Neutral Citation Number: [2025] EWHC 15 (Ch)

Case No: BL-2024-000099

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

Rolls Building
Fetter Lane
London, EC4A 1NL

14 January 2025

Before :

NICOLA RUSHTON KC

(Sitting as a Deputy Judge of the High Court)

- -

Between :

MR BASHAR BIN MAHMOOD

Claimant

- and -

(1) KPMG LLP
(2) DAVID JAMES COSTLEY-WOOD

Defendants

- -
- -

Mr Timothy Becker (instructed by Direct Access) for the **Claimant**
Mr Matthew Abraham (instructed by **Stephenson Harwood LLP**) for the **Defendants**

Hearing date: 17 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 10 a.m. on 14 January 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

NICOLA RUSHTON KC:

1. I have before me an application by the Defendants to strike out the Claimant's claim against them on grounds of abuse of process, and/or for summary judgment on the basis that the claim has no real prospect of succeeding. The claim is essentially for professional negligence and misconduct between 2008 to 2010 in the conduct of the administrations of a number of insolvent companies of which the Claimant was director, shareholder and/or guarantor, in particular in allegedly selling at an undervalue the development properties which were the main assets of those companies. The value of the claim was said on the Claim Form to be £1,206,600,000 plus interest.

2. The claim to a very great extent duplicates an earlier claim brought by the Claimant against the same Defendants in the Central London County Court (Claim Number J36YJ967, "**the First Claim**"). That First Claim was struck out and judgment was given in favour of the Defendants by an order of District Judge Greenidge of 10 July 2023, following a hearing which from the transcript took the best part of a day. Permission to appeal was refused on the papers by HHJ Saggerson on 27 October 2023. The Claimant renewed his application for permission orally and it was refused by HHJ Bloom on 9 May 2024. DJ Greenidge and HHJ Bloom each also found that respectively the claim and the application for permission to appeal were totally without merit. I have been provided with the transcripts of the judgments and the hearings before both DJ Greenidge and HHJ Bloom, as well as the bundles and other papers relating to those hearings.

3. The present claim was issued on 26 January 2024. This was before the Claimant's oral application for permission to appeal on the First Claim had been dealt with, as he acknowledged to HHJ Bloom during the hearing before her. On 23 February 2024 the Defendants issued their application for strike out and summary judgment on the present claim. On 14 March 2024 Master Brightwell directed the Claimant to explain how the current claim differed from the First Claim, saying that it was not open to a dissatisfied litigant whose claim had been dismissed in one court to issue the same claim again in another. The Claimant has never responded to that direction.

4. On 22 April 2024 the Claimant issued an application for wide-ranging disclosure against the Defendants. On 24 April 2024 Master Brightwell directed that the question of whether that application needed to be listed would be considered at the conclusion of the hearing of the Defendants' application, which he listed to be heard before him on 1 August 2024.

5. The hearing before Master Brightwell on 1 August 2024 was vacated because the Claimant's counsel unfortunately contracted Covid. The application was therefore relisted, and came before me for hearing on 17 December 2024, with a time estimate of one day.

6. In his direction of 31 July 2024 vacating the hearing, and having reviewed the Defendants' skeleton filed in support, Master Brightwell observed that rather than being a case where an issue estoppel or cause of action estoppel had arisen, this might rather be a case where the previous claim had been struck out without an adjudication on the issues, so that the applicable principles were those set out by the Court of Appeal in *Securum Finance Ltd v. Ashton* [2001] Ch 291 ("***Securum***"). He also noted that the Claimant had been made bankrupt after the events of which he complained, which appeared to create the fundamental objection that the Claimant had no standing to sue. The Master gave further directions which were intended to give the Defendants the

opportunity to deal with the *Securum* point, Claimant's counsel to file a skeleton in opposition to the application, and Defendants' counsel to respond to the same. Regrettably Claimant's counsel filed and served his skeleton late for the hearing before me, preventing Defendants' counsel from responding to it in writing but I am satisfied that he had a proper opportunity to do so in oral submissions.

7. The Claimant has for the most part acted as a litigant in person, but he was represented at the hearing before me by counsel, Mr Timothy Becker, acting on a direct access basis. The Defendants have been represented throughout, as they were in the First Claim, by counsel Mr Matthew Abraham, instructed by Stephenson Harwood LLP. I am grateful to both counsel for their submissions in writing and at the hearing.

8. On 19 July 2024 the Claimant applied to amend his Particulars of Claim, attaching proposed draft amended Particulars. The Defendants have helpfully provided a red-lined version showing the proposed amendments. That application was also listed to be heard before me. Mr Abraham on behalf of the Defendants did not oppose the amendments, on the basis that he wanted the strike out and summary judgment to extend to any amended claim. Accordingly I will consider the Defendants' application on the basis that the Particulars of Claim have been amended under CPR rule 17.1(2)(a), without therefore any acknowledgement or finding that the amendments have rendered the claim reasonably arguable. By the amendments the Claimant among other things reduced the size of his claim to £25,000,000, and added additional heads of claim which are closely related to the original ones.

9. There is no dispute that the Claimant was made bankrupt on 23 March 2009, after all the relevant companies had entered administration. He was discharged from bankruptcy on 20 August 2012. A representative of the Official Receiver attended the hearing before me as an observer.

10. The Defendants' application for strike out and summary judgment was made on a number of alternative grounds, so I will approach these in the manner which seems to me logical.

Abuse of process under CPR 3.4(2)(b) and *Securum*

11. Mr Abraham's primary submission was that the claim should be struck out under CPR 3.4(2)(b) on the basis "that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings*"* because it essentially replicates the First Claim, which has itself been struck out and dismissed, and judgment entered for the Defendants.

12. Although the First Claim was disposed of at an interim hearing, Mr Abraham submitted that it was adjudicated upon on its merits, because DJ Greenidge struck it out under CPR 3.4(2)(a) as well as under sub-paragraph (b), and also granted summary judgment. Mr Abraham took me to the extended recital to DJ Greenidge's order, in which the District Judge set out that he had considered, and was including within the definition of the Claimant's claim:

> "… (i) the Claimant's claim dated 25 October 2022; (ii) the particulars of claim filed in respect of it; (iii) the 'Detailed Supplementary Claim Statement Submission as Requested by the Defendants' document dated 29 December 2022; (iv) the further particulars dated 7 February 2023 'in reference to the defendants' response

> [to the Claimant's request for further information] dated 25 January 2023'; (v) the further particulars by way of the Claimant's document dated 1 April 2023 entitled 'In reference to the defendants' response of refusal to correspond via part 18 Procedure And Court order to correspond for conclusion date 25.03.2023'; (vi) the further particulars by way of the Claimant's 'Position Statement as ordered by HHJ Ellington on the 25.March.2023', dated 20 April 2023; (vii) the further particulars by way of a document titled 'Skeleton Argument in Support Towards Part 18 Sanctions Against The Defendants' dated 26 April 2023; (viii) the Claimant's application dated 14 June 2023 for an order 'Detailing and expanding of the Particulars of Claim submitted 25.10.2023 to the court and defendants with the supplementary witness statement and part 18 witness statements issued between 28.12.2022 and 02.06.2023'; (ix) the Claimant's skeleton argument dated 15 June 2023; and (x) the Claimant's 'supplementary Claimant witness statement' dated 6 July 2023 (the Claim)"

13. Mr Abraham submitted that the current claim was an abuse of process because it sought to relitigate the First Claim, which was disposed of on its merits. He said that the Claimant had admitted this before HHJ Bloom and also in an application for a stay which he issued in the present claim on 28 February 2024, in which the Claimant said in his witness statement in support:

> "2. I issued proceedings against the Defendants in Central London County Court. My claim is substantial. That Court said my claim should be transferred to the High Court as it was above the County Court Limit.
>
> 3. Instead, the Defendants applied to strike out my claim on the basis that my pleading was incoherent. On 10 July 2023 District Judge Greenidge struck out my case.
>
> a. I applied for permission to appeal within the time limit. Eventually my application was refused on paper. I straight away applied for an oral hearing. After all this time I am told the Central London Cou[n]ty Court will list my hearing soon.
>
> 4. In the meantime, I issued the current claim which covers the same case. I did this because I was concerned that my case may become ineligible due to limitation periods. It was only in 2021 onwards that I gained information which showed me that I had a claim."

14. Mr Abraham submitted that the claim should be struck out as an abuse of process because the striking out and dismissal of the First Claim has created a cause of action or issue estoppel. He relied on the principles summarised by the Chancellor, Sir Julian Flaux as to cause of action estoppel in *Margulies v Margulies* [2022] EWHC 2843 (Ch) at [50]:

> "A cause of action estoppel arises where the cause of action in the later proceedings is the same as the cause of action in the earlier proceedings. It is an absolute bar in relation to all points which had to be and were decided in order to establish the existence or non-existence of a cause of action"

And at [49], as to identifying a cause of action:

> "A cause of action is a factual situation the existence of which entitles a person to obtain a remedy from the court, consisting of every fact which the claimant must prove: see the statement of Millett LJ in *Paragon Finance Plc v DB Thakerar & Co* [1999] 1 All ER 400 at 405, referring to the earlier authorities. As Millett LJ went on to say: "The selection of the material facts to define the cause of action must be made at the highest level of abstraction." See also per Barling J in *The Manchester Ship Canal Company Ltd v United Utilities Water Ltd* [2019] EWHC 1495 (Ch) at [78]–[80]. In considering what was the cause of action in earlier proceedings, the court can take account not just of the particulars of claim, but of all the material before it: *Spencer Bower and Handley: Res Judicata* (5th edition*)* [7.16]."

15. Insofar as there are additional causes of action in the current claim, as amended, which were not in the First Claim, Mr Abraham submits that an issue estoppel arises. He relies on the decision of the Supreme Court in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2014] AC 160 (SC), which characterised issue estoppel as:

> "the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties" [17].

The Supreme Court went on to confirm that:

> "Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised" [22(3)].

16. He also referred me to the principles of issue estoppel as summarised by Dias J in *Fibula Air Travel Srl v Just-Us Air Srl* [2023] EWHC 1049 (Comm) at [19]:

> "…(b) Even where the subsequent proceedings involve a different cause of action, a decision on a particular issue which formed a necessary ingredient of the earlier cause of action and is also relevant to the subsequent cause of action is binding on the parties and cannot be reopened: *Arnold (supra)* at 105E.
>
> (i) The relevant question in this respect is whether resolution of the issue was a "necessary step" to the decision or a "matter which it was necessary to decide and which was actually decided, as the groundwork of the decision": see *Seele Austria (supra)* at [18] quoting Lord Wilberforce in *Carl Zeiss Stiftung v Rayner and Keeler Ltd (No. 2)*, [1967] AC 853. A mere dispute about facts divorced from their legal consequences is not an "issue" for these purposes: *Fidelitas Shipping Co. Ltd v V/O Exportchleb*, [1966] 1 QB 630, 641. The test is whether the determination was so fundamental to the substantive decision that the latter cannot stand without the former: *P&O Nedlloyd (supra)* at [23]-[24] quoting with approval from *Spencer Bower, Turner and Handley, the Doctrine of Res Judicata* (3rd ed.);
>
> (ii) For this purpose, it is permissible to look not only at the judgment but also at the pleadings, evidence and, if necessary, other material in order to show what

> issue was actually decided: see *Seele Austria (supra)* at [18] quoting *Carl Zeiss (supra)*…"

17. Mr Abraham's submission was that the cause of action in the present claim was at its core the same as in the First Claim, as the Claimant admitted. Both the First and current claims were for professional negligence against the Defendants and included the same allegations of (i) failing to ensure the various companies exited administration on a solvent basis; (ii) selling assets of the companies at an undervalue; (iii) acting where there was a conflict of interest; (iv) disclosing information to third parties, including government bodies; and (v) failing to keep proper records. Mr Abraham then cross-referenced paragraphs from the current claim to paragraphs from the First Claim where the same allegations were made in both under each of those five heads.

18. In addition Mr Abraham submitted that DJ Greenidge's judgment gave rise to binding issue estoppels on a number of central matters which went to the viability of the current claim, namely that he concluded (paragraph numbers referring to his judgment) that:

    i) there was no evidence of an assumption of responsibility sufficient to found a duty of care owed by the Defendants [7];

    ii) the Claimant was unable to establish how breaches of duty alleged had caused any loss [8];

    iii) the First Claim was limitation barred in that "the causes of action arose at the very latest in May 2011. Therefore any claim would have needed to have been brought by May 2017. The case was issued in December 2022 and would therefore have been caught by limitation" [14];

    iv) "even if there were causes of action which could be pursued, those causes of action vest in the trustee in bankruptcy" [15].

19. Finally insofar as any part of the present claim had not formed part of the First Claim, Mr Abraham submitted that it should have been brought as part of that claim. He relied on the principles in *Henderson v Henderson* (1843) 3 Hare 100 as summarised by Lord Leggatt in the Privy Council in *Finzi v Jamaican Redevelopment Foundation Inc* [2023] UKPC 29; [2024] 1 WLR 541 at [32]-[33]:

> "32. The doctrine of res judicata in its narrow sense prohibits a party from relitigating a decision in earlier proceedings that a cause of action does or does not exist (cause of action estoppel) or an issue decided in earlier proceedings (issue estoppel). There is also a broader principle, first stated by Wigram V-C in *Henderson v Henderson* (1843) 3 Hare 100, which precludes a party from raising in subsequent proceedings matters which were not, but which could and should have been, raised in earlier proceedings. This principle is wider than the narrow res judicata doctrine in two respects: it applies, not to matters decided by a court, but to matters which could have been decided but were not; and it applies to parties to the subsequent proceedings even if they were not parties to the earlier proceedings (or their privies). Like the narrow doctrine of res judicata, however, this broader principle also rests on the public interest in the finality of litigation. As stated by Sir Thomas Bingham MR in *Barrow v Bankside Members Agency Ltd* [1996] 1 WLR 257, 260:

> '[The *Henderson* principle] is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed.'
>
> 33. In general, the question whether a matter which could have been raised in earlier proceedings "should" have been raised in those proceedings depends on a "broad, merits-based judgment" that takes account of all the public and private interests involved and all the facts of the case and focuses on "the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before": *Johnson v Gore Wood & Co* [2002] 2 AC 1, 31 (Lord Bingham of Cornhill). As a matter of law, there is no distinction to be drawn between cases where the original action concludes by judgment and where it concludes by settlement: *Aldi Stores Ltd v WSP Group plc* [2008] 1 WLR 748, para 11. The *Henderson* principle applies equally to both."

20. Mr Abraham submitted that the current claim was the same claim as the First Claim, but even if this was not the case for some element, any new element could and should have been brought within the First Claim and the Claimant was misusing the court's process by continuing to seek to bring claims against the Defendants which on any view arose out of the same factual matters which had already been rejected.

21. On the query raised by Master Brightwell, whether rather than being a case where *res judicata* principles applied, the application should instead be considered by reference to *Securum* principles as it might be said there had been no adjudication on the First Claim because it had been struck out for being "vague and incoherent", Mr Abraham submitted:

    i) There had been an adjudication, because DJ Greenidge had found an abuse of process under CPR 3.4(2)(a), i.e. that the statement of case disclosed no reasonable grounds for bringing the claim, and had also granted summary judgment, so *res judicata* principles could apply. Mr Abraham relied on an extract from Zuckerman on Civil Procedure (4th edition) at 9.43 to 9.47 to the effect that a distinction should be drawn between cases where the claim is struck out after a consideration of the substantive merits leading to the conclusion that it discloses no reasonable grounds for bringing the claim, and claims which are struck out or dismissed for non-compliance or abuse not entailing any substantive consideration, such as for excessive delay or breach of an unless order.

    ii) However, if contrary to this submission there had not been an adjudication, then according to *Securum*, since the First Claim had been struck out for abuse of process, the Claimant would have to identify a "special reason" to allow the new claim to proceed, which he had not done. Applying *Securum* at [34], whether to allow the present claim to continue was for the discretion of the court, bearing in mind the overriding objective and whether the Claimant's wish to have a "second bite at the cherry" outweighed the need to allot the court's limited resources to other cases, and considering any excuse given for the misconduct in the First Claim. It had to start with the assumption that if a party has had one action struck out for abuse of process, some special reason has to be identified to justify a second action being allowed to proceed. The First Claim had been held to be abusive, had already taken up substantial court time and resources, the Claimant had failed to pay the

> £25,000 on account of costs which he had been ordered by pay by DJ Greenidge, and it was not consistent with the overriding objective for the Claimant to launch proceedings seeking over a billion pounds and then reissue the same claim without any change in circumstances, so that it was effectively a collateral attack on DJ Greenidge's decision. There were therefore no "special reasons" to allow the new claim to continue.

22. On behalf of the Claimant, Mr Becker submitted in response that, on the point on *Securum* raised by Master Brightwell, it was right as a matter of principle that the principles of *res judicata*, including the rule in *Henderson*, did not apply where the earlier proceedings had been terminated prematurely without any substantive adjudication or settlement. He submitted that the present case was one where, applying the principles in *Securum*, the court did need to be satisfied that there were special reasons to allow the current claim to proceed, the First Claim having been struck out as an abuse of process.

23. Mr Becker referred me to the examples in the notes in the White Book (2024 edition) at paragraph 3.4.8 of cases falling within the *Securum* principles. Having looked at those cases together in the hearing, we agreed these were examples of procedural failure where there was no adjudication on the merits. In *C (A Child) v CPS Fuels Ltd* [2001] EWCA Civ 1597, the claim had been struck out for failure to comply with an unless order. In *Aktas v Adepta* [2010] EWCA Civ 1170, the claim was struck out for failure to serve the claim form in time. In *Davies v Carillion Energy Services Ltd* [2017] EWHC 3206 (QB); [2018] 1 W.L.R. 1734, the claim was struck out for failure to file and serve particulars of claim pursuant to an unless order. *Harbour Castle Ltd v David Wilson Homes Ltd* [2019] EWCA Civ 505 concerned strike out for failure to comply with an unless order to provide security of costs. *Kishore v Revenue and Customs Commissioners* [2021] EWCA Civ 505 was another example of strike out for failure to comply with an unless order. The only slightly different example was *Cranway Ltd v Playtech Ltd* [2008] EWHC 550 (Pat) where the first action had been struck out for failure to comply with a practice direction dealing with the requirements for a pleading. Lewison J (as he then was) applied the *Securum* test on the basis the court must take a broad view of the reasons why the original action was struck out and the stage at which it was struck out. He concluded that it was an important factor that the original claim had not been struck out as an abuse of process.

24. Mr Becker accepted in his oral submissions that there were no examples of *Securum* principles being applied where the first claim had been dismissed or struck out for "summary judgment type" reasons, i.e. a summary determination of the substantive merits, and he said I therefore had a "clean canvas". He also agreed that the claims raised in the current claim were the same as those raised before DJ Greenidge, except for some "bolt-ons" which he acknowledged were very small in comparison to the other claims. For example, the amended claim includes an apparently new claim alleging eviction of the Claimant from one of the properties, and a claim in connection with an additional company, Construction Link Ltd, for alleged removal without authority of vehicles and machinery belonging to it, from one of the repossessed properties.

25. On the basis that *Securum* principles should be applied here, Mr Becker submitted that there were special reasons for allowing the new claim to continue, because the Claimant had not had all the information he needed when he brought the First Claim. He submitted that this case was analogous to *Walbrook Trustees (Jersey) Ltd v Fattal* [2009] EWCA Civ 297, where it was held that a second claim should not have been struck out as an abuse of process because the appellant trustees did not know certain necessary facts at

the time an earlier claim had been brought, because the relevant information had been concealed from them by the respondent. If they had sought to make the new claim at the time of the original claim, it would have been struck out because of the absence of the concealed information. As such, it was held the second claim could not be abusive.

26. Mr Becker contended that since the Claimant still had an application for disclosure by the Defendants which had not yet been determined, at the time of the First Claim he did not have (and still did not have) all the necessary information to bring his claim. As an example he said there was reference within the administrators' reports to Construction Link Ltd's assets.

27. In paragraph 148-149 of the new claim (101-102 in the amended claim) the Claimant alleges that the Defendants deliberately withheld information from him, thereby preventing him from knowing whether he had a case. He alleges that such information only came to light in 2022 and 2023, listing 11 categories of such alleged information.

28. On the specific point as to disclosure of documents, Mr Abraham replied that the Claimant had been provided with copies of all the administrators' reports on all of the companies, as part of the First Claim (which was why the papers were so voluminous) and these reports were in any event public documents filed at Companies House at the relevant time, so that the Claimant would have had contemporaneous constructive knowledge of them. He referred me to the letter referring to Construction Link Ltd's assets, which was from KPMG to Barclays Bank Plc and dated 8 May 2008. This letter said on page 4, under the heading "Risks", "The construction assets may belong to Construction Link, a Company with security and debt of £1.5m with Lloyds". It is this statement which it is said the Claimant relies on as new information. However, Mr Abraham said, this letter was referred to at paragraph 12.2 of the witness statement of Mr Julian Cahn of the Defendants' solicitors dated 23 February 2024, filed in support of the present application by the Defendants; and exhibited thereto.

29. In the context of an argument around limitation, Mr Abraham further said that the Claimant had provided no evidence of any concealment by the Defendants. Lack of access to documents did not amount to deliberate concealment. Mr Abraham relied on evidence in the statement of Mr Cahn of 23 February 2024 at paragraph 53 as answering why all the various categories of information listed by the Claimant in his Particulars of Claim either had been provided, were publicly available and/or were irrelevant.

Decision on abuse of process under CPR 3.4(2)(b) and *Securum*

30. On this head of the application for strike out for abuse of process, under CPR 3.4(2)(b), my conclusion is that DJ Greenidge did make a substantive adjudication on the merits of the Claimant's claim in the First Claim when he struck it out and granted judgment to the Defendants on 10 July 2023.

31. At paragraphs [5] to [11] of his judgment the District Judge said the following, before concluding that the claim should be struck out under CPR 3.4(2)(a) as disclosing no reasonable grounds for bringing the claim, saying also that the Claimant had been given ample opportunity over several months to amend his case:

> "5. The claimant has in my opinion tried his best to set out what his case is. Based on his submissions, I understand… it is a claim for professional negligence against

the defendants, for their failure to take action to prevent the sale of the properties at an undervalue. The claim, which was issued on 24 November 2022, is valued in the region of £1.4 billion. The claimant says that KPMG, the first defendants, and Mr David James Costley-Wood, the second defendant, were negligent and that he has a claim in common law in respect of that negligence.

6. The defendants' case, as argued by Mr Abrahams, is the particulars of claim disclose no reasonable ground for bringing this claim and are also an abuse of process. For the reasons I shall give, in my judgment, the application in respect of the strike-out is made out and succeeds.

7. In my judgment, the basis of the claim is very unclear. The claimant alleges that he was owed a duty of care by the defendants which would meet the requirements for the first limb of any claim for professional negligence. However, as was referred to by Mr Abraham in his submissions, Sir Geoffrey Vos C, in the Court of Appeal, in *Fraser Turner Limited v PricewaterhouseCoopers LLP & Ors* [2019] held, in relation to administrators, that there must be an assumption of responsibility such as to create a special relationship between in this case the claimant and the defendants. There is no evidence at all from the claimant of any such special relationships. If one considers the judgment of Sir Geoffrey Vos C, it does not appear any special promises were made, or any agreements reached which would create some special relationship. Therefore, in terms of the duty of care, it is not clear at all from the claimant's pleaded case what duty was owed.

8. The second criterion is in respect of breach of the duty owed. Again, on the claimant's case as pleaded there is no clear statement as to what the claimant alleges the breach of duty involved. For the avoidance of doubt, in respect of the claimant's pleaded case, I mean the claim form and the detailed supplementary statement which appears in the bundle, which the claimant has not got permission to rely on, nor has he made any application to amend or rely on the supplementary statement, but I have… in any event considered.

9. In respect of the causation, having considered the documents and heard from the claimant over the course of the two hearings, again on the claimant's pleaded case I have been unable to establish how he suffered any loss by reason of the defendants' conduct.

10. Finally, in relation to the recoverability, this is a claim valued at £1.4 billion. I have not seen any independent or corroborative evidence as to how those sums have been calculated. The evidence upon which the claimant relies falls well short of explaining the losses he seeks to claim.

11. Therefore, I am satisfied that CPR3.4(2)(a) is met in so far as the case as pleaded discloses no reasonable grounds for bringing the claim. The claimant in his submissions rightly pointed out that "strike out" is a draconian step, and I accept that is so. However, in my judgment taken at its highest the case as pleaded is vague, difficult to understand and in places incoherent. There are, because of the nature of strike out, grounds upon which the claimant might have sought permission to amend his particulars of claim. However, in my judgment he has already had ample opportunity to do so, particularly given at the last hearing on 23 June 2023, the prospect was raised of him providing amended particulars of claim.

> I am satisfied therefore that it would be inappropriate make an order allowing him to amend his claim at this stage. On the submissions I have heard, had there been any formal application for such before me today, that application would not have been granted."

32. As I have quoted at paragraph 18 above, DJ Greenidge went on to hold further in relation to the substantive merits of the First Claim, at [14] that the claim was barred by limitation in that the causes of action arose at the latest in May 2011, and at [15] that the causes of action arose during the period when the Claimant was bankrupt and so even if there were any causes of action which could be pursued, they would have vested in his trustee in bankruptcy.

33. In my view the determination by DJ Greenidge that the Claimant's claim disclosed no reasonable grounds for bringing the claim, so that it fell to be struck out under CPR 3.4(2)(a) necessarily involved and did involve a consideration and adjudication upon the substantive merits of the Claimant's claim as presented in his statement of case and the other witness statements, draft particulars and further information relied on by him. It was a conclusion that the merits of that claim as presented were so hopeless that there was no justification in allowing the claim to continue. This also led directly to DJ Greenidge finding that the claim was totally without merit.

34. I agree with the author of Zuckerman on Civil Procedure (4th edition) where he says at 9.44:

> "Striking out on the grounds that the statement of case discloses no reasonable claim or defence is different in nature from striking out for abuse of process or non-compliance. The first is a decision on the substantive merits of the claim, because the court effectively holds that the claim or defence is groundless. By contrast, a court that strikes out a statement of case for abuse of process or for non-compliance generally expresses no view about the substantive merits. There may, however, be a certain overlap between CPR 3.4(2)(a) and (b), in that a statement of case may be struck out if it is vague, incoherent or badly drafted. Striking out on such grounds is still a decision on the substantive merits, for there is no difference between saying that the particulars of claim as drafted reveal no cause of action (invoking CPR 3.4(2)(a)), and saying that they are too incoherent to enable a just disposal (invoking CPR 3.4(2)(b)). In both situations, the court decides that the particulars of claim cannot justify the remedy sought. Notwithstanding this overlap, it is important to keep in view the distinction between a decision on the substantive merits and a decision on grounds of abuse of process or non-compliance. The former decision involves an examination of the party's entitlement under the substantive law; the latter does not…"

And at 9.50:

> "… It is plainly wrong to suggest that a party who has had the benefit of an (albeit abbreviated) hearing on the merits in a court of competent jurisdiction has been denied access to court adjudication. Every modern system has a variety of procedures for disposing of different types of cases depending on their value, complexity, importance and so on... "

35. While there may well be cases of strike out under CPR 3.4(2) (a) and (b) which are in a grey area between procedural strike out and substantive adjudication, where resort to the *Securum* principles will be preferable, I do not consider that the present case is one of them. DJ Greenidge had voluminous papers before him, including multiple attempts by the Claimant to rework and re-express his intended claim, and the judge spent extensive time in the hearing seeking to understand what that claim was. This is well illustrated by the list of 10 sources of information as to the Claimant's case which the judge set out in the recital to his order, which I have quoted at paragraph 12 above. I consider that he clearly made a decision under sub-paragraph (a) of CPR 3.4(2) that the statement of case disclosed no reasonable grounds, even though he also considered that it was so vague and incoherent as to justify strike out under sub-paragraph (b). In any event, I agree with Zuckerman that a decision that a claim is vague and incoherent is a decision on the substantive merits of the claim, even if it could be made under either sub-rule (a) or (b). It is fair to say that DJ Greenidge's judgment does not explicitly rule on the application for summary judgment as well, but he says that the "Defendants' application should be granted" and his order does provide that the Defendants shall have judgment against the Claimant.

36. That DJ Greenidge's judgment amounted to an adjudication is in my view reinforced by the decision of HHJ Bloom on the Claimant's oral application for permission to appeal, in particular at [24] to [26] and [31] to [39], where she was clearly undertaking a review of DJ Greenidge's decisions on the substantive merits of the Claimant's case as pleaded.

37. My conclusion therefore is that the strike out by DJ Greenidge under CPR 3.4(2)(a), together with his order of judgment for the Defendants, was an adjudication on the merits of the Claimant's claim which brings into play the principles of cause of action estoppel, issue estoppel and the *Henderson* principle.

38. Mr Becker does not dispute on behalf of the Claimant that the present claim duplicates the First Claim, with what he calls some "bolt-ons". I accept Mr Abraham's submissions as to the obvious parallels between the case as pleaded in the First Claim and in the new claim. In addition the Claimant freely admitted that the new claim replicated the First Claim, when he said in his witness statement in support of his stay application in the new claim, "in the meantime, I issued the current claim which covers the same case".

39. My conclusion is that insofar as the current claim includes any causes of action at all, which may be unlikely given its incoherence, virtually all of it repeats the causes of action which were disposed of in the First Claim. More significantly, given the incoherence of the First Claim, I consider that there is an issue estoppel in that DJ Greenidge has determined that the factual allegations relied on by the Claimant in the First Claim and repeated in the current claim disclosed no reasonable grounds for bringing any claim. Insofar as there are additional claims in the current claim, such as the reference to eviction or to a claim in respect of the assets of Construction Link Ltd, either these arise out of the same factual circumstances, so that they are also covered by that issue estoppel, or they are so closely related to those circumstances that they should have been brought at the same time as the First Claim (insofar as there is any merit in them, and I have seen no evidence that there is any such merit) and so are barred under the *Henderson* principle.

40. If I am wrong that DJ Greenidge's judgment constituted an adjudication on the First Claim, then it would be necessary to consider the Defendants' application by reference to the *Securum* principles, which I propose to do therefore, in the alternative.

41. Applying *Securum* principles, for the current claim to continue it would be necessary to identify a special reason to allow it to proceed, because the First Claim has been struck out as an abuse of process. In deciding how the court should exercise that discretion, Chadwick LJ stated at [36] in *Securum* that "it is necessary to examine the events which led to the striking out of the first action…"

42. Here the First Claim was struck out as an abuse of process under 3.4(2)(a) and (b). It and the application for permission to appeal were both judged to be totally without merit. The costs order arising from the First Claim has not been paid by the Claimant and he has failed to respond to the Master's direction that he explain why the new claim differed from the First Claim. In fact the current claim essentially repeats the First Claim, which itself was struck out on the grounds that it raised no arguable cause of action, and was vague and incoherent, rather than having been struck out for a non-compliance unrelated to the merits of the claim. These factors all point strongly towards refusing to permit this claim to proceed, and striking it out as an abuse of process.

43. I do not accept Mr Becker's contention that the Claimant's position is analogous to that of the trustees in the *Walbrook Trustees* case or that there is any evidence that important information relating to the Claimant's claim has been concealed from him. There is no general principle that a claimant in a professional negligence claim can obtain either pre-action or early disclosure of documents from the defendants. In any event the Defendants have in fact provided a large volume of material relating to the administrations to the Claimant, in the First Claim, despite the extremely stale nature of the claim and the fact that much of that documentation was publicly available. No evidence has been provided by the Claimant of any concealment by the Defendants of any information or document necessary for him to bring a valid claim. He is simply asking the court to infer concealment from the fact he has applied for disclosure of documents which he claims have not been provided. That is entirely to misunderstand the nature of concealment, and I decline to draw any such inference.

44. In the recent decision of *Canada Square Operations Ltd v Potter* [2023] UKSC 41 the Supreme Court considered once again the definition of "deliberate concealment" for the purposes of the extension of the limitation period, under s.32(1)(b) of the Limitation Act 1980, an issue which has also been raised and on which I heard argument on this application. The Supreme Court concluded at [109] on deliberate concealment that:

> "What is required is (1) a fact relevant to the claimant's right of action, (2) the concealment of that fact from her by the defendant, either by a positive act of concealment or by a withholding of the relevant information, and (3) an intention on the part of the defendant to conceal the fact or facts in question."

45. Applying this test to the broad allegations of concealment made by the Claimant for a number of purposes, including to avoid the strike out of his claim but also on limitation, my conclusion is that there is no evidence before me of any positive acts of concealment or of withholding of relevant information by the Defendants, nor material from which one could infer any intention to conceal facts relevant to a right of action of the Claimant, nor even as to what are the facts relevant to any cause of action of the Claimant which are said to have been concealed.

46. Whether in the context of an alleged extension to the limitation period or in considering whether there is any special reason not to strike out the current claim as an abuse of

process, there is in my view no evidence of concealment by the Defendants, properly understood.

47. As I have already indicated, applying the *Securum* principles, all material factors would point strongly towards striking out the present claim as an abuse of process in any event.

48. Accordingly, whichever type of abuse of process under CPR 3.4(2)(b) is raised by the previous striking out of the First Claim, my conclusion is that the present claim should be struck out in its entirety as an abuse of process, and I so order.

Other bases of strike out or summary judgment

49. In the alternative, the Defendants seek the strike out of this claim under 3.4(2)(a) and (b) on the basis that the Claimant's statement of case (as amended) discloses no reasonable grounds for bringing the claim, alternatively they apply for summary judgment. This is essentially on the same basis as the case was put to DJ Greenidge. Indeed I have been referred to the witness statement of Mr Cahn of 22 December 2022 which was filed and served in support of the application before the District Judge.

50. However, save for one specific respect, I have concluded that it is neither necessary nor appropriate for me to go on to undertake what would effectively be a reconsideration of all the points which were argued before DJ Greenidge and considered by HHJ Bloom on the application for permission to appeal. To do so would in a way be to give the Claimant the second bite of the cherry, and waste resources, in a way that my strike out of the claim under CPR 3.4(2)(b) by reference to the strike out of the First Claim is intended to prevent, and I decline to do so. I should emphasise that I have not therefore set out in this judgment the numerous bases on which the Defendants contest the Claimant's claims, and nothing in this judgment should be read as accepting the validity of any part of those claims.

51. The one point I have concluded I should deal with is the application to strike out the claim on the basis that the matters complained of pre-date the Claimant's bankruptcy, so he has no standing to bring the present claim.

52. Whilst at the time that the evidence (in the form of the witness statement of Mr Cahn dated 22 December 2022) in support of the Defendants' application to strike out the First Claim was signed, the Defendants believed wrongly that the Claimant had not been discharged from bankruptcy, by the time the matter was before DJ Greenidge I am told it was understood by all parties that the Claimant had been discharged on 20 August 2012.

53. In his oral submissions Mr Becker conceded both that his client had not had standing to bring either the First Claim or the present claim, which were vested in his trustee in bankruptcy (now the Official Receiver) insofar as they existed, and further that the Claimant knew that his earlier bankruptcy meant he was not entitled to bring any claim. However Mr Becker submitted that, applying the decisions of the Court of Appeal in *Rajesh Pathania v Edmond Adefolu Adedeji; Grace Adebola Ajayi v Bank of Scotland PLC* [2014] EWCA (Civ) 681 at [16], the position is capable of being regularised either by the joinder of the trustee or by the taking of an assignment from them.

54. I note further that it is not disputed that the Official Receiver has not agreed (at least to date) either to be joined to any claim or to assign any claim to the Claimant.

55. Mr Becker proposed that if I was otherwise minded to dismiss the application to strike out the claim, I should stay it pending an application by the Claimant to the insolvency court if the Official Receiver continued to resist the request to assign.

56. In *Pathania* the Court of Appeal at [12] - [13] referred to an unreported decision of the Court of Appeal in *Pickthall v Hill Dickinson* [2009] EWCA Civ 543 in which the former bankrupt had commenced proceedings because of the imminent expiry of a limitation period, at a time when he knew he did not have a cause of action but hoped he would obtain one by assignment from the Official Receiver. The Court of Appeal held this was an abuse of process, so the claim was liable to be struck out. It was improper for the former bankrupt to start proceedings knowing the cause of action was vested in someone else. Furthermore, they refused permission to amend to plead the subsequent assignment. The former bankrupt was therefore unable to pursue his claim at all, since a fresh action would have been statute barred.

57. At [15] - [16] the Court of Appeal in *Pathania* stated their conclusions as to the applicable principles in the following terms:

> "15. Where a bankrupt is commencing or pursuing a claim which he knows he does not have, the abuse of process in commencing or pursuing that claim is obvious. No claimant is entitled to sue on a right which he knows belongs to someone else. The abuse lies in knowingly pursuing a claim which, as presently constituted, is bound to fail. The abuse does, however, depend on actual knowledge of the lack of title to the cause of action, not on what he or she ought to have known.
>
> 16. Nevertheless, where an action is commenced or continued after the cause of action has vested in a trustee in bankruptcy, the action does not abate and the position is capable of being regularised by the joinder of the trustee or by the taking of an assignment from him. Whether the court will permit that to happen will involve an exercise of discretion. It will be necessary to have regard to the interests of those likely to be affected, including the creditors in the bankruptcy. The court would be likely to stay the action until the position in the bankruptcy is clarified."

58. Mr Abraham submitted that paragraph [15] represented the position so far as the Claimant was concerned, since there was no dispute that he knew he did not have a cause of action when he issued the claim. The claim should therefore be struck out.

59. Mr Becker submitted that paragraphs [15] and [16] needed to be read together even where a claimant had actual knowledge of his lack of title to the cause of action and that the court had a discretion to stay the action as suggested in [16] even in such a case.

60. My view is that paragraph [15] should be read as affirming the decision in *Pickthall,* that where the claimant knows he does not have title to the action by reason of his bankruptcy, the claim is improper and abusive and should be struck out without more. In my view paragraph [16] must therefore be intended to refer to situations where such actual knowledge does not exist.

61. In *Pickthall* the Court of Appeal concluded that the claim should be struck out even though there had been a subsequent assignment and the context was imminent expiry of a limitation period. *A fortiori* the claim should be struck out as abusive where, as in the present case, the Claimant knows not only that any cause of action is not vested in him but also that the Official Receiver has not agreed, at least to date, to assign any claim to him.

62. Given the abusive nature of the claim on this specific basis also, I consider that I should also strike out the claim on the basis that the Claimant has no standing to bring it because any claim which does exist is vested in the Official Receiver, and the Claimant has known this at all material times, not least because DJ Greenidge also held that the Claimant had no standing for the same reason.

Totally without merit

63. In the event that I struck out the claim as an abuse of process, as I have done, the Defendants also asked that I make a formal finding that the claim was totally without merit for the purposes of CPR 3.4(6).

64. I am entirely persuaded that the current claim was doomed to fail both because it was abusive under CPR 3.4(2)(b) by reason of the strike out of the First Claim, and because the Claimant has no standing to bring any claim since it is vested in the Official Receiver, in both cases for the reasons set out above.

65. As such I find that the claim is totally without merit.

66. I will give consideration under CPR 3.4(6)(b) to whether it is appropriate to make a civil restraint order (there having been two previous findings that claims or applications by the Claimant were totally without merit) after hearing further submissions at the costs and consequentials hearing to be listed to follow handing down of this judgment.