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



No. BL-2023-001403

[2024] EWHC 656 (Ch)

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 23 February 2024

Before:

DEPUTY MASTER LINWOOD

B E T W E E N :

BANNER UNIVERSAL MOTION PICTURES LIMITED

Claimant

- and -

(1) WIGGIN LLP
(2) FOX WILLIAMS LLP

Defendants

MR D BANNER (Director) appeared in person on behalf of the Claimant Company.

MR H EVANS (instructed by Browne Jacobson LLP) appeared on behalf of First Defendant.

MR T BARCLAY (instructed by RPC) appeared on behalf of the Second Defendant.

Hearing: 16th February 2024

J U D G M E N T

(v i a M i c r o s o f t T e a m s)

DEPUTY MASTER LINWOOD:

- 1 By an application notice dated 27 November 2023, the second defendant, Fox Williams LLP, applied for an order that the Claimant's claim against the second defendant be summarily dismissed pursuant to: (a) CPR 3.4, because it discloses no reasonable grounds for bringing a claim against the second defendant; or (b) CPR 24.2, because it has no real prospect of succeeding and there is no other compelling reason why it should be disposed of at trial.
- 2 Three days later, the first defendant, Wiggin LLP, applied for orders that: (a) the Claimant's particulars of claim be struck out as against the first defendant pursuant to CPR Part 3.4(2) (a) or (b) and/or; (b) the first defendant to have summary judgment against the Claimant pursuant to CPR Part 24, because the particulars of claim disclose no reasonable cause of action against the second defendant and (1) the Claimant has no real prospect of succeeding; and (2) there is no other compelling reason for the case to be disposed of at trial. Fox Williams had acted for the Claimant in proceedings before this court against a Swedish TV company, Friday TV AB, Endemol and NBC Universal Global Networks UK Limited. Wiggin acted for those three defendants.

The Background

- 3 Following a four-day hearing in November 2016, Snowden J, as he then was, dismissed the Claimant's claims for copywrite infringement, breach of confidence and passing off in respect of a TV game, entitled Minute Winner, which the Claimant said was its creation and intellectual property, which was infringed by another TV game, Minute to Win It.
- 4 This judgment must be read in the light of the judgment of Snowden J and, in particular as to background, at paragraphs 1, 2, 3, 6 and 8 to 17. At paragraph 18 Snowden J sets out the decision of the Stockholm District Court in proceedings brought by Mr Banner personally against Friday TV:

“By a written judgment dated 3 March 2014, the Stockholm District Court dismissed the claim and Mr Banner was ordered to pay Friday TV SEK1,110,800 in costs. The district court identified the first issue that it had to decide was what information Friday TV had received. The court concluded:

“It cannot be otherwise than inferred from studying the case that [Friday TV] had been given part of the information on Minute Winner and only in the form of ... an email with attached document. That was plainly a finding that, contrary to Mr Banner's case, the Minute Winner concept had not been pitched at the meeting on 11 November 2005, but had only been communicated to Friday TV in the email of 21 November 2005.”

- 5 Paragraph 19 then refers to the decision of the Swedish court, which also held that information regarding Minute Winner was not capable of being a trade secret in accordance with the Swedish Trade Secrets Act. Mr Banner applied for permission to appeal to the Swedish Court of Appeal, which refused the same on 30 June 2014. A further application for permission to appeal was made to the Swedish Supreme Court. That was dismissed on 29 July 2014, Mr Banner being ordered to pay further costs in addition to the costs already awarded against him, the Sterling equivalent being about £85,000.

6 Mr Banner then apparently assigned his intellectual property rights in Minute Winner to the Claimant here, Banner Universal Motion Pictures Limited, a company registered in England. I say “apparently” as I am not aware as to the terms of assignment, but there was no challenge to it before me. In May 2016, the Claimant commenced proceedings here, serving them in July 2016.

7 In dismissing the Claimant’s claims, Snowden J said at paragraph 46:

“In my judgment, tested against any of those requirements, there is no realistic prospect of BUMP persuading a court that the contents of the Minute Winner Document qualified for copyright protection. In my view, those contents are both very unclear and lacking in specifics, and even taken together they did not identify or prescribe anything resembling a coherent framework or structure which could be relied upon to reproduce a distinctive game show in recognisable form. The features were, in truth, commonplace and indistinguishable from the features of many other game shows.”

8 Then at paragraph 52:

“Even if I were wrong in this conclusion as to subsistence of copyright, a comparison of the Minute to Win It programmes and the Minute Winner Document makes it clear that BUMP cannot hope to make out its allegation that a substantial part of its (alleged) copyright work has been copied by the Defendants. The features of the Minute to Win It shows were described in the evidence at some length and I had the opportunity to review a couple of DVDs of some of the episodes. In my judgment, the two are different in every material respect.”

9 And then at paragraph 60:

“I therefore conclude that BUMP’s claim for subsistence and infringement of copyright is without any realistic prospect of success and should be dismissed.”

10 As to breach of confidence and estoppel, in terms of the Swedish decision, Snowden J referred to *Virgin Atlantic Airways v Zodiac Seats UK* [2014] AC 160 at [63] including reference to *Henderson v Henderson* abuse of process through to paragraph 68.

11 Then, at paragraph 69, he said that, applying those principles to the claim before him, it was clear the Claimant’s claim for breach of confidence must fail. At paragraph 75 he said:

“I therefore reject Ms Heal's argument that the Swedish claim and the English claim are sufficiently dissimilar that cause of action estoppel cannot operate. In my judgment they are in substance the same claim, and as the Swedish courts delivered a final judgment on the merits of Mr Banner’s claim, he, and BUMP as his assignee, are barred by cause of action estoppel from pursuing a claim on the same facts for breach of confidence in England. I would add that I would in any event also have been inclined to accept the Defendants' submission

that the information in the Minute Winner Document was too vague and insufficiently developed to qualify for protection as confidential information under English law. I have set out the references to the relevant authorities in that regard above, and although they make clear that a fully developed format is not a prerequisite for protection as confidential information, I think that the very generalised description of the concept in the Minute Winner Document fell far short of what was required.”

12 Next, at paragraph 76:

“Even if that were not so, it must certainly be the case that BUMP is issue estopped from running a breach of confidence claim. The District Court expressly identified that the first issue that it had to decide as an essential element of the claim under the Swedish Trade Secrets Act was what information had been given by Mr Banner to Friday TV. The District Court held that the only information that had been given to Friday TV was the information in the email and attached document sent ten days after the initial meeting on 21 November 2005. But BUMP's claim in this jurisdiction depends upon showing that information relating to Minute Winner was communicated to Friday TV at the meeting on 11 November 2005. The Swedish Court has held to the contrary, and in my judgment it cannot be open to BUMP, as Mr Banner's assignee, to contend otherwise.”

13 And then, at paragraph 78:

“Finally, it seems to me that it is a *Henderson v Henderson* abuse of process for BUMP to seek to pursue a breach of confidence claim in England arising out of precisely the same facts that Mr Banner relied upon unsuccessfully against Friday TV in Sweden. This is not simply a case where the same facts are relied upon in two essentially identical claims against the same defendant – which would be unjust in itself. What seems to me to be particularly abusive is that the claim has been brought by Mr Banner through his newly incorporated English company. That seems to me to be a transparent ploy by Mr Banner (to which BUMP is a party) to attempt to obtain the benefits of a new claim in England without paying the outstanding costs orders to which Mr Banner is subject in Sweden.”

And then, at paragraph 79:

“I therefore conclude that the claim for breach of confidence is barred *res judicata* and/or is an abuse of process.”

14 I would add, as to the costs, Mr Banner told me that there were none due from him in the Swedish proceedings. Snowden J concluded the claim for breach of confidence was barred *res judicata* and/or amounted to a *Henderson v Henderson* abuse of process. Likewise, he dismissed the claim for passing off and concluded the Claimant's claims were not “sustainable on any basis” and dismissed them with an interim costs order for £130,000. Mr Banner submitted that the costs awarded against the Claimant were paid by his after the

event insurers. The Claimant is a company of no substance and, as I understand it, obtained litigation funding to bring those claims.

- 15 In his oral submissions, Mr Banner emphasised that people had advanced their careers as his expense. They had used his work. All he was trying to do was get paid what was properly due to him. His company was a dormant company due to the damage and abuse he had suffered. He said that he had been followed and intimidated even on a family holiday, but Minute to Win It was the world's most sold gameshow in 2011 to 2012 and he was not just walking off the street demanding payment, as shown by his existing contractual arrangements over TV shows with Friday TV. Most importantly of all, Friday TV had no evidence that they created Minute to Win It.
- 16 Mr Banner was and is clearly very upset and angered by what he regarded as the theft of his intellectual property. He therefore turned his ire upon his previous solicitors and the solicitors representing the successful three defendants. He sent a letter before action on 30 March 2021 which led to lengthy correspondence with Reynolds Porter Chamberlain ("RPC") for Fox Williams. In June 2023, he complained directly to Aviva, Fox Williams' insurers, alleging they had delayed a valid indemnity claim with no good reason.
- 17 He then extended his ire to all those possible involved in any respect, making allegations of professional misconduct. As Mr Barclay says in his skeleton argument at paragraph 25:
- (1) On 16 January 2023, Mr Banner sent RPC a draft letter of complaint to the Solicitor's Regulation Authority accusing them of dishonesty and misconduct and alleging RPC had wrongly failed to advise Aviva to compensate him.
 - (2) On 22 February 2023, Mr Banner sent RPC another draft letter of complaint to the SRA repeating allegations against RPC and adding:

"it will be an abuse of court process by RPC, Fox Williams and Aviva to force BUMP to file its claim."
 - (3) On 16 July 2023, Mr Banner complained to the SRA about RPC.
 - (4) In August 2023, Mr Banner filed an SRA report form complaining about Jonathan Wyles at RPC and Gary Oldroyd at Browne Jacobson LLP, who represent Wiggin, Caroline Kean at Wiggin and Simon Bennett at Fox Williams.
 - (5) In each of those letters Mr Banner made allegations of professional misconduct, dishonesty and fraud against each of those individuals.

The allegations against Wiggin and Fox Williams

- 18 Then this claim was issued on 20 October 2023. The Claimant filed separate particulars of claim against Wiggin and Fox Williams. Against Fox Williams the Claimant said, at paragraph 3, that the Claimant's claim against the defendant is for professional negligence, breach of the retainer agreement (breach of contract) and breach of duty of care.
- 19 At paragraph 4 he said that Fox Williams:

"... made grave errors and omissions, miscalculation and poor judgment in their handling of the Claimant's case and documents

when they pleaded the Claimant's case in court, which made the court unable to deal with the Claimant's case fairly and justly and issue a fair and just court order. All of the Claimant's claims were struck out and the Claimant's case was not allowed to proceed to trial."

20 The particulars of breach at paragraph 39 plead:

"The defendant failed to exercise all of the above and thereby also failed in their duty of care and breached the express and implied terms of the contract in that it:

- (1) acknowledged they had received from the Claimants "a number of documents" to put in the case and before the hearing judge, the defendant even successfully obtained funding on the basis of all those documents and secured own cashflow and covered own costs, but the defendant expressly failed to disclose all of the same documents and consequently failed to successfully plead the Claimant's case to the court;
- (2) failed to investigate and include in the case the smoking gun evidence of Internet Links to contractual files which Wiggin's clients established with the Claimant with the intent to resolve the matter out of court;
- (3) failed to advise the Claimant on the prospects of issuing a specific disclosure application for any evidence which Wiggin and their clients had in their control and possession to be disclosed to the Claimant which would have strengthened the Claimant's case. Such an application should have been made when Wiggin LLP made their initial threat to strike out and once the application had been issued; and
- (4) opted to issue the claim under the short trial scheme even when this was not appropriate for the Claimant's case."

21 The evidence the Claimant submitted Fox Williams failed to put before Snowden J was:

- (1) A document entitled "Read Your Fortune" which the Claimant says was emailed to Friday TV in 2007.
- (2) The "Links Evidence" being screen or document grabs from the Claimant's website.
- (3) An online news story in a Swedish newspaper, Aftonbladet, from 2011 that one Caroline af Ugglas, a choir leader in Sweden, was paid millions of Swedish Krona in royalties after developing a TV gameshow format called "Clash of the Choirs" with Friday TV.

22 Due to those failures by Fox Williams, at paragraph 44, the Claimant pleads it:

"... lost the chance and opportunity to fully present its case and to provide all the facts and documents to the court."

23 The Claimant relies upon its interpretation of certain correspondence from Fox Williams and Wiggin in support of its allegations which, as I will come to, in my view arise from a misunderstanding of that correspondence. This led to what I consider are unrealistic pleas that, for example, at paragraph 45, Fox Williams:

“... made a serious miscalculation and poor judgment, assuming the judge was going to consider the matter further before issuing his decree, leaving the Claimant with the impression or hope that there was still the possibility to provide more documents to the court before summary judgment.”

24 In summary, at paragraph 66 of his particulars of claim, the Claimant says:

“The Claimant, relying expressly upon the defendant’s legal representation and advice lodged the claims for copyright, passing off and breach of confidence on the basis of one single piece of evidence for the entire case and but for the defendant’s omissions and failure of disclosure, failure to follow the Claimant’s instructions, failure to investigate key evidence, failure to provide proper and correct advice to the Claimant, the Claimant would have had a greater chance of resisting Wiggin’s application for strike out and for summary judgment and would have had its claim allowed to proceed to a proper trial.”

That single piece of evidence being the Minute Winner Document Snowden J sets out at paragraphs 6 to 11 of his judgment.

The Links Evidence

25 Before I turn to the claim against Wiggin, I will mention the Links Evidence as this features heavily in both claims. What happened was that in September 2011 Friday TV’s Swedish lawyers and/or parent company, Metronome looked at the Claimant’s website and downloaded documents. In evidence are two URLs with files named in Swedish, “contract” and “contract documents”, as is more particularly set out in the particulars of claim against Wiggin at paragraphs 31 to 34. The Claimant pleads, at paragraph 49:

“What the defendant did not disclose to the court in London, however, was the fact they had in their control and possession more information and details of the Claimant’s work from the documents they revealed they downloaded from the Claimant’s website, as well as the agreement files they had created between Friday TV and the Claimant and which meant that the matter should have been resolved between the parties rather than be decided by the court. The defendant and their clients were fully aware that they were abusing the court process.”

That was in the particulars as against Wiggin.

26 Subsequently, at paragraph 55, the Claimant pleads:

“The judge would have understood from the omitted documents that there was no reason for a dispute and the matter should have been

settled out of court between the parties, also especially since Friday TV and their legal counsel already recognised the Claimant's right to the gameshow Minute to Win It and were in the process of drafting agreements."

And then, at paragraph 56:

"On this basis, the court would have concluded the defendant and their clients were abusing the court process and would have allowed the case to proceed to a proper trial or would have struck out the defendant and their client's defence and then ruled in favour of the Claimant."

- 27 Mr Banner also showed the court a six-minute video he had made of the process of the visit to his website and the downloading of the files to Friday TV's or Metronome's server, with their descriptive URLs. Mr Banner only indicated he wished to show this video just before the hearing. The defendant's lawyers said that whilst evidence had closed they would not object on the basis I could review it *de bene esse* and each counsel could make such submissions as they saw fit. I appreciate the pragmatic and proportionate approach taken by both RPC and Browne Jacobson, which is typical of the way they and their respective counsel have dealt with this highly charged matter notwithstanding the extreme personal attacks that have been made upon some of them by Mr Banner. In any event, all who viewed the video agreed it was of assistance in understanding the process.
- 28 Having said that, I pushed Mr Banner to explain exactly what was downloaded. He could not tell me as he said his website was in a state of constant flux, so all that is certain is that the download was on 12 September 2011, but exactly what and why is not known. I can understand Mr Banner's concern over this as one link has in its URL the words "Minute Winner" and the other, "Minute Winner Minute to Win It".
- 29 There could be a more prosaic reason for the download as, one month later, by letter dated 12 October 2011, Metronome and/or Friday TV's lawyers, Nord & Co., wrote to the Claimant alleging it had published incorrect and misleading information on its website concerning the intellectual property rights to Minute to Win It, alleging title and trademark infringement and misleading marketing and passing off by Mr Banner and BUMP. However there is no evidence before me as to what exactly was downloaded so the point cannot, in my judgment, go further.
- 30 As to the Read Your Fortune document, the Claimant says Fox Williams failed to submit this in evidence before Snowden J. Read Your Fortune was a gameshow concept Mr Banner had emailed to Friday TV in 2007 and involved those competing to read and recall text from books to win up to \$1 million, with competitors able to choose different categories of books. The Claimant submitted the concept had similarities to the Minute to Win It show, namely: (1) a prize ladder which (2) rose to \$1 million, with (3) increasing difficulty of challenges which (4) had different categories which (5) the viewers could try at home. Therefore, the Claimant submitted in the particulars of claim at paragraphs 12 to 16, if Snowden J had been shown this, it would have been relevant to his decision as to intellectual property infringement in respect of Minute Winner whereby a fair and just ruling would have ensued.
- 31 In my judgment, I cannot see any reason for reasonably competent solicitors specialising in intellectual property claims to advise that the Read Your Fortune document should be

included in the evidence tendered before Snowden J for the simple reason I consider it has no possible relevance to the question as to whether the Minute Winner document was entitled to copyright protection or whether it had been copied. I say that whether the Read Your Fortune document is a standalone document or if it is to be seen as one part of the other pieces of factual evidence that the Claimant thinks should have been put before Snowden J.

- 32 In the particulars of claim against Wiggin, the Claimant pleads, at paragraph 3, that its claim arises out of:

“... statements and new allegations that Wiggin made to the Claimant in a letter of 7 February 2019.”

That is a letter by Wiggin to Mr Banner from Ms Kean, a partner within that firm. He had sent her numerous emails and requests to speak about his claims. Referring to the links evidence, she said:

“The information downloaded was as a result of your claims there had been infringing use of your material. Legal counsel wished to establish what your website said and secure it for use in evidence. This cannot be news to you. The contents of your website was something which was put in evidence in both the Swedish and English proceedings.”

And then:

“You wrongly believe that the existence of the URL and its nomenclature indicates that actual contracts were created and, from this, you make the leap that your information must have been used. You are wrong on both counts. The URL demonstrates only how Metronome set up their folder structures at the time, i.e. Avtal/Avtalsunderlag (agreement/documentation). It does not mean that any contracts actually existed. I can tell you categorically that no contracts were ever created by Ms Almkvist or anyone else relating to “Minute Winner”.”

- 33 In her witness statement dated 30 November 2023 Ms Kean said, concerning the Links Evidence, that she was instructed no contracts existed, explaining that the URLs were automatically generated file descriptors. She acknowledged she was incorrect in that the Claimant’s website was in evidence in the Swedish proceedings, but added, as is the case, Mr Banner knew of the URLs up to three years before the Swedish proceedings ended.
- 34 Mr Banner endeavours to persuade me that Wiggin withheld those downloaded documents, which, in his submission, was an attempt to mislead by adducing false evidence and, therefore, Wiggin and its insurers have no defence against his claim. In summary, against Wiggin, the Claimant says, at paragraph 72:

“The Claimant’s breach of duty and obligation to the court to disclose relevant facts and documents caused the Claimant’s claims to be struck out.

“(1) The Claimant was not given fair court process and lost the chance to fully present its case to the court and obtain a fair and just court ruling.

“(2) The Claimant suffered enormous financial loss, including the opportunity to recover an amount of more than £30 million in unpaid royalties from the defendant’s clients, Friday TV, Endemol Shine and NBS Universal, loss of future revenues, loss of opportunity to exploit its work and to establish relations with third parties who are interested in its work.

“(3) The Claimant’s founder and director has also suffered enormous financial loss and serious emotional distress since the summary judgment was issued and made public and while he continues to pursue the claim against the defendant and seek justice on behalf of his company, including loss of personal income, loss of future income, loss of business activities with his company, loss of career opportunities etcetera.”

35 The Claimant has provided draft amended particulars of claim against Wiggin and Fox Williams, but not obtained permission to serve them. However, and again I mark my appreciation for their pragmatic approach, counsel have dealt with them. Against Wiggin they have included an amendment to plead breach of CPR 31 for failure to disclose, at paragraph 72(m), further and detailed allegations at paragraph 72(n) of dishonesty, fraud and deceit and then perjury, racism and discrimination.

36 At paragraph 79, the Claimant claims against both Wiggins and Fox Williams the same remedy namely £40 million in royalties, plus £10 million damages and £5 million loss of future revenues, a total of £55 million. Against Fox Williams it claims civil fraud and corruption and, at paragraph 72, includes the same damages pleading, but also asks for aggravated and exemplary damages for fraud and corruption to prevent Fox Williams from so acting in the future.

37 In its skeleton argument, in the conclusion at paragraph 14, the Claimant says:

“(1) Fox Williams admitted to their omissions of the Claimant’s documents, and for that reason Aviva and RPC know that the Claimant has a compelling indemnity claim against Fox Williams.

“(2) Fox Williams was warned about the consequences of their omissions by the Claimant.

“(3) Aviva and RPC informed the SRA that the Claimant’s claim against Fox Williams is that of ‘Professional Negligence’.

“(4) Aviva and RPC have declared to the Claimant that their only defence against the claim is their application for strike out and/or summary judgment, thus they revealed that their application is a tactical defence to compensate for their lack of a real defence against the claim.

- “(5) Aviva and RPC also know that since they have no real defence they are unable to answer to the real issues in the claim.
- “(6) The Claimant has established all of the necessary elements of a claim against Fox Williams for professional negligence, breach of contract and breach of duty of care.
- “– CPR Part 31.11 provides the duty of disclosure continues during proceeding and until proceedings are concluded. Fox Williams had an entire year between the hearing in November 2016 until court’s decision on 19 October 2017 to disclose all of the Claimant’s facts and documents to the court but failed to do so.
- “(7) The Claimant has also established all of the necessary elements of Fox Williams’ conduct of corruption as Fox Williams suspiciously insisted that Wiggin filed their application to the court to strike out the Claimant’s claim against Wiggin’s clients and repeatedly ignored the Claimant’s instructions to investigate and to disclose to the court all of the evidence they received for the case.
- “(8) The Claimant has also established all of the necessary elements of a claim for fraud and deceit against Fox Williams and against Aviva and their solicitors RPC for their deliberate obstruction and false arguments during the pre-action period and also now for their scheme to induce this court to unjustly strike out the Claimant’s indemnity claim based on their false representation in their filed application.
- “(9) The Claimant has also suffered reputational damage since the court’s decision of 19 October 2017 was made public and ... has been unable to exploit its work with third parties who are interested in its gameshow ‘Minute To Win It’.”

38 I will deal with two of these submissions now. At subparagraph 1, the Claimant says documents were deliberately withheld from Snowden J by Fox Williams, referring to a without prejudice Part 36 offer from Fox Williams to Wiggin dated 13 December 2016. This was therefore about four weeks after the four-day hearing but before judgment. Fox Williams say in that letter:

“As was established in the course of the hearing before Snowden J, the court does not yet have all of the factual information available and, consequently, is not in a position to rule on important questions such as how our client’s confidential information was used by your clients or how your clients infringed our client’s copyright. Our client remains confident that it has a strong case.”

Then, over the page, they offer to accept £2.567 million plus costs in settlement of the Claimant’s claims. I observe that that is in the context of the Claimant saying it was then entitled to damages of about £30 million. So this is an attempt to negotiate settlement but from a very weak position. There were no other documents of probative value.

- 39 The reference to the court not having all the factual information available is a bargaining or negotiating point and one Fox Williams were entitled to put forward on the basis that Snowden J may have refused summary judgment and the matter proceeded to trial and when there would be full disclosure and certain other documents may well have emerged.
- 40 Evidence of the weak negotiating position is shown by Fox Williams' report to the Claimant written at the end of the second day of the hearing on 9 November 2016, when they said, under the heading, "Copyright":

"(1) So far, the judge appears to view the copyright claim with a degree of scepticism ..."

And then, under, "Breach of Confidence":

"(3) One of the most important issues is establishing the new defendants knew Friday TV had given them confidential information which belonged to you at the time Friday TV gave them the information. This is difficult to establish and the defendants say Friday TV would not have obviously told NBC or Shine that the information was your confidential information because it wanted them to buy the programme.

"(4) Our strategy had been to wait for disclosure, but in order for the substitution to be allowed, the court is requiring that we have a bit more evidence.

"(5) This is particularly important because, as far as NBC is concerned, we do not currently have any examples to fix them with knowledge of your confidential information at the time it was received. We appreciate you wrote to them in 2011 after seeing the Danish version."

This, to put it mildly, is hardly a report brimming with confidence in the Claimant's case. Fox Williams were, rightly, as is now clear, keen to settle. Their only prospect was that "something may turn up" on disclosure, hence the terms of their letter.

- 41 In no sense can it be read, as the Claimant submits, as an admission Fox Williams had further documents to put forward but were withholding them. It was a negotiating ploy and a weak one at that, but understandable in the circumstances which obtained at the time. The Claimant cannot rely upon it as against Fox Williams or anyone else.
- 42 Another point on evidence I will dispose of now is the allegation at subparagraph 7 that Fox Williams "suspiciously insisted that Wiggin file their application to strike out the Claimant's claim." The Claimant relies upon Fox Williams' letter of 5 October 2016 to Wiggin in which, referring to the prospective application to strike out the claim, Fox Williams say:

"We have not received confirmation from you or the court that this application has been made, despite the fact you have continually repeated such threats for almost three months. If your client intends to make this application, please file the application and supporting evidence now without any further delay."

And then later:

“As is clear from the correspondence, your client has been intending to make the application to strike out for some time. Our client is concerned it is your client’s intention to delay making the application until the last moment in order to deliberately obstruct our client’s claim, which appears to be a pattern given your refusal to accept service of the claim on the new proposed fourth defendant.”

43 I have no doubt that Fox Williams’ actions here were in the best interests of the Claimant to ensure they could meet as strongly as possible that threatened application and for good case management. There is nothing suspicious or untoward about writing in those terms. Parties need to get on with litigation. This is almost akin to a “put up or shut up” application in probate claims, namely make your application or stop threatening it. That is all Fox Williams were doing and nothing more can be read into it. I therefore reject any criticism of Fox Williams in this respect. It is another example of Mr Banner taking selected words out of context and wholly misunderstanding them, leading to him making unevidenced and baseless allegations which have no foundation in law or fact.

The Law

44 At paragraph 24, Snowden J states the approach the court will take on an application for summary judgment or, here, reverse summary judgment, namely a party has no reasonable prospect of succeeding in its claim, and then there is no other compelling reason for the matter to go to trial, as also set out in the **White Book** at CPR 24.2(3). In essence, the defendants have to show the Claimant has no more than a fanciful chance of succeeding.

45 As to strike out, CPR 3.4(2) provides:

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

- (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
- (b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings;
or
- (c) that there has been a failure to comply with a rule, practice direction or court order.”

46 I will briefly mention copyright law by reference to the principles. Snowden J set these out in detail at paragraphs 27 to 42 of his judgment and, especially as to TV shows and their protection, at paragraphs 43 and 44. I also have taken into account **Copinger and Skone James on Copyright (18th ed)** at paragraphs 3 to 119.

47 Mr Barclay submits in his skeleton, at paragraph 39, as to breach of confidence, that:

“Individuals may fall under an equitable duty to keep information confidential if:

“(1) the information has the necessary quality of confidence, meaning it must not be public knowledge or generic;

“(2) the information is disclosed in circumstances of confidence, for example, through a contract with a confidentiality clause or where the recipient is aware that the information is imparted in confidence; and

“(3) there has been an unauthorised use or misuse of the information (see, e.g. *OBG Ltd v Allan ...* and *Matalia v Warwickshire County Council ...*).”

48 As to professional negligence, causation and loss are, as ever, key issues the court must determine. In essence, first, to establish liability in tort or to be entitled to any relief in contract, the Claimant has to prove any breach of duty was the factual and legal cause of the specific loss claimed. Secondly, the test for factual causation is the “but for” test. The court will ask to see if but for the breach the loss could have been avoided. If it would, the breach was the factual cause of the loss. Thirdly, a Claimant is required to plead and prove what would have happened if the alleged breaches had not happened.

49 With lost litigation and loss of chance claims, the court, first, will consider if the Claimant has a reasonable prospect of succeeding in its claim if it were not for the breach of contract or negligence. If so, then the court will calculate the percentage chance of success lost and calculate damages, i.e. a monetary value. The Claimant must show that but for the negligence or breach of contract or duty, it had a better or increased chance of succeeding in the litigation and what that increased chance means in monetary terms.

50 I think this is accepted by the Claimant here as, in the particulars of claim against Fox Williams, as I have quoted, at paragraph 68, the Claimant refers to it having “had a great chance of resisting Wiggin’s application for strike out and summary judgment” and “would have had its claim allowed to proceed to a proper trial.”

The claim against Fox Williams

51 Mr Barclay submits the claim, in his words, is hopeless for three reasons:

- (1) There is no prospect of the claimant showing Fox Williams have breached their duties in contract or tort to the Claimant.
- (2) There is no prospect of the Claimant showing the alleged breaches caused these or any other losses.
- (3) The claim is out of time; it is statute-barred.

52 As to breach of duty five points are alleged. First, I have mentioned the Links Evidence and the court was shown the six-minute video by Mr Banner on the Claimant’s behalf. The Claimant submits Fox Williams should have put the Links Evidence before Snowden J after Mr Banner told them in September 2015 - he said it is evidence of contracts being created or established.

53 I think this allegation gets nowhere near establishing a breach of duty by Fox Williams. In fact, it is so far away it is, in my judgment, hopeless, as Mr Barclay submits, for these reasons:

- (1) It has no relevance to the law of copyright, confidential information or passing off that would have assisted the Claimant, especially as there is no evidence before me as to what was downloaded.
- (2) In particular, whatever was downloaded may have been to assist the Swedish lawyers in their claims against the Claimant based on its website for alleging the Claimant was the co-owner or producer of the Minute Winner gameshow.
- (3) Further and in any event, even if it could have been used to infer the Swedish lawyers discussed settlement with Friday TV (their clients), it is: (a) irrelevant, (b) protected by legal advice privilege and (c) meaningless in the context of the legal requirements for copyright, confidential information and passing off.
- (4) Therefore there was no duty upon Fox Williams to put this evidence before Snowden J. I cannot see it is of any conceivable assistance to the Claimant.

54 Secondly, the Clash of Choirs evidence, namely the news story in Aftonbladet I described above. Again, the Claimant submits Fox Williams should have put this before Snowden J. I cannot see any basis for so doing. It was, and is, irrelevant and the one fact I can be certain it apparently establishes, namely that Friday TV will pay royalties where it makes a programme with the creator of such content, was not an issue before Snowden J and nor is it now.

55 Thirdly, the Read Your Fortune document. The Claimant submits that it would have been relevant to the question of whether Friday TV copied Minute Winner. I cannot see that reasonably professional and competent solicitors would have included the Read Your Fortune document in evidence as it has no relevance to whether Minute Winner was entitled to the protection of copyright or, for that matter, confidential information, as it is too vague and generic. Finally, as to passing off, there simply is no goodwill in it as it had not been broadcast and therefore had no viewers and no market.

56 Fourthly, that Fox Williams should have made an application for specific disclosure under CPR 31 against Wiggin or their clients. I cannot see how this could have strengthened the Claimant's case for these reasons:

- (1) As the notes to CPR 31.12(2) state, an application for specific disclosure means:

“the court will need to satisfy itself as to the relevance of the documents sought and that they are or have been in the parties' control...”

But the Claimant is basing such an application on a request for “any evidence” that would support it. Such an application would be doomed to fail.

- (2) Disclosure by the defendants was not relevant to the issues determined in the judgment of Snowden J, namely copyright and estoppel as to confidential information and passing off.

57 As to the Claimant's submission that Fox Williams' decision to proceed under the shorter trial scheme disadvantaged it, this does not bear examination for these reasons:

- (1) It is a sensible and proportionate case management approach in view of the length of trial and the relative brevity of the pleadings.

- (2) It reduced the costs risks.
- (3) It may have been imposed by the court or upon application of the defendants in any event.

Causation

58 The Claimant maintains, in paragraph 29(j) of his witness statement that the failure by Wiggin and Fox Williams to put certain of the above documents before Snowden J prevented a fair and just decision. I do not accept that as to the Clash of Choirs and Read Your Fortune documents for the simple reason they had no probative value, so his decision would not have changed. The Claimant does not advance the case of causation as to the use of the shorter trial scheme, nor failure to make an application under false specific disclosure and, in my judgment, cannot do so.

Summary

59 In my judgment, Fox Williams are entitled to reverse summary judgment or strike out pursuant to CPR 3.4(2) as this claim is based upon a fundamental misapprehension of intellectual property laws and civil procedure in that, for the reasons I have explained above:

- (1) There is no prospect at trial of the court finding that Fox Williams are in breach of their contractual or tortious duties to the Claimant.
- (2) The production of the Read Your Fortune document, the Links Evidence and the Clash of Choirs article would not have made any difference to the outcome of the proceedings.
- (3) Likewise, making an application for specific disclosure and/or not proceeding under the shorter trial scheme would not have affected the outcome in that neither were a breach of contract, nor were they negligent; nor could they have caused loss to the Claimant.

60 The proposed amendments to the particulars of claim do not assist the Claimant in that they have no prospect of success. The allegations of fraud, dishonesty, corruption and perjury are not causes of action. They are in my judgment baseless and wholly unjustified allegations made in a scattergun manner against anyone who has had any part in this claim.

Abuse of process

61 Mr Barclay submits that both iterations of the claim should be struck out pursuant to CPR 3.4(2)(b) as an abuse of the court process or likely to obstruct the just disposal of the proceedings, citing Whipple J in *Cleeves v University of Oxford* [2017] EWHC 702 QB in her summary of the propositions from the authorities.

62 I now apply those propositions to the facts here:

- (1) I find, whilst prolix and substantial in word count, the pleadings are unreasonably vague, especially in terms of the way causation and loss and damage are pleaded, if they are at all.
- (2) There is a real risk that Fox Williams will incur unnecessary expense in defending these allegations if this claim continues.

- (3) Accordingly, as the Claimant is a dormant company, Fox Williams will not be able to recover its costs.
- (4) The Claimant has made baseless allegations against Fox Williams, their solicitors, RPC, as well as Wiggin, their solicitors, Browne Jacobson, and individuals in those firms. Those allegations, which have no merit in them, should not be allowed to stand.
- (5) I note Mr Banner has concluded what can only be described as a campaign against those firms and the individuals in them by his complaints to the SRA. There is no factual or evidential underpinning for any of those allegations.
- (6) The whole tenor of the Claimant's evidence is the repeated submission of long repetitious prolix pleadings and statements with no basis in law or fact. I can accept one or possibly two points he has made as to misunderstandings, but the scale goes far beyond that.

63 I am therefore satisfied that due to the vexatious nature of the Claimant's case I will strike it out as an abuse of process. I say that as a ground independent of and alternative to that of reverse summary judgment.

Limitation

64 If I am wrong as to the above and, on the face of it, the claims have a real prospect of success such that they should proceed to trial and/or are not an abuse of process, Mr Barclay submits that the limitation periods in both contract (section 5 of the Limitation Act 1980) and tort (section 2 of that Act) have expired.

65 He submits that the date or dates of breach all had to occur up to or upon the end of the hearing, namely 11 November 2016. As the claim form was issued on 20 October 2023, the claims are simply out of time. I agree.

66 In tort time runs from when the cause of action accrues. Mr Barclay cited *Holt v Holley and Steer Solicitors* [2020] EWCH Civ 851 and submitted the facts are analogous to the position here as the Claimant alleged the defendants, as her solicitors, failed to require valuation evidence in respect of some but not all of her husband's assets, so the financial relief she obtained was lower than it might have been.

67 Lord Justice McCombe, at paragraph 59, said:

“If one party, owing to a solicitor's negligence, loses the opportunity to adduce the expert evidence that puts his/her case in the best possible light then the value of that party's claim is inevitably diminished. As Mr Fowler put it, at that stage (as in any other civil claim) an important and identifiable part of that party's ‘armoury’ has gone.”

And concluded at paragraph 61:

“In the result, I consider that, on her case, Ms Holt suffered "measurable damage" and was "financially worse off" at the latest by

the end of the hearing on 16 March 2012, as Judge Ralton held, and in all probability much earlier than that. Therefore, her claim for damages in tort was barred by s.2 of the 1980 Act before the claim form was issued on 5 April 2018.”

- 68 I therefore find the Claimant suffered the damage, again, by the end of the hearing, namely 11 November 2016, as that was the last day evidence could be put before Snowden J. That is more than six years before this claim was issued and therefore is statute barred.
- 69 The Claimant has submitted that there was a continuing duty upon Fox Williams to submit further evidence. That cannot succeed as, first, it is wrong in law and, second, Snowden J emailed out his draft judgment on 3 October 2017, more than six years before issue of the claim form here. After then, the Claimant could not make further submissions. That ended the matter.

Wiggin – Breach of duty

- 70 Wiggin is in a different but as I will explain stronger position than Fox Williams. First, Wiggin as solicitors for the defendants owed no duty to the Claimant, save in the most unusual circumstances. An example of the latter is *Al-Kandari v Brown* [1988] QB 665, where, at 672A, Lord Donaldson said:

“A solicitor acting for a party who is engaged in ‘hostile’ litigation owes a duty to his client and to the court, but he does not normally owe any duty to his client’s opponent: *Business Computers International Ltd v Registrar of Companies* ... This is not to say that, if the solicitor is guilty of professional misconduct and someone other than his client is damnified thereby, that person is without a remedy, for the court exercises a supervisory jurisdiction over solicitors as officers of the court and, in an appropriate case, will order the solicitor to pay compensation: *Myers v Elman* ... That said, it should be emphasised that in the present case there is no allegation and no suspicion of any misconduct upon the part of the defendant solicitors.

“I would go rather further and say that, in the context of ‘hostile’ litigation, public policy will usually require that a solicitor be protected from a claim in negligence by his client’s opponent, since such claims could be used as a basis for endless re-litigation of dispute: *Rondel v Worsley* ...”

- 71 The reason why, in *Al-Kandari*, that a duty was found was because the Claimant’s (wife’s) solicitor held the passport of the husband and the children to the order of the court. A duty was therefore found as appears at letter D:

“It was also the passport of the two children who were in the custody, care and control of the plaintiff. In voluntarily agreeing to hold the passport to the order of the court, the solicitors had stepped outside their role as solicitors for their client and accepted responsibilities towards both their client and the plaintiff and the children. One such responsibility was quite clearly a duty not to hand the passport to the husband upon his request and, of course, there was no breach of this duty.”

72 I have no hesitation in saying that is wholly distinguishable on its facts from the position here. Wiggin in no way accepted responsibilities beyond those to their clients in hostile litigation.

73 Mr Evans also cited *NRAM v Steel* [2018] 1 WLR 1190 at [25]:

“A solicitor owes a duty of care to the party for whom he is acting but generally owes no duty to the opposite party: *Ross v Caunters* ... The absence of that duty runs parallel with the absence of any general duty of care on the part of one litigant towards his opponent: *Jain v Trent Strategic Health Authority* ...”

74 In the absence of any duty there is nothing that can be breached, although if Wiggin had not disclosed documents it should have done to the opposing party or to the court, Wiggin may have been in breach of its duty to its clients or the court. But that is not the position here.

75 The Claimant pleads against Wiggin as I have set out in [31] above as to paragraph 3 of its particulars of claim. I have already referred to the letter that the Claimant relies on in paragraph 3, namely that of 7 February 2019 above. As to paragraph 4 in no sense did Wiggin “purposefully breach their professional duty and obligation to the court”. In no sense was the summary judgment obtained by concealment. Contrary to what the Claimant alleges, there was no duty upon Wiggin to do anything with the Links Evidence. Even if there was such a duty, it would have made no difference to the outcome as I have found above as the Links Evidence was irrelevant to the decision of Snowden J. It therefore would have made no difference whatsoever.

76 Further:

(a) Ms Kean says she was not aware of the Links Evidence until the application for permission to appeal the judgment of Snowden J;

(b) Fox Williams had the Links Evidence in any event and decided not to use it.

Causation

77 I also reject the Claimant’s submission as to causation (see the particulars of claim at paragraphs 48 and 56) that disclosure of the Links Evidence would have made any difference or, as the Claimant puts it, prove abuse of process by Wiggin and their clients which would have resulted in the matter going to trial or strike out of the defences. The Links Evidence had no relevance and would have made no difference to the outcome. If Snowden J had evidence of negotiations or willingness to negotiate I cannot see how that would have made any difference to his decision. The claims were struck out as there was no basis for them.

78 I have already explained at paragraph 72 of the particulars of claim how the Claimant sets out its claim for damages premised on breach of duty and obligations to the court to disclose relevant facts and documents, namely the like amounts it claims against Fox Williams. There is no basis in law or fact for these claims and I dismiss them.

Abuse of process

- 79 If I am wrong as to the above, I consider the manner in which these claims have been made to amount to an abuse of process in accordance with the decision in *Cleeves* and, for the same reasons I found in respect of Fox Williams in paragraphs 60 to 62 above.
- 80 One point I must emphasise is that I accept Mr Evans' submission that the Links Evidence and the Claimant's website have become entwined in a way which means they have resulted in a muddle – see the particulars of claim at paragraph 38(e), which states:

“Finally, the last sentence in the defendant's statement that, ‘the contents of your website were something which was put in evidence in both the Swedish and English proceedings’ has revealed that the defendant withheld from the court those downloaded documents for the simple fact that, despite repeated requests by the Claimant, the defendant or their insurers have been and are still unable to provide any evidence for court proceedings to prove the defendant's declarations that they put the downloaded documents in court proceedings.”

- 81 Browne Jacobson, in their letter of 13 October 2023 to the Claimant, state:

“You have also repeatedly suggested that Wiggin LLP falsely stated in its letter of 7 February 2019 that the contents of your website were placed before the court. This was not a falsehood and causally irrelevant anyway. A screenshot of BUMP's website appeared in the bundle that was before the court as attached.”

- 82 The website page and the links evidence are two different matters which the Claimant has conflated. In any event, the Claimant accepts the screenshot was put in evidence by Fox Williams – see the particulars of claim at paragraph 39.

Limitation

- 83 Mr Evans very fairly submitted that if I accept (1) there is a duty on Wiggin (2) that has been breached, which (3) has caused the Claimant loss, and (4) that breach was deliberate, then there may be an extension to the limitation period by virtue of section 32(1)(b) of the Limitation Act 1980, namely:

“Subject to below, where in the case of any action for which a period of limitation is prescribed by this Act, either–

...
(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant ...”

And then:

“... the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.”

And then (2):

“For the purpose of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered or some time amounts to deliberate concealment of the facts involved in that breach of duty.”

84 But there is no evidence here of anything that the Claimant relies upon being concealed from him, as he himself had all the documents and information, so the usual six-year limitation period will apply. As I have explained with regard to Fox Williams in paragraphs 63 to 68 above, the claim was issued on 20 October 2023, with the hearing before Snowden J on 8 to 11 November 2016. Any damage would have been suffered by or at the conclusion of the hearing or, at the very latest, when the draft judgment was circulated, on 3 October 2017. That was all over six years before issue. Any claim is therefore statute barred.

The amended particulars of claim

85 In the draft proposed amended particulars of claim against Wiggin, the amendments comprise, in the main, a new paragraph 72, headed, “Causes of Action”. This lists breach of CPR 31 duty of disclosure, dishonesty, fraud and deceit, perjury, racism and discrimination. These allegations are muddled and, in my judgment, have no basis in law or fact. Much is repeated from earlier allegations which include the muddle between the Links Evidence and the Claimant’s own website. In particular, he repeats allegations that Mr Jock Millgårdh of Friday TV perjured himself – see also the particulars of claim at paragraphs 12 to 28. There is no evidence before me which gets even near supporting these very serious allegations against Mr Millgårdh, Ms Kean and others.

86 Paragraph 73 of the draft proposed amended particulars of claim repeats the torrent of unevicenced allegations which I have rejected above.

Summary

87 I therefore dismiss the Claimant’s claims against Fox Williams and Wiggin under CPR 3.4(2)(a) and/or (b) as there are no reasonable grounds for bringing this claim and it is an abuse of process. I also dismiss the claims as there is no reasonable prospect of them succeeding and there is no other compelling reason why they should be disposed of at trial.

88 Finally, Mr Banner asked, on Wednesday, 21 February, for two or three minutes to make closing arguments at the hand down of this judgment to address four false arguments he said had been made by counsel for Wiggin and Fox Williams.

89 I directed that he should put those arguments in writing. In the event, yesterday, Thursday 22nd February, he submitted a six-page statement of case or pleading in which he made not four but seven arguments he alleged supported his claims for professional negligence, breach of duty and breach of contract.

90 I will deal with each of these, having received from RPC written submissions as to the allegations made against them and their counsel and oral submissions at the outset of this judgment from Mr Oldroyd of Browne Jacobson.

(1) False argument 1:

“Wiggin’s counsel argued at the hearing that agreements were never created between Friday TV and BUMP because it was Caroline Kean’s call.”

I find this a confused and difficult to understand allegation. It adds nothing in my view to this claim. I accept it never was Wiggin’s position that it had control over any agreements and, of course, as to Wiggin’s position, the documents pre-dated their involvement, but I can see no basis for this submission whatsoever.

(2) False argument 2:

“Fox Williams’ counsel argued the reason Fox Williams repeatedly urged Wiggin to file their strike out application was so Fox Williams could get better prepared against the strike out application. Fox Williams never advised the Claimant with regard to this strategy or argument.”

In this respect, I refer above to my determination of this point. The actions were properly taken in the interest of the Claimant and good case management.

(3) False argument 3:

“Fox Williams’ counsel argued that Fox Williams had not put the agreements evidence in the case in 2016 because the agreements would have been confidential. Fox Williams never advised the Claimant with regard to this argument.”

This is another misunderstanding by the Claimant. There was no such submissions as to confidentiality in the links evidence or alleged agreements, and there was no evidence of the agreements existing in any event. I therefore dismiss this as well.

(4) False argument 4:

“Fox Williams’ counsel argued all the documents Fox Williams failed to put in the case in 2016, besides the Minute Winner document, were not relevant. Fox Williams never advised the Claimant with regard to this argument.”

I have disposed of this submission above.

(5) False argument 5:

“Wiggin’s counsel falsely alleged that the Claimant pleaded that Wiggin owed the Claimant their duty of care. This argument is wholly incorrect and a false representation.”

And then Mr Banner goes on to refer to the duties to the court. I have dealt with the duty of care of Wiggin above. The Claimant’s point here is not understood. In any event, the claim before Snowden J was dismissed for legal reasons.

(6) False argument 6:

“On the Swedish lawyers’ cease and decess letter, Wiggin’s counsel pleaded at the hearing the cease and decess letter was sent to BUMP by Friday TV’s Swedish law firm, Nord & Co., demanding that BUMP removed and stopped the use of the Minute to Win It title and trademark from its website. This argument supports the Claimant’s fraud issue.”

In my judgment it does nothing of the sort. I cannot see the basis for the submission put forward here by the Claimant.

(7) False argument 7:

“On the issue of limitation, Fox Williams’ counsel argues that the breach of contract claim is barred by the Limitation Act 1980.”

Mr Banner continues:

“Wiggin’s new revelations to the Claimant with regard to the downloaded and secure documents from BUMP’s website came in 2019, nearly two years after the summary judgment of 2017 and supported and confirmed the issue of fraud and concealment, professional negligence and breach of duty of care against Fox Williams.”

On the facts before me, I must dismiss this. There is no basis for it in law or fact.

91 I therefore reject all these further arguments. I will hear no futher submissions on this claim.

LATER

92 The basic principle under CPR 44 is that costs follow the event. That means that the winner will receive its costs. Each defendant here has been successful in striking out your claim. Therefore I will make an order for costs in favour of each of Wiggin and Fox Williams.

LATER

93 In my judgment, an order for costs on the indemnity basis should be made because these claims against each of Wiggin and Fox Williams were out of the norm or out of the ordinary; they were exceptional in the sense of the leading authority, *Excelsior*. The claims are devoid of merit and are an abuse of process, as I have found. They make wide-ranging and unevdenced extreme allegations against individuals and their professional firms. In all those circumstances, an order for indemnity costs is appropriate.

LATER

94 I have looked through the schedule. I have heard what Mr Barclay has said. This work is appropriate for a Grade A fee-earner. The rates are, in my view, mid-point; they are therefore reasonable. I think the time spent is reasonable and I appreciate and especially understand with the substantial amount of correspondence they say that they have had from

you and, in particular, 9,900 documents they are hosting which all goes to costs. That is why I am going to allow this claim for costs as drawn, summarily assessed in the full amount of £46,481.20.

LATER

95 I now turn to the second statement of costs put forward by Reynolds Porter Chamberlain. Again, for the same reasons, I think the rates are reasonable, the time spent is reasonable and the overall total, therefore, is reasonable. Further, if I was assessing on the standard basis I would find these costs proportionate. I therefore summarily assess the costs as drawn, at £31,363.55.

96 I will now turn to the costs claimed by Browne Jacobson on behalf of Wiggin. I have reviewed both the statements of costs submitted by Mr Oldroyd on behalf of his firm, Browne Jacobson. The hourly rates are, I would say, particularly reasonable. The time spent is, in my judgment, reasonable, in respect of both schedules. I have also considered, as I have with the schedule submitted by RPC, the level of counsel's fees and I find them to be reasonable in all the circumstances too and likewise disbursements where they apply.

97 In all those circumstances, and as this is assessment on the indemnity basis, I assess the costs due to Browne Jacobson on behalf of Wiggin to be £27,138, i.e. I approve the schedule as drawn, and, on the second schedule, £5,129. Again, if I was considering proportionality I would find these costs proportionate in all the circumstances.

LATER

98 I now turn to the question of whether I should mark each of the claims as being totally without merit. I ask Mr Barclay and Mr Oldroyd that when the Orders are submitted for my approval, please include a paragraph that the case was totally without merit against Fox Williams and also against Wiggin, as it was wholly devoid of merit and was abusive, particularly in respect of allegations made against those firms and the individuals within them.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.