



Neutral Citation Number: [2022] EWHC 2151 (QB)

Case No: E90MA099

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

The Civil Justice Centre,  
Manchester

Date: 16 August 2022

Before :

**HIS HONOUR JUDGE BIRD SITTING AS A JUDGE OF THIS COURT**

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Between :

(1) GEO-MINERALS GT LIMITED  
(2) CONOR TENNYSON

**Claimant**

- and -

(1) ~~GEO-MINERALS (HOLDINGS) LIMITED~~  
(2) KEVIN DOWNING  
(3) COLIN DOWNING  
(4) ROUSE & CO INTERNATIONAL LIMITED  
(5) ~~ROUSE & CO INTERNATIONAL HOLDINGS~~  
~~LLP~~  
(6) ~~ROUSE IP LIMITED~~  
(7) ~~ROUSE & CO INTERNATIONAL (UK)~~  
~~LIMITED~~  
(8) MARK FOREMAN  
(9) ROGER JOHN BAINES  
(10) MAYNARD HEADY LLP

**Defendants**

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Andrew Burns QC and Anna Greenley (instructed by Muldoon Britton) for the Claimants  
Roger Stewart QC and Ben Smiley (instructed by Clyde & Co) for the Fourth to Seventh  
Defendants

Robin Howard (instructed by Tolhurst Fisher LLP) for the Second, third and ninth  
Defendants

Hearing dates: 6 and 7 June 2022  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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## **His Honour Judge Bird :**

### Introduction

1. This is the adjourned CMC of a claim brought by Geo Minerals GT Ltd (“GT”), a company registered in Northern Ireland and Mr Tennyson a shareholder in that company and its “main director”, against GT’s professional advisers and against persons said to have conspired together to injure the interests of GT.
2. There are three applications to deal with:
  - a. The Claimant’s application for permission to re-amend the Amended Particulars of Claim (“APOC”) and so to rely on the draft re-amended Particulars of Claim (“DRAPOC”). The Defendants resist the application. The professional advisers submit that the proposed amendments fall foul of section 35 of the Limitation Act 1980.
  - b. The application of Kevin Downing (“KD”), Colin Downing (“CD”) and Roger Baines (“RJB”) (together the “conspiracy Defendants” or “CDs”) supported by the evidence of KD for:
    - i. An order striking out the claim or for summary judgment on the ground that there are no reasonable grounds for bringing the claims or that there are no reasonable prospects of success.
    - ii. An order striking out the claim on the ground that it is an abuse of process because proceedings dealing with the same issues have been concluded in Northern Ireland, because the proceedings have been “warehoused”, because there is no adequate pleading of loss and because the pleading of conspiracy is inadequate.
    - iii. An order striking out or dismissing the claim against Mr Baines.
  - c. The application of the Rouse Defendants, supported by the evidence of Richard Harrison:
    - i. To strike out the claim against it because the DRAPOC discloses no reasonable cause of action or is an abuse of process or fails to comply with requirements of the CPR. The particular grounds are that the claim fails to plead a case in respect of causation and that the Claimants have “warehoused” the claim.
    - ii. In the alternative for summary judgment, on the ground that there is no proper claim in causation.
3. Subject to the relevant claims continuing, the following aspects of the applications have been agreed:
  - a. That the claims against the professional advisers, Rouse & Co. International Holdings LLP, Rouse IP Limited, Rouse & Co. International (UK) Limited should not proceed. Rouse & Co. International Limited (“Rouse”) remains as a Defendant.
  - b. The first Defendant has been wound up and dissolved. The claim against it should be stayed.
  - c. Where the DRAPOC provides an apparently non-exhaustive list of examples of (for example) breach, the “examples” provided are to be taken as the full extent of the pleaded

case so that references to phrases such as “including but not limited to” and “for example” should be removed.

- d. It is accepted that permission should not be given to allow new paragraphs 111 (h) and (i)
- e. It is agreed that the conspiracy Defendants can withdraw an admission that certain certifications were required before the relevant product could be exported to the USA.

### The claims

4. The DRAPOC are 36 pages long. CPR PD 16 at paragraph 1.4 makes it plain that pleadings of more than 25 pages are the exception rather than the rule. Where the pleading is, exceptionally, over 25 pages an appropriate short summary is to be filed and served.
5. The Claimants summarise the claims in this way:
  - a. The CDs conspired together to transfer GT’s valuable intellectual property rights and/or the sale and distribution rights to a now dissolved company Geo Minerals (Holdings) Limited (“Holdings”) without the knowledge or authority of the Claimants. The transfer of the intellectual property rights and/or sale and distribution rights involved the forgery of the signature of Martin Gormley (“MG”), a former director of the First Defendant, and false representations to third parties.
  - b. Rouse (a Trademark agency) acted in breach of contract and/or duty to their client GT, causing loss to both Claimants. It acted in breach of its contractual retainer with GT, beyond the scope of its instructions and without reasonable skill and care by arranging the transfer of GT’s rights to Holdings, in circumstances where no authority or instruction had been provided by the Claimants.

### The Background

6. The factual background to the claim (as advanced by the Claimant) can be summarised as follows:
  - a. Geotec Construction Limited (“GCL”) owned a quarry. Its principal directors were MG and the second Claimant. In about 2009 it was discovered that crushed rock (“the Product”) from the quarry was rich in certain minerals which, when used on agricultural land, would have beneficial effects. Realising the commercial potential of the Product, MG and the second Claimant caused GT to be incorporated. They were its directors and shareholders. GT was to deal with marketing, sales and distribution of the Product. It would also hold all relevant intellectual property rights.
  - b. In January 2011 CD and KD approached GT. They wanted exclusive rights to supply the Product. A memorandum of understanding was prepared and signed. CD and KD were to raise capital to enable GCL and GT to extract, produce and sell the Product.
  - c. In March 2011 CD, acting alone and without any reference to MG, CT or GT, instructed Rouse to apply to register “Geo Minerals” (the brand name of the Product) as a Trademark to Draven Solutions Limited, a company in CD’s control.
  - d. Later that month CT and MG (as directors of GT and GCL), CD and KD met Rouse to discuss the registration of Trademarks in the sole name of GT. Rouse was instructed to register all relevant Trademarks in the name of GT but failed to disclose its previous

instructions from CD.

- e. On or about 26 October 2011 GCL, CT, MG, CD and KD entered into a “lock-out” agreement (“the LOA”) by which GCL, CT and MG granted CD and KD an option to purchase the quarry for £10 million subject to CT and MG retaining a 15% stake in the acquiring company. The agreement lapsed after 90 days. The quarry was not sold.
- f. In December 2011 Holdings was incorporated. The original shareholders and directors were CD and MG. In January 2012 RJB (an associate of CD and KD) became the sole shareholder and sole director.
- g. In April 2012 (see paragraph 6(d) of the Claimants’ skeleton argument) “*the Claimants decided to end their association with the [CDs]*” and Holdings. By then, they were in discussions with an alternative commercial partner, Ed Machado who was based in California. They explained to KD and CD that discussions with him were for the benefit of GCL and GT.
- h. In response to this apparent snub, Rouse instructed US Attorneys to draw up documents, the intended effect of which was to assign all Trademark rights held by GT (and the “entire business” of GT) to Holdings. The assignments were signed by RJB on behalf of Holdings on or about 13 April 2012 and processed by Rouse in August 2012 (see Rouse letter of 17 January 2013 set out at paragraph 74 of the DRAPOC). MG’s purported signature on behalf of GT is said to have been forged. The Claimants first saw those purported assignments on or about 30 November 2012 after detailed correspondence with Rouse in which GT and GCL affirmed they had not executed or authorised any assignment. On 17 January 2013 Rouse confirmed that the Trademarks were assigned “on the instruction of [CD]”.
- i. KD (or KD and CD) contacted Mr Machado after the assignment documentation had been apparently completed and falsely represented to him that (see paragraph 53 of the DRAPOC) “*Holdings held the sale and distribution rights and the brand rights to [the Product] when this was not the case and knowing this to be false*”. As a result, Mr Machado backed out of the deal.
- j. Gulf Petroleum AG (“Gulf”) had offered to acquire the entirety of GT’s and GCL’s business in June 2012. KD contacted Gulf at or about the same time and (see paragraph 58 of the DRAPOC) “*impliedly and falsely [represented] that Holdings, CD and/or KD [held all relevant rights to exploit and sell the Product]. KD said that they intended [to enforce] their rights through legal action which [would] commence shortly*”. This contention and the threat of legal action (see paragraph 59) “*caused Gulf to [withdraw] its offer*”.
- k. CD, KD and Holdings issued proceedings against GCL, CT and MG in Northern Ireland on 4 July 2012. It was asserted that a binding joint venture agreement was in place. The claim was withdrawn on the day of the hearing.
- l. GCL has since gone into compulsory liquidation. The quarry has been sold. It is estimated that there are some 6m tonnes of Product to be excavated from the quarry with an overall value of around £750m.

#### How the claims are pleaded

7. The claims set out in the draft re-amended Particulars of Claim (“DRAPOC”) are put in this way:

### Conspiracy

- a. The conspiracy claim is put as an unlawful means conspiracy and as a lawful means conspiracy.
- b. Paragraphs 96 to 99 set out a plea of the requisite intention and paragraph 97 sets out details of the unlawful means employed. They include the allegation that the CDs unlawfully interfered with the economic rights of GCL through the acts of KD by deliberately misleading both Mr Machado and Gulf about GT's capacity to exploit the Product.
- c. As is usual, and because conspiracies of this kind (like fraud) are generally conducted secretly, the court is invited to infer the existence of the relevant common design.
- d. Causation is pleaded at paragraph 100.

### Claims against Rouse

- e. Allegations of breach of contract, professional negligence and of the TM Attorney's code of conduct are set out at paragraphs 101 to 109. Paragraph 108 is entirely new and included for the first time in the DRAPOC. Paragraph 110 deals with causation.

### Loss and Damage

- f. Particulars of loss and damage suffered as a result of each pleaded claim against both Rouse and CDs are set out at paragraph 111. It is pleaded that GT lost its entire business including "*the exclusive sales, marketing and distribution rights of the Product*". (emphasis added).
- g. The major head of loss is the loss of the opportunity to market, sell and distribute the Product. Brief and non-exclusive details of lost profit are set out. They include the lost opportunity to make profit on contracts with Renewable Products, ITD International and through the Machado agreement. The "*opportunity of a £5 million investment and 49% share in a venture led by [Gulf]*" is also pleaded.

### RFIs and the schedule of loss

8. The CDs raised requests for further information in respect of the amended Particulars of Claim ("APOC") on 3 May 2019. Satisfactory replies were received on 17 February 2020. Request number 4 sought details of the rights covered by the assignments. In response, the Claimants averred that as of 5 April 2011 GT had exclusive rights to "*purchase the [Product and] market the [Product] in Northern Ireland.*" (emphasis added).
9. A schedule of loss was also prepared on 17 February 2020. Request 19 of the Request for Further Information had asked the Claimants to "*particularise the quantum of each and every head of loss*". The schedule was served in response to that request. At paragraph 11 of the schedule (under the heading "preamble") the Claimants again noted that on 5 April 2011 GCL granted GT "*exclusive rights to the quarry*" and to market the [Product] in Northern Ireland." (emphasis added).
10. The schedule of loss pleads losses under 6 heads:
  - a. Loss of profits on specific contracts (including with Renewable Products and with ITD International) that would have been entered into with named purchasers between the third quarter of 2012 and the fourth quarter of 2014 in the sum of £23.6 million. Sales in the

third quarter of 2012 would have been met exclusively from stockpiled Product.

- b. Loss of profits from 2014 are yet to be confirmed.
- c. Loss of profit on US sales agreed with Mr Machado in the sum of \$9 million. The contract would have been for the delivery of 20,000 tonnes of product twice every year for 3 years at the price of \$150 per tonne. That equates to sales of \$18 million.
- d. Loss suffered as a result of the loss of intellectual property rights is yet to be calculated.
- e. Other losses are claimed for loss of reputation and re-imbursement of fees paid to Rouse.

#### The Northern Ireland Proceedings

- 11. The *plaintiffs* in that action (Holdings, CD and KD) claimed that a joint venture agreement (“JVA”) had been entered into in October 2011 and that it had resulted in further agreements about the transfer of land (including the quarry) in June 2012. GCL, CT and MG defended the proceedings. It appeared to the Defendants (at least to MG) that the plaintiffs were relying on the LOA. MG pleaded the full terms of the LOA, pointing out that it expired 90 days after it was signed. The option had not been exercised in that time and so any right to buy had lapsed.
- 12. The plaintiffs subsequently confirmed (in a reply to a Request for Further Information) that the JVA was an oral agreement, and that the June 2012 later agreement was reached partly orally and partly in writing.
- 13. The claim was called on for trial on 6 November 2014. It appears that “judgment” was entered against the plaintiffs in favour of MG and that GCL and CT agreed that the claim against them would be stayed with no order as to costs. The agreement entered into by GCL and CT with the plaintiffs was on the basis that the terms were “*in full and final settlement of all claims of any nature whatsoever by the plaintiffs or any of them relating to any estate or other interest in the [quarry]*” (emphasis added). In effect, the claim was dismissed without any adjudication on the merits. The terms of settlement agreed with CT and GCL clearly prohibited any further claims in respect of any interest in the quarry itself but left open the possibility of claims in respect of other matters.

#### The position of the CDs and of Rouse

- 14. For the sake of completeness, the position of the Defendants is as follows:
  - a. Rouse believed that there was “*in effect*” a joint venture or partnership between CD and others including GT which was intended to own and develop the relevant trademarks and that CD had actual or apparent authority to give instructions to Rouse on behalf of the second Claimant, MG and GT.
  - b. The CDs deny conspiracy and aver that “*any transfer of intellectual property rights and/or sale and distribution rights from GT to Holdings was carried out with the full knowledge and authority of GT.*” It is denied that MG’s signature was forged.

## The procedural chronology

### Overview

15. By way of overview, the claim was issued in April 2018 at the end of the limitation period and without any pre-action attempt to explain the case, narrow the issues or attempt settlement. The proceedings were served at the very last point and now, after more than 4 years there has not yet been a CCMC. As the Claimants acknowledged during the course of submission, that overview does not present an attractive picture.

### In more detail

16. The Claimants appear to have instructed solicitors in April 2018 shortly before proceedings were issued. The first contact with Rouse was on 26 July 2018. Although it is not clear from the documents, I proceed on the basis that there was similar contact with CDs at or about the same time.
17. Proceedings were served on all Defendants by post and email on 7 August 2018. On or about 13 September the parties agreed a 6 month stay of proceedings to allow the PAP process to be followed. The agreement was confirmed by order of DJ Moss on 27 September. The POC was to be treated as the letter of claim and the Defendants were to respond by 30 November. Time for filing defences was extended to 26 April 2019.
18. There were initial problems with the PC. They were vented in correspondence. On 29 November, a first version of the DRAPOC were served. Each Defendant responded (by way of letter) on 11 December. The Claimants did not answer, neither was there any engagement in further negotiations. On 26 April 2019, Rouse served their Defence. On 3 May they served a Request for Further Information. A response was first served on 13 June 2019. It was described by Rouse as “*woefully inadequate*”. On 16 July, the Claimants invited full and complete responses within 14 days failing which an application would be made to court to compel a response. Rouse pointed out that the responses referred to a schedule of loss and invited the Claimants to produce the same. An initial schedule was provided.
19. In the meantime, CDs had applied to court for security for costs and required an extension of time to serve their defence. A hearing of the security for costs application was listed for 23 September 2019. The question of extending time for their defence was ordered to be determined at the same hearing. CDs filed their defence on 26 November. The Claimants paid £36,000 on 21 October 2019 as security for costs.
20. On 7 February 2020, Rouse noted that it was “*prepared to wait until 14 February... for full responses to the RFI [and certain other outstanding questions]*” noting that it had been “*more than patient*”. The responses were provided on 17 February together with an updated schedule of loss. On 17 February, the Claimants asked Rouse for details of its costs of the next stage of proceedings. It would appear that the purpose of the question was to gauge if the Claimants were prepared to provide additional security. In fact, an ATE policy was incepted which appears to have satisfied Rouse. On the same date, the 5 April agreement referred to in the schedule of loss and the response was provided.
21. In August, the Claimants instructed new, specialist counsel (Mr Peter Irvine of Brick Court).
22. On 26 November Rouse raised causation issues in particular noting that “*no positive case has been advanced setting out how the losses alleged would have been avoided but for the breaches said to have been committed by Rouse*”. The Claimants responded on 24 December noting



(amongst other matters) that it was expressly pleaded that Rouse had “*purported to transfer [the Claimants’] entire business and valuable [IP] to an unconnected third-party company. In doing so, [Rouse] caused substantial loss to [the Claimants] because they were unable to conclude contractual arrangements*”.

23. Rouse responded on 22 March 2021. It remained of the view that causation was not properly pleaded and suggested that the issue should be addressed “*by way of further amendment to the [APOC]*”.
24. On 14 April, the Claimants informed Rouse that their counsel (Mr Irvine) had needed to withdraw from the case for health reasons.
25. Alternative Leading and junior counsel (Mr Burns QC and Miss Greenley) were instructed on or around 21 May. On 8 October Rouse wrote to the Claimants expressing “*deep concern*” at the Claimants’ delays. The Claimants were “*a little surprised*” by the accusation of delay and “*dumbfounded*” by the threat of an application to strike out by reason of delay. The DRAPOC were served on 19 November 2021.
26. In fact, newly instructed Leading and junior counsel had reviewed the APOC and made various amendments to it, going beyond the simple clarification of issues of causation. I return to the fruits of this endeavour below.
27. On 21 December Rouse explained that an application to strike out had been sent to court.

The Proposed Amendments set out in the DRAPOC

28. The proposed amendments fall into 4 categories:
  - a. Minor, short and consequential amendments at paragraphs 2, 3, 4, 6, 10, 25, 98 and 99
  - b. Amendments dealing with the factual background to the claim at paragraphs 11 to 18, 24, 26, 39, 47, 52, 55, 57, 59, 62, 63, and 80 to 94.
  - c. Amendments to the way causation is pleaded
    - i. at paragraph 100 to add reference to the Second Claimant as a party who suffered loss as a result of the conspiracy
    - ii. at paragraph 110 as against Rouse.
  - d. Amendments to the nature of the duty owed by Rouse and the allegations of breach against Rouse at paragraphs 101, 102 and 104 to 109 and in respect of loss and damage suffered by GT (not CT) as a result of Rouse’s breaches at paragraph 111. Paragraph 104 appears in the DRAPOC as a proposed re-amendment, in fact the amendments are only partial (see paragraph 85 of the APOC). New duties are pleaded at DRAPOC paragraph 105 to 107 (by reference to the TMA code of conduct).
29. In summary, Rouse resists the application to amend on the grounds that:
  - a. The DRAPOC pleading of causation is inadequate. Rouse submit that the Claimants have been given every opportunity to put their house in order and have failed to do so. In response, the Claimants accept that they must stand squarely with the DRAPOC. They make no application to vary the amendments sought.

- b. The claim has been unjustifiably delayed by the Claimants so that I can infer that for periods of time the Claimants did not intend to proceed with it.
  - c. Specific points are made in respect of specific paragraphs:
    - i. 108(j) (that Rouse “*repeatedly failed to communicate its knowledge of actions taken to the detriment of its client GT and knowingly created a conflict of interest*”) fails to particularise the failures and actions there set out
    - ii. 108(L) and its 7 sub-paragraphs numbered 1 and 7 to 12, are vague and “*makes no sense*”. Paragraph 108(L) pleads that Rouse “*provided an authoritative public platform*” for KD, CD, RJB and Holdings to routinely make representations to third parties that they “*owned the entire business and intellectual property rights [of GT]*”. The sub paragraphs set out particular instances when KD, CD, RJB and Holdings had informed third parties (such as Mr Machado and Gulf) that GT had no rights to deal with the Product citing Rouse as an authoritative professional source in support of that information.
    - iii. 111 introduces new heads of loss
  - d. Limitation issues are raised against paragraphs:
    - i. 108(a). This pleads particulars of breach said to have arisen in November 2011 when Rouse purported to instruct solicitors on behalf of GT in circumstances where Rouse knew that they had no authority to do so. Documentation sent to the solicitors described CD as a director of GT and CD and KD as shareholders of GT when Rouse knew that such descriptions were false.
    - ii. 108(j).
    - iii. 108(k) and its 6 subparagraphs plead that Rouse “actively sought to advance the interests of KD, CD, RJB and Holdings to the detriment of GT (Rouse’s client)”. Particulars are provided of particular actions in March, August and October 2012.
    - iv. 108(l).
30. CDs support the arguments advanced by Rouse and resist the amendments as far as they concern CDs relying, in particular, on a failure adequately to plead causation.

Strike out and summary judgment

31. CDs and Rouse seek summary judgment on the claims against them or an order striking out the claim or parts of it. Each relies on the Claimant’s delay to establish an abuse of process and suggests that the circumstances of the claim are such that the discretion to strike out should be exercised. Each suggests that the Claimants’ have failed to plead a sufficiently arguable case on causation.

Discussion

32. Four main questions arise from the applications:
- a. Do the DRAPOC plead an adequate case in causation? This issue covers the Rouse application to strike out of for summary judgment, the CDs application for strike out or summary judgment and the resistance to the application to amend.
  - b. Should permission to amend parts of the DRAPOC be refused on the ground that the matters pleaded are subject to a limitation defence?
  - c. Is the Claimants’ delay such that the claim should be struck out or permission to amend be refused?

- d. Should permission to re-amend be given?

### The law

### Causation

33. None of the claims pleaded against any Defendant is actionable in the absence of proof of damage. The burden of establishing that any proved wrong has caused damage lies with the Claimants and must be pleaded.
34. The decision of Coulson J (as he then was) in *Pantelli Associates v Corporate City Developments Number two Limited* [2010] EWHC 3189 (TCC) is often cited when arguments about the adequacy of a pleading are raised. In that case, Pantelli, a firm of quantity surveyors, sued for unpaid fees. The Defendant (“CCD”) defended and raised a counterclaim alleging that Pantelli had acted negligently. The adequacy of the plea in professional negligence came before the court in an application by CCD to amend. The main problem it faced was that the particulars of breach were generic and unparticularised. Counsel for CCD accepted during the course of submission that he had “*simply taken each relevant contract term and then added the words “failing to” or “failing adequately or at all to” as a prefix to each obligation, thus turning the obligation into a [plea] of professional negligence*” and that he had been hampered in pleading particulars of negligence “*by the absence of any expert advice as to whether – and if so how – Pantelli had been negligent or otherwise acted in breach of contract.*” Perhaps not surprisingly, Coulson J felt it was “*plain*” that the particulars of breach failed to set out “*a concise statement of the facts on which the Claimant relies*” as required by CPR 16.4(1)(a). He went on to say (as a separate reason to strike out the allegations of professional negligence): “*even though the work that is now the subject of these purported allegations was carried out three years ago, there is no expert evidence of any kind to suggest that that work was carried out inadequately or was in some way below the standard to be expected of an ordinarily competent quantity surveyor. Not only is it simply not good enough to turn a positive contractual obligation into an allegation of professional negligence by adding the words “failing to” to the obligation, but it is also wholly inappropriate to do so in circumstances where there is no expert input to allow CCD to make such an allegation in the first place.*”
35. The pleaded case on causation was simply put as follows: “*as a result of the Claimant’s breaches ...[CCD] has suffered loss and damage*”. Coulson J concluded that that was not a proper plea of causation and loss: “*It is impossible to work out from that terse summary what facts CCD rely on in support of their contention that a particular breach or breaches has given rise to a particular head of loss. There is no answer to the question: but for the negligence, what would have happened and why? The damages claimed are wholly unparticularised. Again, therefore, paragraph 36 does not comply with r.16.4(1)(a).*”
36. Rouse relies on paragraph 11 of the judgment:

“*CPR 16.4(1)(a) requires that a particulars of claim must include “a concise statement of the facts on which the Claimant relies”. Thus, where the particulars of claim contain an allegation of breach of contract and/or negligence, it must be pleaded in such a way as to allow the Defendant to know the case that it has to meet. The pleading needs to set out clearly what it is that the Defendant failed to do that it should have done, and/or what the Defendant did that it should not have done, what would have happened but for those acts or omissions, and the loss that eventuated. Those are ‘the facts’ relied on in support of the allegation and are required in order that proper witness statements (and if necessary, an expert’s report) can be obtained by both sides which address the specific allegations made.*”

37. Rouse also refer to *Towler v Wills* [2010] EWHC 1209 (Comm) at paragraph 18:

*“The purpose of a pleading or statement of case is to inform the other party what the case is that is being brought against him. It is necessary that the other party understands the case which is being brought against him so that he may plead to it in response, disclose those of his documents which are relevant to that case and prepare witness statements which support his defence. If the case which is brought against him is vague or incoherent, he will not, or may not, be able to do any of those things. Time and costs will, or may, be wasted if the Defendant seeks to respond to a vague and incoherent case. It is also necessary for the Court to understand the case which is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense. For these reasons it is necessary that a party’s pleaded case is a concise and clear statement of the facts on which he relies”*

38. There is no suggestion that the particulars of breach pleaded against Rouse (at paragraph 108 which include some re-amendments) or against the CDs (at paragraphs 95 to 99 which do not include re-amendments) are inadequate. The loss and damage suffered by the Claimants is pleaded at paragraph 111. No distinction is drawn between loss suffered as a result of Rouse’s breaches and loss suffered as a result of the wrongs of the CDs. Chief amongst the pleaded losses is that GT lost the entire business and (as set out at paragraph 111(a) by way of re-amendment) that included the exclusive rights to sell, market and distribute the Product. All of the pleaded losses are losses of GT. Now that it is agreed that paragraphs 111(h) and (i) are not to be included by way of re-amendment there is no plea that CT has suffered any loss.
39. The schedule of loss (detailed above) particularises GT’s loss of profit arising out of sales it would have made were it not for the Defendants’ breaches in a sum in excess of £23 million. Even if GT had simply sold the Product that it had stockpiled, it would have made a profit (according to the schedule) of at least £2.425 million.
40. In my judgment, on a fair reading of the DRAPOC the pleaded case on causation is clear. In my view the Defendants should each understand what the Claimants say they should have done but failed to do or did but should not have done. They should also understand what losses have arisen as a result. At its heart, GT’s case is that it was ideally placed to enjoy very substantial profits from its sole and exclusive rights to sell a valuable, highly sought-after, product. If Rouse and the CDs had not acted in the way they did, effectively depriving the Claimants of its rights, those substantial profits would have been realised. I accept, as it seems to me the Claimants accept, that the pleading could be simplified.
41. I am satisfied that the DRAPOC pleads a proper case on causation as far as GT is concerned. In reaching that conclusion I take into account at least those parts of the schedule of loss (part B) I have referred to. There is no doubt in my view that the schedule of loss is intended to be read with the DRAPOC and it would, in my judgment, be wrong to consider the DRAPOC without it. Even if I am wrong about that, the DRAPOC at paragraph 111 make plain that GT has lost the opportunity to make profit from the exclusive right to sell the Product (see paragraphs 111 (a) and (e)).
42. For those reasons, this ground for resisting the amendments and for disposing of the claim has nothing in it. CDs go further and say that loss is not properly pleaded. I do not accept that submission. Neither do I accept that the requisite intention to cause harm (a point advanced by CDs) is not sufficiently pleaded.
43. There is no plea that CT (rather than GT) suffered any loss as a result of any wrong on the part of Rouse or CDs. The schedule of loss makes occasional reference to the “Claimants” (plural) but does not explain how CT has suffered loss in his own right. In reality, any loss is in my view GT’s loss. In the absence of any pleaded basis for concluding that CT suffered any loss, I accept that

any damages claim by him should be struck out.

Limitation

44. Limitation is raised against the proposed amendments to paragraphs 108(a), 108(j) (k) and (l). Each deals with instances of breach. The substance of those paragraphs is set out at paragraph 29 (c) and (d) above. The matters pleaded in summary concern:
- a. 108(a): the actions of Rouse in November 2011 when it instructed solicitors (Prettys) and provided information as to who controlled GT. The facts are repeated at paragraph 24 also by way of a draft re-amendment. The present unamended pleading (the APOC) refers to Prettys being involved in other matters in March 2012 at paragraphs 29, 31 and 32. Paragraph 32 sets out an instance of Rouse providing apparently misleading instructions to Pretty's as to the identity of the party entitled to exploit the Product.
  - b. 108(j): Failures on the part of Rouse to warn GT of actions being taken in their interests and Rouse's creation of a conflict of interest. Those actions and failures clearly arose after 29 March 2011 when GT instructed Rouse. The APOC makes no reference to Rouse acting in conflict or of any failure to warn, but does refer to Rouse taking steps to prefer the rights of Holdings over those of GT.
  - c. 108(k): Actions of Rouse in March, August and October 2012 which advanced the interest of CDs over the interests of GT:
    - i. On or around 7 March 2012 Rouse instructing solicitors (Pretty's) to replace GT with Holdings in a draft Heads of Terms with Mr Machado ("the Machado HoT"). The APOC deal with discussions between GT and Mr Machado at paragraphs 22 to 25. The Rouse Defence responds at paragraphs 39 to 45. At paragraph 41 it avers that on 7 March the Machado HoT were sent to Rouse who, after discussing matters with CD amended it to make reference of Holdings in place of GT. There is further reference to the Machado HoT at paragraphs 43 and 45. The CD defence responds to paragraphs 22 to 25 of the APOC at paragraphs 48 to 55. At paragraph 52 CDs refer to the amendment of the Machado HoT "*in accordance with the agreement reached [with GT] that Holdings would be the holding company for the JV rather than GT*". There is further reference to the Machado HoT at paragraph 54.
    - ii. on or around 14 August sent a warning to a US trademark agent (Terry McAllister) that GT might raise issues with the transfer of its business to Holdings. This point is not referenced (as far as I have been able to find) in the pleadings which precede the DRAPOC. The application bundle however contains an invoice issued by Rouse on 18 September 2012 in respect of work done in August. It refers to a charge for warning McAllister that he may be contacted by CT.
    - iii. emailed details of GT's solicitors (Crawfords) to Mr McAllister.
    - iv. emailed "overseas agents" warning them of possible objections to the transfer by GT. The Rouse invoice of 18 September 2012 also refers to these emails to "overseas agents".
    - v. On or around 15 October 2012 wrote to Hostgator to prevent its use of the website [www.geo-minerals.co.uk](http://www.geo-minerals.co.uk) and
    - vi. On 4 October 2012 wrote to UK Webhosting to prevent its use of the website. At paragraph 61 of the APOC the Claimants plead that Rouse had written to

“*Paragon*” on 28 September 2021 to “*take down*” the website. Rouse denies that such a letter was written at paragraph 84.1 of its defence. The CDs do not admit it. Rouse raised a Request for Further Information of paragraph 61 asking what the relevance of the allegation was and who was said to have written the letter. In their response the Claimants refer to (and produce) the letter to “Host Gator” and refer to (without producing) the UK Webhosting letter.

- d. 108(1): Rouse added credibility to the claims of the CDs that they owned exclusive rights to the Product and the business generally. The breaches pleaded at paragraph 108(1) (1) to (12) relate to the actions of the CDs which were (to paraphrase) legitimised or supported by the actions of Rouse. It is pleaded that CDs contacted Gulf claiming they owned the business (and the exclusive right to sell the Product), contacting Mr Machado and threatening injunctive proceedings, requiring GT and GCL to stop using its own website, representing to ITD International that Holdings owned the quarry, issuing an “*inhibition order*” preventing sale (or advertising of) the Product, registered a pending action charge against the quarry in July 2012 and on 13 August 2012 wrote to a lender advising him not to lend further money to GCL. Paragraphs 3 and 51 of the APOC refers to the same contact with Gulf, paragraph 47 refers to the threat of injuncting Mr Machado.
45. The APOC deal with Rouse’s breach and duties at paragraphs 78 to 87. In summary it is pleaded that:
- a. GT instructed Rouse to register relevant trademarks in its name on or about 29 March 2011. The arrangement was intended to benefit GT and Rouse were given no authority to register trademarks in any other name. It follows that GT was a client of Rouse. Rouse presented invoices to GT which GT paid.
  - b. In April 2012 Rouse acted “*beyond the scope of instruction*” by arranging to transfer GT’s intellectual property rights and the “*entire business*” of GT to Holdings without GT’s consent.
  - c. Rouse owed contractual or common law duties “as a solicitor” to act with appropriate care and skill and within the scope of instructions.
46. Particulars of loss are presently set out in the schedule of loss (which at the request of Rouse provides better particulars of the loss suffered). I have dealt with the plea of loss in the DRAPOC above.
47. The parties are agreed on the law as it applies to the grant of permission to amend proceedings to include a claim which is outside a statutory limitation period. I need not set out the relevant provisions of the CPR or of the Limitation Act. All agree that the Court of Appeal’s decision in *Mulalley & Co v Martlet Homes* [2002] EWCA Civ 32 sets out the appropriate four stage test:
- a. Is it reasonably arguable that the opposed amendments are outside the applicable limitation period?
  - b. Did the proposed amendments seek to add or substitute a new cause of action?
  - c. Does the new cause of action arise out of the same or substantially the same facts as are already in issue in the existing claim?
  - d. Should the Court exercise its discretion to allow the amendment?

Are the amendments outside the limitation period?

48. I am invited to proceed on the basis that it is reasonably arguable that the opposed amendments are outside the applicable limitation period.

New cause of action?

49. The next question is do the proposed (re) amendments seek to add a new cause of action? The Claimants submit, without reference to authority, that they do not. Rouse on the other hand invite a careful consideration of this point. I accept that the correct approach is set out in *Diamandis v Willis* [2015] EWHC 312 (Ch), a decision of Mr Stephen Morris QC (as he then was) sitting as a Deputy Judge of the Chancery Division. At paragraph 48, summarising the conclusions reached by the Court of Appeal in *Berezovsky v Abramovich* [2011] 1 WLR 2290 he said this:
- a. The “cause of action” is that combination of facts that gives rise to a legal right. It is “the factual situation” rather than a form of action. (I note that Coulson J (as he then was) had made the same point at paragraph 11 of *Pantelli*.)
  - b. Where a claim is based on a breach of duty, whether arising in contract or tort, the question whether an amendment pleads a new cause of action requires comparison of the unamended and amended pleading to determine (a) whether a different duty is pleaded (b) whether the breaches pleaded differ substantially and (c) where appropriate whether the nature and extent of the damage of which complaint is made is different. Where the comparison leads to the conclusion that the new pleading raises the same duty and same breach, new or different loss will not be sufficient to conclude that there is a new cause of action. But where there is a different duty or a different breach, then there is likely to be a new cause of action. This test was applied by Mr John Kimbell sitting as a Deputy High Court Judge in *Re One Blackfriars Ltd* (in liquidation) [2019] EWHC 1516 (Ch).
  - c. The “*cause of action*” is every fact which is material to be proved to entitle the Claimant to succeed. Only those facts which are material to be proved are to be taken into account; the pleading of unnecessary allegations or the addition of further instances does not amount to a distinct cause of action. At this stage, the selection of the material facts to define the cause of action must be made at the highest level of abstraction.
  - d. In identifying a new cause of action, the bare minimum of essential facts abstracted from the original pleading is to be compared with the minimum as it would be constituted under the amended pleading.
  - e. The addition or substitution of a new loss is by no means necessarily the addition of a new cause of action. Nor is the addition of a new remedy, particularly where the amendment does not add to the “*factual situation*” already pleaded.
50. It is important to approach the question of whether there is a new cause of action with this guidance firmly in mind. At the heart of the exercise is a relatively high-level comparison of the “*causes of action*” pleaded in the APOC and the DRAPOC. In my view, that comparison shows that no materially new duty is raised in the DRAPOC, that the pleaded breaches raised in the DRAPOC, whilst new, are not substantially different from the breaches pleaded in the APOC and that the particulars of loss raised do not change the nature and extent of the loss suffered. I now turn to deal with each of those points in turn.

New duty?

51. I accept that a new duty is pleaded at paragraphs 104 to 107 of the DRAPOC. The proposed re-amendment corrects the assertion that the Rouse partner dealing with matters (MF) was not a solicitor but a trademark attorney. At paragraphs 105 to 107 new duties are set out, taken from the Trademark Attorney code of conduct. In summary those duties are to carry out work with due skill, care and diligence and with integrity whilst avoiding conflicts and acting in a timely fashion. At paragraph 45 above I have set out how the APOC deals with breach and duty. There is in my view no difference in the substance of the duties pleaded in the APOC and in the DRAPOC. In

practice it makes little difference that MF was a trademark attorney rather than a solicitor.

New breach?

52. The particulars of breach set out at paragraph 108(a) do not in my view differ substantially from particulars of breach already pleaded (see paragraph 32 of the APOC). These are examples of how Rouse is said to have provided misleading information to Prettys. Paragraph 32 is pleaded to at paragraph 62 of the Rouse defence. The allegation is “*not admitted*”. It follows that the allegation is in issue.
53. The particulars of breach at 108(j) are new but are in my view not materially different from the already pleaded allegation that Rouse acted “*beyond the scope of its instruction*” by transferring its intellectual property and business to a third party. There is no clearer instance of a conflict.
54. The instances of breach set out at paragraphs 108(k)(1) are not new. Those pleaded at 108(k)(5) and (6) are further examples of Rouse writing to third parties requiring the relevant website to be taken down. The instances there pleaded were raised in any event in response to a Request for Further Information raised by Rouse. In my view the same point applies to paragraph 108(l). That paragraph sets out a single allegation against Rouse, namely that it wrongly legitimised CDs claims (some of which are set out) to own the business and have exclusive rights over the Product. This is simply another example of Rouse acting “*beyond the scope of its retainer*”. The allegations at 108(2), (3) and (4) set out further examples of steps taken by Rouse to promote the interests of Holdings over those of GT. In my judgment all of the breaches added by way of proposed re-amendment are simply the “*addition of further instances*” of the same breach.

Overview

55. The proposed re-amendments simply set out further instances of allegations which are already in issue. The relevant matters concern:
  - a. Rouse’s provision of information to third parties about the identity of the party who had the right to sell and exploit the Product and use the relevant IP rights (paragraphs 108(a); (k)(1); (k)(5) and (k)(6) set out further examples).
  - b. Rouse having conflicting duties to CDs and to GT but preferring the interests of CDs (instances are at paragraph 108(j) and (k)).
  - c. A summary at paragraph 108 which pulls together under one heading how the actions of failures of Rouse are said to have supported and assisted the wrongdoings of CDs.
56. For those reasons, in my view no “new cause of action” is pleaded. That is sufficient to deal with the limitation objection. In case I am wrong in that conclusion, and the proposed amendments do add “new causes of action” I will go on to consider the next stages.

Same or substantially the same facts?

57. The next question is: do the new causes of action arise out of the same or substantially the same facts as are already in issue in the claim? Guidance on the proper approach to this question is to be found in the *Diamandis* at paragraph 49:
  - a. “*Same or substantially the same*” is not synonymous with “*similar*”.
  - b. Whilst in borderline cases, the answer to this question is or may be substantially a “*matter of impression*”, in others, it must be a question of analysis.
  - c. The purpose of the requirement at Stage 3 is to avoid placing the Defendant in a position where he will be obliged, after the expiration of the limitation period, to investigate facts and obtain evidence of matters completely outside the ambit of and unrelated to the facts



- which he could reasonably be assumed to have investigated for the purpose of defending the unamended claim.
- d. It is thus necessary to consider the extent to which the Defendants would be required to embark upon an investigation of facts which they would not previously have been concerned to investigate. At Stage 3 the court is concerned at a much less abstract level than at Stage 2; it is a matter of considering the whole range of facts which are likely to be adduced at trial.
  - e. Finally, in considering what the relevant facts are in the original pleading a material consideration are the factual matters raised in the defence: see Berezovsky §73 and Goode v Martin [2002] 1 WLR 1828 where the Court of Appeal interpreted CPR 17.4(2) so as to produce a just result where an amendment involved the introduction of no new facts. There the facts in question had been raised in the defence, though not in the original statement of claim.
58. Having concluded that there is no new cause of action for the reasons I have given (principally because no materially new duty is raised in the DRAPOC, that the pleaded breaches raised in the DRAPOC whilst on occasion new are not substantially different from the breaches pleaded in the APOC and that the particulars of loss raised do not change the nature and extent of the loss suffered) it follows that the freshly pleaded matters do arise out of the same or substantially the same facts as are pleaded in the RAPOC.
59. Nonetheless, it is perhaps helpful to ask myself to what extent “*the Defendants would be required to embark upon an investigation of facts which they would not previously have been concerned to investigate?*” Whilst this question should not be used as short cut to the application of the relevant test, it provides a common sense check.
60. If I grant permission for the claim to be pleaded in the manner set out in the DRAPOC, Rouse will not in my judgment need to embark on any new investigation. I note the policy which justifies the refusal of permitting an amendment to add in a time expired claim as explained in Lloyds Bank v Rodgers [1997] TLR 154: “*the policy of the section was that if factual issues were in any event going to be litigated between the parties, the parties should be able to rely on any cause of action which substantially arises from those facts.*” In my judgment the factual issues at the heart of the DRAPOC are going to be litigated even if I refuse permission.
61. I now deal with the exercise of discretion.
62. I am persuaded that permission to amend should be granted. I bear in mind that the application is made before the first case management conference. There is ample opportunity for all Defendants to plead to the claims. There is no reason to believe that the passage of time will hamper the investigation of the issues that arise in this case and neither Rouse nor CDs assert that they will be specifically prejudiced by the amendments (the Claimant’s assertion in its first skeleton argument that “*the only prejudice to the Rouse Defendants is the potential need for amendments to their Defence*” was not disputed). This is not a family dispute where the only relevant evidence comes from fading memories of interested parties, rather this is a commercial dispute where the issues are likely to be resolved by reference to professionally prepared documentation which has been preserved. I bear in mind that the overriding objective is that the court deal with cases in a just fashion. In my judgment the interests of justice in the present case require the permission for the amendments be granted.

### Delay

63. The parties are agreed that delay on its own is not enough (see Icebird Ltd v Winegardner [2009] UKPC 24). There must be more. Here, CDs and Rouse both submit that GT has “warehoused” the claim. In other words, GT has unilaterally at least one point in the history of the claim lacked the

desire to proceed to trial.

64. Rouse and CDs rely on the principles set out in *Grovit v Doctor* [1997] 1 WLR 640 and *Arbuthnot Latham Bank v Trafalgar Holdings* [1998] 1 WLR 1426 as applied recently in *Asturion Foundation v Alibrahim* [2020] 1 WLR 1627 and *Alfozan v Quastel Midgen* [2022] EWHC (Comm) 66. I accept, as did the parties, that the relevant principles are set out at paragraph 12 of *Alfozan*. In summary:
- a. It may be an abuse of process for the Claimant to "warehouse" a claim by taking a decision not to pursue it for a substantial period of time, even if the Claimant subsequently decides to pursue it ( *Solland International Limited v Clifford Harris* [2015] EWHC 3295 or even is intent on pursuing the claim, albeit at some later time ( *Asturion Foundation v Alibrahim* [2021] 1 WLR 617).
  - b. However, mere delay in pursuing a claim, however inordinate and inexcusable, does not, without more, constitute an abuse of process ( *Asturion Foundation v Alibrahim* );
  - c. In deciding whether to strike out a claim for "warehousing" as an abuse of the court's process, it is necessary for the court to undertake a two-stage analysis, considering first whether the conduct is an abuse of process and second whether, if it is, it is proportionate to strike out on the basis ( *Asturion Foundation v Alibrahim* ).
65. In my judgment it is clear from the procedural chronology that the Claimants have at no time (and certainly not over a substantial period of time) decided not to pursue the claim. In my judgment the Claimants have shown themselves at all times willing to pursue the matter. The process of getting the claim to this stage has been slow. That is regrettable but does not reflect badly on the Claimants.
66. There is no basis on which I could properly conclude that the Claimants had decided (however temporarily) not to pursue the claim. CDs' Defence was not filed until 26 November 2019 (after the court had granted an extension of time, and after CDs had successfully applied for security for costs against GT). Responses to Rouse's Request for Further Information were provided on 17 February 2020. The claim made little outward progress in 2020. It is however clear that between June and August 2020 (see paragraph 37 of Mr Harrison's first witness statement) there was correspondence with Rouse in respect of funding arrangements, disclosure and security for costs. Rouse (as Mr Harrison explains) responded to those points on 26 November 2020 raising (amongst other issues) issues in respect of how causation had been pleaded. Rouse suggested in March 2021 that the Claimants' case on causation would need to be re-pleaded. Thereafter there were delays (which I do not think were unreasonable) in instructing new counsel and allowing time to draft the DRAPOC. I accept that these amendments took time because Leading and junior counsel were not starting with a clean slate.
67. I have no doubt at all that there is nothing in this point. I am satisfied that there is no evidence of any decision to "warehouse" the claim.

### Abuse

68. Are the present proceedings, even in their unamended form an abuse as against CDs because of the Northern Irish proceedings? In my view they are not.
69. CDs rely on the principles set out in *Johnson v Gore Wood* [2002] 2 AC 1 and recently applied by Pepperall J in *Mansing Moorjani v Durban Estates* [2019] EWHC 1299 (TCC). No res judicata, cause of action estoppel, or arguments in respect of merger arise.
70. In *Johnson* Lord Bingham described the underlying public interest in the abuse of process argument in this way: "*there should be finality in litigation and .... a party should not be twice vexed in the same matter.*" If the claim in the present action "*should have been*" raised in the

Northern Ireland proceedings the present proceedings may be an abuse of process. As Pepperall J notes in his summary: “*The court will rarely find abuse unless the second action involves "unjust harassment" of the Defendant.*”

71. In *Tinkler v Ferguson* [2021] 4 WLR 27, Jackson LJ noted that “*it [would] be a rare cases where the re-litigation of an issue which has not previously been decided between the same parties or their privies will amount to an abuse*”.
72. The parties to the present case are not the same as the parties to the Northern Ireland action. GT in particular was not a party to the first action. The overarching question is whether the CDs are being unjustly harassed (or, to use the language of *Johnson* “*twice vexed*”) by the present claim. In my view, they are not.
73. In the first claim, the plaintiffs sought various declarations and other relief based on an apparent breach of the JVA the terms of which (see paragraph 6 of the “statement of claim”) required the Defendants to transfer the quarry to the plaintiffs. The Defendants to the claim defended it on straightforward terms (the defence is only 11 paragraphs long), denying there any JVA. There was no counterclaim and issues concerning the conduct of the CDs were not raised. Even if a counterclaim had been raised, it would have required the addition of a new party (GT). Further, the claim was not pursued to judgment.
74. I accept that there are no hard and fast rules that apply in considering whether a second claim should be struck out as an abuse. The power to strike out for abuse of process is “*a flexible power unconfined by narrow rules*” (see *Tinkler*). As the burden lies on CDs to show that there has been an abuse, a good starting point is to ask what the abuse is said to be. In my judgment here, it is no more than the assertion that CT might have raised the present claim within the Northern Ireland proceedings. In my judgment that is not enough to approach, let alone cross, the line between proper practice and abuse.

#### Summary Judgment or Strike Out

75. I remind myself that the test for summary judgment is set out in CPR 24. The court may grant summary judgment if it is satisfied that the Claimant has no real prospect of success and there is no other compelling reason why the claim should be disposed of at trial. Here, “*real*” means more than fanciful. Evidence is admissible on an application for summary judgment.
76. I remind myself that the test for strike out is set out at CPR 3.4. Examples of the circumstances in which a claim might be struck out are set out in CPR PD 3A. When considering an application for strike out I should not consider extrinsic evidence but should take the pleaded case at its highest.
77. I have dealt above with the bases on which CDs and Rouse seek to strike out the claim or be awarded summary judgment. I have concluded that none of the grounds advanced is sufficient.
78. There are 2 pieces of evidence which are of assistance, and which may be taken into account when considering the question of summary judgment:
  - a. The agreement of 5 April 2011 by which exclusive selling rights in respect of the Product are granted to GT; and
  - b. A witness statement from David Tattum, the former chair of Gulf (see in particular the references at paragraph 7(j) above). He confirms that Gulf was prepared to invest in GT but that the agreement was delayed when KD told him that “*the deal*” belonged to Holdings. His evidence is that he was aware that Rouse had circulated assignments purporting to show that GT’s business had been transferred to Holdings. Mr Tattum

regarded this as “*the final nail in the coffin of the investment deal*” and that they made the proposed investment “*untenable*”.

79. I regard both of these pieces of evidence as important indicators that I cannot conclude that the Claimants have no real prospects of success on the claim. The 5 April 2011 agreement confirms the plea that GT lost the “*exclusive sales, marketing and distribution rights*” (pleaded at paragraph 111). The Tattum evidence helpfully shows the mindset of an investor. On its face it is evidence that Gulf failed to invest in a potentially lucrative business as a direct result of the assignments.

### Other issues

#### The claim against RJB

80. In my view the claim against RJB must proceed. He is said to have been a party to the conspiracy. The basis of the application that the claim against him be struck out or otherwise disposed of because he is not directly accused of any unlawful act is, in my judgment, based on a misapprehension. The claim against him (as Mr Burns QC points out at paragraphs 20 to 22 of the Claimants’ second skeleton argument) includes the following (at paragraphs in the DRAPOC):

- a. He was the sole director and shareholder of Holdings but acted on the instructions of CD and KD (paragraph 27).
- b. Was instrumental in representations that Holdings was controlled by CD and KD (paragraph 37).
- c. He signed and purportedly executed the relevant assignment documents on behalf of Holdings (paragraphs 48 and 71).
- d. He was involved in the transfer of an (OMRI) export licence to Holdings (paragraph 54).
- e. The majority of these points (with others) are relied upon at paragraphs 98 and 99 as the basis on which the court should infer the conspiracy.

81. I accept the submission of Mr Burns QC that if the existence of a conspiracy is accepted by the court, the conspirators are likely to be responsible for the totality of the acts carried out in furtherance of the conspiracy. McGrath in “*commercial fraud in practice*” cites *Derby v Weldon (no.5)* [1989] 1 WLR 1244 at 1254 as authority for the proposition that “*in a case founded on conspiracy, acts and admissions by one in pursuance of the conspiracy are admissible against the other*” (see paragraph 14.05 of the text). It is therefore not necessary to plead that RJB was involved in every wrong.

82. For those reasons I decline to strike out the claim against RJB.

### Next Steps

83. It appears to be common ground (see paragraph 40 above) that the DRAPOC might be simplified. In my view, the process of pleading to the DRAPOC will be rendered far more efficient by a further re-drafting of the claim. I think it likely that such a re-draft is likely to result in a shorter more focussed pleading, a similarly more succinct defence, more efficient disclosure and shorter witness statements. In the long run the trial (if the matter gets that far) may be shorter and the whole process less expensive.

84. The parties should endeavour to agree directions to bring the claims to a stage where a case management conference can be heard well before the end of the year.

### Conclusions

85. I am grateful to all counsel involved for their assistance.