounds of Appeal and refused permission to appeal: see [2021] EWCA Civ 1350. The reasons why they rejected Grounds 5 and 6 are relevant to the Strike Out Application and Popplewell LJ (with whom Henderson LJ agreed) gave his reasons at [8] and [9]:

“8. As to ground five, the findings on affirmation were findings of fact which were open to the judge. A claim for counter-restitution based on a counter-factual that, but for the settlement agreement, Mr King would have remained employed, is an unpleaded new case not advanced at trial. Moreover, no restitutionary claim would arise because, on the judge's findings, the entitlement to rescission arose at the date of the settlement agreement as a result of the suppression by Mr King of his own breaches of fiduciary duty. The relevant counter-factual, therefore, is not merely that the settlement agreement would not have been entered into, but also that the suppressed information would have been known to KSSL. It is clear that knowledge of that misconduct on the part of Mr King would have justified summary dismissal for gross misconduct and, on the evidence in the case, it is perfectly clear that that is the course which the directors of KSSL would have taken.

9. As to ground six, the issue of whether there was an improper collateral motive was a question of fact for the judge. The argument is that the judge ought to have found that the motive was to obtain the Kings' shares at an undervalue. However, the judge found, and he was entitled to find, that that was not a matter which was in the minds of those conducting the litigation on

behalf of KSSL as any part of their purpose in bringing the claim against Mr King.”

#### **IV. The Bribery Claim: Effect**

25. The Petitioners do not allege that the Company was a quasi-partnership and Mr Newman made it clear in his oral submissions that this was a carefully considered position. It follows, therefore, that any right to participate in management to which Anthony King and the Trust were entitled as minority shareholders must be located in either the Subscription Agreement or the Articles of Association adopted by special resolution on 20 December 2013 (as amended) (the “**Articles**”).

#### **D. The Subscription Agreement**

26. Clause 7.3 of the Subscription Agreement permitted Primekings to appoint three directors and an observer. Clause 7.4 conferred a mirror right on Anthony King. It provided that for so long as he held 50% or more of the shares which he held at Completion (as defined), he had the right to:

“7.4.1 appoint and maintain AK in office unless he ceases to be a director by reason of gross misconduct, together with one other person as the Founder may from time to time direct as Founder Director of the Company and the Group (and as a member of each and any committee of the Board) and to remove any director so appointed and, upon his removal whether by the Investor or otherwise, to appoint another person to act as a Founder Director in his place; and 7.4.2 appoint a representative to attend as an observer at each and any meeting of the board [sic] and of each and any committee of the Board.”

27. Anthony King and the Trust were defined as “Founders” and the term “Founder Directors” was defined as Anthony King and such other persons appointed under clause 7.3.1 (i.e. by Primekings). Clause 8.2 also provided that the Company should prepare management accounts and send copies of them to each of the Shareholders (as defined) within ten days of the end of each month. Clause 9.1 and Schedule 4, paragraph 9 also provided as follows:

“Each of the Shareholders undertakes to each other (as a separate covenant by each of them) to exercise all voting rights and powers of control available to him in relation to the Company to procure that for as long as the Option is capable of exercise, and for so long as AK holds shares in the Company, the Investor shall not and shall procure that no Group Company shall (without

AK's written consent): 9.1.1 take any steps or omit to take any step the consequence of which the Founders believe acting reasonably and in good faith will impair the achievement of EBITDA targets set out above; or 9.1.2 remove AK King [sic] as a director of the Company save where he is guilty of misconduct, fraud or dishonesty or is not permitted under the Articles to continue as a director of the Company."

28. In the Points of Claim the Petitioners rely on clauses 7.4.1, 8.2, 9.1.1 and Schedule 4, paragraph 9 as providing them with substantial protection as minority shareholders: see paragraph 41. It is important to note, however, that beyond the right to receive management accounts in clause 8.2 they do not assert that either the Trust or Mr and Mrs King personally had any contractual right to appoint directors or to participate in the management of the Company.

E. The Articles

29. Article 1 defines the term "bad leaver" as a "Departing Employee Shareholder" who ceases to be an employee or officer of the Company "in circumstances where he is proved to have been guilty of any fraud or dishonesty". It defines the term "Transfer Notice" as a notice in writing given by any shareholder to the Company "where that shareholder desires, or is required by these Articles, to transfer (or enter into an agreement to transfer) any shares". It also provides that where a notice is deemed to have been served, it is referred to as a "Deemed Transfer Notice". Article 40 is headed "Leavers" and the relevant parts of it provide as follows:

"40.1 If a shareholder who is, or has been, or whose permitted transferee is, or has been a consultant, a director or an employee of any group company (an **Employee Shareholder**) ceases to be a consultant to, or a director or employee of a group company (a **Departing Employee Shareholder**) and is a bad leaver, the Departing Employee Shareholder shall be regarded as giving a Deemed Transfer Notice in respect of all the shares held by him on the date on which his consultancy agreement or employment agreement is terminated or, if he is a director but not an employee, the date on which he ceases to hold office (**Termination Date**) and any permitted transferees, and transmittes of permitted transferees of that Departing Employee Shareholder, shall be regarded as giving a Deemed Transfer Notice in respect of all shares held by them on the same date. 40.2 In such circumstances, the Transfer Price shall be the lower of fair value (as agreed between the bad leaver and the board or, in the absence of such agreement, as calculated by an independent accountant appointed by the board) and the nominal value of the Sale Shares.... 40.6...All voting rights attached to such Departing Employee Shareholder's Shares, if any, shall be suspended on the Termination Date (**Restricted Shares**). However, the holders of Restricted Shares shall have the right to

receive a notice of, and to attend, all general meetings of the Company, but shall have no right to vote either in person or by proxy”

30. Mr Newman submitted that I should not consider or determine the construction and effect of Article 40 in the absence of any pleaded reliance upon it in the Points of Defence. He submitted that this was an issue which the Applicants (as Respondents to the Petition) would have to raise in their Points of Defence, the Petitioners would deal with it in reply and the Court would then decide the issue at trial. I reject that submission for the reasons which I set out below when considering the Petitioners’ claim that they have been excluded from the management of the company. As I make clear, their case as currently pleaded assumes that Anthony King is not a bad leaver and that he was not removed for gross misconduct. But in any event, I am satisfied that the meaning and effect of Article 40 is clear and I should go on and decide it (as I now do).

F. Anthony King’s Removal as a Director

31. On 15 August 2017 a meeting of the directors of the Company took place to consider a resolution to remove Anthony King from office with immediate effect because of his gross misconduct. The meeting was not quorate without Anthony King and was adjourned until 22 August 2017 when Anthony King attended and the board of directors resolved to call a general meeting for the shareholders to consider the resolution. On 20 September 2017 that meeting took place and the minutes record that the resolution to remove Anthony King from office with immediate effect by reason of his gross misconduct was passed. Primekings voted its shares in favour of the resolution and Anthony King and the Trust voted against it but Primekings was able to pass the resolution as the majority shareholder.
32. In the Bribery Claim the judge found that Anthony King was guilty of misconduct which justified his dismissal for gross misconduct and Popplewell LJ (with whom Henderson LJ agreed) confirmed that this was the effect of his findings. In the light of those findings, Ms Addy argued that Anthony King was a bad leaver and that he was to be treated as having served a Deemed Transfer Notice on 20 September 2017. She also took me to the share register of the Company to show that the nominal value of his shares was £201 and Anthony King was required to transfer them for that price under Article 40.2 (although that acquisition has not yet taken place).



33. Mr Newman argued that Article 40 was not engaged because Anthony King would only have become a bad leaver within the definition when it was proved in court that he had committed a criminal offence of fraud or dishonesty. He also argued that Anthony King had not become a bad leaver until (at the very earliest) the principal judgment was handed down on 18 February 2021 and that he would not lose his rights as a shareholder until the Company took steps to communicate the acceptance of any offer contained in the Deemed Transfer Notice (or, at any rate, to act on it). He submitted, therefore, that Anthony King was still entitled to claim unfair prejudice in relation to conduct after 20 September 2017.
34. I have no hesitation in rejecting those submissions. Article 40.1 expressly provides for the date on which a Departing Employee Shareholder is contractually treated as having served a Deemed Transfer Notice and it is either the date on which he or she ceases to be an employee, consultant or director. Moreover, the effect of Article 40.1 is not expressed to be dependent upon the Company accepting or acting on the notice. Indeed, the Article imposes no obligation upon the Company (or the remaining shareholders) to act on the Deemed Transfer Notice either within a specific time period or within a reasonable time or at all. Moreover, I see no reason or necessity to imply such a term.
35. I accept that before Anthony King was required to offer his shares for sale, he was entitled to require the Company to prove that he was guilty of fraud or dishonesty in a court of competent jurisdiction (if he so wished). Moreover, in my judgment, the use of the word “guilty” in the definition of “bad leaver” is insufficient to limit the effect of Article 40.1 to criminal proceedings. In my judgment the word “guilty” is wide enough to include a party who is found by a civil court to have made a fraudulent misrepresentation or to have committed dishonest breaches of fiduciary duty as well as a party convicted of a criminal offence.
36. Accordingly, the Company has now proved that Anthony King is guilty of both fraud and dishonesty and having done this the effect of Article 40.1 is clear. In my judgment, Anthony King became a bad leaver with effect from the date on which he either ceased to be an employee or he ceased to hold office and, if it is necessary for me to decide between those dates, I hold that he became a bad leaver on 20 September 2017 for the following reasons:

- (1) The Settlement Agreement provided that Anthony King agreed to the termination of his employment with immediate effect. His employment contract was, therefore, terminated by mutual consent.
- (2) Although KSSL later rescinded the Settlement Agreement and it ceased to have effect (as Ms Addy accepted), Anthony King did not apply for reinstatement and KSSL did not reinstate him. Moreover, if he had applied for reinstatement or sought to argue that his employment contract had not come to an end, KSSL would have been entitled to resist reinstatement and to dismiss him for gross misconduct (as Popplewell LJ held in the Court of Appeal).
- (3) Article 40.1 expressly provides that where the Departing Employee Shareholder is a bad leaver or if he is a director but not an employee he shall be regarded as having given a Deemed Transfer Notice on the date on which he ceased to hold office. 20 September 2017 was the day on which he ceased to hold office and on any view he had ceased to be an employee by that date.

## **V. The Law**

37. I hesitate to embark on yet another statement of the relevant legal principles relating to *res judicata* and abuse of process. I dealt with those principles in my first judgment: see [2020] EWHC 2861 (Ch) at [108] to [113]; Cockerill J did so in the Conspiracy Claim: see [2021] EWHC 1045 (Comm) at [241] to [251]; and Snowden LJ did so in the Court of Appeal: see [2021] EWCA Civ 1943 at [94] to [99]. It is unsurprising that Ms Addy's submissions on the law closely mirrored the submissions which the Court accepted in all three decisions because she appeared with Mr Sullivan on behalf of the successful parties in each one. I, therefore, explain as briefly as I can the principles which apply in the present case.

## **G. Issue Estoppel**

38. Issue estoppel arises where a particular issue forming a necessary ingredient in a cause of action has been determined in earlier proceedings and one party seeks to re-open that issue in subsequent proceedings between the same parties or their privies. In *Price v Nunn* [2013] EWCA Civ 1002 Sir Terence Etherton set out the relevant principles at [66] to [69]:

“66. The law in relation to *res judicata* has very recently been summarised by Lord Sumption in *Virgin Atlantic Airways Limited v Zodiac Seats UK Limited* [2013] UKSC 46, [2013] 3 WLR 299. The other members of the Supreme Court agreed with his summary. Having regard to what was said there and the cases cited by Lord Sumption, it is sufficient for the purposes of this appeal to state the relevant principles as follows.

67. Cause of action estoppel is a form of estoppel precluding a party from challenging the existence or non-existence of a cause of action where that has already been decided in earlier proceedings. It arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case, unless fraud or collusion is alleged such as to justify setting aside the earlier judgment, the bar is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of the cause of action. Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised.

68. Issue estoppel is a form of estoppel precluding a party from disputing the decision on an issue reached in earlier proceedings even though the cause of action in the subsequent proceedings is different. It may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties or their privies to which the same issue is relevant one of the parties seeks to re-open that issue. In such a situation, and except in special circumstances where this would cause injustice, issue estoppel bars the re-opening of the same issue in the subsequent proceedings. The estoppel also applies to points which were not raised if they could with reasonable diligence and should in all the circumstances have been raised, but again subject to special circumstances where injustice would otherwise be caused.

69. *Res judicata* operates as a substantive rule of law. It is to be distinguished from the court's exercise of its procedural powers to control the court's processes from being abused. They are juridically very different even though there are overlapping legal principles with the common underlying purpose of limiting abusive and duplicative litigation. In the case of the exercise of the court's procedural powers to prevent abuse the court should take a broad, merits-based judgment taking account of the public and private interests involved and all the facts of the case, focusing on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.”

39. In *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2014] AC 160 Lord Sumption explained that issue estoppel extends not only to issues which were decided but which should have been decided in the earlier proceedings:

"Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised."

40. Both decisions were cited by Cockerill J in her judgment in the Conspiracy Claim and she described this last point as the "could and should" aspect: see [246]. But even though there is a close correspondence between the "could and should" aspect of issue estoppel and abuse of process, *res judicata* and abuse of process remain separate and distinct principles of law. As both of the above passages stress, issue estoppel operates as a rule of substantive law whereas *Henderson v Henderson* abuse of process is a rule of procedure which gives the court a wider discretion.

#### H. Abuse of Process

41. In the Court of Appeal in the present case, Snowden LJ set out the principles which the Court will apply to determine whether an action against a third party should be struck out because it amounts to a collateral attack on an earlier decision. He stated this at [96] to [98]:

"96. It is also possible for an action against a third party to be struck out as an abuse of process if it amounts to an impermissible collateral attack on an earlier court decision. The applicable principles in such cases were summarised by Morritt V-C in *Secretary of State v Bairstow* [2004] Ch 1 at [38]:

(a) A collateral attack on an earlier decision of a court of competent jurisdiction may be but is not necessarily an abuse of the process of the court... (c) If earlier decision is that of a court exercising a civil jurisdiction then it is binding on the parties to that action and their privies in any later civil proceedings. (d) If the parties to the later civil proceedings were not parties to or privies of those who were parties to the earlier proceedings then it will only be an abuse of the process of the court to challenge the factual findings and conclusions of the judge in the earlier action if (i) it would be manifestly unfair to a party to the later proceedings that the same issues should be re-litigated or (ii) to permit such re-litigation would bring the administration of justice into disrepute."

See also the recent reaffirmation of this approach by the Court of Appeal in *Allsop v Banner Jones Limited* [2021] EWCA Civ 7.

97. One illustration of the principle is *Taylor Walton v Laing* [2008] PNLR 11 in which a claimant who had failed in a first claim in contract against his

counterparty was not permitted to bring a second claim against his solicitor for negligence. The claim against the solicitor was predicated upon an allegation that the true agreement between the claimant and the counterparty had been on terms that had been rejected by the judge in the first case, and that the solicitor had failed to draw up a written document accurately to reflect those terms. The Court of Appeal struck out the second claim as an abuse of process on the basis that it was a collateral attack on the first judgment and brought the administration of justice into disrepute. Buxton LJ concluded, at paragraph [25], that the proper course for the claimant would have been to appeal the first judgment rather than seek in effect to have it reversed by a court of concurrent jurisdiction hearing the second claim. He also observed that if, exceptionally, a second action amounting to a collateral attack on an earlier decision could be brought, it had to be based on new evidence that entirely changed the relevant aspect of the case: see per Lord Cairns LC in *Phosphate Sewage v Molleson* (1879) 4 App. Cas 801 at 814.

98. As Lord Sumption explained in *Virgin Atlantic v Zodiac Seats*, the abuse of process doctrine can cover the same ground as issue estoppel, but may also apply in a wider set of circumstances. So, for example, it can classically apply where a party seeks to raise in a second set of proceedings against the same opponent, an issue that was not raised in the earlier proceedings, but could and should have been. This is often known as *Henderson v Henderson* abuse of process after the case of the same name: see (1843) 3 Hare 100. The leading modern statement of the principle is the speech of Lord Bingham in *Johnson v Gore Wood* [2002] 2 AC 1 at page 31, where Lord Bingham advocated that the court should take,

"a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before."

42. Both the Court of Appeal in the present case and Cockerill J in the Conspiracy Claim emphasised that there is clear difference between issue estoppel and abuse of process where that abuse arises out of a collateral attack on an earlier decision (although they may often overlap). Mr Newman attempted, however, to put the clock back and persuade me that abuse of process went no wider than issue estoppel and that it was not possible to strike out a claim for abuse of process where there was no identity between the parties. For example, he cited *Carl Zeiss Stiftung v Rayner & Keeler Ltd* [1967] 1 AC 853 and *Shaw v Sloan* [1982] NI 393 where the Northern Ireland Court of Appeal elided both principles: see 397E.
43. In reply, Ms Addy took me through *Taylor Walton v Laing* (above) and provided other examples of cases in which a claim has been struck out for abuse even though it involved separate parties. *Shah v Shah* [2010] EWHC 313 (Ch) has obvious parallels with the

present case. In that case Roth J struck out an unfair prejudice petition because it involved a collateral attack on earlier findings made by the Employment Tribunal. He explained his reasons at [85] and [86]:

“85. Here, the Company was the respondent in the Employment Tribunal but it is only nominally a party to the petition. The primary respondent is CJ. However, a company can of course only act through human agency, and it is CJ against whom the actual allegations were made in the Tribunal. CJ there gave evidence to rebut them, and indeed it was CJ, as the chairman and majority shareholder, who conducted the Company's case. To hold that there is no abuse because of the distinction between CJ and the Company would be, in my judgment, to adopt a formulaic approach to the application of the principle of precisely the kind proscribed by Lord Bingham. For in *Johnson v Gore Wood & Co* it was similarly argued that there could be no abuse since the previous action against Gore Wood & Co that was relied on had been brought not by Mr Johnson but by a company of which he was the managing director and majority shareholder. Although the House of Lords concluded that there was no abuse in that case, Mr Johnson's argument on this ground was expressly rejected: see per Lord Bingham at 32C-G (with whom Lords Goff, Cooke and Hutton agreed).

86. Applying a “broad merits-based approach”, I think that it would be oppressive to require CJ to re-litigate the very issues of whether or not, and in what circumstances, Dinesh was willing to work at the Company in the period August-October 2005 that were argued in the Tribunal. Moreover, in my judgment it would bring the administration of justice into disrepute if Dinesh were now able to ask this court to make contrary findings to those arrived at by the Employment Tribunal which heard the evidence of both Dinesh and CJ. The fact that the form of relief sought in the present proceedings and in the proceedings before the Employment Tribunal is very different is in my view irrelevant. Dinesh is fully entitled to bring his petition under the Companies Act provisions in parallel with his constructive dismissal claim and no question of cause of action estoppel arises. But that does not permit Dinesh to advance in the present proceedings what is, in my view, a collateral attack on specific findings of the Tribunal, that were reached after hearing contested evidence and that are fundamental to its decision. I should add that I have not seen anything by way of documents disclosed in the current proceedings which suggest that the Employment Tribunal would have reached a different decision on these matters if such disclosure had been made in the Tribunal proceedings.”

44. In view of his conclusion on abuse of process it was not necessary for Roth J to decide whether the same facts gave rise to an issue estoppel. However, because the issue had been fully argued, he held that there was sufficient identity between the parties to give rise to an issue estoppel. After citing *Gleeson v J Wippel & Co Ltd* [1977] 1 WLR 510, *Johnson v Gore Wood & Co* [2002] AC1 and the decision of the Court of Appeal in

*Barakot Ltd v Epiette Ltd* [1998] 1 BCLC 28, he set out his reasons at [89]:

“Here, the issues raised in the claim against the Company and determined by the Employment Tribunal were (a) whether Dinesh was willing to work for the Company, and (b) whether CJ’s conduct of the affairs of the Company was such as to deny Dinesh the opportunity to work. The present case raises directly the manner in which the affairs of the Company have been conducted, and in particular the way in which they were conducted by CJ as regards Dinesh. The Court of Appeal in *Barakot* stressed that the question of identification of interest for the purpose of privity must be such as to make it just or equitable that the party to the later proceedings is barred by the determination in the earlier proceedings: per Balcombe LJ at 288f; Beldam LJ at 291e-f. Here, I consider that it is just and equitable that Dinesh should be bound by the decision on these issues in his earlier case against the Company; just as if Dinesh had succeeded before the Employment Tribunal I would have considered it just and equitable that CJ should be bound by the determination of those particular issues as against the Company. Although the Company cannot be regarded as CJ’s alter ego, not least because Dinesh retains a substantial minority interest, I think that as regards the subject-matter of the previous dispute there probably is sufficient identification of CJ with the Company for an issue estoppel to apply.”

45. Ms Addy also relied upon *Arts & Antiques Ltd v Richards* [2014] Lloyd’s Rep 219, where Hamblen J (as he then was) held that an arbitration award gave rise to an issue estoppel in later arbitral proceedings between the same parties. But he also held that it was abuse of process both as between the same parties and a third party. He made three particular points which are relevant in the present case: first, he emphasised that it would bring the administration of justice into disrepute to permit a collateral attack on the first decision: see [22]. Secondly, he made the point that it was all the more abusive to permit the unsuccessful party to re-litigate the same issues where the successful party had incurred substantial costs which remained unpaid: see [35]. Thirdly, and finally, he held that it was appropriate to grant summary judgment where no new evidence had been identified. On this third point he made the following statement at [42]:

“The issue of agency is addressed by the Arbitrator in paragraphs 14 to 17 of the Second Partial Award. I agree with his reasoning and conclusion. No further evidence has been identified which would throw doubt on that conclusion. On the contrary, as explained above, the Binding Authority confirms that the position was as he understood it to be. Popplewell J considered that the Arbitrator’s conclusion on this issue was not open to serious doubt. I agree. If it was necessary, I would accordingly conclude that there is no reasonable prospect of A&A establishing any of its alleged causes of action against Zurich put forward on the basis that Towergate was acting as Zurich’s agent.”

46. CPR Part 3.4(2)(b) provides that the Court may strike out a statement of case if it appears to the Court that it is an abuse of the Court's process. It is clear from the notes on the effect of the rule in *Civil Procedure* (2022 ed) Vol 1 at 3.4.5 that the power extends to attempts to relitigate issues which give rise either to an issue estoppel or to *Henderson v Henderson* abuse of process. Moreover, the notes at 3.4.9 identify collateral attack as a further example of abuse of process. Where an allegation involves a collateral attack on an earlier decision, therefore, the appropriate course is to strike it out under CPR Part 3.4(2)(b) whether either principle is involved.
47. The Court also has power to strike out allegations where it considers that the party making them has no real prospect of succeeding on the facts. CPR Part 24.2(a)(i) provides that the Court may grant reverse summary judgment on a particular issue if it considers that the claimant has no real prospect of succeeding on that issue. Moreover, CPR Part 24.6 provides that the orders which the Court may make on an application under CPR Part 24.2 include both judgment on the claim or an issue and the striking out or dismissal of the claim.
48. The commentary in *Civil Procedure* (2022 ed) Vol 1 at 24.2.2 cites the decision of Judge Robin Vos (sitting as a Judge of the High Court) in *Abaidildinov v Amin* [2020] EWHC 2192 (Ch) as authority for the proposition that the Court may make a declaration on an application for summary judgment. However, the commentary also provides the following guidance:

“When determining a summary judgment application, a judge is not obliged to give declarations on related or sub-issues if not granting the application even if he/she is of the view that a party does not have a realistic prospect of success on that issue, *Executive Authority for Air Cargo and Special Flights v Prime Education Ltd* [2021] EWHC 206 (QB) (Saini J). Whether the judge decides to make such a declaration on the sub-issue or simply leaves the issue for the trial judge will be a fact-specific case management decision to be undertaken following assessment as an exercise of discretion in accordance with the overriding objective.”

#### I. The rule in *Hollington v Hewthorn*

49. In answer to the Amendment Application Mr Newman relied upon the rule in *Hollington v Hewthorn* [1943] KB 587. He cited *Crypto Open Patent Alliance v Wright* [2021] EWHC 3440 (Ch) in which His Honour Judge Paul Matthews (sitting as a judge of the



High Court) considered and explained the rule in detail. He referred to both *Secretary of State for Trade and Industry v Baird* [2003] EWCA Civ 321 and *Rogers v Hoyle* [2015] 1 QB 265 in which Christopher Clarke LJ explained the operation of the rule at [42]:

"As the judge rightly recognised the foundation on which the rule [in *Hollington v Hewthorn*] must now rest is that findings of fact made by another decision maker are not to be admitted in a *subsequent* trial because the decision at that trial is to be made by the judge appointed to hear it ('the trial judge'), and not another. The trial judge must decide the case for himself on the evidence that he receives, and in the light of the submissions on that evidence made to him. To admit evidence of the findings of fact of another person, however distinguished, and however thorough and competent his examination of the issues may have been, risks the decision being made, at least in part, on evidence other than that which the trial judge has heard and in reliance on the opinion of someone who is neither the relevant decision maker nor an expert in any relevant discipline, of which decision making is not one. The opinion of someone who is not the trial judge is, therefore, as a matter of law, irrelevant and not one to which he ought to have regard."

50. HHJ Matthews also referred to the recent decision of the Court of Appeal in *Ward v Savill* [2021] EWCA Civ 1378 in which Sir Julian Flaux C (with whom Elisabeth Laing and Warby LJ agreed) resisted an attempt to depart from the rule and confirmed that the rule "represents a well-established principle of law which this Court should follow": see [85]. However, in his application of the rule, HHJ Matthews made it clear that the rule does not require every reference to earlier proceedings to be struck out. It will depend on the purpose for which the party relies on the decision: see, in particular, [58] and [59]. He also dismissed an application to exclude evidence at the trial. There were a number of limbs of the application, but he dealt with the first limb at [70] and [71]:

"70. The first limb of the order sought seeks an order that evidence of findings of fact made in the Kleiman Litigation be not admissible in these proceedings. This is the subject of the rule in *Hollington v Hewthorn*. If evidence is placed before the court of what a judge in other civil proceedings between different parties found as a fact, it is inadmissible to prove the same fact in the present proceedings. If, however, that evidence is put before the court, not to prove the same fact, but instead (say) for the purpose of proving that the judge in the other proceedings actually said those words, then it will be admissible for that purpose. Accordingly, I could not make the order sought under this limb in any event: it is too broadly worded. 71. But, even in the narrower form of order, that the judicial findings from the US litigation be not admissible as evidence of the facts so found, I do not consider that I should make the order. The rule in *Hollington v Hewthorn* is clear, and it will be the duty of the trial judge to decide whether it applies to the particular evidence tendered. It would

be unusual for another judge, long before the trial, and with less information than the trial judge will have, to bind the hands of the trial judge in this respect. If this limb of the order is made now, what is to prevent other orders being sought at this stage to prevent admissibility of evidence at trial which infringes other of the rules of evidence? These are matters best left to the trial judge.”

51. In the report of *Arts & Antiques Ltd v Richards*, the Claimants do not appear to have relied on the rule in *Hollington v Hewthorn* to resist the application for summary judgment. It may be said, therefore, that Hamblen J should not have held that the Defendants were entitled to summary judgment by relying on the earlier decision of the arbitrator. I would be extremely slow to decide that Hamblen J decided this point *per incuriam*. Moreover, it appears that Popplewell J (as he then was) had reached an earlier decision on the same basis in the same litigation.
52. I am not satisfied that the decision in *Arts & Antiques Ltd v Richards* is inconsistent with the rule in *Hollington v Hewthorn* because Hamblen J was not admitting the arbitrator’s award as evidence of his findings. The Claimants were relying on exactly the same evidence in the court proceedings and the reason why Hamblen J granted summary judgment was that he had reached the same conclusions on the evidence as the arbitrator and the Claimants had advanced no new evidence which might persuade him to reach a different conclusion on the same issues. However, for the reasons which I set out below, I find it unnecessary to determine this issue.

J. The role of the Company (and its subsidiaries)

53. There is a considerable line of authority for the proposition that a company whose shares are the subject matter of an unfair prejudice petition should be joined as a nominal party to proceedings between shareholders. For present purposes it is sufficient to refer to *Re Crossmore Electrical and Civil Engineering Ltd* (1989) 5 BCC 37 in which Hoffmann J stated that the company is a nominal party and that it is a general principle of company law that its money should not be spent on disputes between shareholders: see 38G.
54. In *Re a Company No. 004502 of 1988, ex p Johnson* [1991] BCC 234 the petitioner applied for an order restraining the directors of a company from using company funds for the defence of an unfair prejudice petition until judgment. Harman J accepted that the company should be joined as a nominal respondent but he explained why this was

necessary and when it should be represented at 235F-H:

“However, *Crossmore* seems to have brought it to the profession's attention that on sec. 459 petitions, in particular, where a company is a necessary respondent, the company may be affected by the petition in two particular ways: it may have to give discovery of documents on what is sometimes called a pure sec. 459 petition, that is a petition simply seeking a buy-out by one section of the members of the other section of the members or some of them; further, it may be that the company itself might be ordered to buy back the shares which are in issue, Such an order plainly involves the company's interest and requires its representations for two reasons; first, the interests of creditors may be affected and, secondly, the interests of members as a whole may be affected in that the company should have sufficient moneys to carry on its business in a proper way after it has spent moneys on buying in shares. Apart from those interests, the company has no business whatever to be involved in the sec. 459 petition on the principle that, as was said in *Pickering v Stephenson*, the company's moneys should not be expended on disputes between shareholders.”

55. After referring to *Re Hydrosan Ltd* [1991] BCC 19 (an earlier decision of his in which he had made a disclosure order against the subject company on the ground that it was a nominal respondent without any interest in the matter) he stated that on the same basis the company should take no active part in the petition other than to give disclosure and to make “such representations as might be needed on matters affecting the interests of the company as a whole”: see 236D. However, he refused to make the order sought for the following reasons:

“It seems to me that to restrain the company from being represented during delivery the judgment or if, following the modern practice, the judgment was released to counsel the evening before for consideration of consequential matters the next morning at the time of handing down. at the time of release to counsel. is not a sensible restraint. The company may need to have counsel hear the judgment, or receive the judgment and consider it overnight, so that he can advise the board as to what representations on behalf of the company need to be made to the court before the order is considered. There may well be a need for the interest of the company as a whole to be considered and the board advised about representations to the court about consequential orders. For that reason I am not prepared to restrain the company until after judgment, as the application is framed. It seems to me that the right thing is to restrain the second, fourth and eighth respondents on these admitted misfeasances by them, although the amount wrongly spent is unquantified, from causing or procuring the company to be represented on the hearing of the petition or to be otherwise involved in and about the petition save for any necessary applications under sec. 127. They should further be restrained from causing the company to incur costs in relation to this petition save costs reasonably and properly expended on giving discovery, or on making any necessary

application, but that those restraints should terminate on conclusion of the argument on the petition rather than until after judgment. That, however, is a merely semantic difference. I do not think it goes in the least to the principle of the matter.”

56. It makes obvious sense for the Court to invite the company itself to make representations before any final order is made. This is particularly so where the court is considering whether to make a buyout order against the company itself (or any subsidiary). In those circumstances, the interests of the creditors may need to be protected before any order is made. There will be circumstances where the Company can take an active role in the petition and the most obvious is on disclosure. But it also makes obvious sense that for the most part the company should not be permitted to spend company money on the defence of the petition and should remain neutral as between the individual shareholders. By parity of reasoning, the same principles should apply to a subsidiary.

## **V. The Strike Out Application**

### **K. Procedural Background**

57. Although Mr Lenon QC handed down the principal judgment in the Bribery Claim on 18 February 2021 the Petitioners have taken no steps to amend the Points of Claim to reflect his decision. By letter dated 5 March 2021 Macfarlanes raised the issue with Claremont. They received no response to that letter or to chasing letters dated 30 April 2021 and 29 July 2021. By letter dated 19 August 2021 Claremont finally replied stating that the Petitioners had no intention of applying for permission to amend the Points of Claim.
58. By letter dated 24 September 2021 Macfarlanes wrote to Claremont stating that the Applicants intended to apply for permission to amend the Points of Defence to rely on the judgments in the Bribery Claim and also on certain text messages sent by Anthony King. These texts were disclosed in the Bribery Claim and the judge relied on many of them in his principal judgment. By letter dated 19 November 2021 Claremont replied objecting to the amendments on the basis that the judgments in the Bribery Claim were inadmissible under the rule in *Hollington v Hewthorn*. They also asserted as follows:

“The Trust, James King and Susan King were not parties to those proceedings [the Bribery Claim] or that decision, and they are not bound by it. That means that the issues at trial are at large regarding all parties. In any event, the issue in these proceedings is fundamentally different to the issue in the Bribery

Claim – these proceedings concern whether the affairs of the company have been conducted in a manner which was unfairly prejudicial to members generally including our clients. Our clients say that the expenditure of huge and disproportionate amounts of company money to pursue a modest claim against Anthony King amounts to commercial mismanagement and was borne out of a personal animus that cannot be justified.”

59. A Costs and Case Management Conference was listed for hearing before HHJ Matthews on 7 October 2021. The Petitioners prepared a List of Issues for disclosure (the “**List of Issues**”) and a Disclosure Review Document (“**DRD**”). The List of Issues stated as follows:

“1. For the avoidance of doubt the pleadings remain the definitive guide to the parties’ respective cases. This document has been assembled to assist the Court with case management.

7. Did the Respondents put pressure on the Petitioners aimed at pressuring them to give up their shares in KSGL. In particular.....7.3 Did they try to create pressure by bringing a bribery claim against Anthony King where the costs incurred including the irrecoverable costs were hugely disproportionate to the amounts in issue? Should such a claim have been avoided because an offer from TCH had been accepted, alternatively should have been accepted?

11. Were the Petitioners unfairly excluded via: 11.1 A failure to provide information such as management accounts? 11.2 Failing to allow a founder director to be appointed who could report to the Kings? 11.3 Failing to allow an observer to be appointed who could report to the Kings?”

60. At the hearing on 7 October 2021 HHJ Matthews made no order for disclosure and neither the List of Issues nor the DRD were agreed. The recitals to the order which the judge made record that the Applicants had issued the Amendment Application and confirmed that they intended to apply for reverse summary judgment in relation to the Bribery Claim. They also record that the Petitioners had served the List of Issues and the DRD for the purposes of disclosure but that the Court had determined that the CCMC could not proceed efficiently until the statements of case were in a final form. On this basis, he ordered that the judge who heard the Amendment Application should give further directions.
61. On 17 December 2021 the Court of Appeal ordered the Petitioners to amend the Points of Claim to reflect the judgment of the Court. On 7 January 2022 the Petitioners served draft Amended Points of Claim which reflect the amendments which they were ordered to make by the Court of Appeal. The Petitioners did not take that opportunity to make

amendments which reflected the findings in the Bribery Claim and those Points of Claim have not been verified by a statement of truth.

62. Until the hearing of the application the Petitioners' position in relation to the Bribery Claim remained as set out in Claremont's letter dated 19 November 2021 although Mr Newman modified that position in his oral submissions (as I explain below). Ms Addy also submitted that it was not possible for the Petitioners to sign a statement of truth in relation to the proposed amended Points of Claim because they remain inconsistent with the findings in the Bribery Claim. I accept that submission and whilst this is not a reason for striking out the offending passages by itself, it clearly colours Mr Newman's general appeal that it would be unjust not to give the Petitioners the chance to advance these allegations at trial. If they are unwilling or unable to sign the statement of truth, this casts serious doubt on that submission.

L. The Subject Allegations

63. On the earlier strike out application I adopted the device of setting out in an Appendix the allegations in the Points of Claim which were the subject of the application to strike out and then summarised their effect in the body of the judgment and I adopt the same device here. The Applicants apply to strike out the following extracts (containing the following paragraphs) in the Points of Claim or for reverse summary judgment in relation to the issues raised in them:

- (1) The removal of Mr King as CEO (paragraphs 108 to 126);
- (2) Change of solicitor (paragraphs 141 to 145);
- (3) The initiation of proceedings (paragraphs 155 to 165);
- (4) The removal of Mr King (paragraphs 172 to 174);
- (5) The second Stiefel threat (paragraphs 177 to 181);
- (6) Exclusion in breach of shareholder rights (paragraphs 204 and 205);
- (7) Actions taken which are calculated or likely to reduce the ability of the Kings to seek an effective remedy from the Court (paragraphs 228 to 232);

- (8) Particulars of the involvement of Mr Fisher, Mr Stiefel, Mr Zeidler and KSSL (paragraphs 241, 244, 246 and 248); and
  - (9) Miscellaneous statements (various).
64. I deal now with each extract in turn considering first whether the allegations in question involve a collateral attack on the judgments in the Bribery Claim and, if so, whether this gives rise to an issue estoppel or amounts to an abuse of process. Having considered each extract in turn, I then go on to deal with a number of general objections raised by Mr Newman both in his Skeleton Argument and in his oral submissions.
- (1) *The removal of Mr King as CEO (paragraphs 108 to 126)*
- (a) The Allegations
65. The principal allegations which the Petitioners advance in extract (1) are as follows. The Applicants spent time, money and resources seeking a pretext on which to dismiss Anthony King for gross misconduct with a view to excluding him from the management of the Company and putting pressure on him to give up his shares: see paragraph 108; Mr Zeidler threatened Anthony King: see paragraphs 109 to 111; KSSL set out to engineer Anthony King's dismissal in bad faith and he had no choice but to enter into the Settlement Agreement: see paragraph 113; KSSL intended not to pay the £70,000 due under the Settlement Agreement throughout: see paragraph 119; Mr Stiefel and Mr Fisher intended Mr Anthony King to be placed in a position of maximum financial distress to put pressure on the King family to agree to the transfer of their shares for a fraction of their value: see paragraph 123; and, finally, their without prejudice offer dated 13 June 2017 shows that the real goal of the Applicants was to obtain the King family's shares: see paragraph 125.
66. In my judgment the allegations in paragraphs 108 and 113 must be read against the Points of Claim as a whole. The Petitioners' case (as pleaded) is that KSSL found an unjustified pretext to dismiss Anthony King for gross misconduct, that it did not have valid grounds for doing so and he was not guilty of gross misconduct: see paragraphs 108, 173, 207 and 217. It is also their case that the Bribery Claim was misconceived and pleaded in a way which was materially misleading: see paragraphs 158 and 163.

67. I am satisfied, therefore, that the allegations in paragraphs 108 and 113 amount to a direct attack on the judge's findings that Anthony King took a bribe and committed breaches of fiduciary duty. I am also satisfied that they involve a direct attack on the conclusion reached by Popplewell LJ that this behaviour would have justified summary dismissal for gross misconduct.
68. I am also satisfied that the allegations in paragraphs 119, 123 and 125 involve a direct attack on the judge's findings that KSSL was entitled to rescind the Settlement Agreement and his dismissal of Anthony King's counterclaim. In particular, he found that the evidence fell far short of establishing that the purpose of the Bribery Claim was to put pressure on the King family to acquire their shares at an undervalue (above).
69. Finally, I am satisfied that the allegations in paragraphs 109 to 111 involve a direct attack on the judge's finding that the words used by Mr Zeidler at the board meeting on 17 May 2017 did not show that KSSL was prepared to concoct allegations of mismanagement or other impropriety against Anthony King.

(b) Anthony King

70. The issue whether KSSL had grounds to dismiss Anthony King for gross misconduct, the issue whether KSSL was entitled to rescission of the Settlement Agreement and the issue whether Primekings and its representatives brought the Bribery Claim for the improper purpose of expropriating the King family's shares at an undervalue were all necessary elements of KSSL's claim and Anthony King's counterclaim in the Bribery Claim. It follows, in my judgment, that Anthony King is estopped from contesting those issues against KSSL in the Petition.
71. Mr Newman submitted that it was not possible for the Petition to give rise to an issue estoppel because KSSL has not served a defence and is not an active defendant. I reject that submission for the reasons given by Roth J in *Shah v Shah*. In that case the company was a nominal respondent: see [2]. But Roth J held that an issue estoppel arose between the petitioner and the company. He did so because the petition raised the same issues and the identity of interests between the parties made it just and equitable that the petitioner should be bound by the determination of the employment tribunal in the earlier proceedings: see [89]. I am satisfied that the position is the same here. The Petition raises the very same issues which the judge determined in the Bribery Claim after a long and



exhaustive trial and although KSSL is not an active Respondent there is a very close identity between it and the Applicants. Indeed, Anthony King's very complaint is about the way in which Mr Fisher, Mr Stiefel and Mr Zeidler conducted the Bribery Claim on KSSL's behalf.

72. I also find that it would be an abuse of process for Anthony King to re-litigate those same issues against the Applicants or KSSL in this Petition. In my judgment, it would be an abuse for Anthony King to challenge the judge's findings in the Bribery Claim for similar reasons to those given by Roth J in *Shah v Shah*: see [86] and [87]. It would be oppressive to the Applicants to have to re-litigate those same issues and to do so in circumstances where the costs of the Bribery Claim remain unpaid. Mr Newman did not suggest that any new evidence had come to light or that Anthony King's evidence would be any different. If I permitted any of these allegations to go to trial, I would be doing no more than giving him a second bite at the cherry. In my judgment, it would also bring the administration of justice into disrepute to allow him to challenge the judge's findings or the conclusions reached by the Court of Appeal.
73. In his oral submissions Mr Newman recognised this and did not seek to persuade me that it was open to Anthony King to challenge either the findings of the judge or the Court of Appeal in the Bribery Claim. Instead, he sought to persuade me that it was unnecessary for Anthony King to challenge those findings in order to succeed on his claim for unfair prejudice. He submitted that even if those findings stood, Anthony King had a real prospect of establishing unfair prejudice on the grounds that the directors of the Company acted in breach of fiduciary duty in irreversibly committing the Company to a course of action which it could not afford without consulting the Board of KSSL.
74. Mr Newman relied upon the decision of the Court of Appeal *Re Tobian Properties Ltd* [2013] 2 BCLC 567 where Arden LJ (as she then was) stated that one of the most important matters to which the Court will have regard on an unfair prejudice petition is the terms on which the parties have agreed to do business together. She continued at [22]:

“In addition, the terms on which the parties agreed to do business together include by implication an agreement that any party who is a director will perform his duties as a director. Primary among these duties are the seven duties now codified in sections 171 to 177 of the Companies Act 2006. Under these duties, a director must act in the way which he considers, in good faith, would be most likely to promote the success of the company for the benefit

of its members as a whole. There is also the well-known duty to avoid conflicts of interest and duty: a director must avoid a situation in which he has an interest which conflicts with that of the company. Six out of seven of these duties are fiduciary duties, that is, duties imposed by law on persons who exercise powers for the benefit of others. Non-compliance by the respondent shareholders with their duties will generally indicate that unfair prejudice has occurred.

75. Mr Newman also recognised the difficulty that the Points of Claim remain inconsistent with the findings in the Bribery Claim and he sought to persuade me that I should focus on the allegations framed in the List of Issues, which involved no overt challenge to the findings in the Bribery Claim. He tried to persuade me that once they were agreed, the List of Issues would supersede the statements of case and would govern the issues which the Court would be asked to determine at trial.
76. I accept entirely the general statement of principle in *Re Tobian Properties Ltd*. But it does not take Mr Newman very far. Arden LJ was not considering a case in which the company itself had claims for breach of his statutory duties against the very director and shareholder who was petitioning for an unfair prejudice remedy. But even assuming that Mr Newman is correct and that Anthony King is not prevented from pursuing an unfair prejudice remedy by the findings in the Bribery Claim, I reject Mr Newman's submission for the following case specific reasons:
- (1) The case which Anthony King now wishes to advance is not the one which the Petitioners have pleaded in the Points of Claim. It remains their case that the Bribery Claim was misconceived and that KSSL had no valid grounds for dismissal.
  - (2) The Petitioners do not allege in the Points of Claim that the directors of the Company acted in breach of any of their statutory duties either in initiating or pursuing the Bribery Claim. They hint at this by alleging that Mr Stiefel, Mr Zeidler and Mr Fisher were exercising their powers for the improper purpose of the "**Campaign**" (which included the goal of excluding Anthony King and his parents from the business). But there is no allegation that any of these individuals committed a breach of duty by authorising or continuing the Bribery Claim. If such a case were to be pursued, it would have to be properly pleaded.
  - (3) It is now clear that Anthony King also wishes to advance a case that the directors

of the Company gave instructions to issue the Bribery Claim without the authority of KSSL itself and against the wishes of its chief executive. However, this allegation is not pleaded either. Again, the Petitioners hint at it but they do not allege that the Bribery Claim was brought by the Company or the directors without the authority of the board of directors of KSSL.

- (4) These are not mere pleading points because it would only have been possible for me to assess whether the Petitioners' new case involves a collateral attack on the findings in the Bribery Claim if the Petitioners had applied for permission to amend to plead their case fully and properly. For example, it seems to me almost inevitable that any allegation that the claim was brought without KSSL's authority will involve a collateral attack on the judge's finding that the Bribery Claim was authorised by the non-executive directors.
- (5) It is no answer to any of these objections to pray in aid the List of Issues. The function of a list of issues for disclosure is very different from the parties' statements of case, which continue to govern the issues to be determined at trial. Moreover, Mr Newman recognised this in paragraph 1 of the List of Issues itself and HHJ Matthews sensibly concluded that the CCMC could not take place until the parties had finalised their statements of case.
- (6) Moreover, in the absence of any application for permission to amend, I have no confidence that Anthony King will not seek to attack the findings in the Bribery Claim when the Petition comes to trial. His position as stated in Claremont's letter dated 19 November 2021 is that those findings are not binding on him and the Petitioners have refused a number of invitations to amend. Indeed, when I floated the possibility again in oral argument, Mr Newman did not take me up on that suggestion. I am afraid to say that I took little comfort from the List of Issues that Anthony King would not try to challenge the findings in the Bribery Claim again.
- (7) Finally, I am not satisfied that Anthony King's new case has any real prospect of success. It is fanciful to suggest that he will be able to persuade the Court that he has suffered unfair prejudice because the Company brought and then continued the Bribery Claim against him if he is unable to contest any of the relevant findings. The Court has found that he was not reliable or honest, he accepted a bribe, he

committed breaches of fiduciary duty and he is liable for the costs of the action on an indemnity basis. Indeed, it seems to me that it is a complete answer to any claim for unfair prejudice based on the costs incurred by the Company in the Bribery Claim that Anthony King failed to acknowledge liability or to make any realistic efforts to settle the claim or to accept KSSL's offers (as the judge found).

(c) Mr and Mrs King

77. I turn therefore to the position of Mr and Mrs King. Ms Addy submitted that it would be an abuse of process for them to pursue the same allegations in the Petition for the following reasons (references removed):

“In the present case, Anthony King did seek (unsuccessfully) to appeal and no basis has been put forward by or on behalf of James and/or Susan King as to why any different conclusion ought to be reached on the same issues in the present proceedings or as to why they should be permitted to relitigate such claims which concern only their son's relationship with KSSL. James and Susan King resigned as directors of KSSL on 9 November 2011 and 26 March 2010 respectively and resigned as directors of the Company on 20 December 2013. As neither James nor Susan King have had any involvement in the management of the Company or KSSL since then, they would have no relevant evidence to give in relation to the matters determined in the Bribery Claim.”

78. Ms Addy also relied upon the approach taken by the Court in the Conspiracy Claim. In that case, Cockerill J stated that there would have been a clear case of issue estoppel if there had been an identity between the parties and then asked herself whether the absence of an identity between the parties should lead to a different outcome. She reached the conclusion that the outcome should be the same at [284] to [286]:

“284. It follows then that were this a case where there was identity of parties I would conclude that there was a clear case of issue estoppel as regards the costs allegations, insofar as they put the amount of the costs liability in the Misrepresentation Claim in issue. 285. The question is whether a different outcome results because of lack of identity of parties. On this I conclude without any difficulty at all, that the same outcome must result. The attempt to run these points now is a blatant attempt to go behind both the decision on the detailed assessment and the decision of Master Whalan not to stay that detailed assessment; a decision which was taken expressly so that Primekings had finality on the indemnity costs order which it had obtained (by consent) in the Misrepresentation Claim. 286. It cannot be said that anything has changed between the time when those decisions were made and now: the costs issues are no different now to what they were then. This is particularly

tellingly illustrated by the fact that the Points of Dispute were served on the same day as the Particulars of Claim in this action.”

79. I gratefully adopt the same approach. In the present case, there is an identity between two of the parties (Anthony King and KSSL). Indeed, I have found that there is an issue estoppel which prevents Anthony King from re-litigating the findings as against KSSL. I therefore ask myself whether the absence of identity between Mr and Mrs King and the Applicants should lead to a different outcome and, for the reasons advanced by Ms Addy (above) I have reached the conclusion that there is no reason why it should do so.
80. Mr and Mrs King do not allege that the Company or KSSL broke any contractual or fiduciary duties to them, they did not give evidence at the trial themselves, they do not assert that they have any relevant evidence to give in relation to the removal of Anthony King and, even if they do, they do not explain why they did not give that evidence at the trial of the Bribery Claim. In those circumstances, it would be an abuse of process to permit them to use an unfair prejudice petition to challenge the judge’s findings of fact and law.
81. Moreover, beyond asserting that the findings of the judge and the Court of Appeal were not binding on them, Mr Newman gave no reasons why the Court should exercise its discretion to permit Mr and Mrs King to contest their son’s liability or the rescission of the Settlement Agreement at trial. He sought to persuade me that I should treat Mr and Mrs King as completely separate parties and that I should not place reliance on the fact that they were Anthony King’s parents. However, I am satisfied that this must be a relevant factor. I am also satisfied that if I permitted Mr and Mrs King to take the allegations in extract (1) to trial, I would in substance be giving Anthony King another opportunity to challenge the findings of the judge and the Court of Appeal by using the vehicle of his parents’ claim.

(d) Outcome

82. For these reasons, therefore, I strike out extract (1) apart from those paragraphs in bold and square brackets in the Appendix. I have considered whether I should permit any of the specific factual allegations in paragraphs 108 to 126 which I have not directly addressed (above) to go to trial. I remind myself of the Court of Appeal’s guidance that an unfair prejudice petition should only state material facts and I am satisfied that those

factual allegations are no longer material if I strike out the principal allegations.

83. For example, the allegation that Mr Zeidler threatened Anthony King with dismissal for gross misconduct only appears to me to be relevant if I do not strike out the principal allegations in paragraphs 108 and 113. That allegation has no place in the Points of Claim if the Petitioners are not permitted to challenge the finding that KSSL was entitled to dismiss Anthony King for gross misconduct. But in any event Mr Newman did not argue that those paragraphs or any other specific allegations in paragraphs 108 to 126 would survive the strike out of the principal allegations in extract (1).

(2) *Change of Solicitor (paragraphs 141 to 145)*

(a) The allegations

84. The first allegation which the Petitioners advance in this extract is that Eversheds ceased to act for the Company and KSSL because the Bribery Claim was a vendetta being pursued for the benefit of Primekings. I am satisfied that this allegation involves a collateral attack on the judge's dismissal of Anthony King's counterclaim.
85. The second allegation which the Petitioners advance is that the Bribery Claim was not in the interests of the Company or KSSL. Again, I am satisfied that it would be impossible for the Petitioners to succeed on this allegation at trial unless they were able to challenge the judge's findings that it was not unreasonable for KSSL to pursue the Bribery Claim and that it was most unlikely that Anthony King would have agreed to give KSSL the relief to which it was entitled. The judge also held that Anthony King's counterclaim was undermined by the offers made by KSSL and that was not an abuse to bring the Bribery Claim to a conclusion in the absence of settlement.

(b) Anthony King

86. The issue whether Mr Stiefel, Mr Fisher and Mr Zeidler acted for improper purposes in instructing Teacher Stern to pursue the Bribery Claim on behalf of KSSL and the issue whether it was in the interests of KSSL to pursue the claim at all were necessary elements of Anthony King's counterclaim and KSSL's claim to recover indemnity costs. It follows, in my judgment, that Anthony King is estopped from contesting those issues against KSSL in this Petition. I also find that it would be an abuse of process for Anthony

King to challenge the judge's finding on those issues for the reasons which I have set out (above) in relation to extract (1).

(c) Mr and Mrs King

87. I am also satisfied that it would be an abuse of process to permit Mr and Mrs King to use the Petition to re-litigate the same issue for the reasons which I have already expressed in relation to extract (1). Mr Newman did not advance any reason why the absence of identity between Mr and Mrs King and the Applicants should lead to a different outcome in relation to these allegations and in my judgment, there is no reason why it should. Indeed, if I permitted these allegations to go to trial, I have little doubt that Anthony King would attempt to use his parents' unfair prejudice claim as a vehicle to challenge the judge's findings on his counterclaim and costs.

(d) Outcome

88. For these reasons, therefore, I strike out extract (2) apart from paragraph 140 which is in bold and square brackets in the Appendix. I have considered whether I should permit any of the specific factual allegations in paragraphs 142 to 145 to go to trial. However, in my judgment the allegation that the appointment of Teacher Stern gave rise to a conflict of interest falls away if I strike out paragraph 141. I am also satisfied that no proper basis remains for the allegation that Mr Stiefel was aware of this alleged conflict of interest. But in any event, once I have struck out paragraph 141 the allegation against Mr Stiefel is not material to any other allegation in the Points of Claim and as such has no place in an unfair prejudice petition for the reasons given by the Court of Appeal.

*(3) The Initiation of Proceedings (paragraphs 155 to 165)*

(a) The allegations

89. The first allegation which the Petitioners advance in extract (3) is that the Bribery Claim was misconceived and that it was pleaded in a way which was misleading. The basis for this allegation is the assertion that KSSL was in possession of documents which showed that Mr Evans deliberately misled Anthony King. However, the Judge found that Anthony King knew how the Range Rover Transaction was being funded and appreciated its impropriety. I am satisfied, therefore, that this allegation involves a direct attack on

that finding and his finding that Anthony King took a bribe.

90. The second allegation which the Petitioners advance is that the Bribery Claim was not in the best interests of KSSL. As I have stated above, it is my judgment that it would be impossible for the Petitioners to succeed on this allegation at trial unless they are also able to challenge the findings made by the judge in both the primary judgment and the costs judgment.
91. Finally, the third allegation which the Petitioners advance is that the Bribery Claim was brought for improper collateral purposes and in advancing this allegation the Petitioners expressly plead and rely on Anthony King's counterclaim for abuse of process. There can be no doubt, therefore, that this allegation involves a direct collateral attack on the judge's dismissal of Anthony King's counterclaim.

(b) Anthony King

92. The issue whether Mr Evans misled Anthony King about the Range Rover Transaction, the issue whether it was in the interests of KSSL to pursue the Bribery Claim and the issue whether that claim was brought for improper collateral purposes were necessary elements of KSSL's claim, Anthony King's counterclaim and KSSL's claim to recover indemnity costs. It follows, in my judgment, that Anthony King is estopped from contesting those issues against KSSL in this Petition. I also find that it would be an abuse of process for Anthony King to challenge the judge's finding on those issues for the reasons which I have set out (above) in relation to extract (1).

(c) Mr and Mrs King

93. I am also satisfied that it would be an abuse of process to permit Mr and Mrs King to use this Petition to re-litigate the same issues for the reasons which I have already expressed in relation to extract (1). Again, Mr Newman did not advance any reason why the absence of identity between Mr and Mrs King and the Applicants should lead to a different outcome in relation to these allegations and in my judgment, there is no reason why it should. If I permitted these allegations to go to trial, I have little doubt that Anthony King would attempt to use his parents' unfair prejudice claim as a vehicle to challenge the judge's findings on the Bribery Claim, his counterclaim and costs.



(d) Outcome

94. For these reasons, therefore, I strike out extract (3) apart from the heading above paragraph 164, paragraph 164 itself and the first part of paragraph 165 in bold and square brackets in the Appendix. I have also considered whether I should permit the allegation in paragraph 162 to go to trial. In that paragraph the Petitioners allege that the merits of the Bribery Claim are not relevant to their claim for unfair prejudice (which was the position adopted by Mr Newman in his oral submissions). However, I am not prepared to do so for the reasons which I have set out in [73] to [76] (above). In my judgment, this allegation has no real prospect of success unless the Petitioners are able to challenge the findings in the Bribery Claim.

*(4) The Removal of Mr King (paragraphs 172 to 174)*

(a) The allegations

95. The principal allegations which the Petitioners advance in extract (4) are that Primekings procured the removal of Anthony King as a director and that the “purported” justification for his removal was that he had committed gross misconduct. In the same extract the Petitioners assert that there was no factual investigation before Anthony King was removed and that his removal formed part of a campaign to exclude him from the business of the Company and KSSL. These assertions make no sense unless the Petitioners intend to challenge the basis for Anthony King’s removal as a director. Moreover, it is clear from the Points of Claim as a whole that this is exactly what the Petitioners have in mind: see extract (3) (above). I am satisfied, therefore, that these allegations involve a collateral attack on the judge’s findings in the Bribery Claim.

(b) Anthony King

96. The issue whether Anthony King took a bribe and committed breaches of fiduciary duty and the issue whether that misconduct justified summary dismissal were all necessary elements of the Bribery Claim and in my judgment Anthony King is estopped from contesting those issues against KSSL in this Petition. I also find that it would be an abuse of process for Anthony King to challenge the judge’s finding on those issues for the reasons which I have set out above in relation to extract (1).

(c) Mr and Mrs King

97. I am also satisfied that it would be an abuse of process to permit Mr and Mrs King to use the Petition to re-litigate the same issues for the reasons which I have already expressed in relation to extract (1). Again, Mr Newman did not advance any reason why the absence of identity between Mr and Mrs King and the Applicants should lead to a different outcome in relation to these allegations and in my judgment, there is no reason why it should. If I permitted these allegations to go to trial, I have little doubt that Anthony King would attempt to use his parents' unfair prejudice claim as a vehicle to challenge the findings of the judge and the Court of Appeal that he had committed gross misconduct and that it justified his dismissal and removal as a director.

(d) Outcome

98. For these reasons, therefore, I strike out the entirety of extract (4). I have considered whether I should permit the specific allegation that no internal disciplinary process was followed to go to trial. But again that allegation has no place in the Points of Claim if the Petitioners are not permitted to challenge the fact that Anthony King's removal as a director was justified because he had committed gross misconduct. But in any event Mr Newman did not argue that this paragraph would survive the strike out of the principal allegations in extract (4).

(5) *The Second Stiefel Threat (paragraphs 177 to 181)*

(a) The allegations

99. The allegation which the Petitioners advance in extract (5) is that the draft minutes of the meeting on 20 September 2017 at which Anthony King was removed as a director were not complete and accurate and that when he challenged them, Mr Stiefel sent an email dated 19 October 2017 threatening Anthony King from which the inference should be drawn that the Applicants intended to pursue the Campaign in a vindictive and vengeful manner.
100. I am satisfied that when extract (5) is read in the context of the allegations which the Petitioners make about the Campaign, it involves a collateral attack on the judge's findings on the counterclaim in the Bribery Claim. It is their case that one of the goals of

the Campaign was the deliberate exclusion of Anthony King and his parents from the business. It is also their case that this was not in the interests of the Company and that in pursuing the Campaign Mr Stiefel, Mr Zeidler and Mr Fisher were exercising their powers for an improper purpose. The “**Second Stiefel Threat**” is intended to provide particulars of these allegations and has no relevance otherwise.

(b) Anthony King

101. The issue whether Mr Stiefel, Mr Zeidler and Mr Fisher acted for improper purposes in removing Anthony King and pursuing the Bribery Claim and the issue whether it was in the interests of KSSL to pursue the claim at all were necessary elements of Anthony King’s counterclaim and KSSL’s claim to recover indemnity costs. It follows, in my judgment, that Anthony King is estopped from contesting those issues against KSSL in this Petition. I also find that it would be an abuse of process for Anthony King to challenge the judge’s finding on those issues for the reasons which I have set out (above) in relation to extract (1).

(c) Mr and Mrs King

102. I am also satisfied that it would be an abuse of process to permit Mr and Mrs King to use the Petition to re-litigate the same issue for the reasons which I have already expressed in relation to extract (1). Again, Mr Newman did not advance any reason why the absence of identity between Mr and Mrs King and the Applicants should lead to a different outcome in relation to these allegations either and in my judgment, there is no reason why it should. If I permitted these allegations to go to trial, I have little doubt that Anthony King would attempt to use his parents’ unfair prejudice claim as a vehicle to challenge the judge’s findings on the counterclaim and in the costs judgment.

(d) Outcome

103. For these reasons, therefore, I strike out extract (5). I also strike out extract (5) on the basis that Mr Stiefel’s email is not material to any of the allegations remaining in the Points of Claim if the Petitioners are not entitled to challenge the judge’s findings in relation to the removal of Anthony King and the Bribery Claim and as such have no place in an unfair prejudice petition for the reasons emphasised by the Court of Appeal.

(6) *Exclusion in Breach of Shareholder Rights (paragraphs 204 and 205)*

(a) The Allegations

104. The principal allegation which the Petitioners allege in extract (6) is that they have been wrongfully excluded from the business of the Company and KSSL in breach of their rights as minority shareholders. They also advance a number of motives for which the Applicants chose to exclude them from the business. In my judgment, this allegation involves a collateral attack on the judge's findings in the Bribery Claim for the following reasons:

- (1) The only contractual right to participate personally in the management of the Company upon which the Petitioners rely in the Points of Claim is Anthony King's right to appoint and maintain himself in office under clause 7.4.1 of the Subscription Agreement. The Petitioners do not allege that Mr and Mrs King or the Trust had any rights themselves to participate in management.
- (2) Anthony King's right to maintain himself in office as a Founder Director was made subject to two qualifications or requirements: first, he lost that right if he ceased to be a director by reason of gross misconduct; and, secondly, he could only exercise it whilst he held 50% or more of his shares on completion in accordance with the Articles.
- (3) The first qualification or requirement is not satisfied if Anthony King is bound by the findings made by the Judge and the Court of Appeal in the Bribery Claim. On 20 September 2017 he was removed as a director for gross misconduct and because of the findings in the Bribery Claim he is unable to challenge his removal for gross misconduct.
- (4) For the reasons which I have set out above, the second qualification or requirement is not satisfied either because Anthony King must be treated as having served a Deemed Transfer Notice in relation to his shares in the Company on 20 September 2017 and the Company is entitled to acquire his shares for £201. Moreover, as of that date all voting rights attached to his shares were suspended under Article 40.6.
- (5) The Petitioners will only be able to establish that Anthony King was excluded from

the management of the Company in breach of clause 7.4.1 if he is able to prove that he should not have been removed for gross misconduct and that he is not a bad leaver. To do so he will have to mount a direct attack on the findings of the judge and the Court of Appeal in the Bribery Claim. It is clear from the Points of Claim as a whole and the Petitioners unwillingness to amend them that it remains their intention to do so.

105. I should add that the Petitioners also rely on Anthony King's rights to appoint a Founder Director and observer under clause 7.4 and their right to receive management information under clause 8.2 of the Subscription Agreement. I make it clear that the Applicants have not applied to strike out the claims that the Applicants have failed to comply with their obligations to provide management accounts or to permit Anthony King to appoint a Founder Director or observer and that these allegations must go to trial. I also make it clear that in this judgment I have not considered the scope of those rights and whether they survived Anthony King's removal as a director.

(b) Anthony King

106. The issue whether the shareholders were entitled to dismiss Anthony King for gross misconduct and the issue whether he was guilty of fraud and dishonesty (and, therefore, a bad leaver) were issues which the judge and the Court of Appeal have decided in the Bribery Claim. It follows, in my judgment, that Anthony King is estopped from contesting those issues against KSSL in this Petition. I also find that it would be an abuse of process for Anthony King to challenge the judge's finding on those issues for the reasons which I have set out (above) in relation to extract (1).

(c) Mr and Mrs King

107. I am also satisfied that it would be an abuse of process to permit Mr and Mrs King to use this Petition to re-litigate those issues for the reasons which I have already expressed in relation to extract (1). Again, I am also satisfied that there is no reason why the absence of identity should lead to a different outcome. If I permitted these allegations to go to trial, I have little doubt that Anthony King would attempt to use his parents' unfair prejudice claim as a vehicle to challenge the judge's core findings that he was guilty of gross misconduct, fraud and dishonesty.

(d) Outcome

108. For these reasons, therefore, I strike out extract (6). I have considered whether I should permit the detailed allegations of motive to go to trial. However, I am satisfied that if I strike out the allegation of exclusion from management, they cease to be material. As Ms Addy and Mr Sullivan submitted in their Skeleton Argument, it is clear that the justifiable removal of a director or employee on the grounds of serious misconduct cannot amount to unfair prejudice even if that conduct is merely used as a pretext for the removal of the director or employee: see *Joffe, Minority Shareholders: Law, Practice, and Procedure* (6<sup>th</sup> ed at [6.156]), *Mears v R Mears & Co (Holdings) Ltd* [2002] 2 BCLC 1 at [34] to [36] (Laddie J) and *Re a Company (No 005685 of 1988) ex p Schwarcz (No 2)* [1989] BCLC 427 at 441 (Peter Gibson J).

(7) *Actions taken which are calculated or likely to reduce the ability of the Kings to seek an effective remedy from the Court (paragraphs 228 to 232)*

(a) The Allegations

109. The allegations which the Petitioners make in extract (7) are as follows. The Respondents denied the Petitioners access to funds by failing to pay the £70,000 due under the Settlement Agreement: see paragraph 228. Teacher Stern wrote to AIG Europe Ltd, the insurers funding Anthony King's representation in the Bribery Claim stating that his defence and counterclaim were without merit and that he was willing to lie on oath: see paragraphs 229 and 230. The Respondents have been unwilling to substantiate this claim and the inference should be drawn that they cannot substantiate it because they are not aware of any evidence of a lie: see paragraph 231.

110. I am satisfied that these allegations involve a collateral attack on the judge's findings. In particular, they involve an attack on his finding that KSSL was entitled to rescind the Settlement Agreement and his findings that Anthony King's defence and counterclaim were without merit and that his evidence was not reliable or honest. It is striking that to meet all of the allegations in extract (7), the Respondents need do no more than refer to the judge's findings.

(b) Anthony King

111. The issue whether KSSL was required to pay the £70,000 under the Settlement

Agreement and the issue whether Anthony King had a good defence and counterclaim were necessary elements of the Bribery Claim. It follows, in my judgment, that Anthony King is estopped from contesting those issues against KSSL in this Petition. I also find that it would be an abuse of process for Anthony King to challenge the judge's finding on those issues for the reasons which I have set out (above) in relation to extract (1).

(c) Mr and Mrs King

112. I am also satisfied that it would be an abuse of process to permit Mr and Mrs King to use the Petition to re-litigate the same issues and that there is no reason why the absence of identity between the parties should lead to a different outcome. Again, if I permitted these allegations to go to trial, I have little doubt that Anthony King would attempt to use his parents' unfair prejudice claim as a vehicle to challenge the judge's finding that he lied on oath and his decision to dismiss the defence and counterclaim.

(d) Outcome

113. For these reasons, therefore, I strike out extract (7). I also strike out extract (7) on the basis that the correspondence between Teacher Stern and AIG is not material to any of the allegations remaining in the Points of Claim if the Petitioners are not entitled to challenge the judge's findings in relation to the removal of Anthony King and the Bribery Claim and as such have no place in an unfair prejudice petition.

(8) *Particulars of the involvement of Mr Fisher, Mr Stiefel, Mr Zeidler and KSSL (paragraphs 241, 244, 246 and 248)*

114. The principal allegation which the Petitioners advance in extract (8) is that the Bribery Claim was brought at the behest of Mr Stiefel and Mr Fisher for their own benefit and for the benefit of Primekings and the Kirsh group rather than for the benefit of KSSL. When this allegation is read in the context of the Points of Claim as a whole, it is clear that it involves a collateral attack on the judge's decision to dismiss Anthony King's counterclaim. The judge found that Mr Stiefel and Mr Fisher had mixed purposes in bringing the Bribery Claim but that they were not unlawful or improper.

115. The other allegations which the Petitioners advance in extract (8) are that Mr Stiefel, Mr Zeidler and KSSL were all involved in the events which gave rise to the Bribery Claim, namely, the dismissal of Mr Anthony King as an employee and his removal as a director,

the refusal to pay the £70,000 and the bringing of proceedings. Because I have struck out all of the allegations relating to those events and to the Bribery Claim itself, they cease to be relevant or material to any of the remaining allegations and I am satisfied that they should be struck out too.

(b) Anthony King

116. The issue whether Mr Stiefel and Mr Fisher brought the Bribery Claim for improper and collateral purposes was a necessary element of Anthony King's counterclaim which the judge dismissed. It follows, in my judgment, that Anthony King is estopped from contesting that issue against KSSL in this Petition. I also find that it would be an abuse of process for Anthony King to challenge the judge's finding for the reasons which I have set out (above) in relation to extract (1).

(c) Mr and Mrs King

117. I am also satisfied that it would be an abuse of process to permit Mr and Mrs King to use the Petition to re-litigate the same issue and that there is no reason why the absence of identity between the parties should lead to a different outcome. Again, if I permitted these allegations to go to trial, I have little doubt that Anthony King would attempt to use his parents' unfair prejudice claim as a vehicle to challenge the judge's decision to dismiss the counterclaim.

(d) Outcome

118. For these reasons, therefore, I strike out extract (8) apart from the allegations in paragraphs 246 and 248 in bold and square brackets. Those allegations extend beyond the Bribery Claim and the events which gave rise to it and the Applicants do not apply to strike them out.

*(9) Miscellaneous*

119. I also strike out the miscellaneous statements which I have identified in extract (9) of the Appendix. I strike all of those statements out of the Points of Claim for the following reasons:

(1) The statements in paragraphs 207, 217 and 255 involve the express or implied



assertion that KSSL was not entitled to dismiss or remove Anthony King for gross misconduct. These statements should be struck out as a collateral attack on the judge's findings and the Court of Appeal's conclusion that Anthony King's behaviour justified his dismissal for gross misconduct.

- (2) The statements in paragraph 96c, 107b.iii, 107c, 233c and 254 all involve the assertion that the Petitioners were wrongfully excluded from management. These allegations should also be struck out as a collateral attack on those findings because the Petitioners had no right to participate in the management of the Company once Anthony King was dismissed for gross misconduct and as a bad leaver.
- (3) The statements in paragraphs 94, 107b.iii, 107c., 221 and 252 all involve the assertion that KSSL spent legal fees on the Bribery Claim for an improper purpose and with the goal of acquiring the King family's shares at an undervalue. These allegations should be struck out as a collateral attack on the judge's findings that the Bribery Claim was not brought for an improper purpose or to expropriate the King family's shares at an undervalue.
- (4) Finally, the reference in paragraph 260f.iii of the prayer for relief to the recovery of legal fees incurred in relation to the Bribery Claim should be struck out because there is no longer any basis for challenging KSSL's decision to bring and pursue the Bribery Claim in this Petition.

#### M. General Objections

120. Mr Newman advanced a series of general objections to the Strike Out Application which he put at the forefront of his submissions. I intend no disrespect to him or to the quality of those submissions but having carried out the detailed analysis (above), I can deal with those objections briefly.

##### *(1) Res Judicata*

121. Mr Newman argued that the doctrine of *res judicata* was not engaged because the parties to the Petition are different from the parties to the Bribery Claim. He put this argument two ways. He submitted that because KSSL was not a party to the application, it was bound to fail. He also submitted that even if the Applicants were entitled to strike out

parts of the Points of Claim, they would remain unchanged because the claim against KSSL would continue on the existing basis. I reject both of those submissions for the following reasons:

- (1) As I explain when dealing with the KSSL Application, KSSL is a nominal and neutral party only and it was not appropriate for it either to serve Points of Defence or to join in the Strike Out Application. But equally, its failure to join in the application should not prevent the Applicants from striking out the abusive parts of the Points of Claim.
- (2) Even though KSSL is a nominal party I see no reason why the Applicants should not rely on an issue estoppel between Anthony King and KSSL. In *Shah v Shah* Roth J held that an issue estoppel arose between the petitioner in analogous circumstances because it was just and equitable that he should be bound by the earlier decision.
- (3) Moreover, in a letter dated 3 August 2018 RPC LLP (“**RPC**”) wrote to Macfarlanes asking them to consent to KSSL being joined as a party because KSSL was “sufficiently connected” to the unfair prejudice to justify it being jointly and severally liable to purchase the Petitioners’ shares. RPC explained the basis of this argument in a footnote:

“The relevant question was whether the particular respondent was “so connected to the unfairly prejudicial conduct in question that it would be just in the context of the statutory regime contained in sections 994 to 996 to grant a remedy against him in relation to that conduct”: *F&C Alternative Investments v Barthelemy* [2012] 3 WLR 10 at [1096].”

- (4) If it was just and equitable for the Petitioners to join KSSL to the Petition because it was sufficiently connected with the unfair prejudice to be treated as jointly and severally liable, then in my judgment it is equally just and equitable that the Petitioners should be bound by any issue estoppel arising out of the Bribery Claim (and I so find).
- (5) But even if KSSL had not been a party to the Petition and no issue estoppel had arisen, this would not have prevented the Applicants from relying on abuse of process. I have found that it would be an abuse of process to permit the Petitioners

to advance any of the allegations in the Appendix. I am satisfied that the absence of identity between the Petitioners and the Applicants would not have made a difference to the outcome whether or not KSSL had been named as a party to the Petition.

(2) *Timing*

122. Mr Newman's second argument is that it cannot be an abuse of process to continue a claim which was properly issued and that if it were possible to become an abuse of process later, parties to legal proceedings would not know where they stand. He cited no authority in support of this argument and I have no hesitation in rejecting it. There can be no doubt that the allegations which I have struck out became abusive when the judge made his findings in the Bribery Claim and the Court of Appeal refused permission to appeal. It would be wholly unjust if the Court were powerless to prevent parties from re-litigating claims which have been finally determined because they have managed to issue the Claim Form in the second action before the Claim Form in the first.

(3) *Article 6*

123. Mr Newman's third argument was that it was not Article 6 compliant to strike out any of the allegations or grant summary judgment because KSSL had not served a defence. He submitted that it could never be just to strike out an allegation if the relevant defendant or respondent might have to admit the allegation in their statement of case. Again, he cited no authority in support of this argument and I have no hesitation in rejecting it. It assumes that KSSL is required to serve Points of Defence and that it must either admit or deny the contested allegations. But as I explain in dealing with the KSSL Application, KSSL is a nominal and neutral party which is not required to spend money taking sides and serving Points of Defence.

(4) *CPR Part 1.3*

124. Mr Newman's fourth argument was that the Court should refuse to strike out the contested allegations because the Applicants were acting in breach of their duty to assist the Court to further the overriding objective: see CPR Part 1.3. He submitted that because the Applicants had budgeted for a contingency of £222,325 for the Strike Out Applicant and because the Petition is going to trial anyway, this amounted to a breach of CPR Part

1.3 and the Court should not engage with the application. I reject this argument. If the Petitioners have a legitimate complaint about the costs which the Applicants have incurred, that is a matter for assessment. I also note that the Applicants have given them every opportunity to withdraw the contested allegations and explained to them why they should do so.

(5) *Partial Strike Out*

125. Mr Newman's fifth argument was that it was not compatible with Article 6 to strike out parts of a complex and composite claim where the remaining allegations must go to trial. I also reject that argument. CPR Part 3.4(1) expressly provides that references to a statement of case in that rule include references to part of a statement of case and Mr Newman did not draw my attention to any authority in which that rule has been held to be contrary to Article 6. Moreover, in *Arts & Antiques Ltd v Richards* (above) Hamblen J emphasised that it would bring the administration of justice into disrepute to permit a collateral attack on an earlier decision. In my judgment, it would interfere with the administration of justice by diverting the Court's resources away from other Court users to permit the contested allegations to go to trial.

(6) *Risk of Injustice*

126. Mr Newman's sixth argument was that a partial strike out would give rise to an unacceptable risk of injustice and that the safest course would be to permit the contested allegations to go to trial. He also submitted that Mr Stiefel could not be trusted to give accurate instructions. I reject this argument too. I have struck out the contested allegations after a detailed analysis and comparison between them and the findings in the Bribery Claim. Moreover, in doing so I have not relied on any disputed evidence given by Mr Stiefel.

(7) *No Abuse of Process*

127. Mr Newman's seventh argument was that the contested allegations involved no abuse of process because there was no authority for the proposition that a party not previously involved in litigation can be prevented from advancing an arguable claim. In this context he relied on *Shaw v Sloan* (above). He also submitted that there were reasons to believe that the judge's findings in the Bribery Claim were induced by fraud. Again, I reject that

argument. Mr Newman took a narrow approach to *Henderson v Henderson* which was contrary to the recent authorities. Equally importantly, the findings of the judge and the Court of Appeal remain binding on Anthony King until they are set aside by the Court. It would also be an abuse of process to permit him or his parents to challenge them in this Petition until or unless they have been set aside.

(8) *Improper Motive*

128. Mr Newman's eighth and final argument was that the Strike Out Application has been brought with the improper motive of concealing the fact that the Chief Executive Officer and Chief Financial Officer of KSSL were not involved in the decision to issue the Bribery Claim. He made this submission in paragraph 41 of his Skeleton Argument (footnotes excluded):

“If Primekings felt confident that Judge Lenon's decision was correct on the evidence, then it would be hugely in their interests to have the paragraphs in question remain in the pleading. Bearing that in mind, there is reason to think that the application is in fact being brought (at huge cost) because Primekings knows that at the trial the evidence is likely to show that the Chief Financial Officer and the Chief Executive Officer were not involved in the decision to issue the bribery claim without writing a single letter that decision being taken outside of the KSSL Executive Board of Directors, and that is likely to lead the Trial Judge to find that there was Unfair Prejudice. That that is what happened is consistent with the approach of Primekings as shown by the email showing Primekings taking steps in 2016 to 'neutralise' the KSSL independent board of directors.”

129. Again, I reject that argument. I do not follow the logic of Mr Newman's submission. But in any event it is little more than an attempt to re-open the judge's reasons for dismissing the counterclaim. The judge found that the decision to bring the Bribery Claim was made by the non-executive directors and that after it was filed, it was decided that Ms Shaw and Mr Zeidler would have overall lead on the claim. The judge accepted that KSSL's conduct of the Bribery Claim did not provide any real support for Anthony King's case that KSSL's predominant purpose in bringing the claim was improper. Although he found that KSSL should have sent a Letter of Claim, he also found that it had genuine reasons for not doing so. In my judgment, it is not open to the Petitioners to challenge those findings on this application.

N. Summary Judgment

130. Because I have struck out all of the contested allegations (above) on the ground that they involve a collateral attack on the judgments in the Bribery Claim, it is unnecessary for me to consider whether the Petitioners have a real prospect of succeeding on those allegations at trial and, if not, whether I should grant reverse summary judgment to the Applicants. Subject to one point, therefore, I make no findings and no order on that part of the Strike Out Application.

131. I have struck out the allegation that it was unfairly prejudicial to exclude the Petitioners from the business because it involved a collateral attack on the findings in the Bribery Claim that Anthony King was removed as director for gross misconduct and that, as a consequence, he was a bad leaver. But if I am wrong and those allegations did not involve a collateral attack on the findings in the Bribery Claim, I go on to consider whether I should grant reverse summary judgment on that issue.

132. I am satisfied that the Petitioners have no real prospect of persuading the Court that the Applicants' conduct in excluding them from the management of the Company after Anthony King's removal as a director caused prejudice to their interests as shareholders of the Company or that it was unfair. I have reached this conclusion for the following reasons:

(1) In my judgment the Petitioners have no real prospect of persuading the Court that Anthony King was not a bad leaver or that the Company was not entitled to require him to sell his shares for £201 on 20 September 2017: see section E (above). In those circumstances, the allegation that he has been unfairly excluded from management is bound to fail.

(2) Further, even if the Petitioners were able to persuade the Court that Mr King had the right to remain a director under clause 7.4.1 until the Company called for a transfer and his name was removed from the register, I can see no basis on which the Applicants would be ordered to pay any more than £201 for his shares. This is a drop in the ocean when compared with the sums which Anthony King owes to them.

(3) Finally, since Mr and Mrs King had no right to participate in the management of

the Company as directors and employees and do not allege that they were personally excluded from management, they have no real prospect of succeeding on this allegation either.

133. There was an interesting debate before me about the extent to which the Court should make findings or declarations on particular issues on an application for summary judgment. Mr Newman submitted that the Court should not make detailed declarations on such an application and Ms Addy did not press the point. Given that the Court has power to strike out allegations under CPR Part 24.6 or to strike out part of a claim, I therefore strike out paragraphs 204 and 205 together with the references to exclusion from management in paragraphs 96c, 107b.iii, 107c, 233c, 252 and 254 on the alternative basis that those allegations have no real prospect of success and the Applicants are entitled to reverse summary judgment.
134. I stress that I have not struck out or determined the allegations in paragraphs 206 to 218 and, in particular, the allegations that the Applicants failed to provide monthly management accounts to the Petitioners in breach of clause 8.2 and that they denied Anthony King the right to appoint a replacement director or an observer under clauses 7.4.1 and 7.4.2 of the Subscription Agreement. I also stress that I have only decided that £201 is the maximum amount which the Court would order the Applicants to pay for Anthony King's shares for excluding him from management. If he succeeds at trial on any of the other allegations, he may be able to persuade the Court that his shares should be valued at a different date or on a different basis.

## **VI. The Amendment Application**

135. Mr James Popperwell of Macfarlanes helpfully exhibited an updated draft of the Amended Points of Defence as exhibit JPN5 to his fourth witness statement dated 14 January 2022 ("**Popperwell 4**"). He or his team had amended the draft in red to show the amendments which the Applicants sought to make before the Court of Appeal had given judgment on the first strike out application. They had also amended the draft in green to show the additional amendments which the Applicants now apply to make after the Court of Appeal's judgment. Where I refer to paragraphs in this section of the judgment, I intend to refer to the draft of the updated Amended Points of Defence

### **O. Unopposed Amendments**

136. The Petitioners objected to those amendments in red which are highlighted in yellow on the updated draft. They did not object to any of the amendments in green. Mr Popperwell's team had highlighted some of the green amendments to identify which were not consequential upon the Court of Appeal's order and for which they therefore needed permission. He also identified all of these amendments and explained their purpose in Popperwell 4, ¶58.
137. I am satisfied that there is no basis for objecting to those amendments and I will give permission to the Applicants to amend the Amended Points of Defence to add the unopposed red amendments in red and the green amendments referred to in Popperwell 4, ¶58. I invite counsel to agree those amendments and to include them in the Points of Defence to be annexed to the Order which I make.

P. Opposed Amendments

138. The Applicants also applied for permission to amend the Points of Defence to make four categories of amendment which the Petitioners opposed. Those categories were as follows (and I deal below with each category in turn):
- (1) Amendments to plead findings from the judgments in the Bribery Claim (the "**Bribery Claim Amendments**");
  - (2) Amendments to plead the misconduct of Anthony King by reference to a schedule of misconduct (the "**Schedule of Misconduct**");
  - (3) Amendments to plead certain text messages to and from Anthony King by reference to a schedule of texts (the "**Schedule of Text Messages**"); and
  - (4) Miscellaneous amendments which the Petitioners opposed primarily on the grounds of relevance.

*(1) The Bribery Claim Amendments*

139. Ms Addy and Mr Sullivan accepted that if the Strike Out Application was successful the proposed amendments to paragraphs 93A, 129 and 142 would fall away. I will, therefore, disallow those amendments. In my judgment, paragraphs 104 and 125A fall into the same category. In those paragraphs the Applicants aver that it would be an abuse of process to



re-litigate issues in the Bribery Claim. I agree for the reasons which I have already given. But having struck out the relevant allegations in the Points of Claim, paragraphs 104 and 125A are now redundant. I therefore disallow those amendments.

140. The Applicants also apply for permission to amend to plead the judge's findings both in his principal judgment and the costs judgment, the findings of the Court of Appeal and the findings of Cockerill J in the Conspiracy Claim. Mr Newman objects to them on the basis that those findings are inadmissible under the rule in *Hollington v Hewthorn*. I accept that submission in relation to those amendments where the Applicants' purpose is to rely on the findings in the Bribery Claim and the Conspiracy Claim as evidential support for their case. In my judgment, those findings are not admissible for that purpose and I therefore disallow the following amendments: paragraphs 89 (second amendment and footnote 16), 96 (and footnote 17), 99 (footnote 18), 102 (footnote 19), 117, 117A, 117B, 118, 124b, 124g, 124h and 127.

141. There are, however, a small number of amendments which the Applicants propose to make which do not fall into that category and I will permit those amendments for the following reasons:

- (1) *Paragraph 89*: The purpose of the first amendment in this paragraph is to plead that Mr Zeidler was cross-examined on his witness statement in the Bribery Claim. If it was relevant to plead that witness statement (and the Petitioners have not applied to strike out this allegation), then I can see no reason why I should not permit the amendment.
- (2) *Footnote 17*: The purpose of this amendment is to plead the evidence which Mr Pownall gave at the trial in the Bribery Claim. It may be that the Applicants will wish to call Mr Pownall to confirm his evidence or to serve a hearsay notice to rely on it. Although it is not usually permissible to plead evidence, I will permit it in this instance because it gives the Petitioners fair warning of the case which the Applicants intend to run.
- (3) *Paragraph 124(h)*: I will permit the Applicants to make the amendments to the second and third sentences (which do not rely on the findings in the Bribery Claim) but disallow the fourth sentence (which does).

(2) *The Schedule of Misconduct Amendments*

142. Ms Addy and Mr Sullivan also accepted that if the Strike Out Application was successful, the amendments in paragraphs 5, 6, 7, 9 and 10 of the Schedule of Misconduct would fall away. They submitted, however, that paragraphs 1 to 4, 8 and 11 of the Schedule of Misconduct remained relevant to paragraphs 164 to 167 of the Points of Claim in which the Petitioners argue that the allegations in the Letter of Claim dated 31 August 2017 were without foundation. I accept that submission. I am also satisfied that the allegations have a real prospect of success and that any prejudice caused by the amendments can be compensated in costs. I will, therefore, permit the amendment to paragraph 245 of the current draft on the basis that the Schedule of Misconduct is limited to those paragraphs.

(3) *The Schedule of Text Messages Amendments*

143. Ms Addy and Mr Sullivan also submitted that the Schedule of Text Messages remained relevant to the outstanding issues because they provided evidence that Anthony King had taken positive steps to damage the Company or expressed a desire to do so. These allegations are pleaded in paragraphs 131(d) and 148(d) of the current draft of the Amended Points of Claim. Mr Newman objected to the amendments on the basis that they were too vague and if the Applicants intended to allege that Anthony King had taken steps to damage the Company, those steps should be properly pleaded.

144. I reject that submission. The Schedule provides particulars of the allegation that Anthony King expressed a desire to damage the Company. It also provides particulars of the steps which he is alleged to have taken (e.g. that he had discussions with competitors). I am also satisfied that the allegations have a real prospect of success and that any prejudice caused by the amendments can be compensated in costs. I will, therefore, permit the amendments to paragraphs 131(d) and 148(d) of the current draft and permit the Applicants to rely on the Schedule of Text Messages.

(4) *Miscellaneous Amendments*

145. Finally, the Applicants applied for permission to make the following miscellaneous amendments and Mr Popperwell gave a detailed explanation for each one in Popperwell 4. I rule as follows in relation to each of the miscellaneous amendments:

- (1) *Footnote 3*: The purpose of the amendment was to clarify the existing pleading by relying on Cockerill J's judgment in the Conspiracy Claim. In the light of that objection, Ms Addy did not press me to grant permission and I disallow the amendment.
- (2) *Paragraph 68k*: The purpose of the amendment is to plead the open offer which the Applicants made to the Petitioners. Mr Newman objected on the basis that it was not permissible to plead correspondence. In this particular context, I disagree. It is common for majority shareholders to make an open offer and then rely on the minority shareholder's failure to accept it as a defence to a claim for unfair prejudice. I am satisfied that the Applicants have a real prospect of persuading the Court that the offer is relevant to the substantive issues and I permit the amendment.
- (3) *Paragraph 102*: The purpose of this amendment was to plead how Mr Evans came to be dismissed and, in particular, the disclosure of the fact that he had concealed the fact that the Company was paying for the King family's mobile phones. Mr Newman submitted that this was irrelevant to the dismissal and removal of Anthony King. I disagree and I am satisfied that the specific reasons for Mr Evans' dismissal are relevant to the question whether the Petitioners have suffered any unfair prejudice.
- (4) *Paragraph 107*: The purpose of this amendment is to add that the Petitioners have been able to fund a claim in the Commercial Court against ten defendants. Mr Newman submitted that this was irrelevant. He also went so far as to submit that it amounted to intimidation. I disagree. The way in which the Petitioners have been able to fund complex litigation may well have relevance to remaining issues in the Petition and I permit this amendment.
- (5) *Paragraph 124d*: I disallow this amendment. The purpose of the amendment was to plead the detailed costs budgets which Teacher Stern submitted in the Bribery Claim in answer to paragraph 159 of the Points of Claim: see Popperwell 4, ¶83. Mr Newman objected to this amendment on the basis that the Applicants should have pleaded the actual amounts which they had incurred. I would have been willing to allow this amendment but since I have struck out paragraph 159 of the Points of Claim this amendment is now redundant and I disallow it.

- (6) *Paragraphs 112c, 143d, 147 and 263a*: Mr Newman originally objected to all of these amendments on grounds of relevance. By the end of the hearing, he had given up his opposition. I therefore permit these amendments.

## **VII. The KSSL Application**

146. On 20 March 2018 the Petition was presented. It did not name KSSL as one of the Respondents and even now no formal application has been made to amend it to add KSSL as a party. By letter dated 3 August 2018 RPC, who were then acting for the Petitioners, asked Macfarlanes to consent to KSSL being joined as a Respondent because it was “sufficiently connected” to the unfair prejudice which the Petitioners claimed to have suffered to justify it being held jointly and severally liable to purchase the Petitioners’ shares (and I have set out part of the text of that letter above). By letter dated 12 December 2018 Macfarlanes consented to the joinder of both the Company and KSSL on the following basis:

“We confirm that our clients consent to a joinder of KSSL to the proceedings. Our clients accept that KSSL and KSSL need to be parties to the Petition in order to be bound by any decision made by the Court and in order to give any appropriate disclosure. However, as with KSSL, KSSL intends to take a neutral position in this dispute. For that reason, none of the views expressed in this letter (and our other letters) constitute the views or representations of KSSL or KSSL.”

147. By letter dated 20 December 2018 RPC confirmed that they would amend the Petition (although they never did so). On 21 January 2019 the Petitioners served the Points of Claim in which they named KSSL as the Sixth Respondent and on 25 January 2019 ICC Judge Prentis approved a consent order for directions which showed KSSL as the Sixth Respondent. Paragraph 2 of the Order also provided that: “The Respondents (save for the Company and KSSL) shall file and serve Points of Defence by 4.00 pm on 22 March 2019.” Ms Addy took me to the standard form order for directions made by the Court under the Companies (Unfair Prejudice Applications) Proceedings Rules 2009 to show that the Order made on 25 January 2019 was in the standard form.
148. On 18 April 2019 the Applicants served Points of Defence in which paragraph 1 stated (as it does now) that both the Company and KSSL “adopt a neutral stance in response to the present Petition”. The Petitioners have never served Points of Reply challenging that paragraph and KSSL has continued to be named as the Sixth Respondent in Court

documents (including my own judgment).

149. By letter dated 12 June 2019 RPC wrote to Macfarlanes stating that because KSSL had not filed “a Defence” the Petitioners would be entitled to summary judgment. By letter dated 19 June 2019 Macfarlanes replied stating that there was no basis for ordering summary judgment against KSSL and that it was well-established that a company in which disputing shareholders hold shares should only be a nominal party to the dispute. However, the Petitioners took no further action following that exchange of correspondence. On 7 October 2021 HHJ Matthews ordered that any application by the Petitioners against KSSL had to be issued by 4 pm on 15 December 2021. On that day itself the Petitioners issued the KSSL Application.
150. In my judgment, RPC’s letter dated 12 June 2019 and the KSSL Application are misconceived. There was no procedural requirement for the Company or KSSL to serve a Defence (or, more properly, Points of Defence) unless ordered to do so by the Court. On 25 January 2019 ICC Judge Prentis ordered the Applicants but not the Company or KSSL to serve Points of Defence. Since KSSL has never been ordered to serve Points of Defence, it is wholly inappropriate to make an unless order which penalises it for the failure to do so.
151. That is sufficient to dispose of the KSSL Application. But in any event, it is not appropriate to vary the Order dated 25 January 2019 and to order KSSL to serve Points of Defence (either with or without a sanction). It is also meaningless to ask the Court to debar it from defending the Petition. *Re a Company No. 004502 of 1988, ex p Johnson* (above) is authority for the proposition that the Company and, by parity of reasoning, KSSL should not be permitted to spend company funds defending the Petition. They are nominal Respondents and will be bound by the Court’s findings and the result. But equally, the Court should not debar them from making submissions in relation to the form of relief or any other matters which might affect the interests of creditors or the Company as a whole.

## **VII. Disposal**

152. For these reasons I grant the Strike Out Application and I will make an order striking out all of the allegations in the Appendix (apart from those in bold type and square brackets). I will also make an order striking out paragraphs 204 and 205 together with the references

to exclusion from management in paragraphs 96c, 107b.iii, 107c, 233c, 252 and 254 on the alternative basis that the Petitioners have no real prospect of succeeding on those allegations at trial and that the Applicants are entitled to reverse summary judgment.

153. I will also make an order granting permission to the Applicants to amend the Points of Defence to make the unopposed amendments set out in Popperwell 4, ¶4 and the opposed amendments in paragraphs 68k, 89, footnote 17, 102, 112c, 124(h), 131(d), 143d, 147 148(d), 245, 263a, the Schedule of Misconduct (limited to paragraphs 1 to 4, 8 and 11) and the Schedule of Text Messages. I dismiss the KSSL Application.
154. I will hand down judgment for which the parties need not attend Court. I invite them to agree a form of order annexing copies of the Amended Points of Claim and the Amended Points of Defence and to re-list the CCMC before me at which I will deal with both any outstanding points on the form of order and costs. I will also give directions for the further conduct of the Petition.

## **V. Postscript**

155. On Thursday 5 May 2022 I circulated a draft of this judgment inviting the parties to submit typing corrections and other obvious errors by 4 pm on 9 May 2022 with a view to my handing down judgment on 11 May 2022. By email dated 9 May 2022 Mr Newman submitted a list of corrections and identified one error which he asked me to correct in [88] (above) on behalf of the Petitioners. By email also dated 9 May 2022 Mr Sullivan submitted a document on behalf of the Respondent which contained a list of corrections (which I have largely accepted) and observations about suggested directions for further conduct of the Petition. By email dated 10 May 2022 took objection to those submissions and to changes which the Respondents asked me to make to [105] and [134] (above). By email dated 10 May 2022 Ms Addy and Mr Sullivan responded to Mr Newman's submissions on [88] (at my invitation).
156. In [88] (above) I dealt with extract (2). Mr Newman submitted that although I had struck out paragraph 141 of extract (2) I should not strike out paragraphs 142 to 145 in which the Petitioners allege that the appointment of Teacher Stern to act on behalf of KSSL in the Bribery Claim created an immediate conflict of interest and that Mr Stiefel was aware of the conflict. He submitted that this conflict of interest remained relevant to other allegations which the Respondents did not apply to strike out.

157. The Petitioners allege that in a letter of claim dated 31 August 2017 Teacher Stern alleged on behalf of KSSL that Anthony King had incurred unauthorised expenditure of £400,000: see paragraphs 164 to 167. They also allege that in a letter of claim dated 4 December 2018 Eversheds alleged on behalf of both the Company and KSSL that Mr James King owed a debt of £50,493: see paragraph 225. They rely on both of these letters as acts of unfair prejudice carried out by the Respondents through KSSL: see paragraphs 248(d) to (f).
158. In my judgment, paragraphs 142 to 145 have no relevance to these allegations. The Petitioners allege that the appointment of Teacher Stern to act for KSSL in the Bribery Claim gave rise to a conflict of interest because they were also acting for the Company. In support of this allegation they rely on the fact that Mr Stiefel had recognised that a different firm of solicitors, DWF, had a conflict of interest almost two years before. But whether or not these allegations had any merit, once I had struck out the allegations relating to the Bribery Claim, they had no relevance. The Petitioners do not refer to the conflict of interest in paragraphs 164 to 167 and 248 either expressly or by cross-referring to paragraphs 142 to 145. Moreover, the Petitioners rely on the letters of claim as acts of prejudice which the Respondents committed through KSSL. The Petitioners rely on the fact that Teacher Stern and Eversheds acted for both the Company and KSSL. But it is not relevant whether they also had a conflict of interest.
159. In [105] and [134] I dealt with the consequences of my decision in relation to the bad leaver provision in the Articles. Mr Sullivan invited me to remove the words “and that these allegations must go to trial” from [105] for the following reasons:

“The Court is respectfully invited to delete the words “*and that these allegations must go to trial*”. The Court’s determination in relation to the bad leaver provisions means that the Company is now obliged to proceed with the sale mechanism prescribed for in the Articles in respect of Anthony King’s shares. The Respondents propose that the effect of any such sale upon the further conduct of the Petition (and Anthony King’s role within the proceedings) is a matter which should be addressed in argument and determined by the Court at the hearing to be listed pursuant to paragraph 154 of the Draft Judgment. Accordingly, the Court is respectfully invited not to make any such consequential findings in the present Judgment but to consider such matters (and determine them in the light of relevant argument) at such later date.

(For the sake of completeness and lest it be said that they should otherwise have asked the present stage, if (and only if) the Court is not minded to reserve

the determination of such consequential matters until such further hearing date, the 2<sup>nd</sup> to 5<sup>th</sup> Respondents respectfully ask the Court for permission to appeal such matters; however, their primary position is that the words identified in this and point 39 below should simply be omitted from the Judgment to be handed down on 11 May 2022 and the Court addressed in relation to the same at the consequential hearing.)”

160. Mr Sullivan also invited me to omit the last three sentences of [134] for similar reasons. Mr Newman objected to these submissions on the basis that they did not identify typographical or obvious errors but advanced new arguments. He also submitted that if the Respondents intended to apply to strike out these further allegations, they should issue an application, which would be met by an abuse of process defence. I agree with Mr Newman that these submissions travel well beyond the correction of typographical or obvious factual errors and I am not prepared to amend [105] and [134] of my judgment. I remind the parties that a request to submit corrections is not an open invitation to reargue the case or to make detailed submissions on the consequences of the judgment. The Court will list a hearing to deal with these matters or invite submissions from the parties to deal with them on paper.
161. On the other hand, I make it clear that by expressing the view that the relevant allegations would have to go to trial, I was not prejudging any further application which the Respondents make. My purpose in expressing those view was to make clear to the parties the clear limits of the present judgments. Moreover, the relevant allegations will have to be determined at trial in the absence of any further application by the Respondents to strike them out or for summary judgment. Likewise, it will be open to the Petitioners to argue that those allegations should go to trial because the Respondents did not include them in the Strike Out Application. I decline to these changes, therefore, to [88], [105] and [134].



## APPENDIX

### Extract (1): The Removal of Mr King as CEO (paragraphs 108 to 126)

#### *[Removal of Mr King as CEO]<sup>1</sup>*

108. The Respondents have spent company time, money and resources seeking a pretext on which to:

- a. Dismiss Mr King for gross misconduct with a view to excluding Mr King from the Company for the personal purposes of the majority shareholder Primekings;
- b. Put pressure on Mr King to give up his shares, including by suing (or threatening to sue) him and other members of his family.

109. On the day of discontinuance Mr Zeidler arranged to meet Mr King on 17 May 2017 at the offices of RSM in Leeds. At that meeting Mr Zeidler stated to Mr King that if he did not agree to resign as CEO of KSSL and sign a compromise agreement, the company would look into his mismanagement and he would be dismissed for gross misconduct.

110. Mr King asked Mr Zeidler "what mismanagement?", to which Mr Zeidler stated "we'll find something" ('the Zeidler Threat').

111. Notwithstanding that it must have been his intention all along to deliver that message, Mr Zeidler had previously, on 15 May 2017, sent Mr King at 9.16pm a disingenuous email which made reference to the possibility of a 'social dinner' on the evening of 17 May 2017, a reference which it is to be inferred was intended to convey to Mr King the inaccurate impression that Mr Zeidler intended to move forward productively with Mr King and that the outcome of the planned meeting would be amicable.

112. The fact that this course of action had been anticipated in advance is evidenced by the fact that Bob Forsyth (an individual installed immediately by Primekings as CEO of KSSL in May 2017) had been employed by PIL since around March 2017, with KSSL being instructed to reimburse his £5,000 of wages once he officially replaced Anthony King.

113. Following the Zeidler Threat, which Mr King interpreted (correctly) as meaning that KSSL would set out in bad faith to engineer a dismissal for the purposes of the majority shareholder Primekings rather than for the benefit of the company as a whole, Mr King felt he had no choice but to enter into the proposed Settlement Agreement dated 19 May 2017 ('the Settlement Agreement').

114. **[Mr King's employment with KSSL terminated as of 19 May 2019]<sup>1</sup>** in accordance with the terms of the Settlement Agreement. The Settlement Agreement provided that:

- a. (at clause 5.1) Mr King was to receive £70,000 within 14 days as a settlement sum;
- b. (at clause 11.2) Mr King was to receive £5,000 within 14 days in consideration of Mr King agreeing not to work with Mr Evans for 12 months.

115. Notwithstanding Mr King's entry into the Settlement Agreement, the Zeidler Threat was carried into effect anyway, as evidenced by the following matters, and by the other steps subsequently taken or threatened against the Kings as detailed below:

a. Shortly after Mr King's removal from the position of CEO in May 2017 (as which see below) the CFO, Mr Pownall, was threatened with gross misconduct if he did not reveal anything about Mr King which could be used against him. Mr Pownall stated in a text message to Mr King on 30 May 2017: "*Anthony I feel terrible they are threatening me with gross misconduct. So sorry.....They are really vindictive... You don't deserve this...*".

b. On 14 July 2017, Paul Hughes (the KSSL chef) was asked by two lawyers (acting on behalf of KSSL) whether Mr King and Mr Evans had received free food or drink from the canteen. This demonstrates that KSSL was looking for any allegations, however trivial, which might be used as a basis on which to bring proceedings against Mr King.

#### *Effect of Mr King's removal on the business*

116. The removal of Mr King as CEO was seriously prejudicial to the interests of the Company, and to the Petitioners as shareholders:

a. Mr King's value to the Company had been recognised by Primekings, and the ability of the business to succeed was very significantly diminished by his removal.

b. The removal of Mr King had a serious impact on staff morale and retention. Around 50 staff including Mr Pownall left within the first 6 months of Mr King being dismissed. Many of those staff had many years of experience and knowledge of the industry.

#### *Non-payment of settlement sum to Mr King*

117. Payment of the £70,000 payable under clause 5.1 of the Settlement Agreement was due within 14 days, namely by 2 June 2017. The money was not paid, by that date, or at all.

118. The £5,000 payable pursuant to clause 11.2 of the Settlement Agreement was paid on 31 May 2017. It is to be inferred that the £5,000 was paid because the Respondents, whilst wanting to deny the King family funds which they could use to engage legal professionals to help them resist the unlawful Campaign, wished to have available to them the ability to enforce the covenant given by Anthony King not to work with Mr Evans contained in the Settlement Agreement, which they believed meant that the consideration for that covenant needed to be paid.

119. The fact that the Settlement Agreement split out the sums in that way suggests that non-payment of the £70,000 was intended throughout.

120. Ms Kehoe, the company secretary, initiated the payment of £70,000 to Mr King with the bank on Friday 26 May 2017 but was told by Mr Zeidler on that same evening to go back into the office to recall the payment.

121. The King family was left in such a parlous financial state that Anthony King had to take two of his children out of the schools they were in and later sell the family car and jewellery.

122. On 26 June 2017 Mr King sent an email to Mr Zeidler (copying in the board of KSGI plus Mr Pownall and Ms Kehoe) noting that he had not been paid his agreed settlement figure and making it clear that his wife and children had been left with no source of income and in a parlous financial position.

123. It is to be inferred that Mr Stiefel and Mr Fisher fully intended for Mr King to be placed

in a position of maximum financial distress, this being part of their strategy in implementing the Campaign, in order to place maximum pressure on the King family to agree to the transfer of their shares for a fraction of their true value. That inference is strengthened by:

- a. The 13 June 2017 letter described at paragraph 124 below.
- b. The efforts Mr Stiefel and Mr Fisher have made more recently to find out what the financial position of the King family is, efforts which are only explicable (post payment of the Payment on Account Debt) on the basis that the finances of the Kings matter to them because the success of the Campaign requires the Kings to be impecunious and therefore unable to resist by seeking an effective remedy through court proceedings.

*[13 June 2017 letter*

**124. On 13 June 2017 the Respondents’ solicitors sent a without prejudice letter to the Kings (over which the Respondents waived privilege on 2 October 2018) which:**

**a. Asserted that the Kings’ likely total costs liability to Primekings as a result of the Misrepresentation Action was £2.7m, an increase of over £800,000 from the figure of £1.872m given to the Court at the time of the application for a payment on account.**

**b. Proposed a settlement involving (among other things) the Kings agreeing that the costs liability be £2.7m and transferring all of their shares in the Company to Primekings in satisfaction of that liability, James and Susan King each receiving a payment of £1,000 a month for 5 years and the Company and KSSL waiving all outstanding claims against the Kings.]<sup>1</sup>**

125. The terms of that letter (‘the 13 June 2017 letter’) show that the real goal of those who control KSSL is to obtain the King family’s shares, not to recover compensation or make a point of principle to the market as Mr Zeidler has contended in a witness statement in the Bribery Proceedings.

Extract (2): Change of solicitor (paragraphs 141 to 145)

*[Change of solicitor*

**140. Around the middle of July of 2017, Mr Stiefel and/or Mr Fisher and/or Mr Zeidler procured that Teacher Stern replaced Eversheds as the solicitors for the Company. Prior to this, Eversheds had been instructed to build a case against Anthony King.]<sup>1</sup>**

141. It is to be inferred that Eversheds were not comfortable with that instruction because it was evident that the pursuit of such a case was not in the best interests of Eversheds’ clients, the Company and KSSL, but rather was in the nature of a vendetta being pursued for the benefit of Primekings.

142. The appointment of Teacher Stern as solicitors for the Company in place of Eversheds immediately created a conflict of interest, because it meant that solicitors who were professionally obliged to act in the best interests of Primekings were being asked to act at the same time for the Company, in circumstances here it was clear that those interests conflicted.

143. Mr Stiefel himself had previously pointed out on 5 October 2015 (at 21.40) that neither side’s solicitors should act for the company, stating that since DWF acted for the Kings ‘they

are no longer independent and as such there is a conflict of interest and neither side should have their solicitors appointed.’

144. Mr Stiefel (at least) was therefore subjectively aware of the conflict of interest that would be caused by Teacher Stern acting for the Company, and instituted or approved the arrangement nonetheless. That amounted to a breach by Mr Stiefel of his directors’ duties and was (and continues to be) unfairly prejudicial conduct of the affairs of the Company.

145. The use of Teacher Stern as the Company’s solicitors in circumstances where Mr Stiefel correctly recognised that that appointment gave rise to a conflict of interest is a strong indicator that Primekings considered that the company could (and can continue in the future to be) be used as a vehicle for the interests of the majority shareholder, rather than for the benefit of the shareholders as a whole.

Extract (3): The Initiation of Proceedings (paragraphs 155 to 165)

*Initiation of proceedings against Anthony King and Steve Evans*

155. In August 2017, Primekings, Mr Stiefel and Mr Fisher initiated a further front in the Campaign against the Kings.

156. This step was foreshadowed by an email dated 13 August 2017 (at 7.29) from Mr Stiefel to Mr King, in which Mr Stiefel quoted from the Bible (Hosea 8:7) saying “They have sown the seed, now reap the whirlwind”<sup>[1]</sup>.<sup>[SEP]</sup>

157. Two days later, on 15 August 2017, KSSL issued a claim against Anthony King and Steve Evans in the High Court, alleging that Mr King and Mr Evans had accepted bribes from TCH Leasing (‘TCH’), a motor vehicle leasing company (‘the Bribery Claim’).

158. At the time the Bribery Claim was issued, KSSL was in possession of documents which cast serious doubt on the inference which is at the heart of the case against Anthony King and rendered the Particulars of Claim materially misleading.

159. The bringing of the Bribery Claim was not in the best interests of KSSL:

a. The failure to go through Pre-Action Protocol exposed KSSL to possible costs sanctions and a counterclaim for abuse of process.

b. The grossly disproportionate manner in which the claim was brought (including a failure to agree a reasonable extension of time for filing a defence), means that it is a mathematical certainty that KSSL will lose money as a result of bringing the Bribery Claim, even if that claim were to succeed:

i. The benefits alleged to have been received by Mr King and Mr Evans total in the tens of thousands of pounds.

ii. The cost of bringing the Bribery Claim is already in the hundreds of thousands of pounds.

iii. KSSL’s costs budget shows that it spent £143,504.52 in legal costs and disbursements to prepare and issue the proceedings, comprising £18,287.57 in “Pre-action Costs”, and £125,216.95 on “Issue/Statements of Case”.

iv. Those sums will inevitably increase substantially as the matter progresses to trial. KSSL estimated in the budget that its total costs of the proceedings would be £572,142.56, of which it had already incurred c. £225,000. The accounts of KSSL dated 31 October 2017 state that there were exceptional costs during the year ended 31 October 2017 of £0.4m consisting of costs relating to legal and professional costs associated with the dispute with Anthony King and Steve Evans.

v. The irrecoverable costs of the Bribery Claim are thus bound to cost KSSL far more than it can hope to recover even if it is successful. Such irrecoverable costs currently exceed £230,000.

vi. That would be true even if Mr King had had funds from which to meet any judgment. A fortiori it is the case when Mr King, at the time the action was brought, was asserted to owe £2.7m to Primekings and Primekings was asserting that the King family's major assets were worth circa £174,000.

160. It is to be inferred that the Bribery Claim was brought for improper collateral purposes as part of the Campaign by the Respondents against the King family. Anthony King has been given permission to bring a counterclaim in the tort of abuse of process. This inference arises from all the circumstances set out herein, specifically fortified by the following:

a. The uncommercial nature of the action and the manner in which KSSL has pursued it, as detailed above;

b. The fact that KSSL has notably chosen not to pursue the solvent alleged payer of the bribe, TCH, with whom KSSL continues to do business.

c. The fact that KSSL chose not to accept an offer by TCH to pay a substantial sum in compensation to KSSL, or did accept it and did not give credit for it.

161. The pursuit of the Bribery Claim amounts to unfairly prejudicial conduct of the affairs of the Company (both in and of itself because large sums of KSSL money are being spent on an endeavour which will not benefit KSSL and as part of the Campaign), as well as (separately) being a tortious act.

162. The merits of the Bribery Claim are not relevant to the allegations of unfair prejudice set out herein – whether or not it succeeds the exercise will not advance the interests of KSSL and will leave KSSL financially worse off.

163. Without prejudice to that, Mr King's position is that the Bribery Claim against him is misconceived and was pleaded in a way which was materially misleading because documents which KSSL had in its possession at the time demonstrated conclusively that Mr Evans was deliberately misleading Mr King.

*[Letter Before Action asserting further claims*

**164. On 31 August 2017, Teacher Stern (on behalf of KSSL) sent to Anthony King a Letter Before Action, alleging that Anthony King had incurred unauthorised expenditure of over £400,000. The numerous allegations set out in that letter must have required the expenditure of further significant company time and money.**

**165. The letter encouraged Mr King to take independent legal advice]<sup>1</sup>, at a time when the Respondents knew that they had denied him access to the funds that he would need to do that,**

firstly by not paying him the £70,000 under the Settlement Agreement, and secondly denying him the ability to exercise his put option, as set out above.

Extract (4): The removal of Mr King (paragraphs 172 to 174)

*Removal of Anthony King as a director of KSGL and KSSL*

172. On 20 September 2017, at a general meeting attended by Mr Stiefel, the Kings, Ms Kehoe, Mr Zeidler and Peter Levinger of Teacher Stern, Primekings procured the passing of a resolution to remove Anthony King from his role as a director of the Company. Immediately thereafter the Company as sole shareholder of KSSL resolved to remove Anthony King from his role as director of KSSL.

173. The purported justification given for that step was that Mr King had committed gross misconduct by reason of the matters alleged in the Bribery Claim.

174. No internal process had been followed to investigate or ascertain the facts in relation to those allegations, or to give Mr King an opportunity to respond to them, prior to the commencement of the Bribery Claim on 15 August 2017. Nor was any such process followed between the commencement of the Bribery Claim and the meeting on 20 September 2017. The absence of any such process provides further support for the inference that the initiation of the Bribery Claim and the removal of Mr King as director of the Company and KSSL were part of the Campaign.

Extract (5): The Second Stiefel Threat (paragraphs 177 to 181)

*The Second Stiefel Threat*

177. Anthony King was unhappy with the draft minutes of the minutes of 20 September 2017 that Ms Kehoe, circulated. The draft minutes did not amount to a complete and accurate record, in particular because they did not record the objections made by Mr King to the resolutions that were passed. It is to be inferred that the draft minutes, which purported to record a meeting lasting 48 minutes in under 2 pages, had been prepared in that form at the request of Mr Stiefel, Mr Fisher and Mr Zeidler.

178. On 19 October 2017, Mr King wrote an email to Ms Kehoe (sent also to Mr Stiefel and Mr Fisher who had also been sent Ms Kehoe's email attaching the draft minutes), suggesting that Ms Kehoe had been placed under pressure to produce the draft minutes, indicating his disagreement with them and describing them as a 'disgrace'.

179. Mr Stiefel emailed in response to Anthony King: <sup>[L]</sup><sub>[SEP]</sub> "You are despicable and insulting.<sup>[L]</sup><sub>[SEP]</sub> With your pious attitude you deserve everything that is coming your way. I would have thought that you would have learnt something from your ill conceived and destructive Court case. I can only think that the devil has got hold of you."

180. It is to be inferred that the words "everything that is coming your way" referred to the continued pursuit of the Campaign (which was already in full flow as described above) and its escalation by the application made 8 days later for an Order for Sale of the shares on terms that were even more unfair to the Kings than the terms offered in the 13 June 2017 letter.

181. The vindictive and vengeful mindset in which the Campaign was being (and continues to be) pursued is readily apparent from the language of the email.

Extract (6): Exclusion in Breach of Shareholder Rights (paragraphs 204 and 205)

204. As further particularised in this section, since mid-2017, the Petitioners have been wrongfully excluded from the business in breach of all the rights as set out above, which conferred on them protection as minority shareholders and the right to participate in the running of the Company and receive information about it.

205. Aggravating the severity of this exclusion (each aspect of which amounts to conduct of the affairs of the Company and is inherently unfair and prejudicial in and of itself) it is to be inferred that the exclusion of the King family has been at least in part motivated by the desire:

a. To impair the Kings' ability to verify (or otherwise) information about the business placed by Primekings before Deputy Master Cousins and (any subsequent valuer).

b. To prevent the King family from acquiring full knowledge and evidence of the improper use Company money and resources on the Campaign.

c. To prevent the King family from being able to detect further unfairly prejudicial conduct in the affairs of the Company, including steps calculated or likely to have an adverse impact on the value of the Company and/or cause difficulties for the Petitioners in the enforcement of any judgment in these proceedings.

d. To impede Anthony King's access to information that would assist him in the defence of the Bribery Claim, and/or which would support his contention that the pursuit of that claim is not in the best interests of the Company and is being brought for improper purposes.

e. To conceal from the King family the Respondents' plans to increase the profitability of the Company, and/or any plans to achieve a profitable sale of the business, and the Respondents' expectation that such plans will be successful. It is to be inferred from all the circumstances including the pursuit of the Campaign and the continued support provided to the Company by Mr Kirsh and the companies associated with him, that the Respondents do indeed have such plans and expect them to succeed.

f. To give Primekings and its appointed directors free reign to run the business for its own objectives, as if the Petitioners were not shareholders and had no rights in the Company.

Extract (7): Actions taken which are calculated or likely to reduce the ability of the Kings to seek an effective remedy from the Court (paragraphs 228 to 232)

*Denial of funds*

228. The Respondents have at all times acted in such a way calculated or likely to deny the Kings access to funds which could be used to fund legal advice and assistance: a. The Respondents failed to pay the agreed sum of £70,000.

*Attempts to intimidate insurer funding Mr King's defence of bribery claim*

229. By letter dated 9 October 2018 KSSL, (through its solicitors, Teacher Stern) wrote to AIG Europe Limited ('AIG'), the insurers funding Anthony King's legal representation in the Bribery Claim. That letter purported to put AIG on notice of KSSL's intention to seek a third party costs order against AIG at the end of the litigation.

230. That letter asserted that “*Mr King's defence and counterclaim is without merit*” and expressly referred AIG to a letter to Walker Morris (which it enclosed) in which Teacher Stern had asserted that “*your client is willing to lie on oath*”.

231. The Respondents have been unwilling to substantiate the alleged lie with any particularity, despite having been requested to do so. It is to be inferred that that is because they are not aware of any evidence of a lie.

232. In the circumstances, it is to be inferred that the letter to AIG was an unwarranted (and defamatory) attempt, in furtherance of the Campaign, to interfere with Mr King's legal representation in relation to the Bribery Claim.

Extract (8): Particulars of the involvement of Mr Fisher, Mr Stiefel, Mr Zeidler and KSSL (paragraphs 241, 244, 246 and 248)

241. The statement in the Application Notice in support of the strike out application in the Bribery Claim (referred to above) that referred to the “pursuit by Investor Directors of their legal rights in relation to a lawful judgment against Mr King”, supports the inference that the Bribery Claim was brought at the behest of Mr Stiefel and Mr Fisher for their own benefit and that of Primekings and the Kirsh group rather than for the benefit of KSSL.

244. Mr Stiefel's personal involvement is further evidenced by his vindictive comments to Anthony King (as referred to above) which suggest that the actions taken have been instigated (in part at least) at his behest.

**[246. Mr Zeidler's involvement in the unfairly prejudicial conduct is evident from (among other things):**

**a. His direct involvement in the events relating to the goodwill impairment and the failure to file accounts on time.]<sup>1</sup>**

b. His direct involvement in the unfair removal of Anthony King from the Company.

d. His involvement in the bringing of the Bribery Claim.

**[248. A number of the unfairly prejudicial acts affecting the Petitioners were carried out by or through KSSL. By way of example only:]<sup>1</sup>**

a. Termination of Mr King's employment by KSSL following the making of the Zeidler Threat;

<sup>[1]</sup><sub>[SEP]</sub>b. KSSL's non-payment of the £70,000 settlement sum; <sup>[1]</sup><sub>[SEP]</sub>

c. The issue and pursuit of the Bribery Claim;

Extract (9): Miscellaneous statements (various)

That unfairness of that conduct is exacerbated by the fact that, subsequent to these events and as described below, huge sums of money have been (it would seem) been spent by the Company on legal fees bringing claims (and threatening to bring claims) with the goal of obtaining the shares of the King family (including all of the B Shares) for the benefit of Primekings at a gross undervalue. (paragraph 94)



such prolonged and egregious exclusion from participation in management and from the receipt of management information as set out in these Points of Claim and (paragraph 96c.)

by excluding Anthony King from the business, by spending Company money on matters which do not benefit the Company, and (paragraph 107b.iii.)

The pursuit of the Campaign by the Respondents amounts to a concerted exercise by the majority to exclude the minority from participation in the management of the Company and to acquire the shares of the minority for an undervalue. (paragraph 107c.)

Even if (which is not the case) the Respondents had had valid grounds to remove Mr King personally as a director (paragraph 207)

(which did not in fact take place, because Mr King was not guilty of gross misconduct) (paragraph 217)

in circumstances where the Respondents had deliberately ensured that he did not have the funds required to do so (as set out above) (paragraph 221)

the exclusion of the Kings from the Company and (paragraph 233c.)

the misuse of KSSL money for a course of action which will not benefit KSSL, the egregious exclusion of the Kings despite their clear contractual rights and the requirements of the Pre-Action Protocol, and (paragraph 252)

including the exclusion of Anthony King from the business (paragraph 254)

the dismissal of Anthony King and (paragraph 255)

including in relation to the Bribery Claim (paragraph 260f.iii)

**<sup>1</sup> The headings and passages in bold type and square brackets are not the subject matter of the Strike Out Application and are included in this Appendix for sense.**