



Neutral Citation Number: [2023] EWHC 2865 (Ch)

Case No: BL-2021-000365

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

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

Date: 14/11/2023

Before :

SIR ANTHONY MANN

Between :

Nebahat Evyap İşbilen
- and -
Selman Turk and others

Claimant

Defendants

Mr Dan McCourt Fritz KC and Mr Andrew Gurr (instructed by Peters & Peters LLP) for
the Claimant

The First Defendant appeared in person
No other Defendant appeared or was represented

Hearing date: 4th October 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on Tuesday, 14th November by
circulation to the parties or their representatives by e-mail.

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SIR ANTHONY MANN

Sir Anthony Mann :

Introduction

1. This is an application for default judgment on part of the claims against 3 defendants, with an alternative application for summary judgment against one of those, together with an application for summary judgment on part of the claim against the first defendant, Mr Turk, who is said to be the perpetrator of wrongs which have led to the claims against most of the other defendants.
2. The context of these applications for partial judgment is as follows. Mrs Işbilen is a Turkish national whose husband is in prison in Turkey as a political prisoner. She feared she would suffer the same fate and fled Turkey in 2017 and ended up in this country. She is independently wealthy and had assets worth tens of millions of pounds. A lot, if not most, of that money had to be moved from Turkey. She claims not to have known how to go about that and enlisted the help of the defendant Mr Turk, a former banker at Goldman Sachs, in order to assist her. Her case in this litigation is that he was engaged to secure her assets and keep them safe. In due course much of her money was removed to what were regarded as safer jurisdictions. However, he went further than that and disbursed, or procured the disbursement, of very large sums for what is said to be his own benefit, into entities in which he was interested and into which the money has to a large extent disappeared. Those entities are the defendants in this action other than Mr Lewis, who is a business partner of Mr Turk and with whom these applications are not concerned.
3. Mrs Işbilen claims that she did not know or appreciate what had happened to her money and commenced these proceedings. In their original form they were (in summary) based on breach of fiduciary duty, want of authority and deceit (and, it would seem, in some cases a form of non est factum), so far as Mr Turk is concerned. The other defendants, sued as recipients, are (in outline) sued in restitution and knowing receipt, being infected, so far as necessary, by notice via Mr Turk's interest in or control of them. The full details of the nature of the claims is generally not relevant to this application, but some of it will be relevant when considering the relief sought on this application and it will appear there.
4. When proceedings were commenced Mrs Işbilen sought and obtained a freezing order against Mr Turk and various of the defendants. The order (and its continuation) contained familiar disclosure provisions, and Mr Turk is said to be in breach of those obligations. A substantial committal application about that is due to be heard in November of this year. Mr McCourt Fritz KC, who appeared for Mrs Işbilen, told me that the applications made to me are tailored so as to leave out of the fray any issues, claims and other matters which might be relevant to the committal application. That

means that the applications are more limited than might otherwise have been the case, but it has also contributed to the complexity of the application.

5. The applications were also limited by another factor. Three defendants have not filed acknowledgments of service or taken other formal steps to defend. Mr Turk himself was fully represented for some time by solicitors and counsel, but for a while now has been acting in person (save for the committal proceedings where he has legal representation). He appeared in person before me. The remaining defendants (the second, fourth and tenth defendants) are represented in the action and have defended it so far - the “Shoosmiths defendants”. Those defendants are not the subject of the present applications and as a result of representations made by their solicitors (Shoosmiths) the present applications also steer clear of claims which relate to those defendants. Nor are the 7th, 8th and 9th defendants who have not acknowledged service.
6. The present applications have therefore been operating within those self-imposed but understandable restraints.

Procedural matters

7. Certain procedural matters are potentially significant as background to these applications, and in particular the summary judgment application.
8. So far as it is necessary to go into details of the claim, that will be done in the sections of this judgment to which they relate, as already observed. I have outlined the main bases of the claim above. The undue influence claim, on which the summary judgment application is solely based, was not an originally pleaded claim. It was introduced by an amendment on the basis that relevant facts had emerged from subsequent disclosures, and Mr Turk opposed the amendment on the footing that it was not maintainable as a matter of law. That contention was dismissed at a contested hearing before Mr Stuart Isaacs QC on 20th December 2021, and he allowed the amendment. The amended pleading containing that allegation (and other amendments which were not opposed) has therefore been in play since then. However, Mr Turk (and the other defendants) have never pleaded to it despite a direction (order dated 13th January 2022) providing for the serving of an Amended Defence by 10th February 2022. Those who were participating had put in Defences to the original claim, but no new amended Defence was put in by Mr Turk to deal with those amendments, including the new undue influence claim.
9. Nor has Mr Turk sought to put in any other material in response to the undue influence claim. The summary judgment application was made on 4th April 2023 supported by

witness statement evidence. Mr Turk has not put in any evidence designed to meet that particular witness statement material. A day or so before the hearing he gave notice that he wished to rely on historic affidavit and witness statement evidence filed for other purposes in these proceedings. Because they were not directed to the issues in the summary judgment application they contain a lot of material which is not germane, but they do contain a limited amount of material which is germane - some general remarks about the abilities of Mrs Işbilen and Mr Turk's relationship with her, and some explanations of some of the disputed transactions. I have read them and taken them into account. He also gave notice that he wished to rely on a witness statement apparently filed in defence to his committal application, but after he had contacted his solicitors about the wisdom of that he withdrew reliance on that evidence. At the invitation of the claimant I did not read that evidence pending Mr Turk deciding whether or not he really wished to rely on it, and as a result of his change of mind I never did read it.

10. The result was that Mr Turk did not file any evidence specifically related to the summary judgment application made against him, so he had little evidential material available. While that is a concern where a litigant in person is involved, perhaps because the litigant did not understand what was required of him or her, in the present case that concern is less than it might otherwise have been. When the amendments were ordered and the direction as to pleading was made Mr Turk had the assistance of a legal representative (a solicitor who was not on the record but who acted as an advocate for Mr Turk) who is likely to have explained to Mr Turk what was required by way of pleading. When the present application was served on Mr Turk there was no directions order made, but on 5th September 2023 the claimant's solicitors wrote to him and pointed out that he should put in some evidence if he wished to rely on any. Mr McCourt Fritz submitted that, looking at Mr Turk's background and commercial experience, he must have appreciated what it was that he needed to do in order to defend himself and I have borne that in mind in assessing the significance of the material. Nonetheless I still have to look fairly at what material he might be able to deploy, and Mr McCourt Fritz did not suggest otherwise – indeed he fairly accepted that if it contained relevant material it should be taken into account.

The applications for a default judgment - general

11. Some general remarks are appropriate in this case, applicable to all the applications, before I turn to the specific applications themselves.
12. CPR 12.2 provides that application may be made for judgment in default where a defendant has not filed an acknowledgment of service or a Defence. The present proceedings are not excluded from that provision by any Practice Direction or otherwise so the procedure is available to Mrs Işbilen in these proceedings.

13. As will appear, the claimant is applying for default judgment against the relevant defendants (the “default defendants”) on claims some of which have their roots in conduct on the part of Mr Turk and in respect of which they are not seeking judgment against him. If judgment in default were granted against those defendants it would leave the claims against Mr Turk to be decided. In theory it might turn out that Mr Turk is not liable on the claims against him which have founded the further claims against the default defendants. That, however, is not necessarily a bar to obtaining default judgments. The issue came before Flaux J in *Otkritie International v Urumov* [2012] EWHC 890 (Comm), in which a claim was made for \$150m against an individual, and a claim derived from his conduct was made against a company in respect of \$30m of that money. Flaux J considered the effect of what is now CPR 12.9(2) (then CPR 12.8(2)) which deals with the position where default judgment is sought against one of more than one defendants:

“12.9(2) Where a claimant applies for a default judgment against one of two or more defendants—

(a) if the claim can be dealt with separately from the claim against the other defendants—

(i) the court may enter a default judgment against that defendant; and

(ii) the claimant may continue the proceedings against the other defendants;

(b) if the claim cannot be dealt with separately from the claim against the other defendants—

(i) the court will not enter default judgment against that defendant; and

(ii) the court must deal with the application at the same time as it deals with the claim against the other defendants.”

14. The essence of Flaux J’s decision for present purposes is that he did not consider that the existence of a several claim which was still being pursued prevented default judgment being entered against one defendant, leaving the several claim to be pursued to trial against another. Thus he allowed a default judgment against the company despite the fact that the claim against the individual was being pursued to trial, and despite the prospect that the individual might be exonerated which might have meant that the company was not liable in the first place. That was said to be because such claims did not fall within paragraph 9(2)(b) but fell within paragraph 9(2)(a) - see paragraph 21.

15. Mr McCourt Fritz invited me to apply those principles to the default judgment applications in this case. I shall do so as appropriate. I shall also apply the principle of CPR 12.12 which provides that on a default judgment application the court shall give such judgment as the claimant is entitled to on her statement of case.
16. I shall now turn to the applications as they apply to the relevant individual defendants.

Default judgment - AET Global Partners Ltd – (“AET”)

17. AET is a Dubai company. Service of the claim form and Particulars of Claim has been properly effected pursuant to an order of Miles J. It has neither served a Defence nor acknowledged service. I am satisfied that there has been proper service and a failure to respond which prima facie entitles the claimant to a default judgment.
18. The pleaded case derives from acts of Mr Turk. It is pleaded that AET is a member of what is described as one of the “Sentinel entities” - a group of companies, many of whom have “Sentinel” in their name. Paragraph 47(5) of the Particulars of Claim pleads that AET formerly held shares in a now dissolved Sentinel company (Sentinel Global Properties and Investments (DIFC) Ltd, of which Mr Turk was a director. In paragraph 70 it is pleaded that Mr Turk “made a number of payments to AET out of the Varengold Account between August 2017 and March 2018” totalling \$720,000 and €1,640,000. The “Varengold account” is an account set up for the claimant by Mr Turk to receive some of her funds. Paragraph 71 pleads that she did not authorise the payments and received no consideration for them. She therefore claims a declaration that she is beneficially entitled to the moneys and an order requiring the transfer of the funds or the traceable proceeds. Paragraph 73 pleads in the alternative that those facts and payments “pursuant to a mistake of fact” mean that AET was unjustly enriched and is liable to repay those sums.
19. The first head of relief sought in the proposed minute of order is a declaration that Mrs Işbilen is entitled to the moneys received or their traceable proceeds. The second head of relief is in the following terms:

“9. The Claimant is entitled at her election (and to the extent not inconsistent, cumulatively) to:

(a) an order requiring the Sixth Defendant to reconvey the AET Global Assets to her;

(b) an order that such of the Schedule A Transactions as involved the Sixth Defendant are set aside;

(c) payment of \$720,000 and €1,640,000; and

(d) compound interest to be assessed.”

20. Apart from the claim in mistake of fact, the pleaded facts establish the claim to declaration. The claim to mistake of fact does not because there is no pleaded mistake. On the basis of the decision in *Otkritie*, it is still possible to grant summary judgment notwithstanding the fact that the parallel, or underlying, claim against Mr Turk remains outstanding. There is no prejudice to an active defendant in granting summary judgment.
21. I would allow the claim for default judgment in relation to the declaration. However, Mrs Işbilen also makes a summary judgment claim against AET, which requires a consideration of wider material including Mr Turk’s personal response to the claim against AET. I will consider that claim separately in due course.
22. I would not grant default judgment in the terms of the rest of the minute (paragraph 9 cited above). This is for reasons which I set out in relation to the SGP claim set out below, where the shopping list of items is even more extensive.

Default judgment - Sentinel Global Partners Ltd - “SGP”

23. Mr Turk is pleaded as being a director of this Cayman-registered company. No shareholding is pleaded but Mrs Işbilen relies generally on Mr Turk having an interest in the Sentinel entities of which this company is one. It has no registered office but the claim form was served on the former registered office and on its directors. In an order dated 18th March 2021 made by Ms Pat Treacy, sitting as a Deputy High Court Judge, made on the occasion of an application for freezing orders and other relief, the deputy judge declared that the steps taken to bring the claim form (which will have included the Particulars of Claim which are said to be attached) to the attention of (inter alia) SGP constituted good service (Miles J had given permission to serve out of the jurisdiction in his order of 4th March 2021). I am therefore satisfied that there has been good service sufficient to provide a foundation for an application for default judgment.
24. There are two claims made against SGP. The first arises out of the transfer of sums of \$517,750 and \$600,000 of Mrs Işbilen’s moneys to SGP, procured by Mr Turk in February 2017 and June 2019 respectively. These payments are said to have been procured by Mr Turk by virtue of a breach of his fiduciary duties (which are denied by Mr Turk who denies he was a fiduciary but in relation to which SGP has no pleaded position) and for no consideration. It is pleaded by Mrs Işbilen that SGP had notice of

that breach via his directorship of SGP. The breach of duty is pleaded as being Mr Turk's not believing that the payments made to the Sentinel entities (which included SGP) were in Mrs İşbilen's best interests, that they were contrary to her "Essential Instructions" (which were merely to extract the moneys from Turkey and keep them safe) and were made in breach of the "no conflict" duty arising as part of his fiduciary duty (paragraph 54) - his interest in SGP being unspecified but which was to be inferred from other pleaded facts. The relief claimed in respect of this in the Particulars of Claim is the actual return of moneys paid (expressed as Restitution), an account, equitable compensation and a declaration as to Mrs İşbilen's beneficial entitlement to the moneys received. However, on this application she seeks only a declaration as to her beneficial entitlement as to the money or its traceable proceeds (according to the minute of order submitted by her). In addition, she claims a ruling (not expressed as a declaration, but I assume that that is what was intended) that she was entitled to a whole raft of alternative forms of relief at her election. I deal with this below.

25. The second claim is a claim which is said to be a claim in deceit. Paragraph 52 of the Particulars of Claim contains a plea that "in a number of cases" Mr Turk made fraudulent misrepresentations to Mrs İşbilen in order to induce her to sign particular documents. The section beginning at paragraph 114 is headed "Deceit" and pleads a number of instances of deceit by Mr Turk. The first relates to the "SGP Engagement Letters". It is necessary to set out how this is pleaded:

"114. To date, Mrs İşbilen has uncovered the following instances of deceit by Mr Turk:

115. In February 2017 Mr Turk sent Mrs İşbilen engagement letters with SGP (the "SGP Engagement Letters") for her signature.

116. Mr Turk told Mrs İşbilen that the SGP Engagement Letters related to services for transferring her assets out of Turkey. He did not disclose his interest in SGP, or explain the fees that were purportedly payable to SGP (which fees were extortionate and commercially unjustifiable).

117. Mr Turk represented to Mrs İşbilen that SGP was an independent third party that would facilitate the transfer of her assets out of Turkey.

118. The representation referred to in the paragraph immediately above was false, and Mr Turk made it dishonestly, knowing it to be false and intending Mrs İşbilen to rely on it. Mr Turk made it on his own behalf, further or alternatively on behalf of SGP in his capacity as a director.

119. In reliance on it, Mrs İşbilen signed the SGP Engagement Letters. By doing so, she (unwittingly) agreed to pay a company of which Mr Turk was a director fees of at least \$1,910,000 and

£720,000 for services that he had undertaken to provide personally and for which Mrs İşbilen agreed to pay Mr Turk personally remuneration of \$1 million.

120. In the premises of paragraphs 115 to 119 above, (1) Mrs İşbilen is entitled to and claims rescission of the SGP Engagement Letters further or alternatively damages to be assessed ...”

26. The remedy claimed in the Particulars of claim is damages, alternatively an account of moneys received, or equitable compensation. In his oral argument Mr McCourt Fritz indicated that all he sought under this head was rescission, but puzzlingly his prayer does not seek that; nor does his draft minute of order.
27. I consider that Mrs İşbilen is entitled to the declaration sought in the minute in relation to the first (money claim) but not in relation to the deceit claim (so far as that makes any difference). The claim for a declaration in relation to the money flows from the pleaded claim based on breach of fiduciary duty (just); I am not convinced that it flows from the other matters but that does not matter.
28. However, the deceit claim is different. It is inadequately pleaded. Paragraph 118 pleads falsity but gives no proper particulars of the respect or respects in relation to which it was false. Without those particulars (and especially bearing in mind the well-known stringency of the requirements of a fraud pleading) the pleading is defective in itself, but even if, at a trial, Mrs İşbilen managed to salvage the situation without that pleading I consider that that shortcoming means that she is not entitled to a default judgment. She does not have a properly pleaded case on the point which entitles her to relief.
29. Following *Otkritie*, the parallel claim against Mr Turk which is not resolved does not prevent default judgment being entered.
30. The rest of the relief sought in the Minute of Order is in the following terms:
 - “7. The Claimant is entitled at her election (and to the extent not inconsistent, cumulatively) to:
 - (a) an order requiring the Fifth Defendant to reconvey the SGP Assets to her;
 - (b) an order that such of the Schedule A Transactions as involved the Fifth Defendant are set aside;

- (c) an account of the Fifth Defendant's dealings with the SGP Assets;
- (d) an account of profits made by the Fifth Defendant using the SGP Assets;
- (e) equitable compensation (to be assessed) in respect of the Fifth Defendant's dealings with the SGP Assets;
- (f) damages in deceit (to be assessed);
- (g) payment of \$1,117,750; and
- (h) compound interest to be assessed.”

31. The drafting technique is similar to the technique used in relation to AET (above), and in relation to Barton (below). I do not think it right to grant relief in those sort of terms. The form of relief seems to me to be inappropriate. If one allows that it is intended to be in the form of a declaration (though there are no opening words to that effect) it forms no more than a sort of shopping list or check list derived from text books of all the sorts of relief that might be available in these circumstances. It seems to me that this is not an appropriate form of relief for the court to grant. Apart from anything else, it does not take the matter any farther forward. Mr McCourt Fritz told me that his client did not want to be pinned down at the moment by some sort of election because she did not have enough information available to her to be able to judge whether the election was wise, even though in some respects it was highly likely what the election would be. In my view , while understandable, that is not a good enough reason for producing a list of possible remedies. If alternative remedies need to be elected for, the claimant should either elect, or provide for what is to happen in order to enable an election (like the disclosure obligation in *Island Records* disclosure in an intellectual property context, see [1995] FSR 560), or seek an express adjournment of claims to other relief in order that an orderly approach can be considered and taken in relation to the next phase (though that should really have been done by now). What I decline to order is the shopping list of possible remedies.
32. The point just made applies to all three default judgment claims in this matter.
33. In his oral submissions Mr McCourt Fritz said he specifically sought damages in deceit, to be assessed. That would lift that claim out of the shopping list and make it a specific claim. However, for the reasons just given I would not grant that relief.

Default judgment - Barton Group Holdings - “Barton”

34. Barton is a BVI company whose sole shareholder is Mr Turk. He is also a director of it.
35. Barton was duly served with the claim form and Particulars of Claim on 11th March 2011. Miles J had given permission to serve out of the jurisdiction in his order of 4th March 2021. Some of the claims in respect of which judgment in default is sought, were introduced by amendment, and the amended Claim Form was served by email sent to Mr Turk with effect from 26th January 2022, pursuant to the order of Mr Stuart Isaacs QC. Barton has not filed an acknowledgement of service or sought to defend even though its sole shareholder is Mr Turk and he has done both. I am satisfied that the service requirement has been fulfilled. It has not filed an acknowledgment of service or served a Defence.
36. There are two aspects to the claim in relation to Barton, though they are linked. The first is a claim to aggregate sums of \$9,032,569.86 and €5,387,000 paid to Barton over a period of time, and at the instigation of Mr Turk who procured them. It is pleaded that Mrs Işbilen received no consideration for and or no proper explanation of the purpose of the transfers, and that they were procured in breach of fiduciary duty of which Barton had notice through Mr Turk's directorship. There are other ways in which the matter is put, but they can be ignored for these purposes. The pleaded claim in relation to the moneys paid on that basis is a tracing claim to the money, an account, equitable compensation and restitution of the funds.
37. An alternative attack was launched by amendment, this time based on deceit. It is pleaded that Mr Turk has produced two agreements dated 23rd May 2018 purportedly signed by Mrs Işbilen and which were said by him to relate to and justify the payments made to Barton. Mrs Işbilen does not admit that the signatures are hers, but if they are she claims that the agreements were procured by deceit. The deceit is pleaded as a representation that it was necessary to pay lawyers in Turkey 17% of the value of the above promissory notes, that that representation was false and that Mrs Işbilen signed in reliance on it. The representation is pleaded as having been made by Mr Turk and "further or alternatively" on behalf of Barton (paragraph 126B). In the Particulars of Claim Mrs Işbilen claims rescission of those agreements and damages for deceit (if she signed them).
38. The order sought on this application seeks less than the full relief sought in the pleadings. It seeks a declaration that Mrs Işbilen is entitled to trace the funds just referred to and, as in the other cases, a form of determination that she is entitled to elect between a catalogue of other relief, including in this case damages for deceit (to be assessed).

39. The position in relation to the *Otkritie* point is the same in this instance as it is in relation to the other default judgment claims.

40. I shall grant the declaration sought because the pleadings justify it, but decline to grant the other relief for the reasons given above. That declaration is justified by at least some of the claims pleaded. I note that for some reason there is no rescission provision in the draft minute in relation to the Barton agreements. The claim for damages for deceit is made only as one of the things that Mrs Işbilen is entitled to elect for, and is not a claim for that actual relief now. If it matters, I should record that this time I regard the deceit claim as adequately pleaded (just). If, contrary to his minute of order, Mr McCourt Fritz seeks an actual order for damages for deceit (as he did orally in relation to SGP) I would be minded to make such an order.

Default judgment relief - generally

41. As will be apparent by now, there is a divergence between the relief claimed in the Particulars of Claim and the relief sought in the draft minute of order, with (sometimes) something a bit different sought in oral submissions. It may be that Mr McCourt Fritz would wish to beef up the actual relief sought on this application and remove matters from indications of a right to elect to an actual claim for relief. If he wished to do that I might be minded to grant some more positive relief, but that would have to be the subject of further argument after delivery of this judgment.

Undue influence - Mr Turk

42. While the original claim was based in part on breach of fiduciary duty, there was no claim for undue influence. However, as pointed out above, such a claim was added by amendment, for which permission was given on 20th December 2021. Mr Turk has not pleaded to that newly introduced case. However, the application against him, as made in the application notice and as reflected in the accompanying draft minute of order, is not for default judgment but for summary judgment. The failure to meet the case in the pleading is relied on as part of the material which is said to demonstrate there is no defence to such a claim, so summary judgment should be granted.

43. Before turning to the terms of the pleading I set out what the evidence and pleading (supported by a statement of truth) shows about the background and basis of the undue influence claim. This will be an elaboration of the outline of the facts given at the beginning of this judgment.

44. Mrs Işbilen is independently wealthy. Unfortunately her husband fell foul of the regime in Turkey and has been imprisoned there since 2015. One of Mrs Işbilen's assets were promissory notes which she acquired on the sale of an interest in a group called the Eveyapy Group. Some of them were cashed, leaving her with \$50m worth, which were deposited with a bank. Cashing these became one of the tasks undertaken by Mr Turk.

45. In July 2016 Mrs Işbilen resolved to move her assets out of Turkey. By then she had been told that the debtor under the promissory notes would not permit further notes to be cashed outside Turkey. In August 2016 she was introduced to Mr Turk, a former banker, as someone who could help move her assets outside Turkey so as to free them from a risk of confiscation by the government. In September 2016 she asked him to help her to make arrangements to leave Turkey because she feared she herself would be arrested. She gave him what are said to be simple instructions in relation to her assets - she wanted him to preserve them and keep them safe. She did not want him to speculate with them. These are described in the Particulars of Claim as the "Essential Instructions" (Particulars of Claim paragraph 22). She trusted him to carry them out and (she says) signed transfer requests and other documents at his request without reading them (many of them were in English which she says she cannot read). She pleads that she agreed to pay him \$1m for his services in this respect, the only remuneration that she agreed to pay him. It is an important part of her case that she was at this stage in a vulnerable and precarious position, spoke little English, had no knowledge of moving assets internationally and unreservedly placed her trust and confidence in Mr Turk. In due course he procured, or advised her to bring about, transfers to various entities including the corporate defendants, and she did that because he asked and because she trusted him. These factors are said to underpin the allegation of a fiduciary relationship of agency, or akin to agency, and of trusteeship, or akin to trusteeship.

46. Between June 2017, under arrangements made by Mr Turk, Mrs Işbilen managed to move from Turkey to Samos, then to Athens and then to London in February 2018. She has been in London ever since. In the period from June 2017 to 2019 Mr Turk procured the transactions referred to generally at the end of the preceding paragraph. Those transactions are impeached by Mrs Işbilen on a number of bases, the common theme about their destination being that the recipients were Mr Turk's creatures or entities with which he was associated. The original claim against Mr Turk was centred on a breach of fiduciary duty, it being said that the transactions went beyond the "Essential Instructions", were unjustified, were unexplained and that Mrs Işbilen got no or no proper consideration for them. There are also other restitution-based claims. As appears above, an undue influence claim was added in 2021 and it is that undue influence claim which is the subject of the summary judgment application against him (and as an alternative as against AET). The summary judgment application does not seek to impeach all the transactions which are the subject of this action; it seeks to impeach only some of them, for the reasons appearing earlier in this judgment.

47. The pleaded basis of the undue influence claim is set out in paragraphs 136G and following of the Amended Particulars of Claim. Those paragraphs read as follows:

“136G. If and to the extent that Mr Turk is able to demonstrate that Mrs İşbilen properly understood the nature and content of the SGP Engagement Letters, the SGF Application, the Purported Barton Agreements, the Purported Loan Agreements, the Bethlehem Agreement and/or any other documents that Mrs İşbilen signed or agreed to at a material time, such purported agreements and other documents are voidable as having resulted from undue influence exerted by Mr Turk on Mrs İşbilen. Mrs İşbilen will rely on the presumption that such transactions were procured by the undue influence of Mr Turk.

136H. Pending disclosure, Mrs İşbilen will rely in support of the plea in the preceding paragraph on all facts and matters set out in these Amended Particulars of Claim and in particular on (without limitation):

(1) The relationship of trust and confidence which existed between Mrs İşbilen and Mr Turk. Paragraphs 23, 24 and 26 above are repeated.

(2) The disadvantageous nature of the transactions as pleaded in these Amended Particulars of Claim. The transactions were not readily explicable by ordinary motives or the relationship between Mrs İşbilen and the recipients of funds.

(3) The advanced age of Mrs İşbilen.

(4) Mrs İşbilen’s acute vulnerability (by reason of, among other things, her political exposure, her husband’s imprisonment and her isolation).

(5) Mr Turk was the sole liaison with the English-speaking professionals in relation to all the transactions. Mr Turk was, and is, a fluent English speaker whereas Mrs İşbilen spoke little and read no English.

(6) Mr Turk was the sole source of information to Mrs İşbilen in relation to the relevant transactions.

(7) No lawyer, or other professional advisor, has had any direct contact or communication with Mrs İşbilen without Mr Turk’s involvement in relation to the transactions.

(8) Mrs İşbilen was wholly dependent upon Mr Turk to ensure that the Essential Instructions were carried out and that she was properly and fully informed about all of her financial affairs.

(9) The transactions excite suspicion and call for explanation by reason of the facts that (if, contrary to Mrs İşbilen's primary case, they were effective):

(a) The fees paid to the Defendants were extortionate and commercially unjustifiable.

(b) Mrs İşbilen is not aware of any consideration being provided for a number of the transactions. Paragraphs 56, 62, 71, 76 and 111 are repeated.

(c) Mrs İşbilen was charged twice – by SGAM and Barton – for the same purported service of cashing the Promissory Notes.

(d) Mrs İşbilen was, and is, elderly and vulnerable. Paragraphs 8 and 26 above are repeated.

(e) Mrs İşbilen spoke little and read no English and was entirely reliant on Mr Turk for any understanding of the transactions and the effect of the same.

(f) Unbeknownst to Mrs İşbilen, payments were made to companies (SGFG, Barton, SGAM and SGP) in which Mr Turk had an interest.

136I. By reason of Mr Turk's directorship in SGFG (until at least 12 July 2019), SGAM, SGP, Barton, Forten Holdings, Forten and Heyman AI, these Defendants had actual, alternatively constructive, knowledge of the undue influence.

136J. In the premises of paragraphs 136F to 136I, the agreements referred to in paragraph 136G (and each of them) and the transactions purportedly thereunder are voidable at Mrs İşbilen's election. Mrs İşbilen is entitled to and claims:

(1) A declaration that she is beneficially entitled to the monies that the Defendants received as a result of the undue influence or any traceable proceeds thereof, and an order requiring them to transfer such monies or traceable proceeds to her; further or alternatively

(2) Equitable compensation to be assessed.”

48. This is therefore a case where Mrs İşbilen relies on a presumption of undue influence arising out of the nature of the relationship between the parties. The facts said to give

rise to that relationship are those in the pleading which I have just set out, with certain prior paragraphs incorporated. Mr Turk has not specifically pleaded to those new paragraphs, and he has not filed any evidence specifically in answer to the evidence which has been filed in support of the application by Mrs İşbilen despite the fact that by a letter dated 5th September 2023 Mrs İşbilen’s solicitors pointed out that he should file evidence if he wished the court to rely on any. He did not do so, but as already pointed out he gave a very late indication that he wished to rely on evidence previously filed.

49. Despite the absence of a pleading specifically responding to the pleaded undue influence claim, and despite the absence of any undue influence-specific evidence from Mr Turk, Mr McCourt Fritz fairly accepted that if there happened to be a relevant challenge to any of the elements of the undue influence claim then he could not rely on those particular elements. However, he did rely on a failure to respond to the pleading per se as a pointer to there being no prospect of a successful defence to the claim, and further submitted that on any footing what might be left was sufficient to set up the presumption on which he could rely in this summary judgment application, and that that enabled him to impeach the transactions which are the subject of it.
50. Although Mr Turk has not pleaded to the newly introduced paragraphs, he has pleaded to the existing paragraphs which are incorporated by cross reference. Those incorporated paragraphs, and the pleading to them, are important. The specifically incorporated paragraphs, with one or two other paragraphs for context (and especially the pleading of the “Essential Instructions”), and the matching pleading in the Defence, are as follows:

“22. As regards her assets, Mrs İşbilen’s instructions to Mr Turk were simple and limited: she asked him to transfer her assets out of Turkey and keep them safe (the “Essential Instructions”). Mrs İşbilen repeatedly emphasised to Mr Turk that she only wanted to preserve the value of her assets; she never discussed Mr Turk speculating with her assets or using them to invest in his business ventures, let alone authorised him to do so.

23. Having given the Essential Instructions, Mrs İşbilen trusted Mr Turk to carry them out faithfully.

24. In particular, Mrs İşbilen signed transfer requests and other documents – the majority of which documents were written in English, which Mrs İşbilen cannot read – whenever Mr Turk requested her to do so without reading them (where they were written in Turkish) or (where they were written in English) asking Mr Turk to translate or explain such documents to her.

25. In March 2017, Mr Turk requested, and Mrs İşbilen agreed to pay, a fee of \$1m for assisting her. This was the only

remuneration that Mrs İşbilen agreed to pay Mr Turk for the services that he was providing.

26. As Mr Turk knew, Mrs İşbilen: (1) felt that she was in an extremely vulnerable and precarious position, (2) spoke little and read no English, (3) had no knowledge or experience of moving assets internationally, and (4) unreservedly placed her trust and confidence in Mr Turk.”

51. Mr Turk has pleaded to that (in a pleading signed by counsel) in the following terms:

“39. Paragraphs 22 and 23 and their references to the “Essential Instructions” are denied.

(a) The “Essential Instructions” appear to be an allegation that the Claimant and Mr Turk entered into a contract by which she asked him to transfer her assets out of Turkey and keep them safe, in return for a payment to Mr Turk. This allegation is embarrassing and not compliant with CPR PD 16, para. 7.4 which requires that a claim based upon an oral agreement should set out the contractual words used and state by whom, to whom, when and where they were spoken.

(b) It is noted that the Claimant does not refer to any document in which the alleged “Essential Instructions” were set out, nor to the date, time or place when the alleged “Essential Instructions” were given.

(c) The Claimant’s instructions to Mr Turk, in his capacity as director of the relevant companies, were set out in the engagement letters and the Barton Consultancy Agreements (as pleaded below in paragraph 117), which reflected what the Claimant and Mr Turk had agreed on behalf of Sentinel Global Partners and other entities. Those documents were deliberately entered into with corporate entities and not Mr Turk in his personal capacity. Mr Turk would have been unable to carry out the tasks required by the Claimant himself and receive her funds in his personal bank accounts.

(d) The engagement letters each provided that they could not be amended except in writing signed by all parties. There was no amendment to the engagement letters by which the parties agreed to jettison or amend the terms of those documents in favour of the alleged “Essential Instructions”.

(e) Even if the instructions were limited to the extent of the “Essential Instructions” (which is denied), those instructions (on the Claimant’s case) were given in or around September 2016

and the Claimant's assets were, in accordance with the Essential Instructions, transferred out of Turkey and kept safe. The Claimant subsequently gave further instructions for her funds to be invested and/or utilised, which instructions were documented in the agreements and documents referred to herein. Those instructions were not and could not continue to be subject to the "Essential Instructions".

40. Paragraph 24 is denied:

(a) The documents in Turkish were signed and/or read by the Claimant. Mr Turk did not ask her not to read the documents in Turkish, nor is there any reason why he would do so. The Claimant is an intelligent business person who read or would have read documents before signing them. Further and in any event, Mr Turk was entitled to assume that the Claimant had read the documents before signing them.

(b) As for the documents in English, those documents reflected the Claimant's instructions, were documents that the Claimant did understand (for example they referred to sums of money which she plainly understood as being sums that were to be invested on her instructions), and the Claimant could have asked for translations or explanation. Where asked for explanation, Mr Turk gave explanation. The Claimant also had an opportunity to check Mr Turk's explanation from other people copied in on correspondence, some of whom were Turkish speakers. The Claimant understood what she was signing and did so knowing that it reflected her instructions. The documents were drafted in English because they were instructions to English-speaking recipients, such as banks and the like (but all investment documents, including prospectus' for investments into Bethlehem/Naturlich and Sphera, were translated into Turkish and sent to the Claimant's Turkish lawyer, Zeynep Demirkaya).

41. As to paragraph 25, it is denied that Mr Turk requested and the Claimant agreed to pay a fee of US\$1m to him personally, or to any of the corporate defendants, if that is alleged. All relevant fees were recorded in documents, i.e. the engagement letters as pleaded above and the Barton Consultancy Agreements (as pleaded below in paragraph 117). At no point was there an agreement between Mr Turk in his personal capacity and the Claimant.

42. As to paragraph 26:

(a) Point (1) is admitted.

(b) Point (2) is denied. The Claimant speaks limited English but has good comprehension of written and spoken English. For example, in March 2017, the Claimant completed an account opening form in English with Varengold, in which she identified herself as an experienced investor.

(c) Point (3) is denied. The Claimant was a board member of Evyap, an international company, and she held assets in the Netherlands. The Claimant invested in structured notes and high yield bonds with YapiKredi Bank which are complicated financial products. She also met the criteria of a sophisticated investor as set by the FCA in COBS 4.12.6 in particular the value of her net assets exceeded £250,000 and in COBS 4.12.8 because she made more than one investment in unlisted companies.

(d) Point (4) is denied. The Claimant asked questions about all proposals or suggestions put forward by Mr Turk. Furthermore, in the spring of 2017, Mr Turk was liaising with the Claimant's Turkish lawyer, Zeynep Demirkaya, who told him in a telephone conversation that the Claimant asked for all documents received from Mr Turk in English to be translated into Turkish."

52. The other specific cross-references are to allegations that certain transactions were for no consideration and in one case that Mrs İşbilen paid twice for the same services. There is a form of riposte to each of those allegations in the Defence which purports to contain a justification.
53. In addition to those express incorporations, it is also right, in my view, to see how fiduciary duties are pleaded and responded to in the pleadings. Mr Turk's alleged duties appear in paragraphs 27 and 28:

"27. In his dealings with Mrs İşbilen's assets, Mr Turk acted as trustee of such assets further or alternatively as Mrs İşbilen's agent. In the premises of the immediately preceding sentence and paragraphs 6 to 8 and 12 to 26 above, at all material times Mr Turk owed Mrs İşbilen fiduciary duties:

(1) To deal with her assets in what he considered to be her best interests;

(2) To carry out the Essential Instructions and not take any step that was inconsistent with them;

(3) To avoid situations where his personal interests conflicted with or might conflict with his duties to Mrs İşbilen (the "No Conflict Duty");

(4) To disclose to Mrs İşbilen any direct or indirect interest that he had in any proposed transaction concerning her assets (the “Duty to Disclose”);

(5) Not to make a secret profit by reason of his fiduciary position or through transactions that he effected, arranged or procured in relation to Mrs İşbilen’s assets.

(6) To maintain proper records of his dealings with her assets;

(7) To account for his dealings with her assets and provide on request comprehensive details of where and in what form they were held;

(8) To inform Mrs İşbilen in the event that he breached any of his other fiduciary duties to her (the “Duty to Self-Report”).

28. Further or alternatively, in the premises of paragraphs 6 to 8 and 12 to 26 above, at all material times Mr Turk owed Mrs İşbilen common law duties:

(1) To carry out the Essential Instructions and not take any step that was inconsistent with them;

(2) To exercise reasonable care and skill in his dealings with her assets;

(3) To maintain proper records of his dealings with her assets;

(4) To account for his dealings with her assets and provide on request comprehensive details of where and in what form they were held.

To which the response in the Defence is:

“43. Paragraph 27 is denied. Mr Turk did not act as a trustee or as the Claimant’s agent, nor did he owe fiduciary duties to the Claimant:

(a) There was no agreement between Mr Turk in his personal capacity and the Claimant.

(b) There is no pleaded basis, whether in fact or law, to imply a fiduciary duty to carry out the “Essential Instructions” and/or not to take any steps inconsistent with them (even if the “Essential Instructions” existed, which is denied).

(c) None of the Claimant's monies were transferred to Mr Turk for investment or other purposes, or to be otherwise held by him in any trustee capacity.

(d) Mr Turk acted in his capacity as director of SGP, SGFG, SGAM and/or Barton at various times; he did not owe duties to the Claimant whether as trustee or agent.

44. As to paragraph 28:

(a) Paragraph 28(1) is denied. Mr Turk was not obliged to carry out the Essential Instructions and there was no agreement between the parties to that effect. The Claimant's instructions were those set out and agreed in the engagement letters and the Barton Consultancy Agreements (as pleaded below in paragraph 117).

(b) Paragraph 28(2) is denied. Mr Turk did not owe any such duty to the Claimant. Mr Turk acted for and on behalf of the corporate entities which contracted with the Claimant; Mr Turk did not engage in his personal capacity with the Claimant.

(c) Paragraph 28(3) is denied. There was no obligation to maintain records.

(d) Paragraph 28(4) is denied. There was no common law duty to this effect."

It is right to observe that while the fiduciary duties are denied, this is as much in terms of who any relationship was with (the individual or the company) as in terms denying the background to the relevant relationship.

54. Other potentially relevant matters are scattered through the pleadings. Paragraph 136G seeks to impeach the "SGP Engagement Letters" on the basis of undue influence. Although that has not been met head on in a pleading aimed at that paragraph, there are pleadings in relation to those letters. Paragraph 26 of the Defence specifically pleads that Mrs İşbilen had legal advice on the first of those letters and paragraph 34 pleads that she had legal advice on the second of them. Paragraphs 114 and following plead deceit in relation to those engagement letters and a failure by Mr Turk to disclose his interest in SGP (Mrs İşbilen's counterparty to the Agreements). That claim is denied in the Defence and it is specifically pleaded that he did disclose his interest in that company. That is capable of going to the background of the undue influence claim. Earlier paragraphs in the Defence positively aver that Mrs İşbilen was not naive, that she was articulate, intelligent sophisticated and an experienced business person with extensive business contacts (paragraph 11). Although those paragraphs are not specifically directed at the undue influence allegation, they cannot be ignored.

55. Mr Turk invited me to read his first affidavit in these proceedings. That contains some disclosure pursuant to the freezing order relief made against him. It contains nothing which really goes to the undue influence point. However, he also invited me to read his first witness statement (dated 21st March 2021) which contains some limited material going to the point. It disputes Mrs Işbilen’s alleged absence of command of English and her lack of financial acumen, relying (as elsewhere) on her presence on the board of a substantial construction company. It avers her, not his, initiation of some of the disputed payments in these proceedings. He describes Mrs Işbilen as a “bright and intelligent woman”.
56. I was also invited to read a witness statement of Mr Sergey Litvchenko, Mr Turk’s then solicitor, provided in support of Mr Turk’s own application to strike out and/or for summary judgment, signed on 2nd July 2021. Again, this is not focused on the undue influence claim, and in the main propounds the case for striking out/summary judgment. In dealing with the fiduciary duty it again emphasises more the case of Mr Turk that Mrs Işbilen was dealing with companies, not with him. However, there are one or two aspects of the evidence which are capable of going to the undue influence claim and which, in line with the proper concession made by Mr McCourt Fritz, need to be taken into account in the application before me. The witness statement seeks to explain and justify the payments challenged in this action and, in its general section on the parties’ cases in summary, he says:

“58. ... He did so and at every step acted in accordance with the Claimant’s instructions. He further notes that the Claimant could have (and did) get assistance in understanding documents in English and there was no compulsion for her to sign such documents if she did not understand what they were for. The Claimant is an experienced businesswoman who would not have signed a document without understanding its implications. In many cases, the invoices or payment instructions reference the specific purpose of the payments made, and the Claimant has even, on occasion, specifically appended her signature next to the relevant figures, giving rise to a clear inference that she understood clearly what she was signing.”

Paragraph 63(a) expressly avers that Mr Turk told Mrs Işbilen that SGP was “his company”.

57. There is therefore some evidential and pleading material which goes to the underlying relationship and what passed between Mrs Işbilen and Mr Turk in that context, though not a lot.

58. Having reviewed the material, and despite the fair and helpful submissions of Mr McCourt Fritz, I do not consider that it would be appropriate to grant summary judgment on the basis, and in the manner, sought by Mr McCourt Fritz. While acknowledging that Mrs Işbilen has prima facie a strong case, I do not consider that it would be right to go so far as to grant the selective declarations sought. There are various reasons for this.
59. First, although it is right that Mr Turk has not responded directly to the undue influence claim, there is material which he has put in which is capable amounting to a challenge to it. At the heart of the undue influence claim is, of course, the relationship between Mr Turk and Mrs Işbilen. It is that relationship which is said to found the fiduciary relationship which was the first basis of the claims. Mr Turk has challenged the existence of the fiduciary relationship, and while his first point is that there was no relevant relationship between him and Mrs Işbilen (he claims the relationship was with the various companies, not him) he does mount a challenge to elements of the relationship between the individuals which would go to both the fiduciary relationship and the undue undue influence relationship. Mrs Işbilen's ability to understand English and her business acumen are at the heart of both, and there is a conflict of evidence in relation to those elements. They go her "acute vulnerability", pleaded in paragraph 13H of the Amended Particulars of Claim. The "Essential Instructions", which lie at the heart of the non-undue influence claims and which are expressly incorporated into the undue influence claims, are vigorously disputed. While Mr McCourt Fritz may be right in saying that there are elements of paragraph 136H which are incontestable, such as sub-paragraph (6), and while he is right in saying that on the facts the various transactions excite suspicion, I do not consider that that gets him home in the particular context of this case. I consider that on the basis of the current pleading and the (admittedly thin) evidence there are potential holes in the undue influence claim.
60. I have reached this view notwithstanding the valid point made by Mr McCourt Fritz to the effect that Mr Turk has not actually met the undue influence claim head on either in terms of pleading or in terms of a focused witness statement. As he himself said, it is right to allow Mr Turk to rely on the material available to him as a matter of pleading and evidence, and that material is not devoid of relevance, as appears above. But in addition there are additional factors.
61. The second factor is the partial nature of the application and what would be left to be tried even if summary judgment were granted. The alternative fiduciary duty claim remains live in the proceedings because it is to be asserted in claims which are not the subject of the applications before me. The relationship will have to be investigated in that context anyway. Both claims will have to be investigated insofar as it is sought to pursue claims through to active defendants who are said to have been the recipients of moneys emanating from Mrs Işbilen. That applies to both the non-undue influence claims and the undue influence-based claims.

62. Third, the form of relief sought is limited, and I wonder how far it will advance the case. The order sought is similar to the relief sought on the default judgment applications. It is in the following terms:

“2. It is declared that the transactions set out in Schedule A to this Order (the “Schedule A Transactions”) were procured by the undue influence of the First Defendant.

3. The Claimant is entitled at her election (and to the extent not inconsistent, cumulatively) to:

(a) rescission of the Schedule A Transactions as against the Respondents;

(b) a declaration that she is beneficially entitled to the monies (or their traceable proceeds) received by the Respondents as a result of the Schedule A Transactions, and an order requiring the Respondents to transfer such monies or traceable proceeds to her;

(c) an account from the First Defendant of his dealings with any of the traceable proceeds of the Schedule A Transactions;

(d) equitable compensation (to be assessed) to be paid by the First Defendant in respect of the Schedule A transactions.

63. For the reasons given above there is a difficulty about the shopping list in paragraph 3, which would leave only the declaration. But where would that declaration then lead? There is no claim for any follow-on relief, for the same reasons as given above - Mrs Işbilen does not feel herself to be in a position to make any necessary elections, so why bother with the declaration now? Furthermore, I am not satisfied that she is entitled to all the relief as a matter of election. There is authority indicating that she might be entitled to compensation (see *Mahoney v Purnell* [1996] 3 All ER 61), but that does not seem to be a standalone remedy to which she would be entitled irrespective of the availability of rescission and for which an election can be made. Rather, it would seem to be an alternative or a supplement where the traditional remedies (rescission and/or an account) do not achieve justice. Whether it would come into play depends on the other remedies, yet there is no proposal as to how they are to be pursued. It is understandable that in the circumstances more investigation is required before ascertaining the appropriate remedies, but it is unlikely that the necessary steps would be taken before a trial of on the substantial remaining claims. So leaving the declaration hanging there would achieve no clear purpose and it might cause unforeseen difficulties in running the rest of the case.

64. All these points taken together mean that in my view summary judgment would not be appropriate in relation to the undue influence claim in this action. What is required is

that this matter (which is now 3 years old) be propelled towards a trial which is inevitable anyway so that all relevant matters can be gone into at the same time. If it were absolutely plain that the undue influence claims were bound to succeed, which it is not, and that some useful purpose would be achieved by the fragmentation to which the declaration would give rise would nonetheless achieve a useful purpose, which it is hard to divine, then it would be proper to grant the first declaration sought under this head. But since those matters do not appear the proper course is to have the matter tried out properly.

Summary judgment claim against AET

65. This claim is an alternative claim to the same moneys as are subject to the default judgment. The reason for seeking summary judgment instead (if it is available) is because it is said that it would be a judgment on the merits which may be more enforceable out of the jurisdiction than a default judgment - *European Union v Syrian Arab Republic* [2018] EWHC 1712 at paragraph 61(3) (Bryan J). I accept that principle, and accept it might be of utility in this case.
66. The application starts with the pleaded case that payments were made by Mr Turk from one of her bank accounts without her knowledge or authority. This is confirmed by Mr Tickner in his witness statement in support of the present applications. Mr Tickner produces the invoices on which the claims for the sums involved are apparently based (obtained from Mr Turk's documents on the freezing order disclosure) and says that the intended purpose of the payments - to pay for renovations to and furnishing of an unidentified Turkish villa - are implausible. The amounts paid for furnishing are implausibly large, Mrs Işbilen does not have an identified Turkish villa, it is implausible that she would be paying for such things when she was trying to get money out of, not into, Turkey, there is no reason why she would be paying a Dubai-based company for such things and there is no evidence that any works were carried out.
67. AET has, of course, not put in any evidence in answer. Mr Turk has pleaded to this part of the case. He admits the payment, says he was not involved in them and that they were for refurbishment of "the Claimant's property in Turkey". He avers that Mrs Işbilen authorised the payments and that AET provided consideration for them. Mr Tickner notes this and points to material extracted from Mr Turk's own documents which seem to show an involvement in the payments.
68. This is not a wholly satisfactory state of affairs. The claim is based on a want of authorisation of the payments. Mr Turk, but not AET, has challenged that in his pleading, where he says that the payments were effected by Mrs Işbilen herself. Mr Tickner's evidence and argument about implausibility has not been met by AET or Mr

Turk, but at least in theory it was not for Mr Turk to do that because the summary judgment claim is not made against him.

69. I do not think it right, in those circumstances, to grant summary judgment with the benefits that that will apparently bring to Mrs Işbilen if Mr McCourt Fritz is right about extra strength being given to enforceability. It would seem that a claim is made against Mr Turk in relation to this matter, and that claim remains to be tried; summary judgment is not sought against him under this specific head. So that part of the matter has to go to trial. It is desirable that the derivative claim against AET should be dealt with at the trial if there is to be a determination on the merits, though of course there will not be (so far as AET is concerned) because that will be foreclosed by the default judgment. I consider that there is a potential difference, at least in circumstances such as the present, between a default judgment which is allowed in *Okritie* circumstances, and where a determination on the merits is sought. The former is decided more on technical grounds. Things are different where a determination on the merits is invited in circumstances where the same underlying factual considerations remain in play as against another defendant. In those circumstances there is a risk of inconsistent decisions of the court, and that should be avoided.
70. Accordingly I consider that if a determination on the merits is required it should go to trial. Although Mr Tickner's points on plausibility seem quite compelling, I consider that, in CPR Pt 24 terms, there is a sufficiently compelling reason for the claim against AET to go to the same trial as that which will take place as against Mr Turk.
71. I therefore dismiss the summary judgment application as against AET.

Conclusion

I therefore determine that I will make no order on the summary judgment application, save that I would be minded to consider making directions to get this matter to the trial that it needs if (as I anticipate) that would be useful. I will, however, grant the default judgments sought to the extent identified above. The precise form of order will be deb