



Neutral Citation Number: [2019] EWHC 1774 (QB)

Case No: HQ10X01583

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/07/2019

**Before:**

**THE HONOURABLE MR JUSTICE KERR**

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**Between :**

**JUAN CARLOS ALVAREZ**

**Claimant**

**- and -**

**(1) DR JACOB MOOR**

**(2) ERICH KNOEBL**

**(3) SHATTON INDUSTRIES LIMITED**

**Defendants**

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**Andrew Thomas** (instructed by **Westbrook Law Limited**) for the **Claimant**

The **First Defendant** appeared in person and for the **Third Defendant**

The **Second Defendant** did not appear and was not represented

Hearing dates: 11th-12th and 14th-17th June 2019

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**Judgment**

## **The Honourable Mr Justice Kerr:**

### Introduction

1. The claimant, Mr Alvarez, sues for damages or recovery of approximately 2.31 million US dollars (\$), plus interest, which he placed in the hands of the third defendant (Shatton) for investment. The money was nearly all lost to Mr Alvarez. He alleges that he was induced by fraudulent statements from the defendants to entrust his money to Shatton and that the defendants dishonestly conspired and contrived to misappropriate it for Shatton's use and that Shatton invested most of it into a fund from which it disappeared.
2. The defendants deny any fraud. They say Mr Alvarez invested in Shatton with his eyes open and that he was fully aware of and consented to Shatton's placing of his funds, via a reputable Swiss bank, into the fund from which, by misfortune, the money was lost without fault or wrongdoing on the part of any of the defendants. They also deny any contractual obligation to restore to Mr Alvarez the amount of his lost investment or any interest or profits from it.
3. The first and third defendants, Dr Moor and Shatton, were represented by solicitors until a week before the trial, when Dr Moor filed notices of change stating that the solicitors were no longer acting. He represented himself and Shatton at the trial. The second defendant, Mr Knoebl, was unrepresented throughout, but filed pleadings and documents. He did not attend the trial. All three defendants applied to adjourn the trial; Dr Moor in person, Mr Knoebl by letter to the court. I dismissed the applications to adjourn for reasons I gave orally at the time.
4. Dr Moor had to get used to how civil proceedings are conducted in the High Court in England. At first, his eagerness to speak frequently got the better of him and he could not restrain himself from speaking over and aggressively interrupting others. During the first days of the trial, I had to rebuke him and take breaks to enable him to compose himself and behave with appropriate respect for witnesses and the court. By the end of the trial he had learned correct courtroom conduct and his behaviour was satisfactory.

### Facts

5. Mr Alvarez is a French national born in Uruguay, where he lives and works. He is an agronomical engineer and cattle rancher who at one time employed 200 workers. Dr Moor is an Israeli national, resident in Nigeria and London. He is a doctor of chemistry and the owner and controlling shareholder of Shatton, a company previously involved in infrastructure projects in Africa and elsewhere. Mr Knoebl is a civil engineer of German nationality who has in the past been closely associated with Dr Moor and Shatton.
6. In 2005, Mr Alvarez sold certain properties in Uruguay and opened an account with Liechtensteinische Landesbank AG (LLB) in Zurich in order to deposit the proceeds of sale. In 2006, his deposit with LLB was about \$1.82 million. A friend in Uruguay introduced him to a Mr Anthony Blaser, a Swiss intermediary who was ready to recommend investments to Mr Alvarez. Mr Georg Koenigbauer, a German businessman from Shwarmstedt, near Hannover, was also at that time put in touch by an associate in Germany with an intermediary in Switzerland who may have been Mr Blaser.

7. Mr Alvarez and Mr Koenigbauer were both introduced to Shatton as a potential vehicle for them to invest in. Mr Alvarez was introduced via another intermediary, Ms Marie-Luise Weiss. Through Ms Weiss, Mr Alvarez was put in contact with Mr Knoebl who, in turn, introduced him to Dr Moor and Shatton. Mr Alvarez travelled to Zurich in 2006 to open his account with LLB. He became interested in investing in Shatton, which also banked at LLB. He spoke to Mr Colin Stember of LLB, who recommended Dr Moor and Shatton, saying LLB had known them for years and never had any problem with them.
8. Mr Alvarez's pleaded case is that Shatton was at this time a "shell company" with no significant trading activity. Mr Thomas, representing Mr Alvarez, accepted at the hearing that it had been involved in infrastructure projects but not projects with a turnover of more than \$100 million. I accept the documentary evidence that Shatton was, in 2006 and 2007, involved in significant infrastructure projects in the oil industry and the provision of medical services. It was not then a "shell company".
9. On 24 January 2007, Mr Alvarez signed an agreement with Ms Weiss entitling her to commission in respect of any investments by Mr Alvarez with Shatton. When she put him in contact with Mr Knoebl, giving Mr Alvarez his email address, she described him as the Vice President of Shatton. In an email of 28 January, he introduced himself to Mr Alvarez and described himself as Vice President of Shatton, though writing from a private email address. He clearly intended Mr Alvarez to believe he held the position of Vice President.
10. In that introductory email, Mr Knoebl said he was a "member of the Trading Provider, or, called the Trading Platform". After mentioning Shatton's trading activities, he added:

"In our function as project undertaker we have received from the American authorities a platform to finance our multi-billion sized projects ourselves .... We do not offer our services on the market, with this one exception ...".
11. Mr Alvarez and Mr Knoebl began to correspond extensively after that and over the following months and years their emails became friendly and sociable. They discussed their wives, families and leisure activities and at times touched on politics and cultural issues as well as business. Mr Alvarez also corresponded with Dr Moor, less frequently and only about business. Dr Moor tended to be busy and often travelling the world. He referred Mr Alvarez to Mr Knoebl on issues relating to investment in Shatton and led Mr Alvarez to regard Mr Knoebl as authorised to provide information on Shatton's behalf.
12. Dr Moor, with permission from Mr Alvarez, established the latter's credentials as an investor, with officials from LLB, Mr Stember and Mr Benamar Mokhtari. On 31 January 2007, Dr Moor sent Mr Alvarez a draft investment contract with an annex called "Annex II". He sent a powerpoint presentation of Shatton's activities, supplemented by 30 pages of documents comprising bank references from well known banks and other evidence of respectable credentials likely to be of interest to a potential investor. These documents dated back to 1985.
13. It is agreed that on or about 31 January 2007, Dr Moor spoke by telephone to Mr Alvarez (in English, which Dr Moor speaks better than Mr Alvarez) and explained some of Shatton's activities to him. Mr Alvarez signed the contract (the investment contract) and Annex II. Annex I, not yet available, was to provide for a bank guarantee from LLB to produce the investment monies. Dr Moor then suggested it would be more efficient for Mr Alvarez to open a "Lombard credit line" with LLB rather than providing a bank

guarantee. Mr Alvarez accepted and the draft investment contract was amended and re-signed accordingly.

14. The Lombard credit line was approved by LLB on 7 February 2007. The amount was \$1.638 million, about 90 per cent of Mr Alvarez's deposit with LLB. Mr Alvarez then transferred the funds for investment to a sub-account in Shatton's name, with Mr Alvarez as the beneficial owner. Shatton executed a power of attorney in favour of Mr Alvarez, giving him what Dr Moor described as "a joint power on the sub-account". However, the power of attorney did not prevent Shatton from investing the money in the sub-account of its own accord, without Mr Alvarez's counter-signature.
15. Such was, in brief, the machinery by which Mr Alvarez provided the initial funds for his investment in Shatton's activities and projects. These arrangements were put in place from 7 to 13 February 2007. The other relevant terms of the investment contract were that Mr Alvarez would make available to Shatton for investment at least \$1.8 million "for his participation in Shatton's project" (clause 1a). Within 60 banking days of the availability of funds, the parties would execute an annex (called "Annex III" but never executed) (clause 1c):

"setting out the project schedule, the profit return and its provisions. In the event that no agreement on terms and schedule of the return profit are reached then the Investor may request Shatton in writing to swift back his own funds ... and Shatton shall forthwith procure the return of the funds ...".

16. Mr Alvarez had the right to inspect the progress of construction of the project (clause 1d). The profit return would be made available to Mr Alvarez by Shatton in accordance with the schedule in "the Profit Return Agreement" (clause 2). There was a *force majeure* clause (clause 3) and an English law and arbitration clause (clause 4). The annexes formed part of the agreement (clause 5). The agreement "is replacing any other previous agreements or understanding" (clause 7).
17. Annex II was entitled "Project Participation Agreement". The parties agreed "to work together in good faith, using their best efforts and resources to complete the proposed transactions". Shatton "warrants that the funds in the custodial account is secured and will not be lost directly or indirectly, and will be timely released ... not later than one .. year and one ... month from the date of this Agreement", unless extended by agreement (clause 1c).
18. The parties agreed that performance yields were based on historical average performances and are "strictly on a best efforts basis and are not guaranteed until Annex III is executed" (clause 1g). Within 60 banking days of availability of Mr Alvarez's funds, Shatton "will execute Annex III ... setting out the projected net non-recourse projects payment deriving from the private investments made" (clause 2). Clause 3 provided for the payment schedule to be as would be set out in Annex III, with profits thereafter:

"on a monthly basis during the agreed life span of the agreement".

It is anticipated (based on historical records) that the yield indications is approximately US \$ 0.30m-1.25m per annum based on a minimum net credit of US\$ 1.0m. Final amount will be adjusted in Annex III. ..."

19. In oral evidence, Dr Moor suggested there was an error in the figures and that a zero had accidentally been omitted, presumably suggesting the figures should read "US \$ 0.030m-

0.125m per annum”. I reject this. The very high returns suggested in the figures included in Annex II are not only found there; similarly high return figures appear in other documents in the case, as will become clear later in the narrative.

20. On 16 February 2007, Dr Moor emailed Mr Alvarez saying he had attended at LLB the previous day to deliver the original final documents and that Mr Alvarez would be notified of progress until Annex III was concluded; meanwhile he should address any queries to himself or Mr Knoebl.
21. Mr Koenigbauer was also in touch with Dr Moor and Mr Knoebl at this time. I accept Mr Koenigbauer’s evidence that Dr Moor and Mr Knoebl referred to investment programmes organised by “the Fed”, meaning the Federal Reserve Bank in the USA. I accept his evidence that initially, he received the impression that Mr Knoebl was the one who organised these investment programs and that Messrs Koenigbauer and Knoebl spoke about them several times in or around the early part of 2007.
22. On 25 or 26 February 2007, Dr Moor met Mr Koenigbauer at Frankfurt airport where they discussed a plan for Mr Koenigbauer to invest in Shatton. I accept Mr Koenigbauer’s evidence that Dr Moor discussed Shatton’s activities with Dr Moor and said that he, Dr Moor, was the principal organiser of the Fed programmes in New York and Atlanta; that he was the chairman of Shatton and Mr Knoebl was a close associate with authority to speak for Shatton.
23. The discussions with Mr Koenigbauer bore fruit. On or about 26 February 2007, he entered into an investment contract with Shatton similar to Mr Alvarez’s, but with a bank guarantee arrangement rather than the Lombard credit line arrangement in Mr Alvarez’s investment contract.
24. The following month, Mr Alvarez asked for an update about the progress of developing Annex III. On 10 and 11 March 2007, Mr Knoebl emailed back saying that the cash available for investment from Mr Alvarez was \$1.474 million; the final amount accepted would be determined as defined in Annex III. The deadline of 60 banking days from availability of funds was to expire on 7 May 2007. He went on to say that “the programme in which we will participate will be activated at the end of March”. He thought Annex III would be ready at the end of March.
25. Mr Knoebl went on to state in the email that “[t]he regulatory powers have put on hold all MTN [medium term note] trading activities world wide”. He could only give the reasons for this verbally. However, independently of that, “our participation is scheduled, due to our special position and our personal relationship with these regulatory powers, for the end of March”. He went on to say that there was no programme for investments lower than \$10 million, but that Dr Moor “has a special agreement, according to which our submission will be accepted”. He then referred to “extremely confidential information” he could not give in writing.
26. In oral evidence, Dr Moor sought, unconvincingly, to disown these statements from Mr Knoebl. He said he was not party to them and suggested that if representations had been made about a special relationship with the “Fed” and ability to take part in investment programmes organised by it, that would appear in the contract documents. It is correct that there is no mention of the “Fed” in any formal contract documents; if there had been, LLB would have become aware of those references through its due diligence process.

27. Neither Dr Moor nor (in written witness statements) Mr Knoebl explained convincingly why Mr Knoebl had held himself out as the Vice President of Shatton and why Dr Moor frequently referred Mr Alvarez to Mr Knoebl to answer queries about Shatton if Mr Knoebl was, as Dr Moor appeared to suggest, an independent actor on a frolic of his own, with no financial or other interest in Shatton's affairs and without authority from Dr Moor to speak for Shatton. I find that the two men were, as both indicated in emails, close associates who were working together to attract investment in Shatton.
28. When the end of March 2007 came and went, Mr Alvarez emailed on 3 April asking for further news. Mr Knoebl replied on 5 April that a programme for "smaller" investors of between \$10 million and \$100 million would be ready in a few weeks and that Mr Alvarez's investment could go into that programme as "[w]e have special permission to participate in this programme with accumulated 3M USD". However, there was a "global stop to all USD-based programs due to irregularities".
29. A week later, the arrangements for Mr Koenigbauer's investment were made. On 13 April 2007, he transferred one million euros (€) to a sub-account in the name of Shatton, with himself as beneficial owner. Shatton therefore had in its control, available for investment, an amount equivalent to over \$2.5 million, beneficially owned by Mr Alvarez and Mr Koenigbauer.
30. On 23 April 2007, Mr Alvarez again emailed Mr Knoebl asking for news. The latter responded two days later that they had been waiting for news from Atlanta "from the FED regulators" and had received it that morning. It was "an ultra sensitive business", how sensitive no one knew except those "in DIRECT contact with Federal Reserve". He said that the Federal Reserve was expected to lift the restart of its trading programmes imminently, only for selected US banks and "[o]ur accounts are in the right Banks"; and "the start of the FED trading is expected any moment". Mr Alvarez should "please just trust Dr. Moor" as he has "the very best connections to the FEDERAL RESERVE".
31. Mr Knoebl followed up on 30 April with a "very very secret ... message" to Dr Moor in Atlanta from one of his "Friends". The email attached a message coming or purporting to come from Dr Moor saying that Mr Alvarez "must be patient" and "will be enrolled on the program soon". An unnamed "friend" added a message to Dr Moor, sent on to Mr Alvarez by Mr Knoebl, that "[t]he crooked way is straightening" and "[t]he Bank and Reserve have run out of excuses...".
32. In oral evidence, Dr Moor denied being party to this communication from Mr Knoebl to Mr Alvarez. He said it was for Mr Knoebl to explain it. However, I am satisfied that Dr Moor was acting in concert with Mr Knoebl and that the latter's emails to Mr Alvarez were sent with Dr Moor's consent and encouragement. The obvious purpose was to keep Mr Alvarez content and prevent him from becoming impatient and asking for his money back at the end of the period of 60 banking days, which was only a week away.
33. Also on 30 April 2007, Dr Moor arranged to meet Mr Reto Marti on 2 May. Mr Marti was an officer of IBI Bank AG, Zurich (IBI), then a reputable bank. I accept Dr Moor's evidence that when they met that day, they discussed an investment by Shatton to be placed via IBI and that Mr Marti handed Dr Moor a "term/fact sheet" (the term sheet) setting out the basis for an investment by Shatton into the "Avento fund", described as a "fixed income & derivative subfund".

34. The term sheet contained an “[i]ndication of Terms and Conditions”; a \$250m fund with a minimum investment of \$1m per investor; no maturity date; an issue price of 101.25 per cent of the investment and a redemption price of 100 per cent plus the monthly returns, estimated at approximately 5 per cent. I reject the suggestion of Dr Moor that the figure of 5 per cent should be taken as annual not monthly; the document plainly suggests the figure is monthly, equating to an annual return of 60 per cent. The investment could be terminated at any time, without any withdrawal cost.
35. The same day, 2 May 2007, Mr Knoebl was in email contact with Mr Alvarez. The latter denied in cross-examination ever having received the term sheet in 2007 or at any time until it was disclosed by Dr Moor in these proceedings. He said he had never heard of the Avento fund until 2013. There is no documentary evidence of the term sheet having been sent to Mr Alvarez. I accept his evidence that he did not receive it and was unaware of its existence until 2013.
36. On 11 May 2007, Mr Marti emailed Dr Moor about arrangements for their next meeting on 15 May and the documents he needed to complete Shatton’s investment in the Avento fund. Mr Alvarez, meanwhile, was dealing with the loss of hundreds of cattle in Uruguay due to flooding, though he was able to save many more. Mr Knoebl and Dr Moor sympathised and Dr Moor offered short term “small funds” from Mr Alvarez’s “credit line funds” if he needed them. Mr Alvarez did not accept the offer.
37. On 21 May, Mr Knoebl still did not confirm the start of the large Fed run programme. He brought the good news, however, that Shatton had received \$200m of capital for a programme (the “small programme”) planned to start at the beginning of July 2007. He offered Mr Alvarez the chance to participate in it, with the next six month cycle starting on 4 June, an anticipated monthly return, on a “best efforts basis”, of between 2 and 3 per cent (i.e. from 24 to 36 per cent per annum) and an option to switch to the large programme within the six month period. He described it as a “small but safe FED controlled programme”.
38. Mr Alvarez accepted the offer to take part in the small programme, by return email. Mr Knoebl responded on 23 May that he would send a short agreement; Mr Alvarez said he would sign, scan and return it. He asked if the large programme would start in July 2007, for sure. Mr Knoebl answered the next day that he anticipated it would, and gave an estimated timetable of events leading up to it. He said he would send a “mini paper” and would revert at the weekend, two days later.
39. There is no documentary evidence that any written draft contract for the small programme was sent to Mr Alvarez at the end of May 2007. Dr Moor pleaded in his defence (paragraph 22) and gave evidence that he spoke to Mr Alvarez by telephone in or about the last week of May 2007 and told him about the proposed investment in the Avento fund and that it was an investment outside Shatton’s projects and at Mr Alvarez’s risk. Mr Knoebl’s defence made an allegation to the same effect (paragraph 12-1d).
40. I reject this evidence. If Dr Moor and Mr Knoebl had wanted Mr Alvarez to know all about the investment in the Avento fund, they would have ensured there was a written record of that. Yet there is none. The document signed by him and confirming his investment in the small programme (to which I am coming) is dated later, 13 June 2007 and makes no mention of the Avento fund, still less the anticipated high returns set out in the term sheet.

41. Shatton also had access to Mr Koenigbauer's €1 million, held in the sub-account with LLB. Of that sum, 90 per cent, or €900,000, was available for investment. I was shown what appears to be an email of 28 May 2007 from Dr Moor to Mr Koenigbauer attaching a letter outlining the conditions of the latter's investment of the €900,000, together with the term sheet. The letter stated that the money would be converted to US dollars and invested with the Avento fund in Shatton's name but "for your account and risk".
42. Mr Alvarez did not accept the authenticity of that communication, of which I was told no soft copy was disclosed. Mr Koenigbauer in his witness statement denied receiving it, describing it as "pure invention on the part of Dr Moor to try and protect himself ...". In oral evidence he said he did not recall ever receiving it but he was not able to say for sure that it was not sent to him.
43. He was, in my judgment, a careful witness and wary of questions that might trap him. I do not need to decide the point but I strongly doubt that the email of 28 May 2007 was, if it existed on that date, sent to Mr Koenigbauer. There is no indication of the email address to which it was sent. It appears to have been sent to "Koenigbauer" which is an abbreviation, not an email address. The email address abbreviated to "Koenigbauer" could be any email address.
44. I accept the evidence of Mr Koenigbauer that he did not intend to authorise Shatton to move the funds in his sub-account without his counter-signature; that he did not realise the banking arrangements were set up in such a way that Dr Moor could move €900,000 of his money without his consent; that he did not authorise, or at any rate did not intend to authorise, Shatton to invest his €900,000 in the Avento fund; and that he did not ask or intend to authorise Shatton to invest his money in that fund in the name of Shatton.
45. I accept that Mr Alvarez must have increased the amount available for him to invest up to \$1.625m, if it was previously only \$1.474m, as Mr Knoebl had suggested; although the audit trail relating to that increase is not clear. What is clear is that on 28 May 2007, Dr Moor wrote on behalf of Shatton to Mr Marti at IBI confirming that Shatton had decided to invest \$2.8 million into the Avento fund, using \$1.625m of Mr Alvarez's money and €900,000 (converted into US dollars) of Mr Koenigbauer's money.
46. Dr Moor wrote that these investments would be "based on" the term sheet; that Mr Marti had assured him there was "NO risk of Avento shares" and asked Mr Marti to confirm prior to the investment being made that "under no circumstances is the capital fund at risk at any given time" (underlining in original). Maintaining the capital value was, he said, of the "utmost importance since it will be needed for our project and expenses within the next few months"; and Shatton was "also counting on the credit line you assured me to obtain against the secured Avento shares to cover our expenses if needed".
47. In a subsequent document signed by Dr Moor on Shatton's behalf and dated 30 May 2007, confirming the transfers to IBI totalling \$2.8m to be made, he stated that the beneficial owner of the €900,000 (with a US dollar equivalent of about \$1.175m) was Shatton and did not mention Mr Koenigbauer. He did mention that the beneficial owner of the \$1.625m was Mr Alvarez and gave his contact details and a copy of his passport.
48. According to a later document produced by the Avento fund's administrator in Curaçao (in the Netherlands Antilles), a subscription to the Avento fund of \$2.765m was made on 31 May 2007. That is \$2.8m less 1.25 per cent, possibly representing the commission due on the transaction, as stated in the term sheet. The same document records a transfer out



of the Avento fund of the same amount on the same day, leaving a balance of nil. I accept that Dr Moor and Mr Knoebl were, probably, unaware of this unfortunate development at the time when it occurred.

49. On 1 June 2007, Mr Knoebl emailed Mr Alvarez about a delay in getting the date for the “Mini-Agreement”, saying the delay was not important as “we have already done everything in the Trading Bank in NY”. Mr Alvarez was sanguine about that. They continued to correspond by email through June, on various topics including a falling out between Ms Weiss, on one side, and Mr Blaser on the other (with Mr Knoebl siding with Ms Weiss and urging Mr Alvarez to break with Mr Blaser).
50. On 12 June 2007, Mr Marti of IBI wrote to Dr Moor confirming the investment of \$2.8m in the Avento fund and informing him that although profits were not normally paid out monthly, the fund had agreed to do so in the case of Shatton’s investment, on an exceptional basis. He did not confirm that the capital was at nil risk, however; nor did he allude to any change in the expected rates of return.
51. On 13 June 2007, Mr Knoebl sent the “mini-agreement” to Mr Alvarez who signed it and sent it back a few days later. The document is also signed by Dr Moor, for Shatton. It refers to a minimum \$1 million investment in an “interim program”, open ended, starting on 2 July 2007, on a six monthly revolving basis, with additional investment available of not less than \$300,000 on the first Monday of each month. The “best efforts basis” returns were to be “approx. 2.0% to 3.0% per month”. Monthly payouts were possible. The right remained to shift the investment into the large programme, once it was in place. There was no mention in the document of either IBI or the Avento fund.
52. I accept the evidence of Mr Koenigbauer that a similar or identical document was sent to him in or about mid-June 2007. A copy of it, dated 13 June 2007, is among the papers subsequently provided to the criminal prosecution authority in Munich. Mr Koenigbauer signed it. Again, there was no mention of IBI or the Avento fund. If Mr Koenigbauer had already received, a few weeks earlier, a copy of a letter outlining the conditions of the latter’s investment of the €900,000, with the term sheet, there would have been no reason for Mr Koenigbauer’s “mini-agreement” of 13 June 2007 to omit any reference to IBI and the Avento fund.
53. On 14 June 2007, Mr Knoebl emailed Mr Alvarez, confirming that the latter was now enrolled on the short programme and that there would be monthly payouts rather than a single payout at the end of six months. Mr Knoebl said Mr Alvarez should soon instruct him and Dr Moor “what to do with the profit”. The two men then became involved in the sub-plot involving a dispute over commission payable to the intermediary and the falling out with Mr Blaser. These culminated in some emails in French and German in colourful language, with which I am not directly concerned.
54. On 3 July 2007, Mr Marti confirmed Shatton’s sub-account with IBI, for the purpose of its investment in the Avento fund. He acknowledged Dr Moor’s request for credit facilities secured against Shatton’s investment in the Avento fund and indicated that these facilities could be put in place in “some days”, once “the internal banking process is done”. He said he would send written information about this.
55. During the following month or so, Mr Alvarez and Mr Knoebl continued their email correspondence. By 16 August 2007, Mr Knoebl was reporting that Mr Alvarez’s first payment would arrive the next day. The amount was \$21,000 less commission

(calculated at 1.5 per cent of £1.4m invested, less 10 per cent commission for Ms Weiss, leaving \$18,900). The next day Mr Knoebl emailed to Mr Alvarez “[y]ou are entering the big one”, i.e. the large programme, with \$1.4 million. Mr Knoebl predicted a minimum return of 200 to 300 per cent per annum. He added mysteriously that Dr Moor and Shatton “are working secretly on revolutionary things, secret tests are taking place. The world will be astonished. Energy, alternative energy and reduction of impact on the environment is our main company objective”.

56. Mr Alvarez received the \$21,000 and paid Ms Weiss her commission. On 18 August 2007, Mr Knoebl said at the end of a long email that if Mr Alvarez had any business partner with capital to invest, “you can bring him to us”. On 21 August, Mr Alvarez responded that he did not but offered to increase his own capital investment by \$230,000 to bring the amount from \$1.47m to \$1.7m. He asked if it was possible to send cash to Shatton.
57. The following month, on 14 September 2007, Dr Moor was pressing Mr Marti to “provide me the credit line against my Avento security”; three months had elapsed and “I need some funds for my project”. However, in oral evidence, Dr Moor denied that Shatton was reliant on borrowing and insisted that it had ample access to credit and capital. Mr Alvarez received a further \$18,900 (net of commission) at some point during that month.
58. A few days later, on 18 or 19 September, Mr Alvarez was lucky to escape almost unscathed after a truck in which he was travelling skidded and aquaplaned, ending up on its side. Mr Knoebl and Dr Moor expressed their relief and good wishes. There was general agreement about how fragile life is.
59. Then on 20 September, Mr Marti reported to Dr Moor that the Avento fund had made a profit of 7.5 per cent during the month of August 2007. However, on 22 September, Mr Knoebl reported to Mr Alvarez that the small programme fund had made 1.5 per cent in August and “[t]he programme manager has agreed to pay out 1.5% for August-07 at the end of this month ...”.
60. By 26 September, Mr Knoebl was liaising with Mr Alvarez about how the latter should transfer a further \$250,000 he wished to place with Shatton for investment in the small programme. He received a further \$18,900 (after deduction of Ms Weiss’s commission) on or about 6 October 2007. According to the pleadings, there is no dispute that Mr Alvarez transferred \$250,000, or \$249,994, to Shatton’s account (not the sub-account) for investment on or about 12 October 2007.
61. I have a document dated 19 October 2007 whose authenticity is disputed. No soft copy of it was disclosed, a state of affairs Dr Moor attributed to loss of data which he unsuccessfully tried to recover through the services of technical experts. The email, if genuine, notified Mr Alvarez, at unusual length for Dr Moor at that time, that the money had gone direct to Shatton’s account and not to the sub-account and that it would be applied to reimburse Shatton for the balance of funds invested already and “to cover any loans”, past or future, “from Shatton”.
62. The document goes on to state that any residue of the balance would be used to cover bank interest and charges and “at Shatton’s discretion to be utilized to and for the invested funds coming from the interim investment program with the invested bank for future investment in Shatton’s project”, in accordance with Annex III.

63. The same document goes on to state that Mr Alvarez had “clearly been informed your funds were invested together with Shatton’s funds in ‘one basket’ under Shatton’s name with the investment bank as you agreed and accepted with your own discretion and instruction and with the mandate provided to the undersigned to do so as per Agreement ....”. It continued at length, emphasising Mr Alvarez’s personal responsibility and assumption of risk as regards the investment in “one basket”, in a financial product in a Swiss bank.
64. This document is, on the balance of probabilities, not genuine. As Mr Thomas pointed out, it does not fit with the narrative at the time. There is no soft copy of it and it bears the label “print”. Dr Moor’s explanation of his attempts to retrieve deleted emails does not convince me, though I accept he did contact technical computer experts later. He did not acquire the habit of writing long discursive emails to Mr Alvarez, defensive in tone like this one, until years later in the history of events.
65. The email does not chime with the rest of the story at the time and bears the hallmarks of a reconstruction after the event, probably for use in the criminal investigation later undertaken by the prosecuting authority in Munich. The level of detail and disclosure of the investment contrasts too sharply with the mysterious cloak and dagger minimalism of Mr Knoebl’s parallel communications only a few months earlier.
66. By November 2007, Dr Moor was becoming concerned that Shatton had not received any payment of monthly returns from the Avento fund investment. He wrote to Mr Marti on 21 November asking for \$1.65m from the fund – approximately representing Mr Alvarez’s investment – and €900,000 – representing Mr Koenigbauer’s investment - to be transferred to Shatton’s current account with IBI on “maturity of the investment at the end of November”. He asked for the balance, including accumulated profit, above \$2m to be retained in the Avento fund.
67. This instruction was not complied with, but at the end of November a further \$21,000 (from which commission was payable as before) was transferred by Shatton to Mr Alvarez. Dr Moor, increasingly worried, received an email from Mr Marti saying that the performance for November 2007 was 5.7 per cent but that the Avento fund had been closed to further investment since the end of November and that payments out would be made at the end of January 2008. Dr Moor replied to Mr Marti on 6 and 7 December 2007, complaining of lack of information and demanding, with increased urgency, the return of the monies as previously requested. He emphasised that he had to make payments out and had “the feeling that something is wrong...”.
68. On 27 December 2007, Mr Knoebl emailed Mr Alvarez about “the information and instructions ... received from our Interim Programme Bank in the US”. Mr Thomas described it as a “cock and bull story”. The email relayed none of Dr Moor’s concerns about the Avento fund. It stated that the small programme would be terminated at the end of January 2008 instead of the end of December 2007, “due to Christmas and New Year Holidays and closure of the “[a]dministration” from 10 December 2007 to 15 January 2008. The statement of account would be available, said Mr Knoebl, around 15 February 2008, with profits available “immediately thereafter”.
69. By mid-February 2008, Dr Moor emailed Mr Marti citing the latter’s assurance that payment of profits from the Avento fund investment would be made between 12 and 15 February. He set out the profit returns Mr Marti had indicated, which ranged from 2.95

per cent for June 2007 to 7.5 per cent for August 2007 and January 2008. He stated that he was expecting to receive well over \$4m, having invested \$2.765m. At the same time, Mr Alvarez tried, without success, to contact Dr Moor to ask about payment of profits from the small programme, due on 15 February 2008.

70. By 18 February, Dr Moor was becoming very agitated, having not received payment. In their email exchange that day, Mr Marti (emailing from a private address) attempted to soothe Dr Moor, saying the information about the Avento fund would be available the next day. It was not, however.
71. Despite the delays, it is common ground that in February 2008 Mr Alvarez transferred a further approximately \$250,000 to Shatton. According to Dr Moor's defence the exact amount was \$250,013 and the transfer date was 25 February.
72. On 19 March 2008, Dr Moor threatened Mr Marti that he would take legal action if the money from the small programme was not paid that week and that he would report the matter to "the Fraud department". The next day, he sent a formal redemption request to the administrators of the Avento fund. The request was declined.
73. The email from Curaçao, already mentioned, was sent on 21 February 2008, recording a nil balance on the Avento fund as at June and July 2007. It was addressed to Dr Moor. In oral evidence Dr Moor stated that at the time he received it (February 2008) he was told by Mr Marti that it was not correct and should not be taken at face value. However, he protested vigorously, emailing Mr Kurt Shaefer at a company called SKM Global which was associated with the Avento fund, saying he had been assured the capital invested was 100 per cent protected. Mr Shaefer replied that it was not and that Mr Marti had been told the previous July that the Avento fund had lost all its value.
74. Dr Moor and Shatton spent the next few years attempting, without success, to pursue IBI by legal means to recover the amount Shatton had invested in the Avento fund, using the money beneficially owned by Mr Alvarez and Mr Koenigbauer. Mr Knoebl meanwhile corresponded amiably about leisure activities and family matters with Mr Alvarez through the rest of March 2008, occasionally mentioning that Dr Moor was hoping soon to obtain a settlement from the investment in the small programme. Then at the end of March, Mr Knoebl emailed Mr Alvarez that on the orders of George Bush (senior) the Fed programmes for capital over over \$10 million had been stopped. He continued to reassure Mr Alvarez that payment of his investment with profits would be forthcoming.
75. Dr Moor gave evidence that he spoke to Mr Alvarez by telephone in about mid-June 2008 and passed on information he had received from IBI that the Avento fund was completing its accounts and would pay out in the last week of July 2008; and that during the call he invited Mr Alvarez to meet him in Europe. I prefer the evidence of Mr Alvarez that this call never took place and that he first learned of the existence of the Avento fund in 2013. Mr Alvarez would have mentioned the Avento fund in the many emails he sent after June 2008, if he had known of its existence.
76. On 23 June 2008, Dr Moor sent to Mr Knoebl for forwarding to Mr Alvarez a "statement of account". I am satisfied that it was intended to reassure Mr Alvarez that his money was being properly looked after. It made no mention of the difficulties Dr Moor was having with IBI and the Avento fund. I think Mr Thomas's description of it as a fabrication is fair. It recorded amounts paid by Mr Alvarez to Shatton and vice versa. These were correct figures save that the starting amount invested is recorded as only

\$1.4m. It mentioned various small amounts of bank charges and interest, which may well be genuine.

77. But the document then set out fictitious amounts purporting to represent the returns on Mr Alvarez's investment month by month over the period July 2007 to May 2008. These amounts corresponded to monthly return percentages said to average 2.77 per cent, well below those cited by Mr Marti to Dr Moor. Dr Moor's unconvincing evidence was that he was merely setting out conservative estimates or forecasts of what he believed would be the eventual returns. Finally, Dr Moor asked Mr Alvarez to initial and countersign the document as "[a]greed and accepted".
78. On 16 July 2008 the former investment manager of the Avento fund, Thomas Lloyd Global Asset Management, formally wrote to Dr Moor stating that the fund lost all its value in July 2007 and was liquidated and terminated with a loss of \$156,233 as at 31 August 2007. The next day, Shatton wrote to Mr Alvarez asking how much he wanted to invest of the balance due to him, which was said to stand at \$2,247,655.
79. After that, there were no further money transfers relevant to these proceedings. The financial crisis started to take hold, with Lehmann Brothers filing for bankruptcy in mid-September 2008. Dr Moor continued his efforts to recover the monies lost in the Avento fund. Mr Alvarez went on holiday with his wife to Paris and London in October 2008. IBI changed its name to J&T Bank Switzerland Ltd (J&T Bank) in early 2009.
80. In early 2010, Shatton's lawyers prepared a draft claim against J&T Bank, to be issued in Switzerland. In that claim, Shatton claimed 4.494 million Swiss francs. In the complaint, Shatton complained of misrepresentations made by Mr Marti to Dr Moor from June 2007 onwards. At about this time, Mr Koenigbauer discovered that Dr Moor had moved Mr Koenigbauer's investment out of LLB without Mr Koenigbauer's counter-signature. He complained to LLB which, after investigating, closed Shatton's account with LLB in March 2010.
81. Dr Moor offered Mr Koenigbauer the opportunity to receive back his investment in return for signing a letter of confirmation of settlement and an apology to Dr Moor, obviously intended to exonerate the latter and protect him against any allegations of wrongdoing. Mr Koenigbauer, reluctantly, did so in the hope of getting his money back. He never did, apart from \$45,000 which was paid out to him by Shatton at some stage.
82. Mr Koenigbauer made a complaint to the prosecuting authorities in Munich, who investigated Dr Moor, Mr Knoebl and Shatton; wrote to Dr Moor on 1 September 2010 asking for his comments on the accusations; corresponded with him for some time and eventually closed the investigation in January 2013 without bringing any criminal charges. Mr Alvarez progressively lost trust in Dr Moor and Mr Knoebl, starting to complain with increasing anger that he was being kept in the dark. By the end of 2010, Shatton's (unaudited) accounts showed that it was virtually worthless and had lost all its value over the preceding three years.
83. On 2 August 2011, under pressure from Mr Alvarez, Dr Moor wrote to him agreeing to make a payment to him of \$2.31m, subject to production by him of certain notarised documents signed by him and in his name. It is on this letter that Mr Alvarez bases his claim in contract.

84. Various emails sent from 12 August through to 6 December 2011, before the notarised documents were produced, are relied on by Dr Moor and Shatton as indicating that the offer of the payment was not firm but was conditional on receipt by funds. I will return to this point. Mr Thomas says those communications did not withdraw the firm offer but were merely about the anticipated mechanics and logistics of the transaction.
85. On 9 January 2011, Mr Alvarez sent to Dr Moor the notarised documents required, he says, to fulfil his side of the bargain. They included, as in the case of Mr Koenigbauer, a letter of apology to Dr Moor. Mr Alvarez offered to Dr Moor and Shatton “my most sincerely apology for any of my misunderstanding, mistrust, belligerent acts, misconduct attitude, fighting words, libel or slanderous denunciation and threats and any damages caused. My unjustified recent behaviour is greatly regrettable. All is declared as NULL and VOID”; and so forth.
86. Dr Moor and Shatton rely on an email not referred to in the pleaded defence of the first and third defendants, of which I was told no soft copy was disclosed, dated 16 February 2012, thanking Mr Alvarez for the signed letter he had sent and saying the letter was “[a]ccepted subject of receiving the funds from the investment bank”. The genuineness of that email is disputed. I have doubts about its genuineness but, for reasons I will come to, I do not need to decide definitively whether it is genuine or was produced later.
87. Relations between Mr Alvarez and the defendants deteriorated further after that and his emails became more angry in tone. He started to believe he had been deliberately defrauded and fallen victim to a “scam”. In about August 2012, J&T Bank went into voluntary liquidation. In September 2012, Dr Moor emailed Mr Alvarez with a long explanation, owing to a temporary cash flow problem and, optimistically, asking Mr Alvarez for some money to help fund the legal proceedings that Dr Moor said he hoped would lead to recovery of Mr Alvarez’s investment.
88. In February 2013, Mr Alvarez, in the hope of recovering his money, signed a letter admitting to having received various documents, including the email of 19 October 2007, which I have already discussed above and about the authenticity of which I have expressed scepticism. I accept Mr Alvarez’s evidence that he did not trouble to check whether he had received all the documents he said in his February 2013 letter he had received.
89. In May 2013, Dr Moor sent Mr Alvarez a long document defending his and Shatton’s position and seeking to exonerate them from any responsibility for losing Mr Alvarez’s investment. In section B, he mentioned IBI and said it had advised him and Shatton to invest in the Avento fund, which he described as “a secured financial product”. He blamed IBI and Mr Marti for the loss of the fund’s value and recommended cooperation with him and Shatton to make common cause against the liquidators of J&T Bank, as IBI had become.
90. At some point in 2013 – it is not clear when – Dr Moor also met Mr Koenigbauer at Heathrow Airport and they had a conversation in which, as I accept from Mr Koenigbauer, Dr Moor told him that he, Dr Moor, had invested Mr Koenigbauer’s funds and other funds with a Swiss bank that had become insolvent; and Dr Moor attempted to persuade Mr Koenigbauer to contribute to the costs of the resulting legal proceedings.

91. The matter then became litigious as between Mr Alvarez and the defendants. The present claim was issued in May 2016 and tried before me without Mr Knoebl present just over three years later.

Main Factual Conclusions

92. Such are my findings on the events that happened. In my judgment, they lead to the following main conclusions:

- (1) Shatton was not a “shell company” in 2007, when it first approached Mr Alvarez and Mr Koenigbauer. Its business was real enough; the bank references and other documents provided by Dr Moor were probably genuine and reflected real business Shatton had done in the past. The projects described in the powerpoint presentation were not mythical; their grandeur was probably exaggerated but they existed.
- (2) Dr Moor is not an honest man, nor a witness of truth. He may have convinced himself, subjectively, that he is a man of truth, integrity and honesty, with (in his own words) a “high code of honour”; but, objectively, that is not compatible with his words and actions, which were such as ordinary decent people would regard as false, deceitful and dishonest.
- (3) Mr Knoebl is not honest or truthful. He was the author of most of the statements about the “Fed”, which were untrue. The warmth and friendship expressed in his emails may have reflected genuine sentiment; but that did not prevent him from consciously exploiting the friendship to neutralise any resistance or inhibition Mr Alvarez might have about parting with his money.
- (4) If I need to make a positive finding of dishonesty on the part of Dr Moor and Mr Knoebl, I do so. Both had, at least, a reckless disregard for the truth and sometimes full knowledge of the falsity of their words and deeds. It is not required that they themselves appreciated that what they said and did was dishonest by the objective standards of ordinary decent people (*Ivey v. Genting Casinos (UK) Ltd* [2018] AC 391 per Lord Hughes JSC at [74]).
- (5) I think it likely that there are numerous undisclosed written communications between Dr Moor and Mr Knoebl. I note that one of the few emails that was disclosed included Mr Knoebl describing Mr Alvarez as “superficial” and included recommendations on how best to pacify him and induce him not to cause difficulties. That was part of the concerted plan to manipulate Mr Alvarez.
- (6) Mr Knoebl was held out by Ms Weiss and Mr Knoebl as being the Vice President of Shatton; and both Dr Moor and Mr Knoebl held Mr Knoebl out as having full authority to provide information on Shatton’s behalf and to issue documents in Shatton’s name that could bind Shatton in contract. The use of a private email account does not alter that conclusion; nor does Mr Knoebl’s lame explanation that the title of Vice President was in some sense informal, unofficial or historic.
- (7) It is not plausible that Mr Knoebl was an unpaid business associate of Dr Moor. While Dr Moor denied any social relationship with him, Mr Knoebl described himself as a longstanding friend and probably the closest person to Dr Moor on the planet. He described Dr Moor using language expressing reverential admiration for Dr Moor’s achievements; but I do not begin to accept that his devotion extended to providing his

services for free. His expressions of devotion and admiration were part of the services he provided to Dr Moor and Shatton.

- (8) From January or February 2007 onwards, Mr Alvarez and Mr Koenigbauer were deliberately led to believe the false statements made to the effect that Shatton had access to “Fed” controlled investment opportunities not available on the open market, with unusually high returns expected, entered into under the cloak or (in Mr Alvarez’s word) “costume” of humanitarian infrastructure projects to be undertaken by Shatton.
- (9) There is no objective evidence that Dr Moor, Mr Knoebl or Shatton had any relationship with the “Fed” or any US investment bank that could provide access to programmes of investment organised by the Fed or authorised by the Fed or any of its agents for chosen investors. The use of this false story was intended to, and did, succeed in persuading Mr Alvarez and Mr Koenigbauer to transfer money to Shatton.
- (10) Dr Moor manipulated the documents provided to LLB when setting up Shatton’s sub-accounts within the accounts of Mr Alvarez and Mr Koenigbauer so as lead them to believe that they retained control over the money in Shatton’s sub-accounts when in fact, and unbeknown to them, Shatton was able to remove their money from the sub-accounts without their signature or consent, despite the powers of attorney and certificates of beneficial ownership.
- (11) Dr Moor and Shatton were far more in need of money than he led Mr Alvarez to believe. Mr Knoebl and Dr Moor deliberately gave the impression that Shatton’s turnover ran to hundreds of millions of dollars and that Mr Alvarez was a small investor only admitted to the investment programme as a special favour. While Shatton’s business may have been substantial in the past and it had access to some funds, in 2007 and 2008 it was in need of funding.
- (12) Once Dr Moor and Shatton gained control of the money in Shatton’s sub-accounts beneficially owned by Mr Alvarez and Mr Koenigbauer, Dr Moor set about investing it in the Avento fund, via Mr Marti and IBI, knowing that neither Mr Alvarez nor Mr Koenigbauer were aware of or had authorised that investment in the Avento fund.
- (13) Dr Moor and Shatton, acting in concert with Mr Knoebl, intended to use, and did use, Mr Alvarez’s and Mr Koenigbauer’s money to invest for their own unauthorised purposes including obtaining credit from IBI; they intended to, and did, misreport the expected profits from the investment which, however, turned out to be non-existent. Dr Moor and Shatton thereby misappropriated those monies and conspired with Mr Knoebl to do so.
- (14) It is not proved that Shatton, Dr Moor and Mr Knoebl diverted to themselves the monies invested in the Avento fund. Dr Moor’s pursuit of Mr Marti and IBI was not a charade. The misappropriated monies beneficially owned by Mr Alvarez and Mr Koenigbauer were then in turn misappropriated from the Avento fund by a person or persons unknown.
- (15) It is more likely than not that the defendants intended Mr Alvarez and Mr Koenigbauer to be repaid their principal investment together with some – under-reported – profit. It is more likely than not that the defendants intended that Shatton would pocket the difference between the under-reported profit and the actual profit



(had there been any), as well as using the investment monies of Mr Alvarez and Mr Koenigbauer as security to obtain credit.

### The Causes of Action

93. Mr Alvarez's pleaded claim was not prepared by Mr Thomas and predates his involvement in the case. It is not a model of elegance and precision, but I consider that it adequately pleads the causes of action, subject to my further comments below. Dr Moor's pleaded defence, prepared by counsel, complained at various stages that the pleaded case was insufficiently precise and that parts of it should be struck out. But no application to strike out the claim was pursued; the gist of the factual allegations was covered in the pleading and the gist of the causes of action likewise.

### Deceit

94. The first cause of action relied on is the tort of deceit. I was referred to the exposition in *Clerk & Lindsell on Torts*, 22<sup>nd</sup> edition (incorporating the First Supplement), at chapter 18. "[W]here a defendant makes a false representation, knowing it to be untrue, or being reckless as whether [sic] it is true, and intends that the claimant should act in reliance on it, then in so far as the latter does so and suffers loss the defendant is liable" (18-001). It is unnecessary to set out at length the expanded discussion of that description of the tort, since there was no dispute about the applicable principles of law.

95. Two sets of false representations were relied on. First, it was said that the representations about Shatton's business made in the powerpoint presentation and by telephone in late January 2007 were false. I reject this. Shatton was not a "shell company" as alleged in the particulars of claim.

96. Second, it is pleaded that Mr Knoebl told Mr Alvarez that Dr Moor was "well connected with the FED ... and could arrange financing programmes on a secure basis to raise money for worthwhile projects and that he could also arrange other private placement programs producing good secure returns".

97. This allegation is proved. As already noted, in his first email of 28 January 2007, posing as Vice President of Shatton, Mr Knoebl said he was a "member of the Trading Provider, or, called the Trading Platform" and after mentioning Shatton's trading activities added the untruth that Shatton had "received from the American authorities a platform to finance our multi-billion sized projects ourselves ....".

98. I am satisfied that the defendants intended Mr Alvarez to act on that false and fraudulent statement and that he did so in reliance on that misrepresentation. He was heavily influenced by it when deciding to enter into the investment contract. In so far as he suffered loss as a result, the tort is made out and the defendants are, in my judgment, liable as joint tortfeasors, since all three defendants were jointly party to the misrepresentation.

99. Next, in his emails of 10 and 11 March 2007, Mr Knoebl represented to Mr Alvarez that while the regulatory powers had put on hold all MTN trading activities worldwide, Shatton's participation was scheduled, "due to our special position and our personal relationship with these regulatory powers, for the end of March". He went on to say that while there was no programme for investments lower than \$10 million, Dr Moor "has a special agreement, according to which our submission will be accepted".

100. The same representations were repeated by Mr Knoebl on 5 April 2007: a programme for investors of between \$10 million and \$100 million would be ready in a few weeks and Mr Alvarez's investment could go into that programme as "[w]e have special permission to participate in this programme with accumulated 3M USD". However, he said, there was a "global stop to all USD-based programs due to irregularities".
101. These statements were untrue, were intended to be acted upon by Mr Alvarez, and were acted upon by him by agreeing to invest his money in the sub-account under Shatton's control. It is no answer to assert, as the defendants do in their defences, that the claims about special access to "Fed" organised investment programmes with abnormally high returns were patently absurd and could not be taken seriously. However naïve it may have been to take them seriously, they were taken seriously and that is what the defendants intended.
102. In May 2007, the false representations from Mr Knoebl continued. On 21 May, he emailed that Shatton had received \$200m of capital for the small programme, due to start at the beginning of July 2007 and offered Mr Alvarez the chance to participate in the next six month cycle starting on 4 June, holding out the prospect of returns estimated at 2 to 3 per cent per month and an option to switch to the "large" programme within the six month period. He described the small programme as a "small but safe FED controlled programme".
103. These representations were false and were intended to be acted upon by Mr Alvarez. Mr Alvarez made two further investments of about \$250,000 each in reliance on Mr Knoebl's false statements, including those made in his emails in May 2007. His investment money stood at \$1.625m by the time it was placed in the Avento fund and he later increased it.
104. On 1 June 2007, Mr Knoebl emailed Mr Alvarez about a delay in getting the date for the "Mini-Agreement" for the small programme, saying the delay was not important as "we have already done everything in the Trading Bank in NY". That statement was false. I have no evidence about the existence of any dealings between Shatton and a trading bank in New York.
105. The description in the "mini-agreement" sent on 13 June 2007 by Mr Knoebl of the transaction as a "minimum \$1 million investment" in an "interim program", was false and misleading; there was no future final programme. The description was intended to attract Mr Alvarez to the idea of placing further funds in the small programme which he was invited to do in an amount of not less than \$300,000 on the first Monday of each month. The "mini-agreement" falsely held out returns estimated at 2 to 3 per cent per month.
106. On 17 August 2007, Mr Knoebl emailed to Mr Alvarez: "[y]ou are entering the big one", i.e. the large programme, with \$1.4 million. This was false. Mr Knoebl predicted a minimum return of 200 to 300 per cent per annum. He cannot have had any belief in the accuracy of that prediction. In reliance on these various false statements, Mr Alvarez made the two further transfers to Shatton's main account with LLB, one in October 2007 and the other in February 2008.
107. For those reasons, I find all three defendants jointly liable for deceit. I also reject the plea of Dr Moor that he acted at all times as a director of Shatton and "has no personal liability"; and that he "acted in his capacity as a director of Shatton and not in a personal

capacity”. As Mr Thomas points out, a person cannot escape liability for fraud by saying “I am committing this fraud on behalf of someone else and I am not to be personally liable” (see *Standard Chartered Bank v. Pakistan National Shipping Corporation (Nos. 2 and 4)* [2003] 1 AC 959, per Lord Hoffman at [20]-[22]). The claim in deceit succeeds.

### Conspiracy

108. Mr Alvarez relies on the same factual events as establishing his pleaded cause of action that the three defendants are liable to him for the tort of conspiracy to injure him, using unlawful means. The unlawful means relied on are, as I understand it, the unlawful acts constituting the tort of deceit. In the case of a conspiracy involving the use of unlawful means, it is not necessary to show that the defendant’s predominant purpose was to injure the claimant (see *Clerk & Lindsell on Torts*, 22<sup>nd</sup> ed. (with First Supplement), at 24-93).

109. It follows from the analysis above that the claim for conspiracy succeeds as against all three defendants. The pleaded amount is \$1.638 million, plus a further \$500,000 paid over later, in two tranches; making a total of \$2.318 million. I am satisfied that the three defendants conspired together jointly to extract these sums from Mr Alvarez in order to put them to unauthorised and unlawful use amounting to misappropriation of the monies.

110. I have no difficulty in finding that Shatton (through Dr Moor) was a party to the conspiracy as well as Dr Moor personally and Mr Knoebl. Whatever the position in relation to certain other types of body such as a trade union, it is clear that a company can be a party to a tortious conspiracy (*Clerk & Lindsell*, op. cit. at 24-96). However, the success of the conspiracy claim adds nothing of substance to the claim founded on deceit, which I have already addressed. I will return to the amount of loss suffered.

### Trust based and proprietary claims; knowing receipt or unjust enrichment

111. The claimant has pleaded these further causes of action. I will deal with them briefly, as I do not think they affect the practical result of the claim. It is said that Mr Alvarez paid Shatton the sums totalling \$2.138 million pursuant to a mistake of fact, namely in the mistaken belief that the representations made to him were true, when in fact they were false. It is pleaded also that the sum of \$2.138 million and “any profits thereon” became the subject of a constructive trust for the sole benefit of Mr Alvarez.

112. There are difficulties with this analysis. First, there is no proprietary claim in the sense of seeking to trace the monies in the hands of whoever now possesses them. The identity of that person or those persons is unknown. It is not suggested by Mr Alvarez that his funds remain in the possession of Shatton or Dr Moor. Second, it is difficult to see how such a claim could succeed as against Mr Knoebl, who never came into possession of Mr Alvarez’s money.

113. Third, without considering the issue in depth and without any authority having been cited to the court, a restitution claim founded on a mistake of fact does not appear to be an appropriate cause of action or remedy where the mistake is deliberately induced by the defendant. Fourth, courts of equity have tended to reject the broad proposition that a constructive trust can be fashioned as a convenient remedy whenever a defendant is in possession of money which, in conscience, he is bound to hold for the claimant’s benefit; see the discussion of the issue in *Snell’s Equity*, 33<sup>rd</sup> edition, at 26-002 to 26-015.

114. I would have thought a simpler analysis more appropriate to the transactions that took place and the circumstances in which they took place, is that the sums amounting to \$2.318 million which Mr Alvarez advanced to Shatton, became impressed with an express trust in favour of Mr Alvarez, such that Shatton and Dr Moor were at liberty to deal with those funds only on the terms of the investment contract, and not otherwise; and, in the case of the two further tranches of \$250,000 each, only on the terms agreed with Mr Knoebl, i.e. for the investment in the “small programme”.
115. Shatton and Dr Moor then breached their obligations as trustees of those monies by dishonestly misappropriating them for Shatton’s unauthorised use. Shatton and Dr Moor are therefore liable in equity to restore the fund, or its value (including any profits thereon) to Mr Alvarez. No claim directly for breach of trust against Mr Knoebl can be sustained, for he never came into possession of any monies belonging in equity to Mr Alvarez. However, Mr Alvarez has a personal remedy against Mr Knoebl as a third party who has assisted the trustees (Shatton and Dr Moor) to breach their obligations as trustees (see the discussion in *Snell’s Equity*, op. cit., at 30-067).
116. These causes of action were not pleaded in the manner that I have just set out and in any case are not likely to add anything of substance to the personal claims in tort.

Breach of contract

117. Mr Alvarez brings a claim for payment of \$2.31 million based on a contract which, he says, was concluded between him and Shatton on 9 January 2011, pursuant to which Shatton agreed to pay him that sum on fulfilment by him of the requirement that he provide the notarised documents required of him by Dr Moor in his email of 2 August 2011. Mr Alvarez also seeks to pursue this claim against Dr Moor personally, arguing that the corporate veil should be pierced in line with the reasoning of the Supreme Court in *Prest v. Petrodel Resources Ltd* [2013] 2 AC 415. Mr Thomas did not suggest that Mr Knoebl was a party to the contract.
118. I observe, first, that the offer made by Dr Moor in his email of 2 August 2011 must be taken to have been made in his capacity as the director of Shatton and in the name of Shatton. It was Shatton which was the body corporate in possession of Mr Alvarez’s money, not Dr Moor personally. It was Shatton that was intended to use the money for its infrastructure projects, according to the original investment contract. No reasonable person of business would construe the offer made in the email as emanating from Dr Moor in his personal capacity.
119. Next, I do not think the case is one in which I should disregard the separate personality of Shatton and pierce the veil, any more than did the Supreme Court in *Prest*. I do not think it would be right to say that Dr Moor sought to evade an existing obligation on him personally by interposing a company under his control. He simply offered to repay Mr Alvarez’s lost money which the latter had advanced to Shatton, in return for some documents he wanted in order to protect himself and Shatton against the risk of criminal or civil proceedings and in order to help with Shatton’s claim against J & T Bank.
120. I have no difficulty in construing the email of 11 August 2011 as an offer. I reject any argument of Dr Moor and Shatton (if advanced, which is not clear) that the offer was when made, conditional on receipt of funds by Shatton, from IBI, J & T Bank or anyone else. If funds were received, Shatton would already be obliged to reimburse Mr Alvarez without the need for any contract. I am clear in my mind that, objectively considered, the

offer to pay him \$2.31 million in return for the notarised documents was an offer by Shatton to assume a contractual liability to make that payment if and when the notarised documents were provided.

121. It was, in the normal way, open to Shatton to withdraw the offer at any time before the notarised documents were provided. Dr Moor and Shatton argue that the latter did so. Reliance is placed on the emails sent by Dr Moor from 12 August to 6 December 2011. These emails did, for sure, refer to anticipated receipt of funds by Shatton. But I do not consider that, objectively construed, they amounted to a withdrawal or modification of the offer contained in the email of 2 August 2011. I accept Mr Thomas’s submission that they merely indicated an expectation of receipt of funds and referred to the likely mechanics of payment, rather than seeking to modify what would become Shatton’s contractual obligation, if and when the notarised documents were provided.
122. Dr Moor also relied on his email of 16 February 2012, sent after Mr Alvarez had provided the notarised documents. In it, he thanked Mr Alvarez for the signed letter he had sent and saying the letter was “[a]ccepted subject of receiving the funds from the investment bank”. Even if that email is genuine, which I doubt, it could not assist Shatton because its contractual obligation to pay the \$2.31 million to Mr Alvarez crystallised on receipt from the latter of the notarised documents. Dr Moor did not suggest that those documents were other than compliant with Mr Alvarez’s side of the bargain.
123. I therefore hold that the contract claim succeeds, but only against Shatton. It has failed to meet its obligation to pay \$2.31 million to Mr Alvarez. He is not obliged to give credit for the sums totalling \$84,000 which he received from August to November 2007. The contractual debt owed by Shatton excludes those sums.

Limitation and delay

124. The contract claim was brought in time, less than six years from the date of the breach and indeed less than six years from the date the contract was made. The claims in tort are subject to a limitation period of six years from the accrual of those causes of action, subject to extension in the circumstances provided for in the Limitation Act 1980. A claim in respect of trust property or for breach of trust would be governed by section 21(1), which provides:
- (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—
    - (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
    - (b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.
125. As I remarked above, the claims founded on trust law are not clearly, accurately or helpfully pleaded. Since I prefer to found my decision on the clearly pleaded claims in tort, for deceit and conspiracy, I do not propose to consider further the impact of section 21(1) of the 1980 Act.
126. I am satisfied that the tort based claims are in time. The limitation period did not begin to run until the loss of the Avento fund was made known to Mr Alvarez in 2013. The tort claims are actions “based upon the fraud of” the defendants, within section 32(1)(a) of the 1980 Act and the omission until 2013 to disclose the investment into the Avento fund and

the loss of its entire value amounted to deliberate concealment of those facts relevant to the cause of action, within section 32(1)(b).

127. I reject any suggestion that Mr Alvarez could with due diligence have discovered the true position earlier than he did, given the active efforts of Mr Knoebl and Dr Moor to keep him off the scent. I also reject the plea of laches, by the same reasoning.

### Conclusion

128. For those reasons, there will be judgment in favour of Mr Alvarez against all three defendants in respect of the claims for deceit and conspiracy. There will be judgment against Shatton only in respect of the contract claim.

129. The exact amounts for which judgment will be entered, and the question of interest, will be determined in a short supplementary judgment which I will provide having given the parties the opportunity to make brief written submissions. In respect of the tort claims, but not the contract claim, my provisional view is that Mr Alvarez must give credit for the sums totalling \$84,000 (inclusive of Ms Weiss's commission) received by him.

130. I will also consider whether there should be any judgment on the basis of a breach of trust, and if so what the terms of that judgment should be and against which defendants, if any. My provisional view is that I should not give a judgment on that basis.

131. I will consider any brief written submissions on these or any other consequential matters, before deciding the consequential matters and preparing my final order. Finally, I thank the parties for their contributions and respectfully remind them that they are, like litigants generally, strictly prohibited by Civil Procedure Rule 39.8 from communicating with the court unless they simultaneously copy the communication to all other parties.

### Postscript

132. The following addendum supplements my main judgment above. This brief supplemental judgment deals with the outstanding matters identified in my main judgment above, following further written submissions from the parties after I provided the main judgment to them in draft. I am grateful for the written submissions which I have carefully considered.

133. Mr Alvarez does not ask for judgment on the basis of breach of trust. That accords with my provisional view and I think the concession is correctly made on the basis of the pleaded case. I therefore confine my judgment in favour of Mr Alvarez to (against all three defendants) the torts of deceit and conspiracy and (against Shatton only) breach of contract.

134. Mr Alvarez accepts that in the tort claims, he must give credit for the \$84,000 received by him from Shatton. I think that concession is correctly made. I did consider whether he should give credit for the proportion of that sum representing Ms Weiss's commission. In my view he should; it has rightly not been argued that Ms Weiss's commission was tainted or the product of the fraud.

135. The quantum of the loss suffered for the purposes of the tort claims is therefore the total amount transferred by Mr Alvarez to Shatton, which was \$3,128,007, less \$84,000;

giving a total amount of \$2,054,007. Mr Alvarez is entitled to judgment against all three defendants in that amount.

136. I consider next the question of interest in the tort claims. Although a claim for compound interest is pleaded, Mr Alvarez limits his claim to interest to one based on simple interest at 5 per cent per annum. I accept this as a reasonable estimate of what the monies he was kept out of could have generated over the relevant time periods.
137. I accept Mr Thomas's method and calculation, which I set out below:
- (a) Period 1 - \$54,076.44 : Simple interest at 5% on \$1,638,000 from 13 February 2007 until 12 October 2007 (when a further sum of \$249,994 was transferred to Shatton). [It is proportionate to simply reduce that new total on 12 October 2007 by the amount of \$84,000 transferred between August and November 2007)]
  - (b) Period 2 - \$33,608.66 : Simple interest at 5% on \$1,803,994 (\$1,638,000+\$249,994-\$84,000) from 12 October 2007 until 25 February 2008 (when a further sum of \$250,013 was transferred to Shatton).
  - (c) Period 3 - \$1,169,939.88 : Simple interest at 5% on \$2,054,007 (\$1,803,994+\$250,013) from 25 February 2008 until judgment on 15 July 2019.
138. The resulting award of interest in respect of the tort claims is therefore the sum of those three amounts, which comes to \$1,257,624.98.
139. I turn next to the contract claim, which succeeds against Shatton only. The quantum of the contract claim is simply the amount Shatton promised to pay to Mr Alvarez and has failed to pay. That amount is \$2,310,000. I therefore give judgment in favour of Mr Alvarez and against Shatton for that sum.
140. I accept Mr Thomas's suggested interest calculation, based on a rate of 5 per cent on \$2,310,000 from the date the contract was concluded (9 January 2011) to the date of judgment (15 July 2019). The resulting figure is \$983,806.85.
141. As against Shatton, there must be a set-off as between the amounts recoverable pursuant to the tort claims and the amounts recoverable in the contract claim, so that Mr Alvarez may not recover as against Shatton twice over.
142. He must also give credit, as against Shatton, for any sums recovered from the individual defendants, again so that he does not recover twice over. I treat Shatton's obligation in the contract claim as sounding in damages rather than debt, with the result that Mr Alvarez must give credit for any loss mitigated by recovery against the other two defendants.
143. I agree with Mr Thomas's application for costs on an indemnity basis, because of the numerous ways in which the defendants have conducted the litigation unreasonably, namely failure to make proper disclosure, failure of Mr Knoebl to comply with the order to provide medical evidence and reliance on documents that are not genuine.
144. I will direct an assessment of costs on the indemnity basis. Based on the costs budget figures with which I have been provided, I think it is fair and reasonable to make an order that the defendants shall pay £140,000 (in sterling) on account of costs.

145. Finally, Dr Moor has, on behalf of himself and Shatton, sent an email to the court saying that they wish to appeal. I will treat this as an application for permission to appeal. I refuse that application on the ground that an appeal would have no real prospect of success.
146. It seems to me clear that Dr Moor and Shatton wish to argue on appeal the same case as they argued before me. The essential findings relevant to liability are factual and no new point of law or principle arises. The evidence against the defendants was very strong and I see no reasonable prospect of the Court of Appeal deciding the issues differently.
147. The decisions on consequential matters set out in this brief supplemental judgment will be embodied in the court's final order, which will conclude the case.