

IN THE COUNTY COURT AT CARDIFF
On appeal from the County Court at Cardiff
District Judge Vernon
Claim No. J8QZ032R

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 12 September 2023

Before:

HIS HONOUR JUDGE KEYSER KC

Between:

(1) CHRISTOPHER LUCEY
(2) RACHEL LUCEY

Defendants/Ap
pellants

- and -

GEORGE KOUNIS

Claimant/Resp
ondent

The Appellants appeared in person.
The Respondent appeared in person.

Hearing dates: 30 August 2023

Judgment Approved

This judgment was handed down remotely at 2 p.m. on 12 September 2023 by circulation to the parties.

Judge Keyser KC:

Introduction

1. By an order made on 20 December 2022 after a trial on the small claims track, District Judge Vernon gave judgment for the claimant, Mr Kounis, against the defendants, Mr and Mrs Lucey, for £5,910 for debt together with interest of £297.76 and costs of £801.
2. By an appellant's notice filed on 22 February 2023, Mr and Mrs Lucey applied for permission to appeal against the judgment. On 29 March 2023 His Honour Judge Porter-Bryant granted permission to apply out of time of time for permission to appeal. However, on 16 May 2023 he refused permission to appeal on the papers. Mr and Mrs Lucey asked to renew their application for permission at an oral hearing. At that hearing

on 11 July 2023 His Honour Judge Harrison directed that the application be considered at a rolled-up hearing and gave directions in respect of Mr and Mrs Lucey's request to be permitted to rely on fresh evidence.

3. I held the rolled-up hearing on 30 August 2023, when the parties appeared in person and represented themselves. This is my judgment.

The Facts

4. This case is one of a substantial number brought by Mr Kounis against individuals on whose behalf he carried out work for a firm of solicitors in connection with properties that the individuals had bought in Cyprus. I have been told that there are moves afoot to transfer the other cases to a single hearing centre with a view to their being considered together; however, that has not happened yet. The matters before me fall for consideration on the basis of the facts and evidence in this particular case and the decision of District Judge Vernon, but similar issues have arisen also in the other cases.
5. In 2006 Mr and Mrs Lucey bought a property in Cyprus with the assistance of a secured loan from Marfin Laiki Bank. As a result of the economic downturn in 2008 they, like many others in their position, were left with negative equity. Marfin Laiki Bank terminated the loan agreement, commenced proceedings in Cyprus and intimated an intention to enforce any judgment in the UK. In 2009 Mr and Mrs Lucey were adjudged bankrupt in the UK, but it appears that the trustee in bankruptcy took no steps with regard to the property in Cyprus. Marfin Laiki Bank also became insolvent and was replaced as mortgagee by another bank ("the Cypriot Bank").
6. In 2013 Mr and Mrs Lucey retained an English firm of solicitors, Maxwell Alves ("the Firm"), to act for them with a view to negotiating a settlement with the Cypriot Bank. The Firm was already acting for hundreds of clients in a similar position to Mr and Mrs Lucey; its strategy was to use the weight of numbers to encourage the various banks in Cyprus to reach out-of-court settlements. These clients were known collectively as the CyProp clients. The partners in the Firm were Dr Alan Ma and Mr Daniel Cheung. However, the work within the Firm for the CyProp clients was carried out by a dedicated team, known as GK Ops, which was headed by Mr Kounis. Mr Kounis is not a solicitor, but he has a background in business and banking recoveries that was considered to qualify him to negotiate with the banks in Cyprus. He worked as a consultant for the Firm under a Consultancy Agreement dated 25 April 2012, which as between him and the Firm provided for profit-sharing in respect of the CyProp clients.
7. The retainer of the Firm by Mr and Mrs Lucey was regulated by a Letter of Engagement dated 10 April 2013. Under the heading, "People responsible for your work", it stated: "You will be assigned the necessary personnel who are suitably qualified to carry out the work on your behalf. The assigned person is George Kounis working in conjunction with other suitable personnel." Under the heading, "Charges, expenses and billing", the Letter of Engagement stated:

"Details of our fees and charges are provided in the attached Fees and Charges Schedule.

All outstanding sums of our fee and disbursements and relevant VAT are expected to be settled before the completion. Upon

completion, I will let you have a bill of costs and/or completion statement which will illustrate a breakdown of the costs and disbursements. We reserve the right to cease to act for you if you do not pay our fees on a timely basis.”

The text under the heading, “Complaints procedure”, began: “You are entitled to complain about our work or your bill. You have the right to apply for assessment of the bill under Part III of the Solicitors Act 1974.”

8. The Letter of Engagement did not define “completion”. However, the Work Schedule attached to the Letter of Engagement identified the scope of the work under the retainer:

“The aim of this work is to reach an out-of-court settlement with your opponents. ...

Although litigation may be considered as an option, litigation is not within the scope of the current Work Schedule.

It should be clearly understood that we cannot force the bank and/or the developer or any other party to settle nor do we make any claims about our chances of success. If, despite all our efforts, we fail to reach a settlement, we will be unable to proceed further without taking proceedings through a court of law which will involve additional costs. In such eventuality, we will advise you of the alternatives and the costs involved, for your consideration, should you decide to engage us.”

9. Under the heading, “Termination”, the Letter of Engagement said:

“If you change your mind and decide not to go ahead with this matter before the transaction is completed or contracts exchanged, we would require your instructions to us in writing. Nevertheless, any outstanding fees and charges would then be required to be settled. We are entitled to retain all your papers and documents while money is owing to us.

You may end your instructions to us in writing at any time, but we can keep all your papers and documents while there is still money owed to us for fees and expenses. Early Termination Fees relating to a Conditional Fee Agreement incorporated in the Letter of Engagement will apply in the event of termination by you.

We may end this agreement at any stage of the matter under certain circumstances, including but not limited to:

- If you do not pay your legal fees;
- If you do not keep to your responsibilities as set out above under the subheading ‘Your Responsibilities’;

- If we cannot obtain sensible instructions;
- If you reject our opinion about making a settlement with your opponent(s);
- If we believe a non-litigious conclusion to your case is unlikely but under these circumstances Early Termination Fees relating to a Conditional Fee Agreement will not apply.

We may decide to stop acting for you only with good reason and we must give you reasonable notice that we will stop acting for you.”

10. The Fees and Charges Schedule provided:

“Our Basic Fee for undertaking the work specified in the Work Schedule will be fixed at £1,000 plus VAT. This figure is exclusive of disbursements. Disbursements will be charged separately and will be no more than £200 unless you specifically instruct us to incur an additional disbursement on your behalf or you have been advised and agreed beforehand.”

There was then provision for a Success Fee by way of a percentage of the net gain; this does not arise in the present case. The Fees and Charges Schedule continued:

“You will be required to enter into a separate Conditional Fee Agreement with us which is included in this bundle.

Early Termination Fees (applicable where a Conditional Fee has been agreed)

Early Termination Fees apply where a Conditional Fee has been agreed and we are not deemed to have failed to meet the conditions under which a Success Fee would apply. If our Conditional Fee agreement is terminated early by either you or by us for the reasons given under the Termination section in the Letter of Engagement then Early Termination Fees will apply. Early Termination Fees shall be £2,000 plus VAT. ...

This is to reflect a more realistic cost of the work undertaken but where the remuneration has been postponed in lieu of the anticipated Success Fee that has otherwise been denied to us.”

Under the heading, “Payment for advocacy”, the Fees and Charges Schedule stated:

“We shall consult you on whether we believe it advisable to obtain the services of a barrister or another legal representative (‘Advocate’) including Advocates overseas if your case requires that you are legally represented abroad. We shall discuss with you the identity of any Advocate and the arrangements made for

payment to enable you to decide whether you wish to proceed.
The cost of advocacy is chargeable in addition to the Basic Fee.”

11. Mr and Mrs Lucey entered into a Conditional Fee Agreement (“CFA”) with the Firm dated 10 April 2013. The CFA covered the work in the Work Schedule but not work outside the scope of the work in the Work Schedule. Under the heading, “The circumstances under which the conditional fee arises”, the CFA stated:

“You have been asked to sign this Agreement because our Fees and Charges include a Success Fee. This means that whereas all other charges are due and payable by you as and when they arise, the Success Fee is only payable if we succeed in securing for you a benefit from your opponent. This could be a refund, a reduction in your liabilities and/or re-negotiation of the terms.”

The Success Fee was to be in accordance with the Fees and Charges Schedule. The CFA provided that the amount payable for disbursements would be capped at £200, unless Mr and Mrs Lucey specifically instructed the Firm to incur additional expenses or agreed to pay for additional disbursements.

12. According to Mr Kounis’s witness statement dated 1 July 2022, by the end of 2015 his negotiations with the banks in Cyprus had resulted in significant concessions, but they remained unwilling to agree to further significant concessions “without further pressure”.
13. Although the strategy of the Firm and Mr Kounis remained to seek a negotiated settlement, on 22 December 2015 on counsel’s advice a protective claim form was issued in the Commercial Court in England (claim no. CL-2015-000907: “the Commercial Court proceedings”), naming various Cypriot banks and developers as defendants. The Firm was the solicitor on the record as acting for the claimants. By agreement between the parties, the Commercial Court proceedings were stayed pending determination of an issue regarding the English court’s jurisdiction in other proceedings and the time for serving the claim form was extended. The extension of time for service was further extended by subsequent orders, the latest of which, made by Blair J on 28 June 2016 on the application of the Firm, extended the date for service of the claim form until 2 August 2016.
14. In the latter part of 2015 the relationship between Mr Kounis and Mr Daniel Cheung broke down and it was agreed that there would be a parting of the ways between Mr Kounis and the Firm. The separation was effected by a Deed of Settlement and Termination dated 12 December 2015 between (1) the Firm and (2) Mr Kounis (“the Consultant”) (together, “the Parties”) (“the Settlement Deed”).
- Section B of the Settlement Deed recited the relevant background. Clause B.3 recorded that the parties had “decided to disengage and terminate the Consultancy Agreement.”
 - Section A contained a number of definitions, including the following: “termination date” meant 15 December 2015; “disengagement date” meant not later than 15 March 2016; “completion date” meant “the date by which disengagement and any pending transitional arrangements have been

completed”; “transitional period” meant the period between the termination date and the completion date; “transitional arrangements” meant “any arrangements that are agreed by the parties as necessary for a smooth transition which may go beyond the disengagement date”.

- Section C set out the basic terms on which the disengagement and termination were taking place. Clause C.1 stated that the Consultancy Agreement was “now deemed to be terminated” and that “no further fees will be earned by the firm during the transitional period.” In clause C.2 the Firm recognised the need for “a smooth transition” and for “GK Ops to continue as normal under the name of the firm during the transitional period”, and Mr Kounis “agree[d] to use his best endeavours to minimize the transitional period”.
- Section D dealt with disengagement and transitional arrangements. Clause D.1 provided:

“The Parties recognize that they have duties and obligations towards the clients whose cases they have undertaken to deal with. Although they have agreed to terminate arrangements between them with immediate effect, they have also agreed that there will be a period of disengagement during which these cases and any new cases that may be added until disengagement will either be settled, be transferred to another entity with the consent of the clients (the ‘New Entity’) or the clients will be given the option to dis-instruct the firm.”

Clause D.2 (on which Mr Kounis relies) provided:

“Where transfer or dis-instruction is not possible in particular cases due to the stage the case is in, the New Entity will undertake to handle the case on behalf of the firm until the case is settled or is at a stage where it can be moved. Any costs arising from this provision will be borne by the Consultant. The firm agrees to co-operate fully with these transitional arrangements to ensure a smooth transition. This may include, formally instructing the New Entity, assigning debts that arise from GK Ops and are due to the firm or entering into any other reasonable arrangement so long as it is at no cost to the firm or any out-of-pocket expenses are borne by the Consultant.”

Clause D.3 provided that the Parties would co-operate with a view to ensuring that the disengagement date was met and even brought forward as much as possible, though it recognised that the disengagement date might be impossible to meet and contemplated that reasonable extensions could be agreed. Clause D.7 provided that upon disengagement it would be Mr Kounis’s responsibility to use his best endeavours to ensure that clients were transferred to a new entity.

- Section E dealt with the release of moneys received and held by the Firm. In clause E.5 the Firm acknowledged “that additional fees may be due and payable from clients either for past un-invoiced charges or future charges arising”, and Mr Kounis acknowledged that “unpaid fees may need to be pursued through

litigation”; however, “the amount of £171,560.58 already received by the firm as its share of fee income” was said to be “in full and final settlement of all matters appertaining under the fee sharing entitlement of the firm”.

- Other clauses of the Settlement Deed included confidentiality provisions and an “entire agreement” clause. I need not set them out.

15. On 2 February 2016 Maxwell Alves Limited (“the Company”) was incorporated. Dr Alan Ma and Mr Daniel Cheung were the directors and shareholders. This has created a little confusion in the case, because at least in 2017 correspondence from “Maxwell Alves Solicitors” was sent on paper that showed “Maxwell Alves Ltd” in the footer, although it was typically signed by Mr Daniel Cheung as a “partner”. It is clear that Mr and Mrs Lucey’s retainer was with the Firm, not with the Company, and I shall simply refer to the Firm and ignore the Company.
16. On 17 March 2016 Mr Kounis sent an email with the subject line, “Maxwell Alves disengagement and moving forward (Very private and confidential)”. It was addressed to “Dear CyProp client” and copied to Irwin Mitchell LLP and the partners in the Firm. The opening paragraph recorded that most of the CyProp clients had indicated a wish to continue with litigation rather than to settle. Under the heading, “What happens next”, the letter continued:

“1. All cases remain with Maxwell Alves until your matter is closed or you decide to move. Please see the attached letter [i.e. the letter dated 15 March 2016] from Dr Alan Ma the Founder and Senior Partner of the firm giving you this assurance.

2. If you have chosen litigation as part of the ‘Collective Litigation in London’ and you agree to the terms, you will need to engage Irwin Mitchell Solicitors through us.

3. I and my team (‘GK Ops’) will continue to manage your cases, whether your case involves Collective Litigation through Irwin Mitchell, you have instructed us to settle now, your case involves litigation in Cyprus or it involves anything else. ...”

Under the heading, “Disengagement from Maxwell Alves”, the letter mentioned the fact that Mr Kounis was disengaging from the Firm, but it offered reassurance that he and GK Ops “have been there throughout and will see your cases through to completion.” There followed a section under the heading, “About Money”; the opening parts of the section were as follows:

“You will recall that your Retainer with Maxwell Alves covers the cost of dealing with your matter but not the cost of litigation if moving to trial. There is only one part of the disengagement process from Maxwell Alves that has been put in place and that is the ability for you to have the option to move to litigation without additional cost. To do this, I have settled and closed-off accounts with Maxwell Alves, which means that the firm has no further involvement with money due from you. The attached letter from Maxwell Alves confirms this and it also asks you **not**

to pay any more money into the firm's bank account and to pay any monies due to me instead.

What monies are due?

As previously explained, monies due fall into the following categories:

1. Fees, which is the remuneration for our work. **If you have an outstanding Fee Note for fees, please do not pay it.** Depending on the option you have chosen, different fees will apply.
2. Charges, disbursements and other expenses which could be, for example, a fixed charged (sic) for filing a Claim or a specific bill payable in your matter, such as a bill from a barrister appearing on your behalf. most of you have already paid these. A number of you have not. These are due and payable immediately but they need to be paid into a new bank account with Santander in the name of 'George Kounis'. Fee Notes are coming out to you in the next few days with the amounts due and the bank account details. Please settle them immediately as they have put us under unnecessary financial pressures. Most of you know that our duty to protect you has gone beyond the call of duty. Please be fair to us by making us 'must pay bill'."

The email proceeded to discuss fees for further work in respect either of litigation or of settlement.

17. The attachment to the email of 17 March 2016 was a letter dated 15 March 2016 from the Firm, addressed to "Dear CyProp client" and signed by Dr Alan Ma. The letter said that claimants had the option of either settling their claims at that stage or continuing with the litigation. It continued:

"Following discussions with George [scil. Kounis], we have concluded that the best possible way to give you maximum flexibility to move forward is for the involvement of Maxwell Alves to come to an end and for another firm, Irwin Mitchell LLP, who have massive resources and with whom George has reached a deal on costs, to undertake the conduct of the collective action in England. Furthermore, if you are involved in litigation in Cyprus or George is trying to reach a settlement on your behalf, the further involvement of Maxwell Alves may prove unnecessary.

On this basis, apart from concluding a deal with Irwin Mitchell, George has also concluded a deal with us to bring our further involvement and our right to further fees to an end. Under this arrangement, George will be able to offer you rolled-up costs if you are opting for litigation with Irwin Mitchell LLP or the same

or reduced costs if you are settling now. One way or the other, no one will be worse off and the vast majority will be far better off on fees and in addition enjoy greater flexibility. A letter from George on costs accompanies this communication.

To allow you to move forward with whatever option you choose and provide continuity throughout, we have assigned all our rights to fees, charges and disbursements due to George Kounis.

If there are any amounts due from you, please do not pay them into our account. George will be providing you with details of his account for this purpose. Similarly, if there are refunds due, George Kounis will be responsible to process them.”

18. On 15 June 2016 the Firm (acting by Mr Kounis as author of the letter) wrote to L.G. Zambartas LLC, a firm of lawyers in Cyprus, with instructions to verify the service addresses of the defendants in the Commercial Court proceedings, to provide necessary Greek translations of the claim forms and covering letters and accompanying bundles, and to serve the documents on the defendants by 2 August 2016. Service was duly effected. In all other respects the Commercial Court proceedings remained stayed.
19. By an application notice dated 21 July 2017 in the Commercial Court proceedings, the Firm applied to be released from acting for 51 named claimants, including Mr and Mrs Lucey, for whom it was on record as acting (“the MA Claimants”). The application was supported by a witness statement dated 21 July 2017 by Mr Daniel Cheung. Having listed the MA Claimants in paragraph 1, Mr Cheung continued:

“2. Due to human resource reasons beyond our control, we are not able to act for the above MA Claimants any longer.

3. I have emailed each of the above MA Claimants on either 31st May 2017 or 19th June 2017 and informed them of this human resource problem that we have and that they should instruct another firm within 7 days.

...

5. Further, upon the court releasing us from acting, I will do the following pursuant to my professional obligations: (1) duly notify the MA Claimants of our release from acting and serve them the Court Order; (2) re-emphasise they should instruct a new firm of solicitors; (3) inform them that whether or not they instruct solicitors, I will provide them with their files; (4) assist any new firm in the smooth transition of the clients’ files; and (5) as I am in communications with ... the firm that acts for the majority of the claimants in the Jurisdiction Appeal and Jurisdiction Application, should I become aware of any relevant developments, I will update the MA Claimants.”

The witness statement indicated that, while the outcome of a jurisdictional issue in different proceedings was awaited, the proceedings were stayed for a time that would be sufficient to enable the MA Claimants to obtain new representation.

20. On 19 December 2017 the Firm sent a letter to Mr and Mrs Lucey, which was headed, “Maxwell Alves’ application to be released from acting—Claim No. CL-2015-000907”. It began:

“Service of Application Notice of Maxwell Alves

I write further to our email to you on either 31 May 2017 or 19 June 2017. In that email, I informed you that we no longer had the capacity to act for you and that we advise you to instruct Irwin Mitchell or another firm to progress with your litigation matter. Attached to this letter is the Application Notice that we filed at Court as we are applying for a formal Court Order that Maxwell Alves be released from acting for you.”

The letter said that the jurisdictional issue in the different proceedings was to be heard on 11 June 2018 and that the Firm would be monitoring the outcome of that issue and would update Mr and Mrs Lucey in any event. “If that court [i.e. the court dealing with the jurisdictional issue] decides the UK has jurisdiction, you can then proceed with your litigation in the UK. However, if the court decides the UK does not have jurisdiction and instead Cyprus is the relevant jurisdiction, then you should instruct a Cypriot law firm to pursue your case in Cyprus.” The letter then gave guidance as to how to complete the Notice of Change of Representation form and encouraged Mr and Mrs Lucey to complete it promptly to avoid the risk of their claim being struck out. The letter said that the Firm would inform the defendant’s solicitors not to make an application for the claim to be struck out as Mr and Mrs Lucey “should be afforded more time in which to file this Notice of Change form or to consult another firm of solicitors.”

21. In 2020 L.G. Zambartas LLC successfully negotiated a settlement between Mr and Mrs Lucey and the Cypriot Bank, apparently on terms that the property be given up to the bank, with no further financial obligation, and the litigation in Cyprus and in England be discontinued. So far as I am aware, the Commercial Court proceedings have not been formally discontinued but remain stayed, though they are clearly defunct. An email in January 2022 from Mr Kounis to L.G. Zambartas LLC states that his enquiries had shown that the Firm remained on the court record as representing Mr and Mrs Lucey. So far as appears from the papers, they still do so.
22. All of the facts recited above were in evidence before the District Judge.

The Proceedings

23. The claim form was issued on 17 March 2022. The particulars of claim on the claim form stated in relevant part:

“1. On 10/04/2013 you entered into a written agreement with Maxwell Alves Solicitors (MA) to deal with your Cyprus property matter.

2. There are amounts outstanding from you for these services.
 3. On 17/03/2016 MA notified you that they assigned all amounts due under the retainer from you to the claimant, for which the claimant provided valuable consideration.
 4. On 18/06/2018 a letter before action detailing the amounts due was sent to you.
 5. An amount of £5,910 remains unpaid despite subsequent reminders.”
24. The defence filed on 31 March 2022 simply stated:
- “The claimant, George Kounis, did not carry out any work on our behalf. We employed the services of L.G. Zambartas LLC of Cyprus to defend our case.”
25. Mr Kounis’s reply dated 21 April 2022 complained of the inadequacy of the defence. Paragraph 2 stated that his entitlement was “by virtue of an assignment of rights to fees, charges and disbursements from [the Firm] following [the Deed of Settlement and Termination].” It did not state how that assignment had taken place but continued, “Notice of Assignment was given to the Defendants on 17/03/2016”, and annexed the email of that date and the attached letter of 15 March 2016. Paragraph 4 stated, “The Defendants retained [the Firm] as evidenced in Exhibit 3”; that exhibit comprised the Letter of Engagement with attachments and the CFA. Paragraph 5 stated that Mr and Mrs Lucey had incurred £6,110 in costs (that is, owed to the Firm) and had only paid £200, leaving a balance of £5,910 unpaid. A statement of account was reproduced, showing that the unpaid fee notes ranged in date from 9 May 2015 to 15 December 2016. The fee note on that latter date was marked, “Early Termination Fees.” The fee notes were produced in evidence before District Judge Vernon; I shall make further reference to them below.
26. On 8 June 2022 District Judge Evans allocated the case to the small claims track and gave directions, which included a requirement to file and serve documents and witness statements by 6 July 2022. The case was originally listed for a two-hour hearing on 12 October 2022, but on that date it had to be adjourned, principally because of Mr and Mrs Lucey’s failure to file and serve a witness statement with documents in support. A further direction was made for them to file and serve witness statements and documents by 2 November 2022; the order specified the matters to be contained in the witness statement, which included “(e) Why defendants allege that they were not obliged to pay Maxwell Alves; and (f) If different, why they ought¹ not pay the claimant.” The trial was re-listed, with five hours allowed for the hearing.
27. Mr and Mrs Lucey filed a joint witness statement on 24 October 2022. The statement raised the following points. First, having had no communications from or action by Mr Kounis, Mr and Mrs Lucey “were forced to take the costly decision of contacting an alternative solicitor to carry out the duties that Mr Kounis failed to do so. ... From this point, we contacted L Z Zambartas Law, who unlike Mr Kounis immediately undertook

¹ The typed order reads “could not pay”, but the district judge’s manuscript clearly reads “ought not pay”.

our instructions and, in return, were paid in full with the case concluded in 2020.” Second, there was confusion as to the entity for which Mr Kounis was acting—whether the Company, or the Firm (of which the statement appears to imply Mr and Mrs Lucey knew nothing), or Irwin Mitchell, or Click Law. Third, Mr and Mrs Lucey did not know that Mr Kounis was not a solicitor. The statement accused Mr Kounis of “an unethical attempt to extort finances [from] ourselves.”

28. District Judge Vernon (henceforth, “the District Judge”) heard the case on 20 December 2022 and gave judgment for Mr Kounis.

Short summary of the District Judge’s judgment

29. The District Judge identified the following issues: (1) Was there an agreement between the defendants and the Firm for the Firm to act for them in respect of a matter concerning a property in Cyprus? (2) Where any legal fees, including costs and disbursements, incurred pursuant to that agreement? (3) If so, what were the fees incurred pursuant to the agreement? (4) Was there an assignment of the Firm’s rights² under the agreement? (5) Have the fees due under the agreement, if any, been paid by the defendants?
30. The District Judge answered the first issue in the affirmative, finding that there was an agreement between Mr and Mrs Lucey and the Firm. As to the second issue, he found that the Firm had carried out work pursuant to the retainer. The important dispute in that regard concerned the scope of the work done. Mr and Mrs Lucey contended that the work that related to litigation, both in the Commercial Court in London and in Cyprus, was outside the scope of the retainer and was not work done for their benefit or with their consent. Having analysed the documents and in particular the correspondence between the parties, the District Judge rejected that contention and found that Mr and Mrs Lucey had agreed to the work being carried out and had agreed to pay for it in accordance with the details provided by Mr Kounis. As to the third issue, the District Judge accepted that the fees and disbursements had been incurred as claimed. He also held that the Early Termination Fee had become payable; I shall comment further on that below. As to the fourth issue, the District Judge found that Mr Kounis had proved his rights as assignee. As to the fifth issue, there was no dispute but that Mr and Mrs Lucey had made no further payments beyond a sum of £200 shown on the statement of account.
31. The District Judge concluded that Mr Kounis was entitled to £5,910 as claimed and gave judgment accordingly.

The Appeal

32. The appellant’s notice was filed on 22 February 2023. The grounds of appeal in section 5 of the appellant’s notice stated:

“George Kounis was not entitled to receive any funds potentially owed to Maxwell Alves, as stated in the letter to clients of CyProp, dated 8/2/2017.

² The Judge repeatedly referred to an “assignment” of rights “and liabilities”, but that was inaccurate.

In the letter of disengagement of Maxwell Alves from George Kounis, Maxwell Alves states: “I can confirm that Maxwell Alves will not be charging any termination fees should you elect to terminate your retainer and for those clients moving firms. All charges in respect for work to be done will be waived.”

33. On 29 March 2023 His Honour Judge Porter-Bryant gave Mr and Mrs Lucey permission to apply out of time for permission to appeal, and he ordered them to file a transcript of the Judge’s judgment and a skeleton argument or witness statement setting out, in numbered paragraphs, the reasons why the appeal ought to be allowed.
34. Pursuant to that order, on 28 April 2023 Mr and Mrs Lucey filed a document headed, “Defendant Statement—Skeleton Argument”. Their grounds of appeal as identified in this document can be summarised as follows:
 - 1) The Firm was in repudiatory breach of its contract, because it allowed Mr Kounis, a non-lawyer, to have sole and unsupervised conduct of multi-jurisdictional group litigation involving several hundred clients, and accordingly was not entitled to payment of fees from Mr and Mrs Lucey.
 - 2) The Firm never had entitlement to fees under the CFA, because the conditions for payment of a Success Fee had never been satisfied.
 - 3) The Firm terminated its retainer and was never entitled to an Early Termination Fee.
 - 4) The Firm did not assign its rights to Mr Kounis.³
 - 5) Mr and Mrs Lucey never had a contract with Mr Kounis.
 - 6) Mr Kounis has never proved that he did the work to which the claimed fees relate, and the fee notes on which he relies were not produced by the Firm.
 - 7) The claim was statute-barred by reason of section 5 of the Limitation Act 1980.
35. On 16 May 2023 His Honour Judge Porter-Bryant refused the application for permission to appeal after consideration on the papers. The detailed reasons he gave may be shortly summarised as follows: (1) the points about breach of contract and regulatory misconduct had not been raised before the District Judge and insufficient grounds had been shown to justify the admission of further evidence; (2) the District Judge was entitled to find that Mr and Mrs Lucey had agreed to work being performed and fees incurred by the Firm; (3) the District Judge was entitled to find that Mr and Mrs Lucey had terminated the retainer by non-payment of fees and instructing other solicitors; (4) the District Judge was entitled to find that there had been an assignment

³ It is unclear whether Mr and Mrs Lucey intend this ground, though HHJ Porter-Bryant addressed it, as shall I. The uncertainty arises because Mr and Mrs Lucey do not clearly distinguish between (1) the assignment (that is, allocation) of work or clients to particular fee-earners, (2) “assignment” in the sense of what would properly be called novation, resulting in a new contract between them and Mr Kounis on substantially the same terms as their previous contract with the Firm, and (3) the assignment of the right to receive payment of an accrued debt.

to Mr Kounis; (5) Limitation was not a pleaded defence and, further, did not have obvious merit.

36. Mr and Mrs Lucey renewed their application for permission to appeal at an oral hearing before His Honour Judge Harrison on 11 July 2023. The transcript of the hearing shows that Mr Lucey advanced the following case. The Firm made little progress under its retainer, having allocated the work to Mr Kounis, who—unknown to Mr and Mrs Lucey—was not legally qualified. On 21 December 2015 Mr Kounis resigned from the Firm. Thereafter, the Firm did not appoint any other qualified person to perform work under the retainer before the correspondence in March 2016, and it thereby abandoned work on the retainer and effectively terminated it. There was no retainer to “assign” to Mr Kounis and no contract with him. Mr and Mrs Lucey never received any proper invoices, only fee notes produced by Mr Kounis, who has failed to produce his files for consideration. Having heard representations from Mr Lucey, Judge Harrison ordered Mr and Mrs Lucey to file a witness statement in support of their attempt to rely on additional evidence that had not been before the District Judge. He gave Mr Kounis an opportunity to file a witness statement in response.
37. Pursuant to Judge Harrison’s order, Mr and Mrs Lucey filed a document headed, “Skeleton Argument”, dated 18 July 2023 and verified by a statement of truth. In addition to restating and amplifying matters previously raised, the document identified two points on which Mr and Mrs Lucey sought to rely on evidence not before the Judge:
- 1) A determination of the Solicitors Disciplinary Tribunal dated 8 December 2021, whereby “Maxwell Alves Partners” were each fined £7,500 for allowing Mr Kounis, a non-solicitor, to have sole and unsupervised conduct of the commercial litigation. This is said to be a repudiatory breach of the retainer, with the result that neither the Firm nor Mr Kounis is entitled to any fees under the retainer.
 - 2) A denial, by solicitors representing the Firm, that it had authorised or raised the charges in the fee notes relied on by Mr Kounis.
38. In response, Mr Kounis has produced a detailed statement dated 6 August 2023, which is largely in the nature of a skeleton argument.

Discussion

39. Mr Kounis’s claim in these proceedings is put squarely on the basis that he sues as assignee of moneys due to the Firm in respect of work it did under its retainer by Mr and Mrs Lucey. It does not rest on any allegation that there was a separate and subsequent contract directly between Mr and Mrs Lucey and Mr Kounis.
40. In the course of the appeal hearing I went through the various points that Mr and Mrs Lucey sought to raise and identified a number of grounds of appeal, which I then discussed with the parties. Those grounds (though I set them out in a different order from that in which they were discussed at the hearing) were as follows:
- 1) Mr Kounis has not proved that the work to which the fee notes relate was done by the Firm or was work for which the Firm was entitled to be paid.

- 2) The Firm was, in any event, not entitled to payment of any fees, because it was in repudiatory breach of contract in that (a) it failed to exercise any oversight or supervision of Mr Kounis, a non-solicitor and (b) it did not disclose that Mr Kounis was not a solicitor.
 - 3) The Firm was not entitled to an Early Termination Fee, because it was the Firm and not Mr and Mrs Lucey that ended the retainer.
 - 4) Mr Kounis has not proved that the Firm assigned to him each and every debt for which he now sues.
 - 5) The claim is barred by reason of section 5 of the Limitation Act 1980.
41. Both in communications with the court before the appeal hearing and at the hearing itself, Mr Kounis complained that the grounds of appeal had not been sufficiently identified to enable him to prepare for the appeal; though he confirmed at the conclusion of the case that he had received a fair hearing. I am satisfied that, for the purposes of the rolled-up hearing, Mr Kounis was in no way disadvantaged. The issues I have identified were raised in Mr and Mrs Lucey's document filed on 28 April 2023 and were considered by Judge Porter-Bryant, and prior to the hearing I had made clear that I would be considering them. Most of them were considered by the District Judge. All of them have been raised in other claims that Mr Kounis has brought against other CyProp clients of the Firm. Indeed, in the course of the hearing Mr Kounis produced a 21-page document, in the nature of a written submission, dealing with seven issues that covered all five of the grounds identified above except the first one.
42. For the most part, the issues that arise can be dealt with by reference only to documents and evidence that were before the District Judge. However, Mr and Mrs Lucey sought to rely on fresh evidence in the form of documents that were not produced at the trial. These comprised: letters and emails from the Firm to CyProp clients; letters and emails from those subsequently acting for CyProp clients to the Firm and to Mr Kounis or those acting for him; communications among, and representations prepared by, CyProp clients who form something of a support network for dealing with claims by Mr Kounis; a complaint and adjudication of the Solicitors Disciplinary Tribunal in respect of the Firm's handling of the CyProp business; an adjudication by the Legal Ombudsman in respect of a complaint by a CyProp client of the Firm; and orders made in another case brought by Mr Kounis against another CyProp client. In response to this, Mr Kounis objected to the consideration of matters not before the District Judge and, in particular, to the raising of new lines of evidential enquiry, and he in turn submitted a supplemental bundle of documents, though it did not contain new evidence.
43. In considering how to deal with the further documents I have had regard to the familiar principles in *Ladd v Marshall* [1954] 1 WLR 1489, which restricted fresh evidence to evidence that (i) could not have been obtained with reasonable diligence for use at the trial, (ii) would probably have had an important, though not necessarily decisive, influence on the course of the trial, and (iii) is apparently credible. However, in my judgment the correct approach is to apply the overriding objective of enabling the court to deal with cases justly and at proportionate cost (CPR r. 1.1), while regarding the cases before the Civil Procedure Rules as relevant and, indeed, of powerful persuasive authority: see *Sharab v Al-Saud* [2009] EWCA Civ 353, at para. 52. In that light, I have approached the matter as follows:

- 1) I have looked at all of the materials placed before me, not least so that I can decide what is to be done with them.
- 2) I bear in mind that the trial was on the small claims track between unrepresented parties. This does not excuse failure to comply with orders and rules, far less failure to engage with the litigation. It also does not justify re-running litigation that has not gone to a party's satisfaction. It is, however, a matter to be borne in mind when considering how to exercise the court's powers in the interests of doing justice.
- 3) I also bear in mind that this is not a case standing in isolation. There are many similar cases. Documents now sought to be adduced and issues now sought to be raised have been adduced and raised in others of these cases. They certainly do not come as any surprise to Mr Kounis.
- 4) As a matter of principle, decisions of other courts on similar cases can be referred to. However, none of them are binding on me, and I am concerned with this case, not with those cases.
- 5) I am prepared, in principle, to have regard to the decision of the Solicitors Disciplinary Tribunal, which is a statutory tribunal constituted under section 46 of the Solicitors Act 1974. Mr and Mrs Lucey say, plausibly, that this came to their attention when they were contacted by other CyProp clients after the judgment against them in December 2022. However, although I note the fact of the proceedings and the sanction imposed on the Firm, I do not treat the contents of the decision as evidence against Mr Kounis. The Tribunal proceeded on the basis of a statement of facts that was agreed by Dr Alan Ma and Mr Daniel Cheung. Mr Kounis was not privy to those proceedings or to the agreement of the statement of facts and he tells me that he does not accept the agreed facts. I deal further with this point under Ground 2, below.
- 6) I do not admit in evidence the documents regarding the Legal Ombudsman or the various communications from members of the informal CyProp clients network.
- 7) I do admit in evidence the letters and emails from the Firm to CyProp clients, and the letters and emails from those subsequently acting for CyProp clients to the Firm and to Mr Kounis or those acting for him. Mr and Mrs Lucey's position is that some of these were provided to them by other CyProp clients this year and that they found others when unpacking boxes of belongings in the spring of this year. These largely assist only in, so to speak, filling in the gaps in the narrative. They do not raise new avenues of evidential enquiry and they do not constitute documents of which Mr Kounis was unaware. As will appear, they do not materially affect conclusions that might be drawn from evidence that was before the District Judge.

Ground 1: the Firm's entitlement to payment for work done

44. Mr Kounis's claim is set out in a Statement of Account that he produced in July 2022. It shows that Mr and Mrs Lucey made two payments, each of £100, in 2013. Those

payments were credited as payments, respectively, of two “Invoices” that were produced by the Firm:

- i. GK/64296: 05/02/2014: “Apportionment of General Disbursements”: £100
- ii. GK/66129: 16/03/2015: “Our Professional Fees”: £100.

Mr Kounis’s claim for £5,910 was referable to the following series of “Fee Notes”, each of which apart from No. 1486 was inclusive of VAT at 20%:

- 1485: 09/05/2015: “Our Professional Fees”: £1,100
- 1486: 09/05/2015: “Apportionment of General Disbursements”: £100
- 2633: 24/02/2016: “Filing a collective claim in England including court fees”: £600
- 2634: 24/02/2016: “Filing a Generaly [sic] Endorsed Writ in Cyprus”: £1,140
- 2635: 24/02/2016: “Specialist Counsel and Legal Advice Fund”: £300
- 1149: 20/06/2016: *No particulars set out*: £270
- GKL/1080: 15/12/2016: *No particulars set out*: £2,400.

45. Fee Note 1485, when taken with Invoice GK/66129, seems to make up the balance of the Basic Fee of £1,000 plus VAT provided for in the Fees and Charges Schedule. Fee Note 1486, when taken with Invoice GK/64296, makes up the balance of the maximum £200 charge for pre-authorised disbursements in the Fees and Charges Schedule.
46. The three Fee Notes dated 24 February 2016, Nos. 2633, 2634 and 2635, relate to the Commercial Court Proceedings and the proceedings commenced at the same time in Cyprus as a back-up in case the Commercial Court Proceedings failed on jurisdictional grounds. Fee Note 1149 relates to the cost of serving the Commercial Court Proceedings on the Cypriot defendants. Fee Note GKL/1080 is for the Early Termination Fee; I shall deal with that separately.
47. The District Judge gave careful consideration to Mr and Mrs Lucey’s contention that no further payment was due to the Firm because any work to which it related was not carried out on their instructions or with their consent or was not in their interests. He rejected that contention for reasons which he set out at length with reference to the relevant documents (judgment, paragraphs 17 to 22). There is no proper basis on which to interfere with his conclusions; indeed, I respectfully agree with them.
48. In these appeal proceedings, Mr and Mrs Lucey have produced an email dated 8 August 2023 from solicitors acting for the Firm, which states on instructions that only two Invoices, namely GK/64296 and GK/66129, and one Fee Note (No. 87071, dated 10 April 2013, for professional fees in the sum of £1,200 inclusive of VAT) were produced by the Firm but that the remaining Fee Notes were not produced by the Firm.⁴ Mr and

⁴ No mention was made in the email of Fee Note GKL/1080, which however does not purport on its face to have been issued by the Firm. It appears that Invoice GK/6612 and Fee Note 1485 in a sense replaced Fee Note 87071:

Mrs Lucey told me that the Fee Notes mentioned on the Statement of Account were sent to them by email at a date or dates later than the email of 17 March 2016. Mr Kounis, however, maintained that all of the Fee Notes had been issued by the Firm, except for the final two, in June and December 2016, which he had issued.

49. The five disputed Fee Notes, from May 2015 and February 2016, are all in identical form to documents produced by the Firm, with the sole exception that they show at the bottom of the page the details for Mr Kounis’s own bank account with Santander Bank. In my judgment, it is certain that these were produced after 17 March 2016, not on the dates they bear. First, the email correspondence from the GK Props team in December 2015, regarding the charges of £600 and £1,140 to which Fee Notes 2633 and 2634 relate, required that payment be made “directly into our Bank account as follows” but proceeded to give the details of a client account of the Firm. Second, the Firm’s letter of 15 March 2016 contained an instruction that no further payments were to be made to the Firm and that Mr Kounis “will be providing you with details of his account” for the purpose of receiving further payments. Third, the email of 17 March 2016 informed the CyProp clients that further payments would “need to be paid into a new bank account with Santander in the name of ‘George Kounis’” and that “Fee Notes are coming out to you in the next few days with the amounts due and the bank account details.” However, in respect of these five Fee Notes I do not consider that Mr and Mrs Lucey ought to be permitted to take any point in these appeal proceedings. No point was taken in the proceedings at first instance. The evidence does not permit any inference that the Fee Notes were not produced with the authority of and in the name of the Firm. The Fee Notes all relate to work that had been done before the communications with the CyProp clients in March 2016. Moreover, I do not know whether the Fee Notes replaced existing Fee Notes or Invoices from earlier dates⁵; the email of 17 March 2016 indicates that the disbursements to which the disputed Fee Notes relate had already been paid by most of the CyProp clients and it asks clients not to pay Fee Notes that they had already received from the Firm.
50. Fee Note 1149 is not in the name of the Firm. It is headed “George Kounis”, underneath which in smaller script is “Maxwell Alves Solicitors Portfolio”. The address, contact details and VAT registration number shown on the document are those of Mr Kounis. The document was clearly produced by Mr Kounis. It relates to work done after the Settlement Deed and the email of 17 March 2016. Clause E.5 of the Settlement Deed had envisaged that further payment might become due from CyProp clients in respect of work to be done thereafter. The District Judge found that the work to which Fee Note 1149 related had been done with Mr and Mrs Lucey’s authority. There are no grounds for interfering with that finding and (with respect) I entirely agree with it.
51. In these appeal proceedings, Mr and Mrs Lucey have said that the Invoices and Fee Notes did not comply with section 69 of the Solicitors Act 1974. (They have not enlarged on that contention. I think it is a point that has been suggested to them by others facing similar claims by Mr Kounis.) Section 69 provides in relevant part:

“(1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the

the latter accompanied the CFA and relates to the entirety of the Professional Fees that were subsequently the subject of the former two.

⁵ As I have already remarked, it seems that Invoice GK/6612 and Fee Note 1485 did replace Fee Note 87071.

expiration of one month from the date on which a bill of those costs is delivered in accordance with the requirements mentioned in subsection (2); ...

- (2) The requirements referred to in subsection (1) are that the bill must be—
 - (a) signed in accordance with subsection (2A), and
 - (b) delivered in accordance with subsection (2C).
- (2A) A bill is signed in accordance with this subsection if it is
 - (a) signed by the solicitor or on his behalf by an employee of the solicitor authorised by him to sign, or
 - (b) enclosed in, or accompanied by, a letter which is signed as mentioned in paragraph (a) and refers to the bill.
- (2B) For the purposes of subsection (2A) the signature may be an electronic signature.
- (2C) A bill is delivered in accordance with this subsection if—
 - (a) it is delivered to the party to be charged with the bill personally,
 - (b) it is delivered to that party by being sent to him by post to, or left for him at, his place of business, dwelling-house or last known place of abode, or
 - (c) it is delivered to that party—(i) by means of an electronic communications network, or (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible, and that party has indicated to the person making the delivery his willingness to accept delivery of a bill sent in the form and manner used.
- (2D) An indication to any person for the purposes of subsection (2C)(c)—
 - (a) must state the address to be used and must be accompanied by such other information as that person requires for the making of the delivery;

- (b) may be modified or withdrawn at any time by a notice given to that person.
- (2E) Where a bill is proved to have been delivered in compliance with the requirements of subsections (2A) and (2C), it is not necessary in the first instance for the solicitor to prove the contents of the bill and it is to be presumed, until the contrary is shown, to be a bill *bona fide* complying with this Act.
- (2F) A bill which is delivered as mentioned in subsection (2C)(c) is to be treated as having been delivered on the first working day after the day on which it was sent (unless the contrary is proved).”

Section 68(3) provides that, for the purposes of section 69, “solicitor” includes, among others, the “assignees of a solicitor.”

52. Three points under section 69 are potentially raised by Fee Note 1149: first, whether it was signed; second, whether it was delivered; third, whether it is deficient by reason of its lack of any narrative. I refuse permission to appeal on the grounds that the claim is premature by reason of the non-fulfilment of the condition precedent in section 69(1). The matter was not raised before the District Judge and has not been adequately explored before me. It has not, in fact, been contended that the Invoices and Fee Notes were not “delivered” in accordance with section 69. An issue might indeed arise as to the presence of a signature; however, this raises questions as to (i) whether the printing on the documents themselves is a sufficient electronic signature and (ii) whether the documents accompanied sufficiently signed letters or emails (cf. *Friston on Costs*, 4th edition, para 35.83). If signature and delivery are not in issue, the burden rests on the client to show that the Fee Note is not a bill *bona fide* complying with the Solicitors Act 1974. In those circumstances it is for the client to prove that the requirement of an adequate narrative has not been satisfied: *Devonshires Solicitors LLP v Elbishlawi* [2021] EWHC 173 (Comm) at [22]. The sufficiency of the narrative is to be assessed with reference to the knowledge of the clients from other material in their possession, including any covering letter or email: *Garry v Gwillim* [2002] EWCA Civ 1500 at [70]. These are not matters that can conveniently be explored for the first time on an appeal, at least in these proceedings.

Ground 2: repudiatory breach of contract by the Firm

53. This ground of appeal is that the Firm was not entitled to any payment because it was in repudiatory breach of contract in that (a) it failed adequately to supervise the conduct by Mr Kounis, a non-lawyer, in performance of the retainer and (b) it failed to inform Mr and Mrs Lucey that Mr Kounis was not a solicitor.
54. I refuse permission to appeal on this ground.
55. The allegation of repudiatory breach of contract was not a pleaded allegation and was not raised in any other way that might have enabled it to be considered properly by the District Judge. There was certainly no evidence on which he could have been expected to find it proved. Mr and Mrs Lucey now seek to support the allegation by reference to

the adjudication of the Solicitors Disciplinary Tribunal against the Firm. However, as I have mentioned, that adjudication proceeded on the basis of admissions that were made by the Firm regarding the lack of supervision but are contested by Mr Kounis. To permit the matter to be raised now would require a re-trial on a substantially different basis from the original trial. In my judgment, such a course would be unjustified.

56. If the allegation concerning lack of supervision by properly qualified persons were to be raised in other cases, it would fall for consideration there as it does not here. I should add, however, that the complaint that Mr and Mrs Lucey were not told that Mr Kounis was not a solicitor is plainly incorrect: emails sent on his behalf by GK Ops describe him clearly as “Senior Consultant (Non-Solicitor)”.

Ground 3: the Early Termination Fee

57. Having addressed the work done by the Firm, the District Judge dealt with the issue of the Early Termination Fee as follows:

“25. Subsequently, the defendants then instructed a different firm of solicitors based in Cyprus to liaise with the bank in Cyprus. It is clear on the evidence before me and on the basis of those facts that the agreement between the defendants and Maxwell Alves Solicitors was terminated and, in my judgment, that agreement was terminated either because of non-payment of fees or because of, or by, the defendants instructing new solicitors to act in place of Maxwell Alves Solicitors. On either basis, in my view, the obligation to pay the early termination fees under the agreement with Maxwell Alves Solicitors was engaged.”

58. That conclusion is substantially in accord with the way that Mr Kounis put the matter in paragraph 14 of his witness statement dated 1 July 2022 and in his submissions to me. However, I respectfully disagree with the District Judge’s conclusion on this point. I have three reasons for doing so; the second and third are closely related but, I think, distinct: (1) the evidence before the District Judge does not, in my view, support the conclusion that the conditions for payment of the Early Termination Fee had been satisfied; (2) the evidence before the District Judge does not, in my view, show that Mr Kounis had authority to charge the Early Termination Fee; (3) evidence that was not before the District Judge but that, in my judgment, ought to be admitted on the appeal, shows that the Early Termination Fee was waived by the Firm. I shall explain these three reasons briefly.
59. The first reason arises out of simple consideration of the Letter of Engagement, the Fees and Charges Schedule, the CFA, and the sequence of events. Mr and Mrs Lucey’s contract was with the Firm, not with anyone else. The Early Termination Fee was intended to compensate the Firm in the event that, by reason of the client’s decision to terminate the contract, the Firm was deprived of the opportunity to obtain the Success Fee that was to have been its method of being remunerated for the work that would otherwise not be remunerated under the terms of the contract. In the present case, the departure of Mr Kounis and his team from the Firm, pursuant to the Settlement Deed, rendered the Firm unable to perform the work under the contract. That was made clear in the letter of 15 March 2016, in the Firm’s application to come off the record in July

2017, and in the Firm's letter dated 19 December 2017⁶. To say that Mr and Mrs Lucey terminated the contract by instructing other lawyers, namely L.G. Zambartas LLC, seems to me, with respect, to miss the point. The Firm told them it could not act and asked them to find other representation. Mr Kounis might have been able to act and to profit by doing so: he originally hoped to reach an agreement with Irwin Mitchell, but that fell through; later he did act for many CyProp clients through Click Law Partners⁷. He, however, had no contract with Mr and Mrs Lucey⁸ and they had no obligation to place their business with him or facilitate his personal remuneration. He points to the transitional period in the Settlement Deed as showing that he remained able and willing to conduct business for the CyProp clients, but the purpose of the transitional provisions was simply to ensure that clients were not left in the lurch; the Firm actively encouraged clients to instruct other lawyers because it could not continue to act. The suggestion that Mr and Mrs Lucey terminated the agreement by non-payment of fees and thereby became liable to pay the Early Termination Fee is untenable: first, because there is no evidence that the Firm terminated the retainer on account of their failure to pay fees; second, because, as the Firm was unable to perform the work necessary to obtain the Success Fee, it was never in a position to claim the Early Termination Fee. This is, in my view, a sufficient answer to the claim to recover the Early Termination Fee.

60. The second reason is, so to speak, a bridge between the first reason and the third. The Firm did not charge an Early Termination Fee. Rather, it was charged by a "fee note" dated 15 December 2016 issued by and in the name of Mr Kounis, showing his personal VAT registration number. The only basis on which Mr Kounis could be entitled to payment of moneys by Mr and Mrs Lucey was as assignee of the Firm. The fee note shows "Maxwell Alves Solicitors Portfolio" underneath Mr Kounis's name, and it sets out the following text:

"Pursuant to our letter dated 15 March 2016, we hereby give you notice that on 17 December 2015 we assigned all our rights to fees, charges and disbursements arising from your retainer with our firm to Mr George Kounis, who has been the Consultant with the daily conduct of your case. Please refer all future dealings in respect of your fees, charges and disbursements to Mr Kounis ..."

However, the document is misleading, because it clearly was not produced by the Firm but by Mr Kounis. He perhaps thinks that he was entitled to create the fee note, because the grounds existed for charging an Early Termination Fee. If so, he was, in my view, wrong on two counts. First, the grounds for charging an Early Termination Fee did not exist. Second, it was for the Firm to decide whether its retainer had been terminated in a manner giving rise to a claim to an Early Termination Fee. It was not for Mr Kounis

⁶ All of those documents were before the District Judge. A further communication that was not before him is an email from Mr Daniel Cheung to the CyProp clients on 22 November 2016 concerning alternative representation, in which he states, "I note that we are currently unable to exercise supervision over CyProp matters and we do not have the financial or human resource capacity to do so."

⁷ Click Law Partners is the trading name of Click Law Partners Limited, which was incorporated on 4 January 2016 to carry on the business of solicitors. Mr Kounis is a non-solicitor consultant with the practice, and on its current website he is shown first on the Meet Our Team page.

⁸ It is possible that the District Judge's references to the assignment of the benefit "and the burden" of the contract led him into further error in this regard. There was not and is not alleged to have been a novation of the retainer between Mr and Mrs Lucey and Mr Kounis or any entity with which he was associated.

to make that decision, however disappointed he might have been that some clients did not follow him to Click Law Partners. There is, so far as I can see, nothing in the Settlement Deed that gave Mr Kounis authority in that regard; he has certainly not identified anything. A further problem, relating to the right to sue for the Early Termination Fee, arises in connection with Ground 4 below.

61. The third reason is that the Firm expressly confirmed that it would not claim Early Termination Fees. This is clear from the Firm's letter of 15 March 2016; the natural meaning of the paragraphs set out above is that no new fees will become due to the Firm (especially, "... a deal with us to bring our further involvement and our right to further fees to an end ...") and that any moneys already owed to the Firm should be paid to Mr Kounis (especially, "If there are any amounts due from you, please do not pay them into our account" etc.).⁹ Further support for this reason is found, if it were needed, in additional correspondence that was not adduced before the District Judge. In a letter to CyProp clients (including Mr and Mrs Lucey) dated 8 February 2017, signed by Mr Daniel Cheung, the Firm explained that it had commenced proceedings against Mr Kounis in order, among other things, to prevent him from acting in matters in which he was legally prohibited from acting. The second page of the letter contained the following text:

"Concerns have also been raised [that is, by CyProp clients] regarding: (1) what fees might be due to Maxwell Alves should you move to Irwin Mitchell or Click Law; and (2) the return of monies paid on account to either Click Law Partners or George Kounis. For the avoidance of doubt, as your retainers were with Maxwell Alves, only Maxwell Alves should have sent invoices or levied termination fees. However, Mr Kounis has sought to subvert this.

I confirm that Maxwell Alves will not be charging any termination fees should you elect to terminate your retainer and that, for those clients moving firms, all charges in respect of work to be done will be waived."

It is, of course, correct to observe that this letter post-dated the fee note issued by Mr Kounis. However, so did the application to the Commercial Court in July 2017 and the letter from the Firm on 19 December 2017, and there is no evidence that the Firm had treated Mr and Mrs Lucey as themselves having done anything to give rise to a liability for the Early Termination Fee before this letter of 8 February 2017. Mr Kounis responds that by February 2017 he was in litigation with Mr Cheung, who was therefore adverse to him and whose correspondence cannot be relied on; and he refers to later correspondence from DAC Beachcroft on behalf of the Firm that denied that there had been a waiver of fees. However, it is the undisputed fact of the letter of 8 February 2017 that is relevant, not the motivation behind it or any later correspondence.

62. I fear that I am inclined to regard Mr Kounis's attempt to claim Early Termination Fees from Mr and Mrs Lucey as something of a try-on.

⁹ Although it is not formally in evidence and does not affect the reasoning set out here, it seems that Mr Kounis was the author of the text of this letter.

Ground 4: the assignment

63. The District Judge dealt with the issue of assignment as follows:

“26. The question then becomes, can Mr Kounis establish that he personally is now entitled to recover the fees, given that so far all of the agreements have been between Maxwell Alves Solicitors and Mr and Mrs Lucey? In my judgment, the evidence shows the following. Firstly, that Maxwell Alves Solicitors and Mr Kounis came to a settlement agreement whereby Mr Kounis left the employment of the solicitors’ firm. The agreement contained provisions indicating that there may be a need to assign certain rights and liabilities from the solicitors’ firm to Mr Kounis.

27. I am also then satisfied that a letter and email was sent by Mr Kounis to the defendants in March 2016 ... [This is the letter of 15 March 2016 under cover of the email of 17 March 2016. The Judge paraphrased the letter and set out the final two paragraphs, as set out above, and continued.]

28. In his skeleton argument at paragraph 26, Mr Kounis has set out the conditions that are required to be satisfied for there to be a valid, absolute assignment of rights and liabilities under an agreement. I am satisfied, having considered those conditions against the evidence that I have just set out, that the letter that was sent in March 2016 was a valid assignment of the rights and obligations and liabilities from Maxwell Alves Solicitors to Mr Kounis personally. ...”

64. In his written and oral submissions to me, Mr Kounis relied on the provisions of the Settlement Deed, especially clause D.2, and on the terms of the letter of 15 March 2016. No special form of words is required to effect a legal assignment under section 136 of the Law of Property Act 1925, and I consider that the terms of the letter of 15 March 2016 are sufficient for that purpose, both as a present assignment and as a notice; cf. *Chitty on Contracts*, 34th edition, para 22-016.

65. However, a statutory assignment can only be of a present debt. A purported assignment of a future debt (other than debts falling due periodically under an existing contract, such as rent or salary) takes effect as an agreement to assign and is valid in equity but not in law. While the letter of 15 March 2016 says, “we have assigned ...”, clause D.2 of the Settlement Deed envisages that co-operation by the Firm might involve future assignment of rights accruing under the retainers, thus reflecting the distinction between present and future assignment. The practical importance of the distinction is that a legal assignee is able to sue in his own right, whereas an equitable assignee will be required to join the assignor as a party to the claim, unless in a particular case the court is satisfied that the requirement would serve no useful purpose, in which case it may be dispensed with.

66. In the present case, where these points were not taken before the District Judge, the only Fee Notes that both bear on their face a date later than March 2016 and relate to

disbursements properly incurred after that date are No. 1149 and No. GKL/1080. In my judgment, neither of those alleged debts can have been the subject of a legal assignment effected by the Settlement Deed or by the letter of 15 March 2016. It might be said that both of them could be subject of an equitable assignment. However, it is not obvious that this is so. First, the letter of 15 March 2016 appears to refer to the assignment of existing debts. Second, the Settlement Deed does not purport to assign future debts; rather, it seems to envisage that there might be a need to assign future debts as part of the ongoing duty of cooperation. No such further assignment has been alleged or proved, though in the case of the debt in Fee Note 1149 Mr Kounis may be entitled to it. That this distinction is not merely nit-picking is indicated, third, by Fee Note GKL/1080: the Firm has never purported to be entitled to an Early Termination Fee and has obviously not purported to assign it specifically, yet Mr Kounis has considered himself free to make the charge simply in his role as assignee. In my judgment, Mr Kounis was not entitled to sue for payment of these two Fee Notes without joining the Firm (that is, its partners) as parties to the claim. For reasons previously set out, this makes no difference to the result in respect of Fee Note GKL/1080. However, in the light of the lack of proof of a legal assignment of the debt in Fee Note 1149, the lack of proof of even an equitable assignment of that debt (which relates to a disbursement, as to the source of the payment of which there might, for all I know, have been an issue), and the failure to join the Firm into the action, I consider that the claim to payment of that alleged debt ought also to have been disallowed.

67. Accordingly, I give permission to appeal on Ground 4 and I allow the appeal on that ground to the extent of overturning the award to Mr Kounis of the moneys claimed in Fee Notes 1149 and GKL/1080.

Ground 5: Limitation

68. In these appeal proceedings, Mr and Mrs Lucey have contended for the first time that Mr Kounis's claim is barred by limitation of time. The claim form was issued on 17 March 2022, which was the sixth anniversary of Mr Kounis's email of 17 March 2016 referred to above. Section 5 of the Limitation Act 1980 provides:

“An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.”

Mr and Mrs Lucey's argument is that all but the last two of the fee notes on which Mr Kounis relies were dated more than six years before the commencement of the claim.

69. I refuse permission to appeal on this ground. The limitation defence was not raised in the statements of case or at any time before the District Judge gave his judgment. I have jurisdiction to permit the point to be raised now, and to permit an amendment of the defence for that purpose, but good reasons would have to be advanced for taking that course. A limitation defence is procedural in nature, in that (at least in a case like this) it does not allege that the debt is not due, merely that a claim can be answered on time grounds. If the defence has not been raised before judgment, it is on the whole unattractive to permit a defendant to raise it after judgment has already been given after a trial of the merits of the claim. In this case, the mere fact that since the trial the defendants have learned of other available grounds of defence is not, in my view, a

sufficient basis for permitting a judgment on the merits to be challenged on account of statutory time limits.

70. It is, therefore, unnecessary for me to form a concluded view as to the merits of a limitation defence. Mr Kounis submitted to me that the limitation period for a solicitor's claim for fees did not start to run until termination of the retainer; he relied on *Underwood, Son & Piper v Lewis* [1894] 2 QB 306. and *Coburn v Colledge* [1897] 1 QB 702. I am not at all sure that either of those cases supports his argument, and the latter case appears (as I think at present) to be rather against it. If the Firm was in a position to serve invoices, and as the Letter of Engagement provided that the invoices were due for payment on receipt, I cannot at present see any reason why the limitation period ought to run from any later date than that of the invoice. Without deciding the point, my provisional view, therefore, is that Mr Kounis was wrong to think that a claim brought on the sixth anniversary of the email of 17 March 2016 would be safe from a limitation defence in respect of fees invoiced before that date. If the limitation defence is raised in other cases, it will fall for consideration there.

Conclusion

71. For the reasons set out above:
- 1) I give permission to appeal on what I have identified above as Grounds 3 and 4.
 - 2) I refuse permission to appeal on what I have identified above as Grounds 1, 2 and 5 and, for the avoidance of doubt, on any other formulation of a potential ground that has appeared in the various documents filed by Mr and Mrs Lucey.
 - 3) I allow the appeal on Ground 3 and set aside the judgment for Mr Kounis for the Early Termination Fee.
 - 4) I allow the appeal on Ground 4 to the extent of setting aside the judgment for Mr Kounis for (a) the Early Termination Fee—this is an additional reason for setting aside that award—and (b) the sum claimed in Fee Note 1149.
 - 5) The principal sum due to Mr Kounis is therefore not £5,910 but £3,240.
72. The District Judge awarded £297.76 for interest. The pleaded claim for interest was for interest at 8% p.a. from 18 June 2018 (the date of a letter before action) until judgment. That would have given a higher amount than the District Judge allowed. I do not know how he arrived at his figure, but neither side sought to contend that he had been wrong in principle or that some different approach to interest ought to be taken. In the circumstances, I do not think it proportionate to defer consideration of the matter. Making a roughly *pro rata* reduction in the interest on the principal sum to the date of the judgment below, I award £165 for interest.
73. There was no appeal against the District Judge's award of £801 for costs to Mr Kounis.
74. Unless there are matters of which I am not aware, the costs of the appeal ought to be paid by Mr Kounis. Under CPR r. 27.14, those costs would appear to be limited in this case to (a) any court fees paid by Mr and Mrs Lucey, (b) any travelling expenses they

incurred in attending appeal hearings, and (c) any cost they incurred in obtaining the transcript of the District Judge's judgment.
