

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

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

Date: 10 March 2023

Before :

MASTER PESTER

Between :

PANKIM KUMAR PATEL

Claimant

- and -

(1) MINERVA SERVICES DELAWARE, INC

Defendants

(2) PAUL BAXENDALE-WALKER

(3) MARK BARRY SLATER

PATRICK HARTY (instructed by **Bark & Co Solicitors**) for the **Claimant**
ROGER STEWART KC and CHRISTOPHER LOXTON (instructed by **Wordley Partnership**) for the **First Defendant**
WILLIAM SKJOTT (instructed by **Morrison Solicitors LLP**) for the **Second and Third Defendants**

Hearing dates: 22nd and 23rd February 2023

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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MASTER PESTER:

1. In these proceedings, the First Defendant, Minerva Services Delaware, Inc (“MSD”), a company registered in the US state of Delaware applies, by application notice dated 9 September 2022, to strike out the Claimant’s claim against it (“the September 2022 Application”) and, by application notice dated 3 October 2022, for strike out/summary judgment on its own counterclaim against the Claimant (“the October 2022 Application”). The Claimant, Pankim Patel, opposes both the September 2022 and the October 2022 applications.

2. I heard both applications on 22 and 23 February 2023. This is my judgment on respectively the September 2022 Application and on the October 2022 Application. The Second and Third Defendants to the proceedings, Mr Baxendale-Walker and Mr Slater, did not take part in the hearing before me, although Counsel attended the hearing on their behalf.

Background

3. The background to these proceedings was described by Asplin LJ as “rather unusual”, on the occasion when an appeal by MSD came before the Court of Appeal: see [2023] EWCA Civ 118. The detailed procedural history of these proceedings is set out in a judgment of Mr Lance Ashworth KC, sitting as a deputy High Court judge, dated 9 May 2022: reported at [2022] EWHC 970 (Ch). Those interested may refer to both judgments, which set out the background to this matter in fuller detail.

4. In summary, Mr Patel began these proceedings by Part 8 Claim form in October 2021, seeking an anti-suit and anti-arbitration injunction against MSD, Mr Baxendale-Walker and Mr Slater, preventing them from taking any further steps in an arbitration

in Delaware (“the Delaware Arbitration”) or commencing or pursuing any other claims or proceedings in any jurisdiction. Originally, there was no exception or carve-out for any proceedings in this jurisdiction.

5. Turning to the claim form, this pleads that the subject matter of the Delaware Arbitration was “substantially identical” to a claim issued by Bay Mining Consultants Ltd (“Bay”), of which Mr Slater is the *de jure* director (and also, I believe, the sole shareholder). Mr Patel’s case is that the Delaware Arbitration had been commenced at the behest of Mr Baxendale-Walker, following a failed application for an injunction by Bay. Although Bay had commenced proceedings against Mr Patel on 26 April 2021 in the QBD of the High Court, they were discontinued on 6 May 2021.
6. Tipples J heard Bay’s injunction application on 30 April 2021 and refused to grant it. Bay had sued in those proceedings as assignee of the benefits of a purported Deed of Fiduciary Declaration from 2008 (“the 2008 Deed”) and a further Deed of Fiduciary Declaration from 2021 (“the 2021 Deed”), under which it was claimed that Mr Patel held in excess of £11 million on trust for the principal under the Deeds. Tipples J, in a judgment reported at [2021] EWHC 1304 (QB), indicated that there was a “myriad of points” which could be made about the alleged assignment, but that she would make just one, namely, that the document did not comply with section 53(1)(c) of the Law of Property Act 1925: see at [16]. That was one of the reasons which led Tipples J to refuse to grant the injunction sought by Bay, but was not the only one.
7. Following those failed proceedings, MSD was incorporated in Delaware in June 2021. MSD now claims that it is the lawful assignee of sums claimed from MSD Belize 2018. It appears common ground that the arbitration was, at least in essence, in

respect of the same sums claimed to have been advanced to Mr Patel under or arising out of or in connection with the 2008 Deed and 2021 Deed.

8. Mr Patel challenged the jurisdiction of the arbitrator in Delaware on the ground that there was no enforceable arbitration agreement. Before the arbitrator had given any ruling, Mr Patel commenced these Part 8 proceedings. On 27 December 2021, the arbitrator held that as there was a dispute as to whether there was an enforceable arbitration clause, a matter which he did not have jurisdiction to determine, he could not proceed.
9. Thereafter, MSD obtained the Delaware equivalent of freezing relief (a status quo order) from the Chancery Court in Delaware on 27 January 2022, on a without notice application. That relief was discharged by an order dated 7 February 2022.
10. Before Mr Ashworth, MSD alleged that Mr Patel had signed both Deeds under which he acknowledged that monies paid to him by Minerva Services Ltd (“Minerva BVI”), a BVI incorporated company, or by Baxendale Walker LLP, or any other representative as defined, were held for the benefit of Minerva BVI. It was also said that Mr Patel received sums totalling £9.4 million and that he holds those sums on trust for Minerva BVI in accordance with the 2008 Deed.
11. It is also part of MSD’s pleaded case that the rights under the Deeds have been assigned from Minerva BVI to a Belize incorporated company called Minerva Services Limited (“Minerva Belize 2013”), which then purportedly assigned the rights to MSD Belize 2018. MSD Belize 2018 then assigned the rights to MSD.

12. Mr Ashworth granted Mr Patel interim relief, in the form of an interim anti-suit injunction against all three Defendants. However, Mr Ashworth also indicated that, in order to be able to seek an anti-suit injunction in a case not involving a contract with an exclusive jurisdiction clause in favour of England and Wales, English law requires that the legitimate interest which an anti-suit injunction seeks to protect must be the existence of proceedings in this country which need to be protected by the grant of a restraining order, but there were no such proceedings at that stage. In order to address this (a point which had not apparently been taken by any of the Defendants), Mr Ashworth directed that Mr Patel should file Points of Claim with the Part 8 Claim or issue a separate Part 7 Claim seeking declaratory proceedings to the effect that he was not liable to MSD in respect of the claim made in Delaware.

13. On 14 March 2022 therefore, Mr Patel filed Points of Claim. By those Points of Claim, Mr Patel:
 - (1) seeks a negative declaration that he is not liable to MSD under the Deeds it is claimed that he signed in 2008 and in 2021, and that he does not hold any monies on trust for MSD;
 - (2) expressly pleads that he did not sign the 2008 Deed or the 2021 Deed or agree to their terms;
 - (3) brings a claim for unlawful means conspiracy against MSD, Mr Baxendale-Walker and Mr Slater, seeking both the anti-suit injunction and damages.

14. MSD now seeks to strike out these Points of Claim in their entirety.

15. At a further hearing in April 2022, Mr Ashworth refused to grant MSD the freezing and proprietary injunctions. Whilst acknowledging that MSD had a good arguable case that the monies received by Mr Patel via the offices of Baxendale Walker LLP and other “fiduciary companies” were paid to Mr Patel pursuant to the 2008 Deed and were intended to be held on trust for Minerva BVI, and that the interest in those monies and the right to recover them lay with MSD (see at [84 and [86] and [92] – [93]), he held that the application before him was an abuse of process and that there was no solid evidence of a risk of unjustified dissipation. Finally, while not holding it to be determinative, Mr Ashworth was concerned about MSD’s failure to comply with the obligation to give full and frank disclosure when applying for interim relief. (I should note that, following the April 2022 hearing before Mr Ashworth, Mr Patel also amended his Points of Claim to add a new sub-paragraph as follows: “The Arbitration together with the other proceedings referred to in the Claimant’s Points of Claim dated 14 March 2022 were issued as part of a conspiracy between the Defendants, as set out in the Points of Claim.”)
16. On 9 May 2022, MSD filed its Defence and Counterclaim by which MSD seeks payment of £9,477,178. In June 2022, Mr Patel filed his Reply and Defence to Counterclaim, which was then followed by MSD’s Reply to Defence to Counterclaim, also in June 2022.
17. In the meantime, on 15 June 2022, Males LJ granted MSD permission to appeal Mr Ashworth’s refusal to grant MSD freezing and proprietary injunctions.
18. On 9 September 2022, MSD applied to strike out Mr Patel’s conspiracy claim. This was followed on 3 October 2022 by MSD’s application to strike out Mr Patel’s

Defence to Counterclaim, alternatively, for summary judgment on the Defence to Counterclaim.

19. On 10 February 2023, the Court of Appeal (the lead judgment given by Asplin LJ, with Bean and Baker LLJ concurring) dismissed MSD's appeal. One of the issues for the Court of Appeal was whether Mr Patel should be allowed to adduce new evidence on the appeal, in the form of a fifth witness statement from his solicitor, Mr Majid. The significance of this witness statement was that it exhibited partially unredacted copies of bank statements. MSD had relied upon heavily redacted versions of those statements when seeking the freezing injunction before Mr Ashworth. In giving permission for Mr Patel to rely on this evidence, Asplin LJ said this, at [45] - [48]:

“45. It seems to me that permission to adduce the statements in their unredacted form, and the metadata exhibited to Mr Majid's sixth witness statement in evidence before us, should be granted. They are inherently credible and important to the application and the appeal. Although the statements in redacted form were first exhibited in the Delaware Arbitration and, therefore, had been available to Mr Patel and his advisers for some time, the application for freezing and proprietary orders were made without notice and, therefore, there was no opportunity to adduce evidence in response at that stage.

46. Furthermore, it seems to me that the further material revealed in the unredacted form of the statements should have been disclosed by MSD under its duty of full and frank disclosure. Accordingly, reliance on the evidence at this stage cannot cause prejudice to MSD.

47. No explanation has been given for why the redactions were made in the first place and by whom, nor has it been explained why statements in an unredacted form were not placed before the court in accordance with MSD's duty of full and frank disclosure on a without notice application. It is pertinent to note in this regard that Mr Ashworth stated at [48] of his judgment that Mr Halpern did not say that full and frank disclosure had been given and there was no section in the evidence or in Mr Halpern's skeleton to that effect.

48. It seems to me that if the judge had had this evidence before him it may well be doubtful that he would have decided that there was a good arguable case that the payments allegedly made to Mr Patel, or at least many of them, were trust funds. As I have already decided that the judge was entitled to decide that there was no serious issue to be tried as to whether the remaining assets were held on

trust and the question of whether this court should itself grant the injunctions sought does not arise, it is unnecessary to decide the point.”

Legal principles

20. CPR r. 3.4(2(a)) provides that a statement of case may be struck out where the pleadings disclose no reasonable grounds for bringing the claim. The notes to the White Book explain that grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded as well as other cases which do not amount to a legally recognised claim or defence. Curiously, perhaps, MSD does not refer to sub-paragraph (b) in its application, but no one suggested to me that this was a point of substance.
21. The notes to the White Book also indicate that where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and (if it might be), the court should refrain from striking it out without first giving the party concerned an opportunity to amend: see *Soo Kim v Youg* [2011] EWHC 1781 (QB), a decision of Tugendhat J.
22. CPR r. 24.2 on the other hand provides that the court may give summary judgment against a claimant (or defendant) on the whole of a claim or a particular issue if (a) it considers that – the claimant has no real prospect of succeeding on the claim or issue and (b) there is no other compelling reason why the case or issue should be disposed of at trial. Both limbs are important. Further, the use of the word “may” in the operative part of the rule dealing with summary judgment shows that the court is not obliged to give summary judgment on any particular issue.

23. Authoritative guidance on what is meant by a “real prospect” of success is found in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch), by Lewison J (as he then was) at [15]. The principles are as follows:

“(i) The court must consider whether the claimant (or defendant) has a ‘realistic’ as opposed to a ‘fanciful’ prospect of success: Swain v Hillman [2001] 1 All ER 91;

(ii) A ‘realistic’ claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED&F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8];

(iii) In reaching its conclusion the court must not conduct a ‘mini-trial’: Swain v Hillman;

(iv) This does not mean that the court must take at face value and without analysis everything that a claimant [or defendant] says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED&F Man Liquid Products v Patel;

(v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550;

(vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceuticals Co 100 Ltd [2007] FSR 3;

(vii) On the other hand it is not uncommon for an application under Pt 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect

of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725.”

24. I was also referred, by Counsel for MSD, to *King v Stiefel* [2021] EWHC 1045 (Comm), a decision of Cockerill J. At [21] – [27], Cockerill J makes the following points. In the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. Further, a respondent to a summary judgment may not say, with Mr Micawber, that something may turn up. On the other hand, when considering a strike out application, the court assumes the facts pleaded are true. The key point is that there is an obvious overlap between applications to strike out and applications for summary judgment, because if the court concludes that the respondent to a summary judgment application has no real prospect of succeeding on the claim or issue, it follows that the statement of case discloses no reasonable grounds for bringing or defending the claim; alternatively, the statement of case is an abuse of the court’s process or otherwise likely to obstruct the just disposal of the proceedings.
25. I should also say something on the burden of proof. In order to succeed on its application, the applicant for summary judgment must demonstrate both (a) that the respondent has no real prospect of successfully defending the claim, and (b) that there is no other compelling reason why the case should be disposed of at trial. It is important here not to reverse the burden of proof inadvertently. The onus of proof in the first instance is on the applicant which must show credible material in support of the application, and it is only if the applicant is able to discharge that initial burden

that the evidential burden shifts to the respondent to show that they have more than a fanciful prospect of success.

The evidence

26. Turning to the material relied upon, looking at box 10 of the application notice of the September 2022 Application, headed “What information will you be relying on, in support of your application?”, MSD has listed the statements of case in the proceedings as well as the decision of Mr Ashworth, Males LJ’s decision granting Permission to Appeal, and consequential submissions filed on behalf of Mr Patel dated 5 May 2022. No witness evidence is identified.
27. As regards MSD’s second application, the October 2022 Application, in addition to the statements of case, as I understand it (it is not clear from the application notice precisely which witness statements are being relied on) MSD relies on the seventh witness statement of Graham Denny (the solicitor acting for MSD), the first witness statement of Amit Auluk (an FCCA accountant who has acted for MSD and who, in his own words, “has had the care of the books of account of the Minerva fiduciary companies in the UK”), and the second witness statement of Saeedeh Mirshahi, an English qualified solicitor also practising in Delaware, who is the sole director of MSD.
28. In addition, shortly before the hearing, MSD produced two further statements, the eighth witness statement of Mr Denny and a second witness statement from Mr Auluk, both dated 13 February 2023. These were, on any view, produced only very shortly before the hearing and not in accordance with the Practice Direction to Part 24 regarding the timetable for evidence for summary judgment applications.

29. Two days later, a seventh witness statement from Mr Majid, dated 15 February 2023, was produced on behalf of Mr Patel. (Mr Majid makes it clear that this witness statement is not intended to address the substance of the two further statements of 13 February 2023 filed by MSD, because Mr Patel “has not had a proper opportunity to consider these and does not accept that MSD is entitled to rely on them”.) This evidence was also filed late, and not in accordance with the timetable for the exchange of witness evidence as set out in PD 24.
30. I have had regard in reaching my conclusions to all this further additional evidence (both that filed on behalf of MSD and of Mr Patel) in deciding what relief to grant. In addition to these key witness statements, the parties relied on various statements previously produced for the Delaware proceedings, the applications for injunctions as well as the hearing in the Court of Appeal, including Mr Majid’s fifth witness statement.
31. In total, MSD relied, on one count at least, on six witness statements (not counting some of the material produced for the purposes of the US litigation), with exhibits running to about 1,125 pages, and two skeleton arguments (one in support of each application) with a combined total of 43 pages and 156 paragraphs. Pre-reading was estimated for 1.5 days, although this appears to be without taking into account Mr Patel’s evidence.
32. On any view, this is a very large volume of evidence. One might say that this forms an unpromising basis for a summary judgment application. Nevertheless, Counsel for MSD submitted that the court did not need to embark on anything resembling a mini-trial, as the points on which MSD relied were straightforward and could be decided

with relative ease. MSD's skeleton argument went further, and asserted that "This application does not rest on any dispute of fact" and that "Mr Patel's pleaded case at face value, ... provides no legal answer to Minerva's Counterclaim, and no realistic prospect of success".

MSD's strike out application – the September 2022 Application

33. The September 2022 Application seeks an order striking out Mr Patel's claim in conspiracy for damages and injunctive relief on the following grounds:

“as there (a) is no actionable conspiracy; (b) the Claimant has suffered no actionable loss or damage; and (c) paragraph 8 of the Points of Claim is inadmissible per Hollington v F Hewthorn & Company Limited [1943] KB 587”.

34. When the September 2022 Application was first issued, Mr Patel's solicitors complained, in a letter to the Court dated 21 September 2022, that there was no witness statement explaining the basis of the application and therefore Mr Patel did not have proper notice of the grounds of the application. I thought there was a degree of force in that complaint, so I directed that skeleton arguments should be exchanged sequentially, with MSD to file its skeleton argument seven days before the date fixed for hearing, and Mr Patel's skeleton argument being due three days before the hearing date. As it was, Mr Patel's skeleton argument, of 57 pages, was filed late. However, it was still possible to have an effective hearing on 22 and 23 February 2023. Certainly, by the time of the hearing, the basis of the strike-out application was clear to both the Court and Mr Patel.

Ground 1: (a) “no actionable conspiracy”

35. MSD submits that the pleadings disclose no actionable conspiracy. The Supreme Court has recently restated what is required to establish an actionable conspiracy: see *JSC BTA Bank v Khrapunov* [2020] AC 727, at [10]; see also at [13].

36. In the present case, Mr Patel pleads at paragraphs 16 – 17 of the Points of Claim as follows:

“16. Accordingly, the Claimant infers, and avers, that on or before the 26 of April 2021, Mr Baxendale-Walker, Mr Slater and Bay Mining (or any two or more together) wrongfully and with intent to injure Mr Patel by unlawful means, conspired and combined together by agreeing:

(a) To cause proceedings to be commenced against Mr Patel by one or more entities controlled by Baxendale-Walker and/or Mr Slater;

(b) To commence such litigation not for any legitimate process for which proceedings might be brought and without any intent to pursue those proceedings to a final trial but rather to put improper pressure on Mr Patel as part of a vexatious campaign of litigation of the type previously carried out by Mr Baxendale-Walker, as described in Majid-1;

(c) To give and/or rely on dishonest evidence in those proceedings, namely that Mr Baxendale-Walker was not the owner or controller of the claimant in the proceedings and was not significantly connected with proceedings.

17. By acting as alleged in subparagraph (b) of the proceeding [sic] paragraph, Mr Baxendale-Walker, Mr Slater and Bay Mining agreed to abuse the process of the Court. The means set out in subparagraphs (b) and (c) above were unlawful.”

37. There is then a plea that, on 26 June 2021, MSD joined the conspiracy by commencing the arbitration in Delaware. Some further details are given. But the core of the claim in conspiracy is set out above.

38. MSD submits that commencing an arbitration in Delaware cannot constitute “unlawful means” as commencing litigation is neither a crime, nor a tort, nor a breach of statute, nor a breach of fiduciary duty, nor breach of contract, which are all acts which might have founded unlawful means. In response, Mr Patel’s Counsel pointed

out, in his skeleton argument, that commencing litigation can, in certain circumstances, amount to a tort, either the tort of abuse of process or malicious prosecution.

39. I accept on the authorities that English law recognises the existence of the tort of abuse of process. See the useful recent discussion in *Kings Security Systems Limited v King* [2021] EWHC 325 (Ch), where Andrew Lenon KC, sitting as a High Court judge, summarised the present state of the law: at [228]. The key element is that the tort is committed when legal proceedings are brought for an ulterior purpose which is not within the proper scope of the legal process, for example, for the purpose of extorting the defendant's property. Although its practicable application appears to be very rare, with only two reported cases showing a successful claim (*Grainger v Hill* in 1838, and *Gilding v Eyre* in 1868), it was not suggested to me by Counsel for MSD that the tort does not exist. It may well still have a role to play even today. The example given before me was where one party commences proceedings in a jurisdiction, such as some countries in the Middle East, where imprisonment for debt still exists, knowing that there is no basis for bringing a claim, solely in order to seek the imprisonment of the other party.
40. Equally, it is accepted that there is a tort of malicious prosecution: see *Willers v Joyce* [2016] UKSC 43. However, pleading that tort requires clear particulars to be given of malice, as well as other elements of the tort.
41. As to the allegation of lawful means conspiracy, the existing plea in the Points of Claim, paragraph 21, is that MSD "... conspired and combined together to pursue litigation against Mr Patel with the sole intention of causing damage to Mr Patel".

That allegation is amplified somewhat in Mr Patel's Reply, in particular at paragraph 21 which pleads, in relation to the assignment of the alleged trust monies to MSD, that the assignment does not provide that MSD is to retain any of the proceeds of the monies as may be recovered by MSD. It is pleaded that "... the inability of [MSD] to identify any actual benefit" from pursuing the litigation is "... striking".

42. Overall, it seems to me that there were difficulties with the existing pleading, in relation to both forms of conspiracy. This is a jurisdiction where a party must give proper particulars of any allegation amounting to fraud: PD16, paragraph 8. A claim for conspiracy is a claim in fraud. It was not obviously unlawful for MSD to commence litigation in Delaware, and at least apparently Minerva started the proceedings with the predominant purpose of seeking to recover what its alleges are monies held on trust for it by Mr Patel. That purpose, submits MSD, is both proper and lawful. I do not understand Mr Patel to say, at least at this stage, that the counterclaim launched in response to Mr Patel's own Part 8 Claim is strikable as an abuse of process. Certainly it is not something that can be dismissed without trial.
43. If Mr Patel wishes to plead that an actionable claim in conspiracy, he should plead primary facts from which the court could properly infer that the instigation of those proceedings was such as to constitute unlawful means, or was done with the predominant purpose or intention of causing injury to Mr Patel rather than to further some legitimate interest of MSD's own. Similarly, if Mr Patel wishes to argue that the proceedings were started for an ulterior purpose, he will need to give particulars of what that purpose was, carefully pleading what are the primary facts to give rise to such inferences as Mr Patel wishes to rely on. Only in that way can MSD, and for that matter the other Defendants, understand the case it is that they have to meet.

44. Having heard the criticisms levelled at his pleading, Counsel for Mr Patel indicated in the course of the hearing that he was prepared to put forward an amendment to his pleading to address those criticisms. I think he was wise to offer that concession. That seems to me to be right way to proceed. I am mindful of the general principle that, when faced with a strike out application, where the court considers that a pleading might be cured by amendment, the court should refrain from striking it out without giving the party concerned an opportunity to amend: see *Kim v Youg* and the notes to the White Book, to which I referred above.
45. In his reply submissions, Counsel for MSD objected to this proposed course of action, pointing out that *Kim v Youg* involved two litigants in person, where the reason for the strike out was the claimant's original failure to identify any person who had accessed the websites on which the words complained of had been published. The present case was therefore very different from *Kim v Youg*, and Mr Patel should not be given another opportunity to rectify his pleading.
46. He also said that Mr Patel had ample notice of the case against him. It was pointed out to me that MSD had raised several Part 18 Requests of Mr Patel, before the current applications were issued. In particular, I was shown a Part 18 Request, served I believe at some point in May 2022 (the copy before me is undated). It is true that the Part 18 Request is very lengthy, and may properly described as raising certain requests in a tendentious and argumentative way. It is also of course true that CPR PD18, para. 1.2, states that a request for further information should be "reasonably concise and strictly confined to matters which are reasonably necessary and proportionate" to enable a party to understand the case they have to meet.

47. In this case, within the Part 18 Request, Request 9 requests information in relation to paragraph 18 of the Points of Claim, and Request 12(2) asks for clarification of what is meant by the words “improper pressure”. Mr Patel objected to many of the specific requests, in particular indicating for example that the conspiracy was clearly set out, and there was no need for elucidation of the meaning of “improper pressure”.
48. I remind myself that this is a strike out application. I consider that it would have been better had the application for a strike out been accompanied by a short witness statement, identifying the key points on which MSD relied, even if only in outline. In all the circumstances, I do not consider that I should be striking out Mr Patel’s claim on the ground alone that there is “no actionable conspiracy” without giving him an opportunity to prepare an amended pleading. I would not give permission to a party to submit a draft amendment statement of case on a strike out application, if I did not consider that there might indeed be material which could form the basis for a statement of case which would survive a strike out application.
49. It follows that I am not prepared to strike out Mr Patel’s claim at this stage, on the ground that there was “no actionable conspiracy”. Instead, Mr Patel should have an opportunity to prepare a draft amended Points of Claim, which should be served on MSD to enable it to consider whether to consent to the proposed amendments, or whether to oppose them.

Ground 2: (b) the Claimant has suffered no actionable loss or damage

50. In order to have a complete cause of action in tort, a claimant must have suffered actual loss or damage. Paragraph 51 of Mr Patel’s Points of Claim pleads as follows:

“51. Further, Mr Patel is entitled to damages for unlawful means conspiracy, or alternatively lawful means conspiracy, as more particularly set out above. Mr Patel has suffered loss and damage, to be assessed. At present, Mr Patel has incurred costs of approximately £105,000 in relation to the High Court Proceedings, the Arbitration and the Delaware Proceedings which he has been unable to recover and is entitled to recover that sum by way of damages and, in addition, any further costs he may incur in relation to any proceedings brought pursuant to the conspiracy between the Defendants described herein.”

51. MSD raised a Part 18 Request with respect to the allegation of loss, to which Mr Patel responded. What Mr Patel seems to be claiming is three distinct heads of loss, namely, approximately £65,000 of costs incurred relating to the earlier Bay proceedings (said to have been incurred between 28 April 2021 and 8 September 2021), £19,000 odd relating to the costs of the Delaware Arbitration (incurred between 17 August 2021 and 31 December 2021), and just under £8,000 relating to the costs of the Delaware proceedings (incurred between 21 January 2022 and 7 April 2022).
52. As to whether Mr Patel has suffered an actionable loss, in order to have a complete claim in tort, it seems to me impossible at this stage and on the evidence before me to decide this point conclusively against Mr Patel. As to each claimed head of loss:
- (1) The Bay proceedings were discontinued on 6 May 2021. MSD therefore submits that most, if not all, of the alleged £65,000 loss and damage could not have been incurred as part of the Bay proceedings. What Mr Patel has explained is that those costs are perhaps better described as the costs of enforcing the costs orders obtained in the Bay proceedings. I accept that how that loss is calculated has not been very clearly or convincingly particularised to date, but it is not a matter which I can determine on a strike out.

(2) In relation to the Delaware Arbitration and the Delaware proceedings, MSD relies on a witness statement from March 2022 of Mr Sandler, a Delaware attorney. Mr Sandler states that, as a matter of Delaware law, Mr Patel could have requested his costs of the arbitration from the arbitrator, and the costs of the Delaware proceedings from Court of Chancery of Delaware. However, I note that Mr Sandler is not an independent expert (as he acted for MSD in the US proceedings) and there has been no application for permission to adduce expert evidence. Mr Patel relies, via his own solicitor, Mr Majid, on an extract from an article in Wikipedia, to suggest that the American rule is that, generally, each side bears its own costs, and that this applies in Delaware. Reference is made to the case of *Lynch v Gonzalez* CA No. 2019-0356-MTZ (Court of chancery of the State of Delaware). It is further said that there was no obligation on the part of Mr Patel as part of his duty to mitigate to engage in pointless arguments in the US which would not have led (or were at best unlikely to have led) him to recover any costs incurred. While neither side's evidence is particularly compelling on this point, it would be wrong to hold at this stage that Mr Patel does not have a more than arguable claim to recover the costs of the Delaware Arbitration and Delaware Proceedings.

53. There seems to me another point which Mr Patel could have taken as well. As I understand it, part of the costs of the Bay proceedings were not paid until after the commencement of these proceedings, on or about 1 April 2022, by solicitors acting for Mr Baxendale-Walker and Mr Slater. Accordingly, any cause of action in tort (assuming that the other elements of the tort of conspiracy were otherwise present) was complete as at the time when Mr Patel first began these proceedings. Even if

(which I cannot decide on this application) Mr Patel no longer has suffered any recoverable loss, he at least more than arguably had a complete cause of action in tort at the time when the claim was commenced. The fact that that loss was compensated after commencement of the proceedings would not mean that the action is now liable to be struck out.

54. I should also make it clear that I am not deciding positively against MSD at this stage as to whether Mr Patel has suffered an actionable loss; all I am deciding is that Mr Patel has at least a more than merely arguable case, sufficient to resist a strike out application, that he does.

Ground 3: (c) Hollington v F Hewthorn

55. MSD relies on the case of *Hollington v F Hewthorn* as authority for the proposition that a judgment, verdict or award of another court or tribunal is inadmissible evidence to prove a fact in issue or a fact relevant to the issue in other proceedings between different parties. See also *Ward v Savill* [2021] EWCA Civ 1378. MSD submits that on the basis of *Hollington v Hewthorn* and *Ward v Savill*, paragraph 8 of the Points of Claim should be struck out.
56. In response, Counsel for Mr Patel submitted that the rule of *Hollington v Hewthorn* “has long been controversial” and the extent of it was a matter of continuing debate.
57. Ultimately, I do not consider that I need to decide, on this strike out application, the ambit of the rule. I confess I remain somewhat puzzled by this part of MSD’s case. Paragraph 8 is headed “Mr Baxendale-Walker’s and Mr Slater’s connection with the relevant proceedings commenced against Mr Patel.” There are references to previous

cases involving Mr Baxendale-Walker at sub-paragraphs 8(c), (d), (g) and (h), either directly or more tangentially. So the first point is that, whatever the ambit of the *Hollington v Hewthorn* principal, it does not follow that the entirety of paragraph 8 can or should be struck out. Sub-paragraphs 8(a) – (b) and (e) – (f) are entirely unobjectionable. Sub-paragraph (d) refers to evidence given by Mr Slater in a witness statement given in the proceedings brought by Bay. I do not see any basis for striking this out. Finally, Counsel for MSD did not refer me to any authority whereby a simple reference to matters commented on by judges at trial cannot be referred to in a pleading, and I know of no such principle.

58. In the circumstances, I am not going to strike out paragraph 8. The complaints made of that paragraph do not, it seems to me, come within CPR Part 3, r. 3.4(2)(a) in any event.

MSD's summary judgment / strike out application – the October 2022 Application

59. Turning to the October 2022 Application, MSD submits that it is entitled to summary judgment on its counterclaim, alternatively, that Mr Patel's Defence to Counterclaim should be struck out. The relief sought in the application notice is as follows:

"1. That the whole or part of the claimant's defence to counterclaim is struck out pursuant to CPR Rule 3.4(2).

2. Further or alternatively, summary judgment be given in favour of the First Defendant on the whole or parts of its Counterclaim pursuant to CPR 24.

3. Alternatively, the Claimant is subjected to an Unless Order requiring further and better particulars of his Defence to Counterclaim be provided pursuant to CPR 17.3."

60. These points are set out in further detail in the seventh witness statement of Mr Denny. What I understand, both from MSD's skeleton argument and in oral

submissions, is that MSD says that the entirety of Mr Patel's Defence to Counterclaim should be struck out, and summary judgment entered into with respect to it; alternatively, individual parts of the Defence should be struck out, as being too vague and/or contradictory.

61. In short summary, MSD's case is that between 7 April 2008 and 20 January 2021, Mr Patel received £9,477,178 of monies successively from various Minerva companies (paragraph 80 of the Defence and Counterclaim). These are then defined as being "the Trust Monies". It is then said, at paragraph 82 of the Defence and Counterclaim, that:

"82. Minerva Delaware claims against Mr Patel the return of the Trust Monies, totalling £9,477,178, by reason of his liability to Minerva Delaware Delaware as trustee of the Trust Monies under the various Deeds he entered into (as set out below), and/or as bare trustee, and/or as constructive trustee, and/or he is liable in restitution."

62. Initially, at least, Mr Patel's response was to plead that MSD had failed to particularise when and by whom each sum was alleged to have been paid to him, amounting to over £9.4 million between 2008 and 2021. However, in Annex A to MSD's Reply to Defence to Counterclaim, there is a list of payments, showing the date, the amount paid, and the payer bank, between 11 April 2008 and 12 January 2021. Further, Mr Auluk has exhibited to his first witness statement spreadsheets and bank statements, evidencing the payments made to Mr Patel throughout the period in question. It seems to me that MSD has now made it perfectly plain what payments it says were made to Mr Patel, and why it says those are recoverable.
63. Parts of Mr Patel's current Defence to Counterclaim remain undeniably vague and pleaded at a high level of generality. In his Counsel's skeleton argument it was said that "in order to assist the Court and adopt a cards on the table approach", Mr Patel

has volunteered in the Reply and Defence to Counterclaim that he provided Mr Baxendale-Walker (and entities associated with him) with advice and contacts in relation to work within the media and entertainment industry, and further assisted with unspecified “media related matters” (at paragraph 36(a)). There is also a further alternative plea, this time found at paragraph 47(b) of the Points of Claim, that such payments as were received by Mr Patel were gifts made by or at the direction of Mr Baxendale-Walker.

64. Somewhat confusingly, Mr Patel has also alleged (in a second Response to Part 18 Request) as follows:

“... that sums totalling around £1,935,000 which were received by Mr Patel from Mr Baxendale-Walker and/or businesses associated with him between July 2011 and October 2019 are likely to have been repaid to either Mr Baxendale-Walker and/or his associated businesses directly. On the instructions of Mr Baxendale-Walker, the Claimant made at least two payments to Mr Baxendale-Walker, the Claimant made at least two payments to Mr Baxendale-Walker and/or businesses associated with him on 16 December 2019 totalling £50,000. In the absence of disclosure, the Claimant is not at present able to give any fuller particulars as to amounts repaid to Mr Baxendale-Walker.”

65. Contrary to what might be expected, Mr Patel has not been able to put forward any documentary material to support his claim that sums totalling £1.935 million have been repaid.
66. The core submission from MSD was that Mr Patel’s Defence to Counterclaim consists of little more than a bare denial or otherwise sets out no coherent statement of facts, and that such facts as are set out, even if true, do not amount in law to a defence to the claim. In MSD’s skeleton argument provided for the hearing, four separate and at types overlapping submissions were made. First, it was submitted that certain parts of the Defence to Counterclaim should be struck out. Second, summary judgment should

be given in relation to parts of MSD's counterclaim. Third, alternatively, the entirety of the Defence to Counterclaim should be struck out. And then, in the yet further alternative, summary judgment should be given on the whole of the counterclaim.

Summary judgment on the whole claim?

67. I consider that I should deal with those claims in reverse order. Clearly, if I were persuaded that summary judgment should be given on the whole counterclaim, I would not need to deal with whether certain parts of the Defence to Counterclaim should be struck out. I will indicate now that, having considered the parties' submissions, I am not going to strike out, or to grant summary judgment summary judgment on MSD's application in relation to the whole claim. In my view, MSD is unable, on the material before the court, to surmount the initial hurdle of showing that Mr Patel has no real prospects of defending the claim. As I explained earlier, the initial burden is on MSD to establish that there are grounds to believe that Mr Patel has no real prospects of success and there is no other compelling reason for a trial. There are a number of difficulties with MSD's claim which mean that the case is not suitable for summary judgment, nor should Mr Patel's Defence be struck out in its entirety. I only set out below what seem to me the most obvious points.

68. **First**, although MSD's case is that Mr Patel received Trust Monies of £9.4 million from the Minerva companies, not a single one of the payments identified by Mr Auluk comes directly from any Minerva company. They are all from various third parties, starting with the Baxendale Walker LLP "Office account", but also from a wide variety of other entities, such as Buckingham Services, Dunster International,

Umbrella Management Solutions, and Charley's Menswear Ltd, as well as many others.

69. That raises the question whether the funds paid belonged in equity to the Minerva companies in the first place. Certainly, the Court of Appeal, which had the benefit of reviewing unredacted bank statements on which MSD initially relied when seeking the freezing injunction, but in redacted form, noted that a number of payments had been made from the Baxendale-Walker LLP "Office account" to various "actresses" and to Griffin Law Office and Griffin Law Client. Those latter payments are said to relate to litigation conducted on behalf of Mr Baxendale-Walker. That does raise the issue as to whether the funds in the account are properly seen as trust monies held on behalf of the Minerva companies. Moreover, some of the payments appear to have been made when the account was overdrawn. The Court of Appeal's view was that if this further evidence had been before Mr Ashworth, it "may well be doubtful that the payments made to Mr Patel, or at least many of them, were trust funds": at [48].
70. In his second witness statement, dated 13 February 2023, that is, immediately after the Court of Appeal dismissed MSD's appeal, Mr Auluk purports to provide an explanation as to why payments made from the Baxendale Walker LLP office account to Mr Patel should, in fact, be viewed as trust money. In my view, the explanation provided by Mr Auluk raises a number of factual matters which quite clearly cannot be accepted at face value on a summary judgment application. Mr Patel is entitled to cross-examine Mr Auluk on his witness statements at a trial in the normal way. Mr Auluk's second statement, in particular, bristles with uncorroborated factual assertions, in relation to what are described as the "BWL Account Holding Arrangements".

71. **Second**, I am entitled to take into account the material which MSD has chosen to put in evidence so far, and also to take into account what further material might reasonably be expected to be available at trial. This follows from *Easyair v Opal Telecom*. As I understand it, MSD relies on an agreement, dated 11 July 2008, between Baxendale Walker LLP and “Minerva Services Limited” (a Jersey company) whereby the Jersey company apparently authorised the LLP to act as fiduciary in relation to “Net Receipts” (as defined), with the LLP having “all the investment manager powers of a beneficial owner in utilising such Net Receipt monies ...” This document begs a number of questions as to what this all means. In any event, Counsel for Mr Patel correctly points out that similar documents are missing in relation to other payors. So here we have another triable issue.
72. **Third**, even if one assumes that the various payors held the monies on trust for the Minerva companies, which seems to me on the evidence a very big assumption to make on a summary judgment application, MSD would need to demonstrate to the required summary judgment standard that Mr Patel held those sums on trust for MSD. What evidence is there that he received it in that capacity? Counsel for Mr Patel points out that there is not a single contemporaneous record relating to any the individual payments, such as receipts, letters, emails, text messages, any form of written confirmation of transfer and receipt, which might explain why the payments were being made to him. This is surprising, given both the size of the payments made and the extended period during which payments were made.
73. What MSD does relies on is two Deeds of Fiduciary Agreement, the first dated 7 April 2008 and the second 23 March 2021. As to the 2008 Deed, MSD has failed to provide a signed copy, and Mr Patel has denied signing it, so this is plainly a triable

issue. As to the 2021 Deed, Mr Patel denies signing it and alleges that his (apparent) signature on it, which is apparently witnessed by a Tomasz Baran, given occupation “Driver”, has been forged. Again, I accept that there is here a triable issue. I do not consider that the allegation of forgery advanced on behalf of Mr Patel in the statements of case and in the fourth witness statement of his solicitor can be determined on a summary judgment application.

74. In this context, I acknowledge that there are inconsistencies in the statement given by Mr Patel’s solicitor, setting out the odd circumstances in which the 2021 Deed was presented to Mr Patel for signature. In particular, and strikingly, the account given by Mr Majid is entirely unclear, indeed contradictory, as to whether Mr Patel took out the unsigned deed from the envelope handed to him or not. I also accept the criticism that, in a case where an allegation of forgery is raised, it would have been better for Mr Patel to give his explanation in his witness statement, rather than via his solicitor. But the core allegation made is that Mr Patel did not sign the 2021 Deed, and that his signature on it is a forgery. I simply do not consider that this can or should be decided on a summary judgment application.

75. **Fourth**, in order for MSD to have title to sue, it must establish that there is a valid chain of title. MSD relies on a whole series of assignments, via a BVI company through two successive Belize companies and ending with MSD. Mr Patel does not admit the validity of these assignments, and points out a number of reasons to be “very sceptical” of them. I accept the thrust of the criticisms made. Indeed I record here that I find elements of the purported assignments to be very odd. To take just one example, in 2013, Minerva BVI purports to assign all its business, rights, property to Minerva Belize 2013 for the sum of \$100 (presumably US). In circumstances where

MSD's case is that the business was very valuable, including the funds it says Mr Patel was holding for it together with other (unnamed) fiduciaries, it is at least somewhat surprising to see the specified consideration. MSD explains this by saying that both companies were under common management. However, it has failed entirely to identify the natural persons standing behind those companies. This cries out for an explanation. Further examples regarding the odd or uncommercial nature of the assignments relied upon could be multiplied.

76. The commercial purpose of the arrangements entered into are also wholly unclear. Again, I could make a number of points, but I will simply turn to Mr Slater's signed evidence given in the Delaware arbitration proceedings, described as a "Declaration".

After setting out some details of his background, Mr Slater says this:

"7. The Minerva businesses had been carried on since 2005. Minerva companies were offshore, generally in jurisdictions such as Jersey, Belize and the BVI. There was investor involvement in the USA, held through Delaware. Ms Saeedeh Mirshahi, solicitor, had since 2008 undertaken a liaison role between the USA, offshore and UK operations.

8. Minerva provided wealth protection solutions ("the Plans") to UK corporates and high net worth individuals. The Plans were sold and marketed through a network of Introducers (solicitors, accountants, IFA's [sic] and the like).

...

10. If Minerva funds could simply have been banked and retained, then matters would have been simple. Minerva could simply have opened offshore accounts. It did do so. However, Minerva needed to be able to expend monies in operational expenses: paying Introducers, and so on. Minerva also needed to keep a substantial fund of monies onshore, as I explain below.

11. This created a second problem of practical banking. The UK has become a difficult place to undertake ordinary banking operations. Companies, large and small, find their accounts closed down, for no reason. A company with a sterling international reputation, and supported by the UK government, such as Dando, has experienced these practical banking problems.

12. Whilst offshore accounts do not suffer quite the same degree of this problem, they are practically inaccessible. To get funds back from an offshore account may take months. UK banks are wary of even receiving funds from an offshore account.”

77. Leaving aside the description of the UK as being a jurisdiction where it is difficult “to undertake ordinary banking operations”, Mr Slater goes on to describe what is a very surprising and uncommercial arrangement, referred to as a “fiduciary administration role”, whereby Baxendale Walker LLP held funds on trust for the Minerva companies, funds which were then passed on to Mr Patel to hold. These arrangements were supposedly entered into as part of what is described as “an insurance type guarantee of its Plan fees” as part of the Minerva companies practice of “self-insuring” against potential claims by its customers. This description again raises many questions which in my view cannot be decided on a summary judgment application. Mr Patel is again perfectly entitled to say that this is a claim which must go to trial.

78. Counsel for Mr Patel directed me to the decision of the House of Lords in *Rhesa Shipping Co S.A. v Edmunds (the Popi M)* [1985] 1 WLR 948. That case was concerned with the sinking of a ship. The plaintiff shipowners claimed for the total loss of the vessel under a marine insurance policy, on a standard Lloyds form, on the basis that the loss was occasioned by a peril insured against. The defendant insurers disputed this. The trial judge accepted that the loss was caused by the shipowners’ submarine theory, even though he held that it was “extremely improbable”, and on this basis found for the plaintiff. The House of Lords reversed that decision. The ratio of the decision is found in the opinion of Lord Brandon of Oakbrook, who at p. 956C said this:

“... the legal concept of proof of a case on a balance of probabilities must be applied with common sense. It requires a judge of first instance, before he finds a particular event occurred, to be satisfied on the evidence that it is more likely to have occurred

than not. If such a judge concludes, on a whole series of cogent grounds, that the occurrence of an event is extremely improbable, a finding by him that it is nevertheless more likely to have occurred than not, does not accord with common sense. This is especially so when it is open to the judge to say simply that the evidence leaves him in doubt whether the event occurred or not, and that the party on whom the burden of proving that the event occurred lies has therefore failed to discharge such burden.”

79. The point made by Counsel for Mr Patel is that I should not, particularly on a summary judgment application, reverse the burden of proof. The matter is put this way in *Phipson on Evidence*, at para. 6-07:

“Where there are two improbable theories, the elimination of one does not automatically lead to the acceptance of the other, equally improbable, theory. The judge is not bound always to make a finding one way or the other. He has open to him the third alternative, saying that the party on whom the burden of proof lies in relation to any fact has failed to discharge the burden.”

80. Whilst the *Popi M* decision is obviously helpful to Mr Patel, I do not think that strictly speaking he even needs to rely on it. The *Popi M* was a decision following a trial. Here, we are faced with a summary judgment application, where MSD’s case has a number of difficulties, although whether those difficulties prove to be insurmountable is a matter for the trial judge. I accept that Mr Patel’s case, that the payments to him totalling over £9.4 million were in respect of unspecified services, alternatively, a gift, or perhaps in the yet further alternative in part at least expenses (again, unspecified) could be said to be improbable, at least at this stage of the proceedings. However, the simple point is that I consider that MSD’s case is also surprising. It is by no means bound to succeed at trial. In the circumstances, therefore, I consider that MSD’s claim for summary judgment falls at the first hurdle. Mr Patel does have a real prospect of being able to successfully defend the claim. It follows the claim for summary judgment for the whole claim must be dismissed.

81. As a fall-back, MSD submits that it should have summary judgment on certain parts of the claim. It is said that, given that Mr Patel alleges that £1,935,000 has been repaid (and there is no evidence of that sum having been repaid) could MSD have judgment for £9.4 million less £1,935,000, or in the further alternative, for £1,935,000. However, those various alternatives all depend on showing that MSD is the proper claimant. As already explained, I am far from satisfied that this is the case. I am not entering judgment in favour of MSD on any part of its claim on a summary judgment application.

A compelling reason for the case to go to trial?

82. Mr Patel advanced a further argument why the summary judgment application should fail, namely, that there was a compelling reason why the matter should in any event not be decided on a summary judgment. There is very little authority on what counts as a “compelling reason” for the purposes of CPR Part 24.2. I note the observations of Chief Master Marsh, in *Hawk Recovery Limited v Eustace* [2016] EWHC 115 (Ch), at [72 – [74]. That was a case on which Mr Patel relied, also involving Mr Baxendale-Walker, and which was said to have marked similarities to the present.
83. In these proceedings, it is said that MSD is a shadowy company, which seeks to rely on documents which appear uncommercial and which call out for an explanation, at the very least. It is also wholly unclear who is standing behind MSD. Mr Patel also says that it is obviously Mr Baxendale-Walker and he raises more than a prima facie case that this is indeed so. Indeed, Counsel for MSD accepted for the purposes of the strike out/summary judgment that the Court had to assume that this was indeed so. I

note that Mr Baxendale-Walker was made bankrupt in 2018, after a former client sued him for negligence and obtained a judgment of over £16 million against him.

84. Ultimately, I consider that I do not need to decide whether, if I had otherwise decided that Mr Patel had no real prospect of succeeding at trial, there would have been a compelling reason for the matter to nonetheless go to trial. MSD's claim for a summary judgment fails by reason of its inability to establish the initial limb of CPR r. 24.2.
85. However, I note a further point raised on behalf of Mr Patel. PD24, paragraph 2 provides that the application notice for summary judgment or the evidence contained or referred to in it or served with it "must" state that it is made because the applicant believes that on the evidence the respondent has no real prospect of succeeding on the case or issue and, importantly, because the applicant knows of no other reason why the disposal of the claim or issue should await trial. In this case, MSD has failed to comply with that requirement. The Court of Appeal has held that these requirements are no mere formalities: see *Price v Flitcroft* [2020] EWCA Civ 850 where Floyd LJ described them as "mandatory": at [86]. That was a case where an appeal was allowed on the ground that the respondent to a summary judgment had indeed a real prospect of successfully defending the case at trial, just like this case.
86. I have to say that it seems to me that, given the obvious factual complexity of the present case, it is hardly surprising that no one on behalf of MSD, whether its de jure director, or someone else, was prepared to sign with a statement of truth the evidence required by the Practice Direction. Given that I have already found a number of reasons for dismissing the summary judgment application, I do not think I need to

decide whether the breach of the practice direction alone would have justified the dismissal of the summary judgment application.

Strike out of parts of the Defence to Counterclaim?

87. In the yet further alternative, MSD challenged individual parts of the Mr Patel's Defence to Counterclaim. This is properly seen as a strike out, and not a summary judgment, application. Therefore I am applying the test in CPR r. 3.4(2)(a) and/or (b). I should consider whether the statement of case, that is, the Defence to Counterclaim, discloses no reasonable grounds for defending the claim, or the statement of claim is otherwise an abuse.
88. In this context, Counsel for Mr Patel referred me to a number of authorities which warned against the danger of granting summary judgment, or indeed striking out parts of a claim or defence, where the court has already formed the view that the claim should go to trial: see *Three Rivers DC v Bank of England (No 3)* [2003] 2 AC 1; *Executive Authority for Air Cargo and Special Flights v Prime Education Ltd*: [2021] EWHC 206 (QB) at [112- [115]. The later decision was an appeal on a decision on summary judgment. However, it does seem that, as a general principle, a court should be cautious about striking out individual paragraphs of a claim or defence where the court has already formed the view that the matters as a whole should go to trial, because the trial judge will hear more detailed factual and legal arguments than is possible on a strike out application.
89. The first challenge raised her by MSD came under the heading of "*Alleged invalid 2022 Assignment*". In Mr Patel's Defence to Counterclaim, paragraph 61, Mr Patel seeks to suggest, as I read it, that the assignment by MSL Belize 2018 to Bay did in

fact comply with s. 53(1)(c) of the Law of Property Act 1925. MDS says that this is in complete contradiction to what was said in the Points of Claim, paragraph 25, which refers to the “purported” assignment to Bay. It is also said that the issue is *res judicata*, in any event, as a result of the findings of Tibbles J. I reject these contentions as a ground for striking out those individual paragraphs. Mr Patel is entitled to require MSD to prove the supposed invalidity of the earlier assignment to Bay. All that the Points of Claim do is refer to a “purported assignment” to Bay. But “purported” simply means “appearing or stated to be true, though not necessarily so”. In any event, it seems to me well arguable that a decision on an interim application does not create a *res judicata*.

90. Next, it was said that Mr Patel advances contradictory defences. A number of points were taken.
91. The first complaint was made under the heading “Receipts or No receipts”. It was said that Mr Patel’s Defence to Counterclaim on this point was contradictory. The specific complaint is that, it is said, Mr Patel denies any receipt of funds from Minerva companies. I do not think this specific complaint is correct. As I read it, what Mr Patel says is that he denies receiving any payments from any of the three Minerva companies referred to. See the Defence to Counterclaim, at paragraph 51(b). It seems to me open for him to take that point, and as a matter of fact, he does not seem to have received any payment from any of the three specified Minerva companies. What he does say in his Points of Claim, at paragraph 47(b), is that “to the extent that ...” he received payments from businesses “associated with” the Minerva businesses, this was rather remuneration for work done for Mr Baxendale-Walker, the Minerva businesses and other business associated with Mr Baxendale-Walker. That leaves

open the factual point as to whether any of the payors (for example, Baxendale Walker LLP) were associated with the Minerva businesses. There may be an issue here as to whether the vague reference to remuneration for work done is a sufficient plea, but that is a separate point.

92. Second, MSD complains about Mr Patel's allegation of forgery. I have already explained why I do not consider it right to grant summary judgment in favour of MSD on Mr Patel's claim that his signature on the 2021 Deed was forged. However, MSD had a second submission in support of its claim that the plea for forgery should be struck out, in that it was said that Mr Patel was not entitled to plead a set of allegations premised upon his signature not being a forgery. In the Reply and Defence to Counterclaim, paragraph 39, Mr Patel pleads that he did not sign the Alleged 2021 Deed or the Alleged 2008 Deed; but he then goes on to suggest that, had the document been signed, it would have been unenforceable for illegality as being signed for the purposes of dishonest tax evasion. There is also a rather vague plea that the Alleged 2021 Deed could be set aside for undue influence.
93. As a matter of pleading, it seems to me open to Mr Patel to adopt this course. His primary case is that he did not sign either deed, but that, had it been signed, it would in any event be unenforceable or voidable. It is permissible to advance alternative cases. These points are points that should go to trial. I note in this context that further details are provided about the circumstances in which Mr Patel was asked to sign the 2021 Deed (but where his case is that he declined to do so) in Mr Majid's fourth witness statement. Again, given the seriousness of what is being suggested, it would have been better for Mr Patel to give this evidence himself, rather than via a solicitor.

But I do not think what is said justifies the striking out of any individual sub-paragraphs in paragraph 39.

94. One point which did concern me was the suggestion that the Alleged 2021 Deed could be set aside for undue influence. The suggestion was made that the plea, in its existing form, was embarrassing. Again, I do not consider that I should be striking out this allegation made in an individual sub-paragraph of paragraph 39. No doubt Mr Patel has heard the criticisms which were advanced in relation to this plea of undue influence. He may well be advised that it would be better if, in any amendment, further particulars of the alleged vulnerability and the undue influence exerted could be set out.
95. I am going to take the next two grounds of complaint, headed “Gift” and “Expenses” together. Mr Patel pleads that such sums as he received were remuneration for what he describes vaguely as remuneration for “media and entertainment services”. However, in the alternative he pleads that such sums or some parts of them were gifts. In a further plea, this time set out in a response to a Part 18 Request, he suggests that a comparatively small amount (of around £210,000) received in April and December 2018 was in fact a payment of expenses “incurred ... on behalf of Mr Baxendale-Walker and/or businesses associated with him”. In a further response, Mr Patel says that the expenses were incurred on behalf of another company, Praslin Pictures Limited.
96. MSD’s Counsel says is that the case cannot go forward on this basis, and that every opportunity has been given to Mr Patel to put his Defence to Counterclaim right, but those opportunities have not been taken. I will say at once this is all rather

unsatisfactory. In his skeleton argument, Counsel for Mr Patel says that that the criticism is misplaced, because MSD has not pleaded specific payments it says Mr Patel received. However, as I have already mentioned, MSD has now, albeit in its Reply, pleaded specific payments in a schedule to the Reply.

97. There would be real difficulties in allowing Mr Patel's case regarding the reasons for the substantial payments made to him being allowed to go to trial in its current form. Part of the difficulty, it seems to me, is that the exact dates and amount of payments made to Mr Patel were only set out specifically in the Reply to Defence to Counterclaim, rather than the Defence and Counterclaim itself. What should happen is this. Mr Patel is going to provide a draft Amended Points of Claim, to set out properly his claim in conspiracy. Once that aspect of the case is dealt with, MSD should plead to such amendments made to the Points of Claim as may be allowed, and also incorporate what is now found in the Schedule to the Reply to Defence to Counterclaim the individual payments by date and amount made to Mr Patel. At that stage, Mr Patel should indicate, in relation to each payment, whether he says (to the best of his recollection) whether such payments were (a) remuneration, and if so, in respect of what service provided to which natural or legal person (b) a gift (c) reimbursement of expenses incurred in relation to which services provided or (d) something else. If he cannot remember, or provide such details, that too must be confirmed. However, at the moment, I am not going to strike out any individual part of the Defence to Counterclaim.
98. Finally, complaint is also made about Mr Patel's existing case in relation to what he now says he in fact owes to HMRC. Again, I am rather puzzled where that aspect of the strikeout application in fact takes me. I have to confess that it is not even clear to

me which specific paragraphs of the Defence to Counterclaim this complaint is directed towards. The complaint appears to be much more focussed on specific parts of a response to Part 18 Request, and to parts of Mr Majid's fourth witness statement.

99. Part of the problem in this case is that, because Mr Patel began these proceedings by way of a Part 8 Claim, no initial disclosure provided, as would be normal. That is why there are gaps in what one would otherwise expect to have before the court relating to aspects of Mr Patel's case. Those circumstances in fact strengthen my view that, rather than attempt at this stage to form a view as to which parts of the Defence to Counterclaim should be struck out, the proceedings should come on as quickly as possible to a case management conference so that there can be proper disclosure from both parties.
100. The final aspect of the October 2022 Application was, in the alternative, for an unless order "requiring further and better particulars of his Defence to Counterclaim be provided pursuant to CPR 17.3". There was insufficient time to hear submissions on this aspect of the case.
101. I am also aware that there is an outstanding Request for Further Information by the Claimant. That too appears to be a matter for another day.

Conclusion

102. In the circumstances, I will simply dismiss the October 2022 Application, apart from relief sought in relation to the Part 18 Request.

103. As to the September 2022 Application, the position is somewhat more complicated. What I am minded to do, is not to dismiss it at this stage, but instead to direct that Mr Patel should file draft amended Points of Claim along the lines his Counsel indicated would be done, within a defined period of time. I have in mind 28 days, but am prepared to hear any submissions on the point. MSD can then consider the proposed amended Points of Claim, and either consent to them, on the usual proviso as to costs, or indicate its opposition, in which the matter will need to return to the Court for a further hearing.