In the High Court of Justice **CR-2017-008690**
Insolvency & Companies List (ChD)

CLAIMANT'S SKELETON ARGUMENT & BUNDLE FOR HEARING AT 10.30AM ON 23 JANUARY 2024

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IN THE CHANCERY HIGH COURT **CR-2017-008690**
INSOLVENCY & COMPANIES

Pursuant to section 9 of the Criminal Justice Act 1967 & the Insolvency Act 1986 / Insolvency (England & Wales) Rules 2016

Deuda Ltd

Claimant / "**C**"

v

The Official Receiver of London

First Defendant / "**D1**"

Middlesbrough Football & Athletic Company (1986) Ltd

Second Defendant / "**D2**"

SKELETON ARGUMENT DATED 20 JANUARY 2024

Pre-reading time required: 1 hour

Documents to be pre-read: This skeleton, the disclosure application of 12-pages dated 21 September 2023 (**APP-BUNDLE-21-09-2023**), and the 9-page A3 size report (**AI-INVESTIGATION-on-No.8**).

1. It is apparent that the Court and the Defendants seek to prevent the Claimant ("**C**") and its witness from the constitutional right to state its case and to give evidence remotely, when the law and technology provides to do so.

2. There is overwhelming public interest, as well as of paramount importance in the interests of the proper administration of justice, that C is given the right to be heard by a fair and independent tribunal. That has never happened, and now it is blatantly obvious that the judiciary in this case are compromised, there is no independence. The rules of natural justice are violated.

3. It is easily identified that both Miles and Fancourt were acting non-judicially, as judges of their own cause, contrary to the principle of natural justice, *nemo judex in causa sua*. The only result are acts outside jurisdiction, nullities.

4. Mr Millinder's supporting witness statement dated 25 September 2023 and the two exhibits of evidence he relied on with it, demonstrated that Miles, and Fancourt were knowingly conflicted. (See: **APP-BUNDLE-11-09-2023**, 'DOC-10", pages 402 – 422). The evidence referred to is from the official hearing transcript.

5. Mr Millinder's first statement in support of C's applications dated 25 September 2023 alleged perversion during the course of judicial duties in November 2020 in the same case. The evidence shows Miles and Fancourt lying and concealing material facts and witness evidence.

6. It is C's position, as per *Anisminic 1969*, that the acts outside jurisdiction resulting in purported orders by Miles and Fancourt are void ab initio, and must be set aside, *ex debito justitiae*. They cease to have legal effect, from the outset. C is asking the Court during this interim hearing to make that order.

Remote hearings – standard protocol:

7. HM Courts and Tribunals Service (HMCTS) plans to transition to a new video hearings service in 2024. I cite government literature briefly:

> *"The new video hearings service (VHS) is currently being used nationally in tax and property tribunals, as well as*
>
> *Birmingham Civil and Family Justice Centre*
>
> *Bristol Employment Tribunal*
>
> *Chester Crown Court*
>
> *Newport Immigration and Asylum Centre, Wales*
>
> *HMCTS will share plans to roll out the service more widely over the coming months"*

8. Remote hearings are encouraged, and are now the norm. The proceedings in the related Administrative Court proceedings were all remote long hearings between C, Mr Millinder, the Solicitor General, Attorney General, GLD and counsel acting for them.

9. The proceedings in the Kings Bench which C attended before Murray J were remote. The proceedings in Newcastle Crown Court which C attended were remote. The proceedings before Fancourt in November 2020 were remote.

10. There is no plausible reason in the interests of justice as to why a hearing by experienced litigants, wpuld not be remote. Particularly in circumstances where that is the only way C and its witness can be heard. The parties had more than ample opportunity since September 2023 to acquaint with the issues. There is no reason as to why a hearing of any of C's applications would not be remote, as C had applied for.

11. Miles, Fancourt and the GLD were under official duties to have read Mr Millinder's first supporting statement and to have considered the evidence. They were, it is alleged, purporting to act whilst knowingly conflicted.

Authorised representative:

12. Notwithstanding that C contends that the orders by Miles and Fancourt cease to have legal effect from the outset, C has instructed two authorised representatives to attend Court on its behalf in person on Tuesday, with the sole purpose of reading out the contents of this skeleton and taking the Court to the evidence it refers to on behalf of C, in the interim. C must be heard, the arguments must be aired.

13. C authorises Paul Gregory, a private Parliamentary advisor and associate of Transparency International, and Andrew Linsday, a 30 year plus corporate lawyer who completed the original contracts with the Second Defendant, to address the Court on this skeleton.

The Defendant's replication of the Claimant's material is rejected:

14. C is working from its 4 electronic hearing bundles, and fundamentally, the order for disclosure of pre-trial evidence has not been forthcoming.

15. There can be no fair trial in absence of disclosure of the required adverse evidence at the heart of the case.

16. I refer to: **APP-BUNDLE-21-09-2023**, reading pages 6 – 12, which is the draft order sought with detailed reasons. This, in order of C's applications, was the first to be dealt with, and pre-trial. There is reference only to two applications in Fancourt's purported order, uncoincidentally, this one was evaded.

17. The application was served on the Defendants and the GLD first by email in September 2023 on the dates each of the applications were filed. In all that time, the defendants have failed, C alleges fraudulently, to have disclosed adverse evidence, contrary to their legal duty to disclose.

18. Page 9 of 12, para. 4 of C's draft order reasoning sets out the legal principle behind disclosure of adverse documents. It is a right that C is entitled to, which Fancourt and the Defendants seek to conceal and deprive C of.

19. The Court appears to be acting maliciously in seeking to steamroller ahead in absence of allowing C the right to obtain evidence in the way that the law provides for. C submits that the Court has no jurisdiction to do so, for it can only act within the limits of the law, as law intended.

The legal duty to disclose:

20. Practice Direction 57AD applies to all proceedings in the Business & Property Courts. Rule 2.1 specifically states the purpose, which I will read out for the record:

"Disclosure is important in achieving the fair resolution of civil proceedings. It involves identifying and making available documents that are relevant to the issues in the proceedings"

21. Rule 3 of PD57AD are statutory duties in relation to disclosure.

22. I read out 3.1:

3.1 A person who knows that it is or may become a party to proceedings that have been commenced or who knows that it may become a party to proceedings that may be commenced is under the following duties ("the Disclosure Duties") to the court —

23. I read out rule 3.1(2): *(2) by no later than the time(s) set out in paragraphs 9.1 to 9.3, to disclose known adverse documents, unless they are privileged. This duty exists regardless of whether or not any order for disclosure is made;*

24. I emphasise that the legal duty to disclose on the Defendants exists in rule 3.1(2), regardless of whether or not the order for disclosure is made.

25. The Defendants have deliberately failed to disclose information of which they are under a legal duty to have disclosed.

26. The Court appears to have shunned the reasoning given set out within C's draft order. That reasoning needs to be considered during this proceeding.

Rule 14.6 of the Insolvency Rules 2016:

27. **Rule 14.6 of the Insolvency Rules 2016** confers a legal duty on the First Defendant, as liquidator of both EW and EEI, to disclose or make available for inspection, all proofs of debt in his possession, "*at any reasonable time, on any business day*".

28. The 12-page application sets out the documents that are required to have been disclosed and the important reasons in the interests of justice for obtaining pre-trial disclosure.

29. The Court has evaded giving any pre-trial directions, contrary to C's rights conferred in CPR Part 25.1. Applications for orders for interim remedies are to be dealt with prior to trial, not bundled in all together in absence of everything.

30. C is asserting that the Defendants appear to rely solely and exclusively on the likes of Miles and Fancourt to defend the case for them, by concealing all the evidence, and deliberately failing to judge, as they have done throughout.

A complete defence by absolute immunity from suit

31. C alleges that both Fancourt and Miles knew that C will not use UK lawyers and that C is non-UK resident, and so is its witness, Mr Millinder. The GLD in their 15 January 2024 letter, state they will oppose any remote hearing. The only reason to do so is of malicious and dishonest intent to conceal what has never been determined.

32. Mr Millinder has been subject to privilege of absolute witness immunity from civil suit, since 20 November 2017 when he gave evidence to Northumbria Police in their investigation of the c£4.1 million fraud in this case.

33. On 15 November 2017, Mr Millinder was witness for EEI, giving evidence in relation to the same fraud that has been concealed ever since. All the purported restraint orders and orders against Mr Millinder are nullities, for he was immune from civil suit, absolutely. On this sole ground, but there are others, the purported restraint orders don't exist, there was never jurisdiction to do it.

34. C and Mr Millinder rely on the Court of Appeal's final decision in *Sprecher Grier Halberstam LLP and Another v Martin Walsh [2008] EWCA Civ 1324*. It was Martin Walsh of C's case. From page 20 of the 30-page authority, I must read out this part:

> *"By complete authority, including the authority of this House, it has been decided that the privilege of a witness, the immunity from responsibility in an action when evidence has been given by him in a court of justice, is too well established now to be shaken. Practically I may say that in my view it is absolutely unarguable – it is settled law and cannot be doubted. The remedy against a witness who has given evidence which is false and injurious to another is to indict him for perjury; but for very obvious reasons, the conduct of legal procedure by courts of justice, with the necessity of compelling witnesses to attend, involves as one of the necessities of the administration of justice the immunity of witnesses from actions being brought against them in respect of evidence they have given. So far the matter, I think, is too plain for argument."*

35. There is no restraint order against Mr Millinder, there was never jurisdiction to make one. Even if there was, issue estoppel, which lays of the heart of the GLD's purported contention, and that of Fancourt's in his order of 17 January 2024, applies to the decision by Andrews LJ in the Divisional Administrative Court.

Acts outside jurisdiction – Affront to the determination by Andrews LJ:

36. Fancourt's order of 17 January 2024 stated this (highlighted red) to focus on the salient parts in question:

"AND UPON the Official Receiver by her acting lawyers, the Government Legal Department, writing to the Court (copied to the Applicant) on 15 January 2024 drawing to the Court's attention that ***the Principal Application and the Secondary Application appear to be a breach of the all proceedings order made under s.42 of the Senior Courts Act 1981 against Paul Millinder on 6 July 2021*** *("the vexatious litigant order"), on the basis that Mr Millinder is making the Principal Application and the Secondary Application through the agency of Deuda Limited and/or Mr Walsh"*

"(1) The Principal Application and the Secondary Application are to be listed before the Court on 23 January 2024 at 10.30am at an in person hearing solely for the purpose of enabling Dueda Limited to show cause why those applications should not be summarily dismissed on the ground that each is a breach of the vexatious litigant order"

37. Mr Millinder is not a vexatious litigant, but someone who has been defrauded by criminal offenders in judicial and public office who acted in conspiracy with the primary offenders.

38. Secondly, Fancourt would have known, given that he was the one concealing the same point at issue in November 2020, that the primary issue distinctly pleaded and proven in C's application of 11 September 2023, has been concealed and never determined at all. The GLD knew likewise, before lying and stating it had.

39. Thirdly. C relied on the impartial AI generated search results of the evidence and the purported determinations to prove beyond reasonable doubt that the fraud in this case, entailing a fraudulent breach of duty in conspiracy by depriving Mr Millinder of the statutory insolvency set off rights conferred in rule 14.25 of the Insolvency Rules 2016 has never been touched on in any of the purported determinations.

40. The important final judgment by the House of Lords in *Anisminic (1969)*, relied on in C's application of 7 September 2023, finally determines that a '*purported determination'* is also a nullity, for the points at issue have never in fact been determined at all. The impartial AI search revealed the extent of the fraudulent concealment throughout the course of public justice.

41. There were 341 exact matches for the term 'set off' and '14.25' in C and Mr Millinder's evidence, and no single match in any of the purported determinations, and yet Mr Millinder's case is founded because the Court, and the Defendants, acted dishonestly to deprive Mr Millinder, and creditors of both EW and EEI of that statutory right, to prevent justice being served on D2, and to defraud those creditors of over £10 million.

Issue estoppel – A complete defence to the contention:

42. Andrews LJ, a superior judge, sitting in the Divisional Administrative Court, in the same case, on 1 November 2022, said this after examination of the issue and the assignment:

> *"If Deuda was a genuine assignee then a ruling against Millinder as an individual would not have any bearing on its right to litigate"*

43. That statement itself is answer to Fancourt and GLD's fantasy, that the restraint order, even were it genuine, would not prevent an assignee under the Law of Property Act 1925, who was assigned a right to claim, from claiming.

44. Such an order is against the individual, not against any right of action vested in him.

45. Issue estoppel applies, proving that the purported restraint order does not have any bearing on C's right to litigate, and it is an abuse of process for the Defendants to affront determination on the issue by a Divisional Court as a way to avoid trial.

46. C must therefore be awarded costs for the substantial time wasted in dealing with something that has already been decided in its favour.

47. I refer to **APP-BUNDLE-16-01-2024** (open bookmarks) go to tab 6, reading pages 75 – 82 of 2,223.

48. According to section 136(1) of the Law of Property Act 1925, C is a 'genuine assignee' and the right to claim becomes '*effectual in law*' from the date notice had been given to the parties.

49. Law does not preclude the assignor or assignee from knowing each other, nor a witness giving evidence.

Absolute contradictions and lies by the GLD:

50. The contents of the GLD's admissions in their statutory replies in the Administrative Court proceedings are now a complete U-turn on the excuses and lies they were portraying before to evade the same issues being aired in court.

51. I take you to page 76 of 223, the report, at para. 20 – 22 where their lies are highlighted in red. Those lies were then told by the GLD and those Defendants in the Administrative Court proceedings in the GLD statutory reply to C's application of 15 June 2022 within those proceedings. That application, nor C's claim, although paid for and issued, have ever been determined.

52. I cite from para. 19 of the GLD's response:

> *19. Third, Deuda is not directly affected by the Section 42 Order and therefore CPR 40.9 is not engaged. That order affects Mr Millinder only. The fact (if it is a fact) that Mr Millinder has assigned any rights to Deuda is immaterial*

53. Now, the GLD and the First Defendant's position is exactly the opposite to what the GLD are saying in the same case about the same issue, which is the opposite as to the decision made by Andrews, of which issue estoppel is effective:

> *the Principal Application and the Secondary Application appear to be a breach of the all proceedings order made under s.42 of the Senior Courts Act 1981 against Paul Millinder on 6 July 2021 ("the vexatious litigant order"), on the basis that Mr Millinder is making the Principal Application and the Secondary Application through the agency of Deuda Limited and/or Mr Walsh"*

54. Mr Millinder assigned the rights of action, and by doing so, being the 'genuine assignee' in law, it has the right to claim on the basis of the assignment.

55. What we are missing is the "double D", we have plenty of 'double dealing' only we are missing a DETERMINATION or a DEFENCE coming from any of the defendants and their legal advisors of the GLD.

56. The GLD and the Defendants are all lying and stating that the fraud has been 'finally determined', yet they have been unable to take us to a singular mention of the point at issue, let alone a determination of the fraudulent conspiracy entailing dishonestly depriving EW and EEI of the statutory set off rights, because the claims vested in both companies, extinguish the fraudulent claims that the Second Defendant and their conspirators sought to prove against both companies.

57. The Second Defendant never had a claim to prove, yet even if they did, they would not have done but for the fraudulent failure of the corrupt judges, and the First Defendant, to have administered the mandatory law of due process, in breach of their judicial and fiduciary duties. It is all fraud.

58. Without lending credence to the fact that the orders by both Miles and Fancourt are nullities, void ab initio, the cause why is only too clear in that report, because firstly fraud unravels all, even post judgment. Secondly, it is fraud to conceal fraud. Thirdly, because nothing that ever-needed determination, ever was.

59. Fourthly, as per Andrews LJ in the same case, "*if Deuda was a genuine assignee, then the ruling against Millinder would not have any bearing on its right to litigate*".

Section 136(1) of the Law of Property Act 1925:

60. Notice of the absolute assignment of the rights of action vested in Mr Millinder, to Deuda Ltd was first served on 25 March 2022 and many times since on the GLD, and on the Second Defendants and all the parties affected.

61. Section 136(1) of the Law of Property Act 1925 affirms that C is the 'genuine assignee' and as per Andrews, the restraint order therefore does not have any bearing on its right to litigate. Any deviation from that position, is an affront to the decision of the superior court judge, as well as to the law itself which affirms that the assignment is effective.

62. On account of those circumstances, and the fact that both the orders of Miles and Fancourt are void ab initio, and that all the hearings have been remote, and that there is overwhelming public interest in prosecuting dishonest lying cheats who use the courts to defraud and pervert whilst purporting to act in the interests of justice, the Court can do nothing else but set aside the order of Miles and Fancourt and to direct that this case is remote only from now on.

63. The Court cannot prevent a claimant and witness from attending, and C has the right to self-represent, as it does to be heard in respect of its applications, evidence and submissions. There can be no reason, in the interests of justice, as to why a hearing of these applications would not be remote, it provides both parties with the right to be heard, and for the Defendants to answer the allegations.

64. Deuda is a party directly affected by the purported section 42 order and none of its applications or claims in the Administrative Court have ever been touched on.

65. The points at issue in its application bundles dated 7th, 11th and 21st March 2023, and the interim declarations sought, have never been determined at all, if they had, C would not have applied for them to be determined now.

66. At the heart of it, is the fact that the Second Defendant never had any claim to prove against either of Mr Millinder's companies, and that when they sought to prove, rule 14.25 of the Insolvency Rules 2016 was the mandatory law of due process that was engaged, but that the corruptors involved, failed in their duty to administer, to defraud creditors.

67. C requests that the court now orders that the Defendants provide disclosure by making the order substantially on the terms sought by C, amended with dates as the Court sees fit, as per the draft order in its interim application dated 21 September 2023, and that the case is directed to be listed for a remote only hearing over 12 hours at the soonest available date.

68. Defendants lawyers are supposed to defend, not tamper with the C's evidence to mismatch it in a substantially different format to that of how it was presented. That is a significant interference with the course of public justice in its own right.

69. The Defendants are must work only from C's 4 tabulated and paginated application bundles which have been filed in September 2023 and January 2024 respectively. C seeks a direction on these terms.

70. In the circumstances the Court should order remote trial as C had originally applied for and that costs of this hearing are awarded in favour of the Claimant, summarily assessed if not agreed.

Martin Walsh

20 January 2024

In person, for and on behalf of Deuda Ltd making its written submission for the hearing listed for 23 January 2024 which it has been denied the right from attending remotely.

URGENT INTERIM APPLICATION NOTICE

(Certificate of urgency sought for the obvious reasons given)

Name of court Insolvency & Companies	**Claim no.** CR-2017-008690
Fee account no. (if applicable)	**Help with Fees – Ref. no.** (if applicable)
	H W F –
Warrant no. (if applicable)	
Claimant's name (including ref.) Deuda Ltd	CR-2017-008690
Defendant's name (including ref.) The Official Receiver of London Middlesbrough Football & Athletic Company (1986) Ltd	
Date	21 September 2023

HIGH COURT OF JUSTICE
THE BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
21 Sep 2023

1. What is your name or, if you are a legal representative, the name of your firm?

Martin Richard Walsh

2. Are you a ☑ Claimant ☐ Defendant ☐ Legal Representative

☐ Other (please specify)

If you are a legal representative whom do you represent?

3. What order are you asking the court to make and why?

On the terms sought in the draft order on an urgent interim basis and for the reasons given within it.

4. Have you attached a draft of the order you are applying for? ☑ Yes ☐ No

5. How do you want to have this application dealt with? ☐ at a hearing ☑ without a hearing

☐ at a remote hearing

6. How long do you think the hearing will last? 0 Hours 30 Minutes

Is this time estimate agreed by all parties? ☐ Yes ☐ No

7. Give details of any fixed trial date or period

28 September 2023

8. What level of Judge does your hearing need?

High Court Judge

9. Who should be served with this application?

Defendants

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

By email to:
farouk.vawda@insolvency.gov.uk
jonathan.lupton@insolvency.gov.uk
dean.beale@insolvency.gov.uk
iona.sims@mfc.co.uk

10. What information will you be relying on, in support of your application?

- [ ] the attached witness statement
- [ ] the statement of case
- [x] the evidence set out in the box below

Please refer to the Claimant's applications of 7th and 11th September 2023 on which this directions application is based and the draft order sought with this application appended at pages 6 - 12

11. Do you believe you, or a witness who will give evidence on your behalf, are vulnerable in any way which the court needs to consider?

☑ Yes. Please explain in what way you or the witness are vulnerable and what steps, support or adjustments you wish the court and the judge to consider.

I am genuinely concerned, having witnessed the past performance of judges where Mr Millinder was concealed, and knowing that the critical points of law and certain other important parts of the case were concealed, that the administration of justice is too greatly comprimised through interferrences (by other judges who are complicit).

I am concerned that the Applicant's right to a fair and unbiased hearing are comprimised contrary to Article 6.1 of the Human Rights Act 1998.

The law of set off at the heart of this case was concealed ever since Registrar Jones became involved in the application that was based on it.

☐ No

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Statement of Truth

I understand that proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

☐ **I believe** that the facts stated in section 10 (and any continuation sheets) are true.

☑ **The applicant believes** that the facts stated in section 10 (and any continuation sheets) are true. **I am authorised** by the applicant to sign this statement.

Signature

☑ Applicant

☐ Litigation friend (where applicant is a child or a Protected Party)

☐ Applicant's legal representative (as defined by CPR 2.3(1))

Date

Day	Month	Year
21	09	2023

Full name

Martin Richard Walsh

Name of applicant's legal representative's firm

If signing on behalf of firm or company give position or office held

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Applicant's address to which documents should be sent.

(***Claimant accepts service by email)***

Building and street

5 South Charlotte Street

Second line of address

Town or city

Edinburgh

County (optional)

Midlothian

Postcode

E H 2 4 A N

If applicable

Phone number

0131 618 9059

Fax phone number

DX number

Your Ref.

Email

walsh@sepulveda-asset.net

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In the High Court of Justice **Claim: CR-2017-008690**
Insolvency and Companies List (Ch D)

In the matter of the Insolvency Act 1986 / Insolvency (England & Wales) Rules 2016.

BETWEEN

Deuda Ltd

Claimant

v

The Official Receiver of London

First Defendant

Middlesborough Football & Athletic Company (1986) Ltd

Second Defendant

ORDER

PENAL NOTICE:

If, by 4PM on Monday 14th November the Defendants fail to comply with the disclosure direction in this order at paragraph 4, you may be found in contempt of court and imprisoned, fined, or your assets may be seized.

Before sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on October 2023.

UPON the application of the Claimant dated 21 September 2023 for directions on the terms sought by the Claimant in this order

AND UPON reading the Claimant's applications of 7 and 11 September 2023 on which its application for directions is sought, and in readiness for trial:

AND UPON the Claimant seeking an order for interim remedies under CPR Part 25(1)(1) on the following basis:

(1) The Defendants must file and serve witness statements setting out any defence or mitigating circumstances by 4PM on Tuesday 14 November 2023:

(2) Pursuant to CPR Part 31 the Defendants shall disclose the Second Defendant's proofs of debt of 1 December 2016 and of 20 December 2016 to the Claimant:

(2.1) The proofs of debt are the claims the Second Defendant submitted to the First Defendant against Empowering Wind MFC Ltd in whichever form they are available on or around 1 December 2016 and on 20 December 2016, together with:

(2.2) All and any emails transmitted to the First Defendant by the Second Defendant containing those proofs of debt, or in connection with them from 1 August 2016 through to 20 March 2017

IT IS ORDERED AS FOLLOWS

1. The order sought by the Claimant is granted;
2. By 4PM on Tuesday 14 November 2023 the Defendants must have filed and served their witness statements in reply to the Claimant's applications of 7 and 11 September 2023 setting out any defence or mitigating circumstances.
3. By 4PM on Tuesday 5 December 2023 the Claimant, should it wish to, must have filed, and served any additional material or statement in response to the Defendant's witness statements.
4. By 4PM on Tuesday14 November 2023 the Defendants shall each disclose by way of standard disclosure under Part 31 of the Civil Procedure Rules 2020, the information specified at paragraph 2, 2.1 and 2.2 above.
5. As with any order made on paper in absence of a hearing, permission is given to the parties to apply to vary or set aside this order within 7-days of its service on that party.
6. This application shall be dealt with on paper only.

SERVICE:

7. Service is deemed effective within 24-hours by email to:

7.1. For the First Defendant:

farouk.vawda@insolvency.gov.uk
TheTreasurySolicitor@governmentlegal.gov.uk
margaret.warner@governmentlegal.gov.uk
jonathan.lupton@insolvency.gov.uk

7.2. For the Second Defendant:

iona.sims@mfc.co.uk
neil.bausor@mfc.co.uk
rbloom@bulkhaul.co.uk

7.3. For the Claimant:

walsh@sepulveda-asset.net

8. The Claimant must serve its application bundle comprising all the evidence and submissions on which it relies in tabulated and paginated lever arch files on the Defendants in hard copy at least 7-clear days prior to the hearing(s).

9. The Claimant is deemed to accept service of documents in this case from the Defendants by email only.

10. Costs are reserved and I give my reasoning in brief below:

REASONS

1. I make the order in furtherance of the overriding objective to ensure the proper administration of justice, primarily to enable both sides to fairly state their case in writing and to have had ample opportunity to have responded prior to trial.

2. I considered disclosure of the proofs necessary in furtherance of the Claimant's case against the Defendants and because:

3. Practice Direction 57AD ("**PD 57 AD**") now applies to all existing and new proceedings (subject to limited exceptions) in the Business and Property Courts from 1 October 2022. The new practice direction largely implements the rules from the Disclosure Pilot Scheme (Practice Direction 51U) ("DPS"), which was implemented in 2019 in an attempt to manage the costs and complexity of the disclosure process.

4. Section 1 of PD 57 AD, 2.1 sets out the principle in this way:

   "*Disclosure is important in achieving the fair resolution of civil proceedings. It involves identifying and making available documents that are relevant to the issues in the proceedings*"

5. The Claimant alleges that the First Defendant lied in his statutory official receiver's reports to Court in this case by denying that the proofs of debt existed.

6. On 1st December 2016 it is alleged by the Claimant that the First Defendant accepted a proof of debt from the Second Defendant in the sum of £256269.89 and then failed to have administered statutory insolvency set off in breach of his duty.

7. On 20th December 2016 it is alleged that the First Defendant accepted a further proof of debt from the Second Defendant in the sum of £541,308.89 and on this occasion also failed in his duty to have administered set off.

8. It was alleged by the Claimant that failure to have set off the proofs of debt represents a conscious and premediated decision and a determination in relation to the proofs of debt which I considered to be central to the Claimant's primary argument in both applications.

9. Disclosure is therefore necessary and in the interests of justice by allowing the Claimant the right under CPR Part 31 to obtain disclosure of evidence required in furtherance of its case.

10. In relation to its 7th September application, the Claimant drew my attention to DOC-1 the 109-page document, page 1.

11. Page 1 of the Claimant's skeleton, paragraph 7 referred to tab 4 at pages 32 – 56 of 109, which is the Lupton Fawcett bundle dated 10th September 2016 setting out the Company's claim against the First Defendant at pages 48 – 51 of 109. Page 49, paragraph 11 refers to the Company's claim against the Second Defendant in the sum exceeding £15 million resulting from forfeiture of the lease for the wind turbine. That claim arose from direct mutual dealings.

12. In *Stein v Blake [1995] UKHL 11*, paragraph 7 of the final judgment determined the "***occasion for taking an account***" which dealt with the statutory set off provision in section 323 of the Insolvency Act 1986, whereas the practically identical provision for corporate liquidation is rule 14.25 of the Insolvency (England & Wales) Rules 2016 ("**IR 2016**"). There is no material differentiation for the purpose of the taking of an account and the occasion for setting off. Lord Hoffman said this:

In what circumstances must the account be taken? The language of section 323(2) suggests an image of the trustee and creditor sitting down together perhaps before a judge, and debating how the balance between them should be calculated. But the taking of the account really means no more than the calculation of the balance due in accordance with the principles of insolvency law. An obvious occasion for making this calculation will be the lodging of a proof by a creditor against whom the bankrupt had a cross-claim. Indeed, it might have been thought from the words "any creditor of the bankrupt proving or claiming to prove from a bankruptcy debt" in section 323(1) that the operation of the section actually depended upon the lodging of a proof. But it has long been held that this is unnecessary and that the words should be construed to mean "any creditor of the bankrupt who (apart from section 323) would have been entitled to prove for a bankruptcy debt". Thus the account to which section 323(2) refers may also be taken in an action by the trustee against a creditor who, because his cross-claim does not exceed that of the trustee, has not lodged a proof: see Mersey Steel and Iron Co. v. Naylor Benzon & Co. (1882) 9 Q.B.D. 648 and In re Daintrey (1900] 1 Q.B. 546 568.

13. The obvious occasion for taking the account of what is to be set off from one to the other is when a proof is lodged where there is a corresponding claim between the company and that creditor.

14. If the Second Defendant sought to prove in the Empowering Wind MFC Ltd ("**EW**") winding up petition by submitting details of its claim in August 2016, then that was when the occasion for taking the account first took place.

15. If the Second Defendant then submitted a proof of debt in the sum of £256,269.89 on 1 December 2016, then it is established that the First Defendant was then under a fiduciary duty to the EW body of creditors to have set off.

The legal duty to disclose:

16. Rule 14.6 of the IR 2016 confers a legal duty on the office holder to disclose a proof of debt to a creditor of a Company "at any reasonable time, on any business day" when requested to have done so.

17. In his statutory report to court dated 15 December 2017 in these proceedings, at paragraphs 10 – 12 the Second Defendant stated this:

1O. In paragraph 1.1 of his statement Mr Millinder stated that he has reason to believe that in December 2016 MFC submitted a proof of debt to the Official Receiver in the sum of £255,000. In fact on 01/12/2016 my staff received an email from MFC which stated, inter alia "There clearly is no useful purpose served by submitting a proof of debt". On 02/12/2016 my office wrote to MFC asking them to confirm the debt said to be due to them and on 20/12/2016 an email reply stated their claim was £541,308. On 26/01/2017 my office wrote to Mr Millinder {Exhibit AC2 of his exhibit) setting out what we had been told and that email expressly informed him that the creditors had not been asked to submit proofs of debt. Subsequently, on 02/02/2017, MFC emailed a proof of debt in the sum of £4,111,874.75 with supporting schedule and this represents the only proof of debt received from MFC (Page 77 - 81 AH 1). Although this has been explained to Mr Millinder on several occasions, he simply disbelieves it.

11. In paragraph 1.2 Mr Millinder asserts that the December 2016 communications of MFC constitute valid proofs of debt which he is entitled to inspect in accordance with Rule 14.6. The requirements of a valid proof of debt are set out in Rule 14.4.Self-evidently the email of 02/12/2016 cannot comprise a proof of debt and I reviewed the email of 20/12/2016 following a request for copies to determine if it meets the statutory requirements and I am satisfied that it does not.

It does not state the creditors name nor address – it purports to come from The Gibson O'Neill Company Ltd but contains no address; It does not identify MFC (either as a company or in any other way - MFC is not mentioned in name nor in abbreviation); It is not authenticated; It does not state the postal address nor the authority of the person sending the email. As office-holder I do not accept that this email constitutes a valid proof of debt.

12. In paragraph 1.3 Mr Millinder states that I have not provided the first two proofs of debt. It is correct that I have declined to release the emails requested by him because they are not proofs of debt. Independently I understand Mr Millinder wrote to MFC direct in January 2017 making the same request and I infer from his subsequent communications that this was also rebuffed.

18. The First Defendant is alleged to have lied when he knew or ought to have known that the alleged blackmail of 25 June 2015 is a proof of debt which meets the requirements of proof set out in rule 14.4 of the IR 2016. A proof of debt is the document on which a creditor submits its claim. There is no longer a formal proof of debt form for use in proving.

19. The First Defendant lied and stated that the proof does not state the creditor's name and address and that it does not directly identify the Second Defendant in name or abbreviation.

20. The First Defendant is alleged to have lied by stating that the person sending the email does not state the authority of the person transmitting it.

21. The emails containing those proofs of debt and the contents of them will reveal the correct factual circumstances to the Court which I consider to be necessary in advancing the Claimant's case, and proportionate, as well as being in a legal requirement in any event that the First Defendant has clearly breached by failing to disclose.

22. It is far easier for the parties to make use of modern technology in navigating the Claimant's documentation and responding accordingly and Courts now encourage it.

23. For these reasons I make the order on the terms sought by the Claimant.

CR-2017-008690

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY & COMPANIES LIST (ChD)

BETWEEN:

DUEDA LTD

Applicant

(1) THE OFFICIAL RECEIVER
(2) MIDDLESBROUGH FOOTBALL AND ATHLETIC COMPANY (1986) LTD

Respondents

ORDER

Before The Honourable Mr Justice Fancourt sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on 17 January 2024

UPON READING the application notice dated 7 September 2023 signed by Martin Richard Walsh on behalf of Dueda Ltd ("the Principal Application") and an application notice dated 11 September 2023 signed by Martin Richard Walsh on behalf of Dueda Ltd ("the Secondary Application")

AND UPON the court ordering on 20 September 2023 that the Principal Application will be heard as an in person hearing on a date to be fixed and refusing the application made on behalf of the Applicant for a remote hearing

AND UPON the court listing the Principal Application for a hearing of 2.5 days in a window commencing on 22 January 2024

AND UPON the Official Receiver by her acting lawyers, the Government Legal Department, writing to the Court (copied to the Applicant) on 15 January 2024 drawing to the Court's

attention that the Principal Application and the Secondary Application appear to be a breach of the all proceedings order made under s.42 of the Senior Courts Act 1981 against Paul Millinder on 6 July 2021 ("the vexatious litigant order"), on the basis that Mr Millinder is making the Principal Application and the Secondary Application through the agency of Deuda Limited and/or Mr Walsh

AND UPON READING an email dated 16 January 2024 sent by Mr Millinder from email account info@intjustice.com in breach of the vexatious litigant order responding to the Government Legal Department's letter dated 15 January 2024

AND WITHOUT NOTICE IT IS ORDERED THAT:

(1) The Principal Application and the Secondary Application are to be listed before the Court on 23 January 2024 at 10.30am at an in person hearing solely for the purpose of enabling Dueda Limited to show cause why those applications should not be summarily dismissed on the ground that each is a breach of the vexatious litigant order.

(2) The Official Receiver should by 4pm on 19 January 2024 make and file a witness statement exhibiting the letter dated 15 January 2024 and its attachments and any further documents to be relied upon.

(3) This Order has been made without notice to Deuda Limited or Middlesbrough Football and Athletic Company (1986) Limited and accordingly any party may apply in writing to set aside or vary this Order by filing a letter and any evidence relied upon on CE-file within 7 days of receipt of this Order.

(4) This Order shall be served by The Government Legal Department on the other parties.

The Court has provided a sealed copy of this Order to the Government Legal Department.

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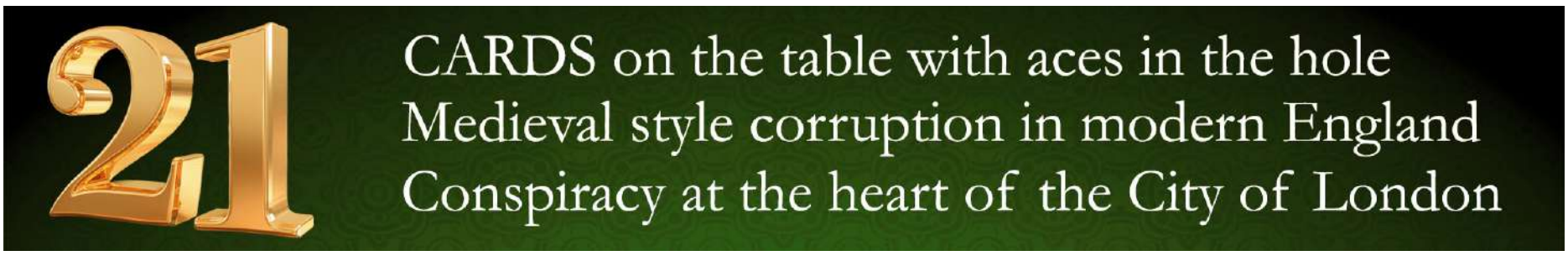


Order by email? admin@opblackjack.com

AI SEARCH INVESTIGATION on No. 8

CASE FILE PART 1 – FILED IN THE ADMINISTRATIVE COURT ON 22 JANUARY 2022

1. We refer to: **8---CASE-FILE-PART-1** ("**8**" of 163-pages - open bookmarks to reveal tabulations). This is the first of the 6-part case file filed in the first quarter of 2022 relying on the defence of nullity. The purported trial was not until 1st November 2022. Paul Millinder ("**Millinder**") relied on the grounds of nullity, fraud and lack of jurisdiction. There is clear evidence of fraud and criminality and therefore there was never jurisdiction to make an order against Millinder under section 42 of the Senior Courts Act 1981.

2. The criminal cover up intended to pervert and mentally torture Millinder with persistent threat of arbitrary detention a nd lies perpetrated over the internet by the Law Society Gazette were convened outside jurisdiction, for which the perpetrators are personally criminally and financially liable.

3. It was officially recorded by Michael Cross, the news editor of the Law Society Gazette who attended in person on 1 November 2022 that (Lady Justice) Geraldine Andrews, No. 13 of 21, (21 Cards of Injustice) said this:

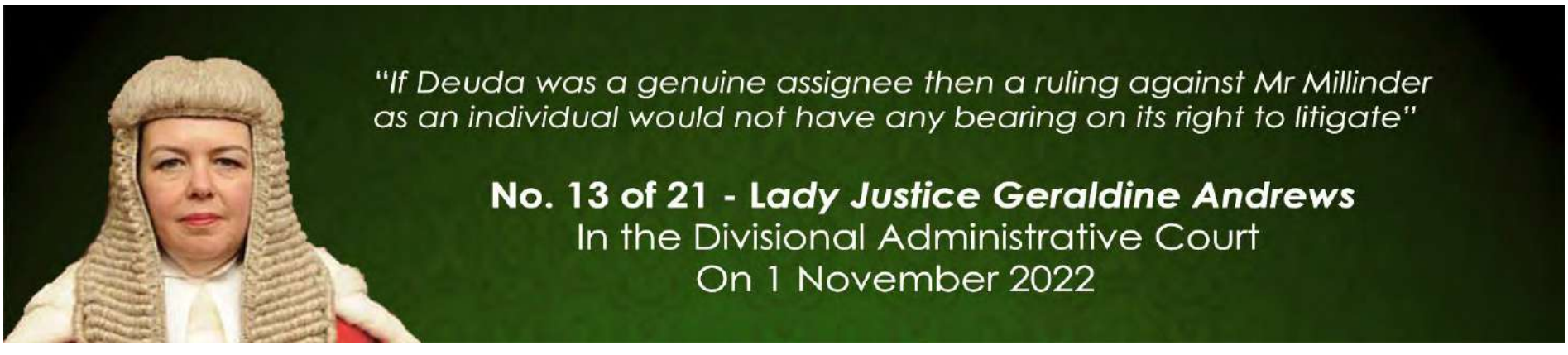
"There is absolutely no case for this court to set aside the [S42] order and say it is void...Arguments that have been echoed are completely meritless, without foundation and betray a fundamental lack of understanding of the way the courts work. What Mr Millinder and Deuda have failed to grasp is that a court order is a valid court order unless and until it is set aside"

4. Andrews lied, having concealed the criminal offending and fraud entailing Millinder being dishonestly deprived of the mandatory law of due process, the law of insolvency set off at the heart of his case. Andrews was affronting the law and decisions of the superior court, but she had no jurisdiction to do it, having perverted. She had no jurisdiction to preside over it, even if the section 42 order was valid!

5. Andrews knew that in order to be '*totally without merit*' (the lie told by all 21 cards of injustice intended to pervert), the points at issue would have first needed to be determined, and given that she was one of the corrupt actors concealing the fraud and criminality, Andrews knew there was never any such determination. Fancourt, a High Court Judge determined that, yet having it in front of her, she still lied.

6. Whilst the corrupt actors of the English kleptocracy defeated the ends of justice, international law and universal jurisdiction holds no boundaries, and the evidence does not deceive. We use AI to get to the facts and evidence, exposing their lies in seconds!

CHALK KC MP AND THE TREASURY SOLICITOR CONTRADICTED ANDREWS'S PURPORTED DETERMINATION:



7. On 1 November 2022 Andrews determined that the ruling, meaning the section 42 order, would not stop Dueda from litigating. Her conspirators, Chalk KC MP, his mate, William Hays of the same Chambers (6KBW) and their cohorts at the Government Legal Department all lied, relying on the restraint order to prevent Deuda from litigating against them for the fraud they have committed and concealed!

8. You, the taxpayer are paying these racketeering offenders to terrorise innocent parties in the name of justice whilst perverting it. The corrupt police forces they control cover up for them, because the offenders asked them to do it.

9. In **Op Blackjack Part 1**, we concluded to the criminal standard that the cover up was of fraud, the dishonest deprivation of statutory insolvency set off rights in 14.25 of the Insolvency Rules 2016. It was pleaded 291 times, v no single reference to either of the terms in any of the purported determinations.

10. To prove our case that Andrews, Chalk and the rest of them are nothing but criminals and lying cheats we needed to define the meaning of '*genuine assignee*' and for that, genuine in law, as most know, means '*real or true, rather than false or fake*'.

11. To prove that Deuda was the 'genuine assignee' we looked at the law itself which affirms that the assignment from Millinder to Deuda of the legal rights of action, is '*effectual*', citing it below:

*"**136 Legal assignments of things in action.***

(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

(a) the legal right to such debt or thing in action; (b) all legal and other remedies for the same; and (c) the power to give a good discharge for the same without the concurrence of the assignor"

Bundle page: 27 of 65

12. By 1st July 2022 Chalk, Middlesbrough FC, all the purported judges involved, the Insolvency Service, the Chief Constable of Northumbria Police and their legal representatives were served with notice of the absolute assignment of the causes of action vested in Millinder, to Deuda, as they were the claims against them. Law affirms therefore that Deuda is a 'genuine assignee' as Andrews stated. By then, they were served the application and the two claims against them by Deuda. (**5---MILLINDER-&-DEUDA-2022-2023** "**5**" of 168-pages: open bookmarks).

PROOF OF SERVICE OF NOTICE OF THE ASSIGNMENT FROM MILLINDER TO DEUDA LTD

13. Here's where it all gets very interesting, and all the dots are joined: The Administrative Court's primary function is to regulate decisions made by people or bodies with a public law function, carrying out a judicial review of decisions made by other courts, tribunals and public bodies to ensure those decisions are lawful and proper. The Official Receiver defrauding creditors through failing to administer the law in breach of his duty would be right up their street, but they covered it up!

14. We refer to number 7 of the 9 documents we examined in this part of our investigation using AI search: **7---DEUDA-APP-16-06-2022.** ("**7**" of 243-pages – open bookmarks). This is Deuda's sealed and issued application as a party directly affected by the section 42 order they were using to prevent Deuda from litigating, contrary to the ruling by Andrews above, as officially recorded by the aptly named Mr Cross, of the Law Society Gazette.

15. **THE APPLICATION NOTICE & CONTINUATION SHEET SEALED AND ISSUED ON 23 JUNE 2022 (**pages 1 – 7 of 243). We encourage the reader to absorb the contents of Deuda's 7-page application. We cite from page 7, para. 14 of the application:

> *"HMCTS and its judges* ***failed to apply the mandatory law in insolvency set off prior to making the winding up orders against EW and EEI****. It is the Claimant's position that this* ***maladministration renders the proceedings null and void for failure to apply statute where it is required****. Failure of D8 to apply statute enabled D1 to make* ***fictitious claims to be creditor of both EW and EEI when they never had the right to have done so.*** *The Claimant is advancing* ***a claim for damages to business reputation and lost opportunity exceeding £100 million against the Defendants jointly and severally****".*

16. That is what the claim's about, fraud, dishonestly depriving Mr Millinder and his companies of the mandatory law of due process to obtain pecuniary interest by deception when law intended that the purported claims arising through Middlesbrough FC's blackmail, were to have been set off entirely prior to making any insolvency order, and prior to them 'proving' for a debt. The Official Receiver accepted 3 proofs of debt from MFC, without set off, but there was never a claim to prove to start with!

17. Page 5 of 281 lists the 11 defendants of Deuda's application for trial. The bundle was served on all the defendants, and to the GLD lawyers purporting to act for them who are likewise the defendants. The assignment at tab 4.2, (pages 192 – 194) from Millinder to Deuda dated 25 March 2022, is the absolute assignment of all rights of action associated with Middlesbrough FC to a value of over £124 million. The assignment was served on all the parties affected and is '*effectual in law*' as the law prescribed. Therefore, law determines that the latter position as stated by Andrews on 1 November 2022 applies:

> ***"a ruling against Mr Millinder would not have any bearing on its right to litigate"***

18. Referring to **Op Blackjack Part 1,** page 22 of 24; DETERMINATION 4 exhibits page 4 of the 5-page response to Deuda Ltd's 281-page application, it contains lies and contradictions from Chalk's team. Given that they responded, it is proven that the parties affected were served the assignment with the application. They were also served the claims in **(5)** which were filed, the fees were paid by Deuda, which, contrary to Andrews's own statement, the Court refused to issue, citing the restraint order which the defendants were using to prevent Deuda from litigating!

19. Naturally, by virtue of those actions, it is proven that Deuda is a party directly affected, also contrary to their lies.

20. Knowing of the assignment which was served on them, on 22 July 2022 the defendants told lies, false representations which both affront the statutory law and which are intended to defraud and to have perverted the course of public justice. They stated this:

> *"17. First,* ***the application is in reality an application brought by Mr Millinder****, for which permission is required under the Section 42 order, which he does not have and has not applied for"*

21. Naturally the Attorney General and her co-defendants knew it was beyond any judge's powers to use a false instrument, outside jurisdiction restraint order to conceal fraud and criminality, just as it was theirs to have applied for one to do so. Therefore, firstly, they knew they were relying on nothing, to conceal fraud and corruption, and they knew what they were doing was dishonest. Secondly, they knew that the assignment, served on them was an absolute assignment of the right of action and that therefore Deuda is the 'genuine assignee'

> *"18. Second,* ***the application is an abuse of process*** ***Deuda Ltd is aware that the underlying litigation has been finally resolved*** *and that the Section 42 Order was imposed to prevent Mr Millinder from continuing that litigation"*

22. In order to be 'finally resolved' the points at issue, enshrined in fraud and dishonest abuse of position, would have first needed to be determined, and it is proven beyond reasonable doubt, by virtue of our impartial AI generated outcome, those points were never even touched on, let alone determined. All the defendants knew that, therefore they knew the representations they were making were not only false, but had real tendency to pervert. It is only too clear from those representations, that was their intention.

> *"19. Third,* ***Deuda is not directly affected by the Section 42 Order and therefore CPR 40.9 is not engaged****. That order affects Mr Millinder only.* ***The fact (if it is a fact) that Mr Millinder has assigned any rights to Deuda is immaterial****"*

THREE STRIKES AND YOU'RE OUT!

23. Three blatant and obvious lies intended to prevent the offenders being prosecuted, which any ordinary informed lay observer can determine to be flagrantly dishonest and false, in seconds, simply by application of logic.

24. It is evidential that the 3 lies told by the Solicitor General; Chalk and his sect of lying cheats were asking the Court to dismiss Deuda Ltd's application for a trial of the issues that have been concealed by them and their conspirators throughout the course of justice.

25. Given the fact that the offenders were all seeking to rely on the false instrument nullity order against Mr Millinder to conceal their own fraud and to prevent justice being served on them, and that Deuda is the 'genuine assignee', we must reiterate, it is self-revealing that Deuda is a party directly affected by the order, as they were using it as a defence of the claims against them!

26. The lie that the litigation has been 'finally resolved' by the central government kleptocracy was the same as the one echoed by the offender, No. 13 of 21, Andrews, who is evidenced lying, as recorded by Cross of the Law Society when she said this:

> *"Millinder had been 'given the indulgence' of a video hearing, been granted six months' notice to appear and **was able to set out his arguments in writing**. '**One needs to get finality**"*

27. Millinder set out his arguments in writing, and acting with intent to pervert, Andrews, Cavanagh and their conspirators, including Chalk, the Treasury Solicitor and their puppets lied, cheated and concealed the evidence and material facts.

28. For there to be 'finality' the points at issue in the case must have been finally determined, yet it is proven beyond reasonable doubt that the issues were concealed, and that **the biggest culprit is the lying cheat herself, Andrews** her sidekick, **Cavanagh**, and puppet to the puppet masters, **Swift**, the 'Treasury Devil' former chief counsel to the Government Legal Department, the go to judge for the corrupt establishment installed by the kleptocracy as the judge in charge of the Administrative Court.

Whilst surrounded by lying cheats in positions of trust, one thing's for sure, the laws cannot be diminished, the evidence does not deceive, and AI does not lie!

No. 8 – CASE FILE PART 1 - THE EVIDENCE AND FACTS LAID OUT IN CHRONOLOGICAL ORDER:

29. **DOC-A**, (pages 2 – 5) is a submission about the mental torture of Millinder and corrupt and improper exercise of police powers, police arresting, charging and detaining him in absence of crime after legal entrapment by the politically coerced corrupt Northumbria Police officers who concealed the serious crimes committed against him just as the purported judges and other police forces did.

30. **DOC-B**, (pages 6 – 40) is a letter & exhibit to the former Lord Chancellor, Rabb, darted 18 February 2022 who sought, acting outside jurisdiction to rely on the restraint order to cover up the fraud and criminality by fellow corrupt Tory politicians (Steve Gibson OBE of MFC). The letter set out in detail fraudulent deprivation of the statutory rights referred to. The letter was ignored and then covered up by the Administrative Court.

31. **DOC-C**, (pages 41 – 46) is a draft form of indictment against 10 allegedly corrupt police officers. **DOC-D**, pages 47 – 97 is an exhibit of evidence relied on with the indictment / private criminal prosecution for corrupt improper exercise of police powers.

32. **DOC-E**, (pages 98 – 109) is Millinder's first skeleton argument in defence of the proceedings brought against him by Chalk to commit him to prison for their perversion of the course of justice. This is a particularly important piece of evidence because it proved that there was never jurisdiction to make the section 42 order against Millinder. It was concealed and evaded entirely by Andrews and Cavanagh.

33. **DOC-1**, (pages 110 – 134) is Millinder's 'Core Navigation Part 1' high level document setting out the case and evidence in chronological order citing critical facts and evidence from the case with meticulous attention to detail over 25-pages.

34. **DOC-2**, (135 – 159) is 'Core Navigation Part 2' continued in chronological order from core nav. Part 1 setting out the evidence and facts from 8 February 2019 – 17 January 2022.

35. **DOC-3**, (pages 160 – 163) is Millinder's index of exhibits and material for the case describing what everything is and where it is located. Page 162 contains the grid connection drawing for the wind turbine connection which MFC refused. Page 163 is the contents of case files parts 2 – 6 setting out the tabulations.

36. This part of our investigation is consolidated solely to Part 1 of Millinder's 6 case files filed in January 2022 in defence of the nullity proceedings brought by Alex Chalk KC MP and his sect of conspirators.

FRAUDULENT ABUSE OF POSITION AND INSOLVENCY ACT CRIMINAL OFFENCES

37. We encourage the reader to digest the contents of Millinder's first skeleton argument at pages 98 – 109. The issues pleaded and proven in that skeleton were concealed throughout the course of public justice.

38. We performed a search of the entire document for the term '**14.25**', with the first match at page 5 of 163, para. 26:

> *"The claim, in favour of the Complainant is a substantial and proven asset that was to be realised without any discount whatsoever pursuant to Rule 14.25(5) of the Insolvency Rules 2016.*

39. The second match is at page 8, para. 22;

> *"22. You, Mr Raab and all your fellow Ministers have a duty to prevent discrimination. You have failed, just as you have failed to respect the rule of law and to have maintained the independence of the judiciary.*

The legal position:
We direct you to R.14.25 of the IR 2016 and we quote the provisions from R.14.25(2) – (5)"

40. The third match is at page 9, para. 23 & 26:

"23. R.14.25(2) provides a mandatory duty of the Court to apply set off" "26. Rule 14.25(5) determines that the claim in favour of EW must have been paid in full"

41. The fourth is at page 14, para. 63:

"Once again, aside from the fact that the order was founded by D4's conscious and premeditated dishonesty, the corrupt, politically controlled court failed once again in its mandatory duty to apply the law in set off conferred in rule 14.25(2) of the IR 2016"

42. The fifth is at page 101, para. 41 of Millinder's first skeleton argument dated 22 January 2022:

*"**Deliberate failure of HMCTS (D29) to administer the law by applying the law in set off:***

41. DOC-1: page 4, p32 & 33 refers to the evidence that was placed before the Court 7-days prior to the hearing.
The Lupton Fawcett LLP letter set out mutual dealings between EW and D1, and that EW has a cross claim which substantially exceeds the £256,269.89 fraudulent liability D1 presented to cause the winding up. P34 refers to Rule 14.25(1) & (2) of the Insolvency Rules 2016 which determines that;

14.25.—(1) This rule applies in a winding up where, before the company goes into liquidation, there have been mutual dealings between the company and a creditor of the company proving or claiming to prove for a debt in the liquidation.

(2) An account must be taken of what is due from the company and the creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other"

43. The sixth is at page 102, para.50, under the heading "***The criminal offence 1.56(1) of the Insolvency Rules 2016***":

"It is believed that upon colluding with D5 and D7, D1, D2 and D3 established that A / EEI still had sufficient voting interest to call a meeting of creditors to replace D5 to enable A to appoint a liquidator who would act in the interests of A and his fellow creditors to realise the proven damages claim in accordance with Rule 14.25(5) of the Insolvency Rules 2016."

44. The seventh is at page 103, para. 55:

"The fraudulent abuse of position by those defendants referred to in p52 and p53 above is centered around the fact that all, in conspiracy have first accepted and then sustained fraudulent proofs of debt against EW to defraud creditors of the multi-million-pound asset which was to be realised for creditors of which A is requisite majority, pursuant to rule 14.25(5) of the IR 2016 when the claim became due and payable"

45. The eighth is at page 104, para. 79:

"By 26/03/2018 it was established that the claim vesting in EW was proven and that law, namely R.14.25(5) of the IR 2016 determined that the claim in EW's favour was:

(5) However if all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without being discounted under rule 14.44) if and when that debt becomes due and payable"

46. The nineth is at page 113 "**DOC-1 – CORE NAVIGATION PART 1**", para. 34:

"Baister R failed in his mandatory duty to apply the law in set off conferred in R.14.25(2) of the IR 2016, knowing of the mutual dealings and the EW cross claim. On 19/06/2016 EW was wound up"

47. The tenth is at page 123, para. 142:

"Jones knew the reason D1 and their conspirators submitted the fraudulent proof of debt is to defraud creditors to keep the proven, asset, founded by unlawful forfeiture, which was to be realised as a dividend distribution for creditors pursuant to rule 14.25(5) of the IR 2016, beyond reach of creditors. Jones did precisely the same. A conspiracy to defraud and conspiracy to pervert the course of justice by criminal racketeers purporting to be lawyers, judges and corrupt public officials in the Insolvency Service embarked upon a protracted and pre-meditated scheme to defraud creditors of whom they owe a fiduciary duty"

48. The eleventh is at page 124, para. 146:

"Page 188 sets out rule 14.25(5), the law applicable to the asset, which was found and proven by Nugee J when on 05/02/2018 he found that no rent or energy supply was owed and that "on the basis of those matters, Middlesbrough demanded money from EW, terminated the lease for non payment and subsequently appeared as a supporting creditor". (See: CSPS; page 3, p11[a] and 11[b])."

The twelfth is at para 149:

"Rule 14.25(5) of the IR 2016 determined that the claim was to be paid in full by D1 to the Company. A substantial cash asset that became due for payment of dividend on 05/02/2018 when Nugee J found that D1 unlawfully forfeited the Lease."

A. Search for the term '**14.25**' is complete with **15 matches**. We now search of the same document for the term '**set off**' of which there are **13 matches** / 28 matches in total. The first 3 matches are at para. 40 and 44 of this report.

18. The fourth match is at page 102, para. 42:

> *"There was a wholesale failure by D29 to act according to the law, which determined that irrespective of the fact that the £256,269.89 claim is fraudulent, it was in any event to have been set off against EW's claim set out in the Lupton Fawcett LLP letter referred to at p40 above. It was this maladministration, entwined with that fraud, which paved the way for D1 and their conspirators to further perpetrate their fraud through the court"*

19. The fifth is at page 124, para. 147(b):

> *"66. This right of set-off is clearly extremely important on the facts of this case. As, if and when it is established that MFC owes a balance to the company, this must be paid to the company.*

20. **THE 10-PAGE LETTER TO RAAB DATED 18 FEBRUARY 2022**: The sixth and seventh count is at page 8, para. 21 and 22:

> *"The law in set off is mandatory, it was wilfully evaded to assist D1 and their cohorts"*
> *"the sums due from the one must be set off against the sums due from the other"*

21. There are 5 further counts at page 9, para. 23, 24, 25, 29 and 30:

> *"23. R.14.25(2) provides a mandatory duty of the Court to apply set off.*
>
> *24. There has always been a debt owed to the Company by the purported creditor, D1 but the Court failed to apply the mandatory law in set off, knowing of the claim in favour of EW, because it is part of the protracted conspiracy to defraud that was convened under instruction of your Tory cabal who provide impunity to fellow cronies.*
>
> *25. If the law in set off was applied, then D1 would not have been able to sustain their £4.1 million fraud by false representation that all used in conspiracy to keep the claim, the contingent asset, beyond reach of creditors when it had always been due and payable"*
>
> *the Court assisted the offenders by acting unlawfully, failing to apply the mandatory law in set off so pave way for the further serious fraud and cover up to ensue.*
>
> *30. Not only did it fail to apply the law in set off, but it proceeded to assist the offenders in sustaining a knowingly false, c£4.1 million fraud by false representation contrary to the mandatory obligation conferred in R.14.11 of the IR 2016 of the Court to remove it.*

B. We noted that the skeleton argument (DOC-E) at pages 98 – 109 referred to 'criminal offences' and offences under the Insolvency Act 1986. We therefore performed a search of the evidence using the term 'offence' of which there are 107 matches and 'offences' of which there are 96 matches.

C. There are just 8 matches for the term 'offence" and 6 matches for "offences" in the purported determinations at (6) and none of those matches purport to determine any of the pleadings and evidence proving those offences.

D. CONCLUSION

A CRIMINAL COVER UP BY THE POLITICAL KLEPTOCRACY AND FAKE ACTORS PURPORTING TO BE JUDGES WHO THEY CONSPIRED WITH TO PERVERT THE COURSE OF PUBLIC JUSTICE

Left: Alex Chalk KC MP of 6KBW Chambers who was then Solicitor General now Lord Chancellor. **Next left:** (Lady Justice) Geraldine Andrews. **Middle:** (Mr Justice John Cavanagh)**. Right middle:** Puppet, William Hays, counsel of 6KBW Chambers who was deployed at public expense by Chalk to participate in this criminal conspiracy. **Next left:** The Treasury Solicitor, Susanna McGibbon who instructed Hays. **Far left:** Treasury Devil's Puppet, Government Legal Department puppet solicitor, Anna Maria Rehbinder of Finland (authorities notified).

Fraudulent concealment by traitors and criminal offenders of judicial, ministerial & public office

1. The preliminary issue in Millinder's case is extremely simple, no money was ever owed to MFC prior to them making an unwarranted demand for payment after refusing the connection, rendering the project useless. Without a connection, the turbine cannot be 'constructed, connected to the grid and operated'. The contractual purpose of the option to lease agreement was to 'construct, connect to the grid and operate' the turbine.

2. The offenders: **Geraldine Mary Andrews** (No. 13) and **John Patrick Cavanagh**, (No. 17) along their co-conspirators; **Alexander John Gervase Chalk** (No. 22) **William Stomont Hays** (No. 23) (both of 6KBW Chambers), **Susanna McGibbon** (No. 24) and **Anna Maria Rehbinder** (No. 25) (instructing solicitors) of the Government Legal Department were all under official duties to have read and digested the contents of Millinder's skeleton argument dated 22 January 2022, as they were all the evidence it referred to.

3. The skeleton argument of 12-pages in A3 size at DOC-E distinctly pleaded and proved the fraudulent breach of duty by the Official Receiver of London and the delinquent purported judges involved, by dishonestly depriving Millinder of the statutory set off rights conferred in rule 14.25 of the Insolvency Rules 2016.

4. We exhibit below a screenshot of page 2 of that skeleton (page 99 of 163):

The preliminary consideration / core issues:

14. Aside from the obvious, referred to above, there are two underlying frauds which were aided and abetted: (a) & (b) below:

a. The c£4.1 million fraud by false representation claim deployed to defraud A of his democratic rights as requisite majority creditor of EW to keep the proven asset, the multi-million damages claim, beyond reach of creditors and to prevent justice being served on the offenders:

1) On 09/01/2017 after admitting that the claims could not be established because "Force Majeure has effect", Staunton (D4), D1, D2 and D3's counsel, stated this;

"Para 110 of the ske. The assertion that Rs did something wrong in respect of the wind turbine project is one that may provide a foundation for a claim by Empowering, not A. The para ends with an assertion that "the Defendant" cannot bring any claim against "the Applicant"; this is not understood. Rs do not bring any claim against A, or Empowering or Earth Energy, save that Rs claim £25,000 from Earth Energy under the consent order of 16 January 2017". [See: DOC-1: page 24, p213(a)]

b. The £25,000 fraudulent liability used to originate a winding up petition to defraud A of the £770,000 assigned investments;

1) On 05/02/2018 D4 admitted that *"what's assigned are the investments"*. On 28/03/2018 D4 and his conspirators wound EEI up for the £25,000 to defeat EEI's application of 01/03/2018 to set aside the fraudulent liability and on 11/04/2018, D4 admitted this:

"MR STAUNTON: --and paras.17 to 24. So there's a cross claim which extinguishes the liability to pay £25,000". [See: DOC-1: page 24, p213(a)]

15. 671-days (1-year 10-months and 2-days) after D4 admitted on 09/01/2017 that no claims could be established because *"Force Majeure has effect"*, D4 retracts the claims but only after using the £4.1 million claim to defraud A and fellow creditors whilst making a gain for his conspirators of c£45,000 in legal fees originating from that fraud, originating from the blackmail of 25/06/2015.

5. Page 2 of the skeleton, in highlight, cited the admissions by Ulick Staunton, counsel for MFC in court on 12 November 2018 when he retracted the claims he brought against EW stating "*R's don't bring any claim*' when he was the one who claimed to prove £256,269.89 on 15 August 2016 (their blackmail), then £541,308.89 on 20 December 2016, then £4,111,874.75 on 2 February 2017.
6. Those are all fraudulent claims arising from blackmail which law, rule 14.25 of the Insolvency Rules 2016, intended be set off entirely, but naturally they had nothing to set off, they had no claim and Staunton admitted that himself on 9 January 2017.

7. Naturally therefore, one can conclude that they did know the claims that they were making were false. Again, this is not rocket science, anyone can conclude that one cannot grant a contract to someone to '*construct, connect to the grid and operate*' a turbine, and then refuse the connection, and invoice for rent and energy supply under those contracts.

8. Likewise, anyone can conclude therefore, that the opinion of any ordinary informed lay observer that representing that anything in Millinder's case was 'finally determined' was absolutely dishonest to the highest degree. False representations were made, not only to defraud, but to prevent justice being served on themselves and their conspirators.

9. Common sense, law, equality and justice figures not, not with this lot. In October 2022, Sunak, head of the Tory crime family promised the people and Parliament there would be ***'accountability at every level of government***'. Where is that exactly?

Lies about the assignment of the investment made in EW to EEI which proved the EEI claim against MFC

10. Page 3 of the skeleton (page 100 of 163) distinctly pleads and proves that the absolute assignment of the investment made in EW to EEI is committed by law as being '*effectual*' from 30 June 2015 when notice of the assignment was served on MFC. Ever since, there has been an indefensible claim vested in EEI exceeding £770,000.

11. The statutory demand of 6 January 2017 was for a liquidated sum of £530,000 being immediately due and payable which the offenders defrauded Millinder of whilst abusing the strict legal duty of full and frank disclosure.

12. This sect of medieval style corruptors keep themselves and their cohorts above the law, anyone that challenges their fraudulent abuse is penalised.

13. We refer to: **OP-BLACKJACK-PART-1**, page 21; DETERMINATION 1 & 2, from the official hearing transcript of 6 November 2020:

> **Fancourt J:** *"**the underlying substantive issues have never in fact been tried**"*
>
> **Fancourt J:** *"Well, it seems to me the position is that the, **the validity of the assignment by EW MFC to EE was never actually decided** by a judge"*

14. It was determined on 6 November 2020 by Fancourt (No. 10) that the issues at the heart of the case were never determined.

Concealment of indictable only criminal offences and fundamental dishonesty distinctly pleaded and proven at pages 3 – 12 (page 109 of 163)

15. The offenders referred to at page 5, section D above, acted in conspiracy to pervert the course of public justice to prevent justice being served Steve Gibson OBE, the Tory Teesside Tory politician and his sect of colluding lawyers of common purpose.

16. Page 102 of 163, para. 47 refers to the indictable offence of rule 1.56 of the Insolvency Rules 2016. The statutory criminal offence is:

> ***Offence in relation to inspection of documents***
>
> *1.56.—(1) It is an offence for a person **who does not have a right under these Rules to inspect a relevant document falsely to claim to be a creditor**, a member of a company or a contributory of a company with the intention of gaining sight of the document.*
>
> *(2) A relevant document is one which is on the court file, the bankruptcy file or **held by the office-holder** or any other person and which a creditor, a member of a company or a contributory of a company has the right to inspect under these Rules.*
>
> *(3) A person guilty of an offence under this rule is liable to imprisonment or a fine, or both.*

17. MFC and their conspirators at Womble Bond Dickinson (UK) LLP, are proven beyond reasonable doubt to have committed this offence, amongst the many others proven in that skeleton and the evidence referred to. They committed the offence on 3 counts, in conspiracy.

18. At all times since and prior to 30 April 2015 when MFC refused the connection, they knew that EW has a claim for many millions which substantially exceeds any claim they could have brought against EW, but contractually, they knew they never had a claim anyway, any ordinary informed lay observer in their shoes would have done. The offenders purport to be lawyers.

19. Naturally they knew they could rely on the 21-corrupt judges, those offenders referred to at page 5, para. 2 above, and the delinquent police forces to cover up, making them above both civil and criminal law. They all did precisely that.

20. In their duty as Millinder's opposing litigants, the offenders were under a legal duty to have read that document and the evidence referred to. It is proven beyond doubt therefore that they knew that MFC's counsel admitted that the assigned investment, in his own words "***extinguished the liability to pay £25,000***" and that they "***don't bring any claims against Empowering***", therefore they knew that none of the issues in that skeleton were ever once touched on, let alone finally determined.

21. On the contrary, it has been the offenders in office as Attorney General and Solicitor General who have been coercing the judiciary to conceal fraud and criminal offending throughout the course of public justice.

22. It started with Robert James Buckland KC MP, when he was Solicitor General. Buckland, a Zionist Royal Arch freemason, is a close personal associate of Jeremy Robin Bloom, the former senior partner of Womble Bond Dickinson in Newcastle and general legal counsel of MFC, the main instigator of the blackmail and fraud, of the same sect. Where could the corruption be originating from, we wonder?

23. MFC knew they could rely on these terrorists to mentally torture Millinder in the name of law and justice, whilst dishonestly depriving him of both to assist them. Likewise, Chalk and co knew that the Court would refuse to issue proven claims against themselves.

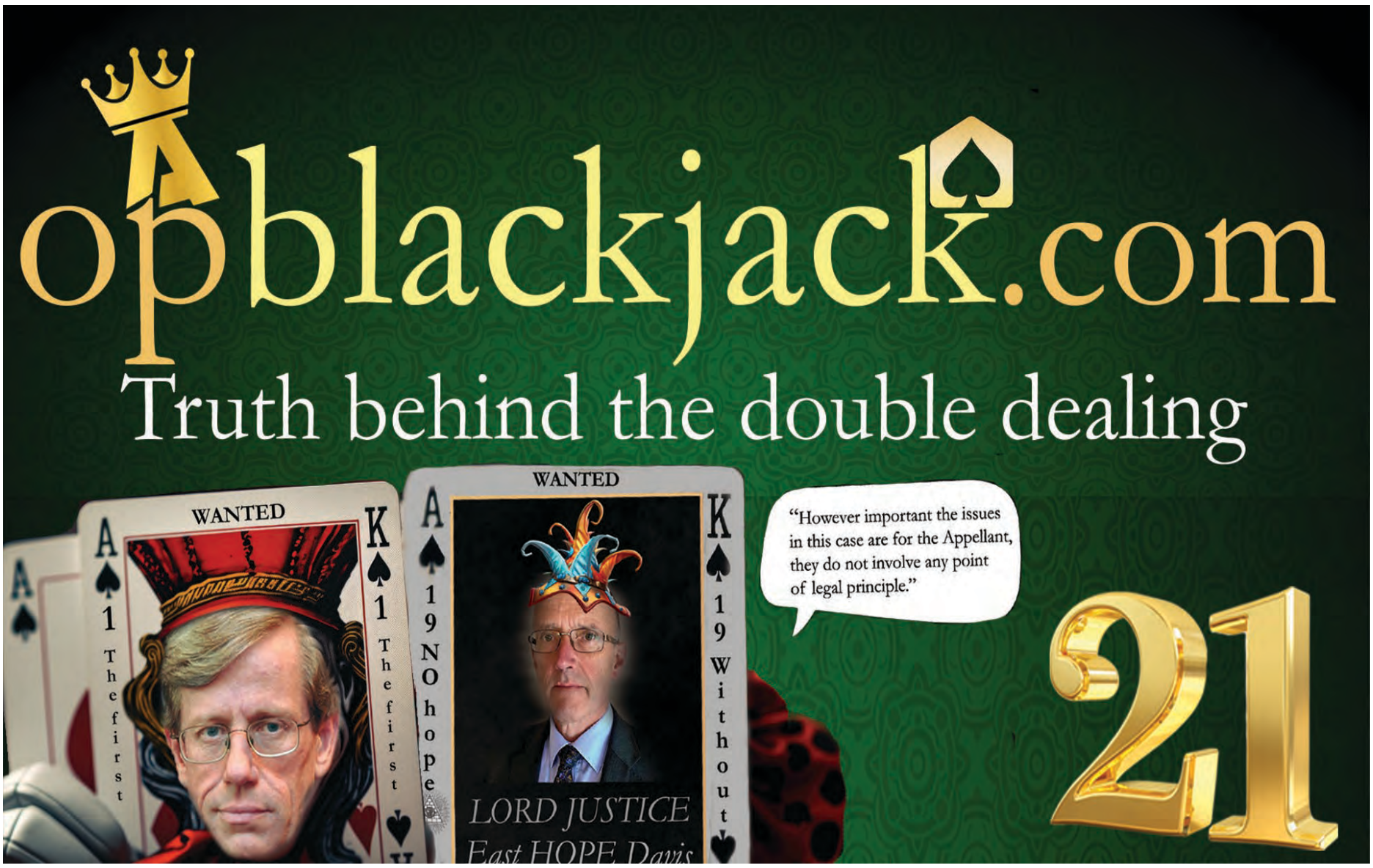
24. Page 95 of 163, para. 93 – 104 deals with the fact that now (HHJ) Michael Leonard Fanning (No. 8), then District Judge Fanning of Huddersfield / Kirklees Magistrates Court in West Yorkshire, was installed by Buckland, who transferred Millinder's private criminal prosecution filed in York, North Yorkshire out of circuit, for disposal before Fanning.

25. Our report: **Insolvency Offences** reveals all. Concealing criminal offences of any type during a course of justice, is perverting.

26. Those in office at the Attorney General's Office relied on the outside jurisdiction orders created by Fanning, who they colluded with to conceal the offending, as the means of originating the false instrument '*all proceedings order*' under Section 42 of the Senior Courts Act 1981.

27. Millinder was permanently deprived of justice whilst those purporting to administer it perverted it, when they all knew, or ought to have known, they never had jurisdiction to do it.

    We have invited the offenders and their associates to comment on this report, which has been duly served on them, by way of formal witness statements with any defence / mitigating circumstances, by **4PM on Friday 5th January 2024 at the longstop**.



"I can say at once that I have been through all the papers in this case in meticulous detail, and **I have seen no evidence of any kind for any of the allegations of fraud, conspiracy or misdealing** that Mr Millinder has made"

Lies: by Sir Geoffrey Vos, then Chancellor of the High Court, now Master of the Rolls, head of civil justice for England & Wales

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Case No: A3/2007/1926

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CHANCERY DIVISION
MS S ASPLIN QC (SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)
HC 05C00244

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3rd December 2008

Before:

THE RT HON. LORD JUSTICE WARD
THE RT HON. LORD JUSTICE MOORE-BICK
and
THE RT HON. LORD JUSTICE RIMER

- -

Between :

(1) Sprecher Grier Halberstam LLP — Appellant
(2) Edward Judge

- and -

Martin Walsh — Respondent

- -
- -

Mr Jonathan Phillips (instructed by Barlow Lyde & Gilbert) for the appellants
Mr Peter Irvin (instructed by Needleman Treon) for the respondent

Hearing date: 17th June 2008

- -

DRAFT JUDGMENT

If this draft Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

Lord Justice Ward:

Introduction

1. This is an appeal from the order of Miss Sarah Asplin Q.C. sitting as a deputy judge of the High Court made on 26th July 2007 whereby she dismissed the application made by the second and third defendants, Sprecher Grier Halberstam LLP ("SGH") and Mr Edward Judge, to strike out the claim of Mr Martin Walsh on the grounds that:

> "(1) the particulars of claim and the further information served under it fail to disclose any proper case of deceit or conspiracy or of any reliance; and/or
>
> (2) upon the evidence, the claim stands no real prospect of success; and/or
>
> (3) the claim, or alternatively paragraphs [4] and [5] of the particulars of claim are contrary to public policy and/or infringe the privilege attaching to the evidence of witnesses."

The litigation between these parties

2. The story begins with a claim brought in April 2002 by Mr Paul Staines against Mr Walsh and a Mr Howard. SGH acted for him. Mr Judge, a partner in the firm, had conduct of the case on his behalf. Richards Butler acted for Mr Walsh at that time. The dispute arose out of a course of trading between the parties in equity derivatives through an offshore company Mondial Global Investors Ltd incorporated in the Bahamas. The arrangement was for sharing profit and expenses. When the relationship between the parties broke down, Mr Staines alleged he was owed $250,000. Liability was furiously disputed. Though we have been spared the detail, it does seem to have been the most acrimonious litigation, hard fought at every turn of a number of interlocutory

skirmishes. No holds were barred; no punches were pulled. The level of animosity between the parties was, and remains, very high.

3. Our concern centres on the opening salvo of that battle – the application made without notice on 23rd April 2002 for a freezing order to restrain Mr Walsh dealing with assets up to a limit of £180,000. It was granted by my Lord, then Rimer J., and, notice of the application having been given, it was continued on 1st May 2002. At the heart of the case before us is the contention of Mr Walsh that Mr Staines knowingly misrepresented his financial position in the affidavit he swore on 23rd April 2002 to support his application for that injunction and that he did not have the means to meet any damages that might be awarded against him under the undertaking in damages he had to give; that his solicitors later wrote to Richards Butler about his finances in terms which they knew were untrue; and that they all deceitfully failed to reveal the true position.

4. On 28th November 2002 Mr Walsh applied to set the freezing order aside on the ground of a failure to make full and frank disclosure and on 2nd December he applied to strike out the claim for want of jurisdiction. On 14th March 2003 Goldring J. dismissed the latter application but adjourned the former. Because he was being prevented – wrongly he would say – from dealing with properties because of the freezing order, Mr Walsh eventually on 14th May 2003 paid £180,000 into court.

5. Mr Staines's riposte was to apply to increase the amount of the freezing order to £370,000 on the basis of further sums alleged to have been found to be owing. That application was heard and dismissed by Laddie J. on 10th June

2003. He described the evidence put forward by Mr Walsh in support of that application as "grossly misleading". He also observed that:

> "[36] … so long as the freezing order is in force, it appears to me that there is a continuing obligation on a claimant, not only to be willing to honour the cross-undertaking in damages, but draw at least the defendant's attention to any material change for the worse in his financial position."

He was of the view that, in view of the payment into court and the declaration by Mr Walsh that he did not intend to withdraw that money, the result was that the existing freezing order had expired by virtue of the payment in of that amount.

6. Those proceedings ended almost immediately thereafter on 30th June 2003 when they were discontinued by Mr Staines. In October he was made bankrupt.

7. On 7th February 2005 Mr Walsh issued the claim against Mr Staines, SGH and Mr Judge with which we are now concerned. The claim form gives these "brief details of claim":

> "(1) The recovery of costs against the second and third defendant who were instructed by, and at all material times acted as solicitors on behalf of the first defendant for an action previously commenced by the first defendant against the claimant.
>
> (2) An action for damages for fraudulent deceit and conspiracy arising from representations made by the [second] and [third] defendants on behalf of the [first] defendant in the course of those proceedings."

The claim for wasted costs stands adjourned: we are only concerned with the action for fraudulent deceit and conspiracy.

The first issue: does the claim disclose a proper case of deceit or conspiracy?

8. There is no dispute that the claim in conspiracy is limited to a conspiracy to deceive. The conspiracy is pleaded perfectly properly:

> "19. The proceedings were conducted by the defendants acting in concert, and to the extent that the allegations of deceit set out above are made good the defendants therefore conspired together during the course of the proceedings to commit an unlawful act, namely the tort of deceit."

9. The deceit is based on three representations, the first being the affidavit sworn by Mr Staines to support his application for the freezing injunction, the second in a letter written by Mr Judge on 13th August 2002 and the third by omission arising from the non-disclosure of Mr Staines's true financial position. The challenge is directed first to whether the claimant's pleaded case discloses a proper case of reliance/inducement capable of supporting the claim in deceit, and secondly, to whether there is a proper plea of deceit.

The requirements for a valid claim in deceit

10. Taking it from the 19th edition of *Clerk and Lindsell on Torts* at 18-01:

> "Where a defendant makes a false representation, knowing it to be untrue, or being reckless as to whether it is true, and intends that the claimant should act in reliance on it, then in so far as the latter does so and suffers loss the defendant is liable for that loss."

11. The case is pleaded in this way in the particulars of claim:

> "**Fraudulent deceit**
>
> 4. In support of the First Defendant's application for the freezing order, the Second and Third Defendants put forward on behalf of the First Defendant an affidavit purporting to disclose the First Defendant's financial position to the Court. The affidavit stated that the First Defendant owned a flat ("the flat") which he believed to be worth £750,000 and that he had an outstanding mortgage liability in respect of it of £350,000,

thus leaving him with some £400,000 of assets to support his cross-undertaking in damages ("the First Representation").

5. The First Representation to the knowledge of the Defendants and each of them … was misleading and/or untrue in that:

a. The flat was probably worth no more than £620,000, having been bought by the First Defendant for that sum in or around July 2001. At a conference with counsel for the First Defendant which took place on 19th April 2002 only four days prior to the date of the First Defendant's affidavit and at which the Third Defendant was present, the value of the First Defendant's flat was stated to be £600,000. Moreover, a materially identical flat one floor below the flat of the First Defendant was valued on 21st August 2002 at £607,000 and was subsequently sold in December 2002 for £570,000. There was no apparent support for the alleged belief that the flat was worth £750,000.

b. The First Defendant's affidavit failed to reveal that he had a substantial unsettled tax liability to the Inland Revenue …

6. In or around August 2002 the First Defendant remortgaged the flat, with the consequence that the outstanding mortgage liability on the flat increased to nearly £650,000.

7. In response to repeated enquiries made by the Claimant's solicitors as to the First Defendant's financial circumstances, the First Defendant caused or permitted the Second Defendants to state in a letter dated 13th August 2002 to the Claimant's solicitors that they had received:

"in excess of £230,000 on account with which to pursue firstly the fraud against MGI committed by your clients, and secondly the claim for monies owed to our client (*i.e. the First Defendant*) by Mr Walsh and Mr Howard."

8. The above statement was intended to and did in fact represent, by implication if not expressly, that the Second Defendant held substantial sums for the purpose of the proceedings and that the First Defendant was a man of financial substance who would have the means to satisfy his cross-undertaking in damages if called upon to do so ("the Second Representation").

9. The Second Representation was, to the knowledge of the Defendants and each of them, grossly misleading and materially untrue in that:

a. The First Defendant still had a substantial outstanding tax liability to the Inland Revenue.

b. As set out in paragraph 6 above, the flat, which constituted the First Defendant's only significant asset, had been remortgaged in the amount of nearly £650,000 earlier that month, leaving negligible equity.

c. The funds which had been received by the Second Defendant were largely derived from the remortgage monies obtained by the First Defendant.

d. The funds were not in any event intended by the First Defendant to remain with the Second Defendant for more than a short time. £150,000 of the £230,000 was in fact paid away by the Second Defendants to the order of the First Defendant within only a few days of this letter of 13th August, namely on 20th August 2002.

10. The Defendants, and each of them, failed to disclose to either the claimant or the court the fact that the First Defendant had remortgaged his flat some six months later on 13th August 2003. Further, the Defendants and each of them failed to disclose until June 2003 that the sums which the Defendant referred to in the letter of 13th August [2002] had been derived largely from the remortgaging of the flat, that a significant proportion of those funds had then been paid away and that there was little or no money left in the client account of the Second Defendant.

11. The failure to reveal the true position regarding the First Defendant's current or changed circumstances arising from the remortgage of the flat or subsequent payment out of the remortgage funds constituted a breach by each and all of the defendants of their continuing obligation (referred to in paragraph 36 of Mr Justice Laddie's judgment) to reveal to the claimant and the court any significant change in circumstances which had a crucial bearing on the First Defendant's ability to comply with his cross-undertaking in damages.

12. In failing to disclose the matter set out above, the Defendants and each of them impliedly, but nevertheless deliberately and continuously represented to the Claimant and to his advisers (as well as the court) that there had been no material change in the First Defendant's financial position from that which it [had] been alleged to be in April 2002 ("the Third Representation").

13. The Third Representation was to the knowledge of the Defendants and each of them, false for the reasons aforesaid.

> 14. The First, Second and Third Representations ("the Representations") and each of them were made with the intent that the claimant would be induced to alter his position by resigning himself to the existence of a freezing order and not to apply to have the freezing order set aside and/or by relying on the expectation that any damage suffered as a consequence of the freezing order would be met by the First Defendant's undertaking in damages.
>
> 14.2 The Claimant was in fact induced to alter his position in reliance on the Representations and each of them, in that he did not make an application to set aside the freezing order until 28th November [2002]. Had the Claimant known that the Representations were false, and in particular that the First Defendant was not in a position to pay the substantial damages caused to the claimant by the freezing order, the application to set the freezing order aside would have been made and/or heard at a much earlier stage. Further, had the freezing order been set aside, the Claimant would have discontinued the proceedings with the consequence that the First Defendant would not have incurred costs arising from numerous interlocutory hearings in the proceedings, including a hotly contested challenge to jurisdiction."

It is unnecessary for present purposes to recite more from the further information given of the particulars of claim than to record that particulars of the material matters known to SGH and Mr Judge were given to support the allegation that each of them knew of the falsity.

12. The deputy judge held:

> "[18] … it cannot be said that it is sufficiently clear that the pleading does not contain the requisite allegations, including that of deceit by implication, knowledge of falsity by Mr Judge and SGH, inducement and reliance to warrant a strike out."

13. In my judgment, she was quite right to refuse to strike out the claim on this ground. In my view the pleading is plain and it is adequate in respect of each representation. It is alleged that to the knowledge of the defendants and each of them the representations were false. The further information expanded the case against SGH and Mr Judge that facts were incorrectly stated as they well

knew. That is a perfectly proper way to plead the necessary allegation of the guilty state of mind of the defendants. They know exactly what case of deceit they have to meet. The particulars of claim cannot be struck out on this ground.

14. Paragraph 14 pleads that each of the representations was made with the intent that the claimant be induced to alter his position as a result and paragraph 14.2 pleads that the claimant was in fact induced to alter his position in reliance on the representations and each of them. Once again that is a perfectly proper and good pleading sufficient to set up the case of inducement/reliance.

15. It follows that this ground of appeal is hopeless and the claim should not be struck out for not disclosing a proper cause of action.

The second issue: summary judgment: does the claim have no real prospect of success?

16. The prospect of the claimant's succeeding must be real. A fanciful prospect is not enough. "The criterion which the judge has to apply under CPR Pt 24 is not one of probability; it is absence of reality," per Lord Hobhouse of Woodborough at paragraph 158 in *Three Rivers D.C. v Bank of England (No. 3)* [2003] 2 A.C. 1, 282. Without conducting a mini-trial, the task of the court is to deal with the case justly and give judgment against the claimant only if there is no real prospect of success. The more complex the case, the more difficult it is to deal with it justly without discovery and without oral evidence. But if the court is satisfied that it is doomed, then summary judgment may be entered.

17. Here the challenge is focused on whether or not the claimant was induced by the misrepresentations. They must have operated on his mind so as to be a cause, not necessarily the only cause, of his acting to his detriment. The law is stated by Sir George Jessel M.R. in *Redgrave v Hurd* (1881) 20 Ch. D. 1, 21:

> "If it is a material representation calculated to induce him to enter into the contract, it is an inference of law that he was induced by the representation to enter into it, and in order to take away his title to be relieved from the contract on the grounds that the representation was untrue, it must be shown either that he had knowledge of the facts contrary to the representation, or that he stated in terms, or showed clearly by his conduct, that he did not rely on the representation."

A man cannot be deceived if he knows the truth.

18. It is necessary to explore in a little more detail how the case is put. The second and third defendants sought further information of the statement of claim, pressing in respect of each misrepresentation for "the facts known or believed or suspected by the claimant", for example under paragraph 7 of the particulars of claim of the repeated enquiries made by the claimant's solicitors as to the first defendant's financial circumstances. In that instance the claimant replied:

> "The claimant was aware that a) the First Defendant was averse to paying taxes; b) the First Defendant had boasted to the Claimant that he had not paid tax on certain sums; and c) the valuation of the flat advanced by the First Defendant in his affidavit in support of the freezing injunction appeared to the claimant to be very high. These matters caused the Claimant to be concerned that the First Defendant may not be able to honour his undertaking in damages. … … the Claimant had no means of knowing or proving the extent to which such assurances [that the First Defendant had sufficient unencumbered assets to honour his cross-undertaking in damages] were misleading and/or false."

As for the claimant's paragraph 14.2, the defendants asked:

> "14. Is it alleged that it was at any time the belief of the claimant that the first defendant would be able to meet such a liability [to pay damages for breach of his undertaking]?"

The answer was:

> "14. In the light of the First, Second and Third Representations, and further in the light of the Second and Third defendants' persistent assurances on behalf of the First Defendant as set out above that the First Defendant had sufficient unencumbered assets to honour his cross-undertaking in damages, the Claimant had no means of knowing or proving the extent to which such assurances as to the First Defendant's ability to meet such liability were misleading and/or false."

19. The formula of having "no means of knowing or proving … were misleading or false" was repeated in the reply and, responding to the allegation in the defence that the claimant's belief that Mr Staines' lack of means to satisfy any order for damages was demonstrated by a series of communications made by him immediately he received notice of the freezing order, the claimant pleaded in the reply that:

> "21. … It is admitted that by the e-mails pleaded in that paragraph, the claimant expressed his suspicion as to the true financial circumstances of the First Defendant. However, in the light of the responses of the Second and Third Defendants to the claimant's queries, the claimant had no way of knowing or proving with any certainty the extent to which the First Defendant lacked the means to satisfy any order for damages made pursuant to his undertaking."

20. What then was the evidence before the deputy judge on this issue? This is how the claimant set out his case on his state of knowledge and reliance upon the alleged misrepresentation. He said in paragraph 4 of his witness statement:

> "… although I and my then solicitors had our doubts about Mr Staines' ability to honour his cross-undertaking in damages, the misleading information we were given, as well as the information that was deliberately withheld from us, left us in

> the position where we had no way of knowing or proving with any certainty the extent to which Mr Staines lacked the means to satisfy an order for damages made pursuant to his cross-undertaking. We were therefore not in a position to take effective action to discharge the freezing order."

21. There are other passages to like effect. For example:

> "6. … I felt obliged to take the documentation drafted by SGH at face value, and, despite some misgivings, I reluctantly proceeded on the basis of the information they were putting forward and allowed the freezing order to remain in place. I would obviously not otherwise have done so. …
>
> 8. … I continued, through my solicitors, to press the defendants for proper disclosure in order to be absolutely sure, but nevertheless felt unable to act on my suspicions regarding Staines' true financial position and his actual ability to pay costs and damages in due course. …
>
> 10. … I therefore reluctantly accepted the mortgage figure given to me. …
>
> 12. … Nevertheless, because of the impression I had by then [3rd August 2002] gained that Mr Staines was a rather devious character, I had my doubts as to whether the mortgage figure and the picture presented of Mr Staines' financial ability to support his cross-undertaking were correct.
>
> …
>
> 55. … I certainly had my doubts. [Dealing with the emails he sent] I was trying to use a bit of bluff to draw Staines and his solicitors out. ….
>
> 68. The questions of the precise state of knowledge of the defendants and the extent to which I relied upon the misrepresentations I allege are complex and will require the sifting of a substantial amount of contested evidence. I do not see how the court can be in a position to decide these questions of the basis of conflicting witness statements in the course of a mini-trial. …"

22. The evidence against him was mainly set out in the affidavit of Mr Cathie, the solicitor having conduct of the matter on behalf of SGH and Mr Judge. He exhibited a copy of the affidavit Mr Staines had sworn on 23rd April 2002 to

support his application for the freezing order. That contains these, the relevant paragraphs:

> "**Undertaking as to damages**
>
> 28. I accept that I shall have to give an undertaking as to damages and in respect of various other matters. I am now based permanently in this country. I am in the process of establishing my own trading firm. I own a flat at D 42 Parliament View, 1 Albert Embankment, London SE1 7XQ. At page 31 of the exhibit is a copy of the purchase particulars.
>
> 29. I believe the property now to be worth about £750,000 and the mortgage outstanding is £350,000."

This gives rise to the first representation.

23. According to the evidence filed, the claimant's immediate reaction to the receipt of the freezing order was to telephone Mr Staines and say to him – omitting the expletives – "I'm going to grass you to the tax man, it's war …".

On 28th April 2002 the claimant e-mailed Mr Judge saying:

> "I would make sure you have plenty of money on a/c as with the state of Mr Staines' affairs you may not get paid in the end."

24. On 29th April he e-mailed Mr Judge to say:

> "I hope you have taken my advice and got some money from your client you "kosher bastard". Get your money quick from the losing side as I will be coming after him for some money as well and it would not be good for your firm if we were both creditors *in his pending bankruptcy*."

(I have edited this and other e-mails to correct the obvious typographical errors. I have italicised the passage which most clearly demonstrates his true state of mind, and will also do so in the subsequent citations.)

25. On 30th April Mr Staines e-mailed Mr Walsh to say:

> "Have just had two hour meeting with my accountant. Finalising my proposal to the Revenue regarding my tax affairs, I have made a full and complete return … I am going to have to pay a substantial amount because I was negligent in making returns 98-99."

On the same day Mr Walsh forwarded that message to Mr Judge and added:

> Eddie did you take my advice re: your fees? Your call, however, as from this e-mail your client is soon to pay a big fine or go to jail. Best you advise him due to the fact that *his affidavit of 23/4 has now some major holes in it* and he will soon have a criminal record directly related to this case, best you drop your client drops [sic] the case and to use a phrase from an e-mail from Mr Staines you use your "kosher bastard" skills on somebody else."

26. On 10th May 2002 Richards Butler wrote on the claimant's behalf:

> "… our clients intend to contest the jurisdiction of the court and have reserved their position in relation to the propriety of the freezing order.
>
> One point in particular which does concern our clients is the information given by your client in relation to his undertaking in damages. Your client has testified to his interest in a flat of which his equity is said to be about £400,000. Our client's understanding, *based on what your client has said directly to Mr Walsh, is that your client has not accounted to the Inland Revenue for any tax payable on very substantial sums* which have been earned as a result of the trading activities referred to in his affidavit. *That would mean a very considerable debt is owed to the Revenue.* There may be substantial penalties applicable too. *Our clients are very concerned that your clients worth may not therefore be accurately represented in his affidavit."*

27. On 19th June 2002 the claimant e-mailed Mr Staines saying:

> "… furthermore *you have deliberately misled the court re your assets* and you have not replied to my lawyers on this matter."

28. Mr Walsh then swore an affidavit in the first proceedings on 28th June 2002 in which he said:

> "18. … To this day, the claimant has not provided details of his indebtedness [in respect of tax]. This is of great concern to me because *it is my view that the claimant has misrepresented his true worth to this court in the context of his ex parte application.*"

29. On 26th July 2002 Mr Walsh emailed Mr Judge in a communication which goes some way to explain the proceedings before us. It reads:

> "… As you are well aware tax evasion is a criminal offence and while previously you could hide behind "I was going on client's instructions" now you cannot. You are duty bound in your professional capacity to "know your client"! *Make no mistake this person is now insolvent and will be going bankrupt*, in which case he will not be able to pay my costs. What I have been trying to do for some time is break the doctor's club which operates in your profession and somehow put you in a position when he goes bankrupt to have a claim against your company insurance policy. RB have some very good ideas along these lines. All this being said suggest you get plenty of fees on a/c as I suspect he has little or no personal funds as otherwise why would he write to John Connell and sign himself off as an attorney. Number one rule in your srummy [sic] profession is get the fees on a/c. A very angry rich Irishman."

30. Richards Butler continued to press for further information writing on 9th August 2002 that:

> "If your client persists in withholding full and frank details we will simply have to put the matter to the judge."

The response dated 13th August 2002 founds the second representation. SGH wrote:

> "We refer to the recent correspondence from you and your client in relation to the concerns you have in relation to our client's undertaking as to damages. We confirm that we have taken our client's instructions on the same and in order to allay your client's fears we have been authorised by Mondial Global Investors Ltd's board of directors to confirm the following. We have to date received in excess of £230,000 on account with which to pursue firstly the fraud against MGI committed by your clients, and secondly the claim for monies owed to our clients by Mr Walsh and Mr Howard."

The reply is significant. Richards Butler responded on 14th August:

> "Second, the fact that unnamed person(s) have given you authority to state that you have received money on account (from persons undisclosed) to pursue various alleged claims is of *no comfort whatsoever* to our client in relation to Mr Staines' undertaking in damages. On the contrary *it gives no information whatsoever as to his financial status or his ability to meet his undertaking* and *reinforces our clients' view that Mr Staines' true financial worth has been misrepresented to the court."*

31. On 28th November 2002 Richards Butler applied to discharge the freezing order on various bases including the alleged breach of the obligation to make full and frank disclosure. Mr Melvin, the claimant's solicitor, filed a witness statement to support that application in which he said of the affidavit of Mr Staines sworn on 23rd April 2002:

> "27. My client was, and remains, extremely concerned that this statement does not accurately represent the claimant's worth.
>
> 28. Firstly, the claimant appears to have substantial liabilities which he has not revealed to the court. [Mr Walsh's] understanding based on statements made directly to him by the claimant was that the claimant had not accounted to the Inland Revenue for any tax payable on the very substantial sums which he has earned as a result of the training activities referred to in the claimant's affidavit. Indeed [Mr Walsh] informs me that during a telephone conversation with the claimant *on 25th April*, the claimant stated that he had paid no tax for five years, so that there was *a very considerable debt owing to the Inland Revenue* regardless of any further penalties that might have been incurred."

32. In his fourth witness statement of 24th February 2003 Mr Walsh dealt with Mr Staines's financial position and said:

> "117. By his own admittance, the claimant was aware that he had to give an appropriate undertaking to the court to meeting any damages which the court might order. *I have **always** regarded that undertaking as wholly inadequate* and following his witness statement response to the issue raised in Robert Melvin's statement, summarised in the replies at paragraph 54

> of his witness statement, my concerns have increased." (The added emphasis is supplied by me.)

33. Finally there is the evidence of Mr Kirkpatrick, the claimant's former solicitor, who said in a witness statement dated 25th January 2007 he said:

> "In the face of the representations which have been made about Mr Staines's assets, and although Mr Walsh still had lingering doubts about Mr Staines's ability to satisfy the cross-undertaking, there appeared little real prospect of being able to set aside the freezing order on the basis of the inadequacy of the cross-undertaking or non-disclosure. Mr Walsh was therefore obliged to resign himself to the existence of the freezing order and concentrate on the question of jurisdiction."

34. In a second witness statement dated 2nd February 2007 Mr Kirkpatrick answered a question directed to him by SPG and Mr Judge who enquired whether the letter of 13th August 2002 (the second representation) "caused Mr Walsh to hold such a positive belief [that Mr Staines was "a man of substance who would have the means to satisfy his cross-undertaking in damages"]". Mr Fitzpatrick said:

> "4. … Obviously only he [Mr Walsh] can say what his actual belief was. I can say from my discussions with Mr Walsh at the time, that notwithstanding the SGH letter, and the apparent existence of a flat with £400,000 equity, he still remains sceptical and suspicious about Mr Staines and his financial position but nevertheless derived reassurance from the fact that SGH apparently held £230,000 in their client account and that this money was going to remain in the client account for the alleged purpose of the proceedings."

Discussion

35. The deputy judge concluded:

> "28. Overall, despite the colourful language in the e-mails sent by Mr Walsh, the only explanation for which is that he was trying to call Mr Judge and SGH's bluff, or that the assertions were posturing, the reference in Mr Walsh's witness statement to his reluctance to believe the financial statements and his

> doubts and suspicions, I am not able to conclude that there is no prospect of showing that Mr Walsh was deceived by the financial information provided by Mr Staines, or that it contributed substantially to deceiving him. Mr Walsh asserts in his witness statement that albeit reluctantly, he took the statements at face value. When this is taken together with Mr Kirkpatrick's assertions in his witness statement as to his understanding of the letter of 13th August 2002, it would be wrong to grant summary judgment on the basis of lack of reliance."

36. In my view this court is able to take a more robust view. The gravamen of the claimant's case is that he was deceived into believing that Mr Staines was in a financial position to meet his undertaking in damages. The startling feature of the claimant's case is that despite numerous requests for further information which explicitly sought to clarify his belief in what he was being told, nowhere does he say he believed what he was being told. The silence is deafening. On the other hand his immediate response to the freezing order was emphatic incredulity. As far as Mr Walsh was concerned, Mr Staines had lied about his financial position. He had a substantial tax liability and was insolvent. He never wavered in that belief. He knew from the beginning of the litigation that the truth had not been told. The passages I have emphasised in the preceding paragraphs make that clear beyond peradventure. That the court was deceived is not to the point. The court made the freezing order on the basis of the affidavit but Mr Walsh knew that full and frank disclosure of his true financial position – assets *and liabilities* – had not been given. Had the failure to reveal the full extent of Mr Staines' tax liabilities been raised, and Mr Walsh had ample evidence of it from the telephone conversation on 25th April (see [30] above) and the e-mail of 30th April (see [25] above), then the probability is that the injunction would not have been continued on the return date on 2nd May. He stands condemned by his own words. The stark

fact remains that Mr Walsh "always" knew that Mr Staines had not been frank in a material respect, was suspicious about everything he said and in those circumstances he cannot in my judgment have any realistic prospect of persuading the court that he relied evenly partly upon these lies, prevarications and omissions to tell the whole truth. The action is, in my judgment, bound to fail and I would allow the appeal accordingly.

37. The deputy judge also held that there was no other compelling reason why this matter should go to trial. In his respondent's notice relying on *Mills v Bull* [1969] 1 Ch 258 Mr Irvin contends on Mr Walsh's behalf that the serious question of professional conduct or, more accurately, misconduct, itself constitutes a compelling reason requiring the matter to be disposed of at a trial after a full investigation of the alleged impropriety. I agree with the judge that these conduct issues can be dealt with in the wasted costs proceedings and that they do not render necessary a trial of a case of deceit which is otherwise destined to fail.

The third issue: does the claim infringe the privilege attaching to the evidence of witnesses?

38. The issue as joined on the pleading begins with the plea in the defence that it is denied that any action may be brought against any party (including Mr Staines or SGH or Mr Judge) arising from the contents of the affidavit sworn by Mr Staines, whether in deceit or conspiracy as alleged or otherwise. It is asserted that such action is barred by public policy and the immunity attaching to statements of witnesses in legal proceedings. In his reply, Mr Walsh contends that these principles have no application to evidence given *ex parte*

in support of a cross-undertaking in damages for the purposes of obtaining a freezing injunction.

The law relating to witness immunity

39. The doctrine is well settled. In *Watson v M'Ewan* [1905] A.C. 480, 486, the Earl of Halsbury L.C. said:

> "By complete authority, including the authority of this House, it has been decided that the privilege of a witness, the immunity from responsibility in an action when evidence has been given by him in a court of justice, is too well established now to be shaken. Practically I may say that in my view it is absolutely unarguable – it is settled law and cannot be doubted. The remedy against a witness who has given evidence which is false and injurious to another is to indict him for perjury; but for very obvious reasons, the conduct of legal procedure by courts of justice, with the necessity of compelling witnesses to attend, involves as one of the necessities of the administration of justice the immunity of witnesses from actions being brought against them in respect of evidence they have given. So far the matter, I think, is too plain for argument."

40. A more modern exposition of the rationale for the rule is given by Lord Hutton in *Darker v Chief Constable of the West Midlands Police* [2001] 1 A.C. 435, 464:

> "… in order to shield honest witnesses from the vexation of having to defend actions against them and to rebut an allegation that they were actuated by malice the courts have decided that it is necessary to grant absolute immunity to witnesses in respect of their words in court even though this means that the shield covers the malicious and dishonest witness as well as the honest one."

He added at p. 468:

> "Furthermore, the authorities make it clear … that where the immunity exists it is given to those who deliberately and maliciously make false statements; the immunity is not lost because of the wickedness of the person who claims immunity."

41. In *Marrinan v Vibart* [1963] 1 Q.B. 234, 238 Salmon J. held:

> "It is true that in nearly all the reported cases in which the principles to which I have alluded were laid down, the form of action was for damages for libel or slander, but in my judgment these principles in no way depend upon the form of action. In *Hargreaves v Bretherton* [1959] 1 Q.B. 45, an unsuccessful attempt was made to evade the immunity to which I have referred by suing for damages for perjury. Counsel for the plaintiff attempted to distinguish that case on the ground that an action for damages for perjury is unknown to the law, whereas an action for damages for conspiracy is of respectable lineage. As far as it goes, the distinction is a sound one. It does not, however, affect the point that *Hargreaves v Bretherton* demonstrates that the immunity to which I have referred is not only an immunity to be sued for damages in libel or slander. The immunity, in my judgment, is an immunity from any form of civil action."

There the plaintiff brought an action claiming damages for conspiracy against two police officers alleging they had conspired together to make false statements defamatory of him as a barrister. It was held that the gist of the tort of conspiracy was not the conspiratorial agreement alone, but that agreement plus the overt act of causing damage and the evidence given was an act done in pursuance of the agreement. The claim was accordingly struck out. The Court of Appeal endorsed what Salmon J. had said, Sellers L.J. adding at [1963] 1 Q.B. 528, 535:

> "Whatever form of action is sought to be derived from what was said or done in the course of judicial proceedings must suffer the same fate of being barred by the rule which protects witnesses in their evidence before the court and in the preparation of the evidence which is to be so given."

42. In *Roy v Prior* [1971] A.C. 470, the defendant was a solicitor who took the view that the plaintiff was evading service of a witness summons requiring him to attend to give evidence for the solicitor's client. The solicitor gave evidence in support of the application for the issue of a bench warrant to

compel the plaintiff's attendance. Dr Roy was duly arrested and compelled to give evidence and he then brought an action against the defendant claiming damages for causing his arrest and his being forcibly brought to the court to attest. Lord Morris of Borth-Y-Gest made this important distinction at p. 477:

> "What the plaintiff alleges is that the defendant, acting both maliciously and without reasonable cause, procured and brought about his arrest. The plaintiff is not suing the defendant on or in respect of the evidence which the defendant gave in court. The plaintiff is suing the defendant because he alleges that the defendant procured his arrest by means of judicial process which the defendant instituted both maliciously and without reasonable cause. … The gist of the complaint, where malicious arrest is asserted, is not that some evidence is given (though if evidence is given falsely it may be contended that malice is indicated) but that an arrest has been secured as a result of some malicious proceeding for which there was no reasonable cause."

Mr Peter Irvin, counsel for Mr Walsh, relies on the minority speech of Lord Wilberforce in which he said at p. 480:

> "The reasons why immunity is traditionally (and for this purpose I accept the tradition) conferred upon witnesses in respect of evidence given in court, are in order that they may give their evidence fearlessly and to avoid a multiplicity of actions in which the value or truth of their evidence would be tried over again. Moreover, the trial process contains in itself, in the subjection to cross-examination and confrontation with other evidence, some safeguard against careless, malicious or untruthful evidence.
>
> But none of this applies as regards such evidence as was given in support of the application for a bench warrant. It was given ex parte: Dr Roy had no means, and no other party any interest, in challenging it: so far from the public interest requiring that it be given absolute protection, that interest requires that it should have been given carefully, responsibly and impartially. To deny a person whose liberty has been interfered with any opportunity of showing that it was ill founded and malicious, does not in the least correspond with, and is a far more serious denial than, the traditional denial of the right to attack a witness to an issue which has been tested and passed upon after a trial. Immunities conferred by the law in respect of legal proceedings need always to be checked against a broad view of the public

> interest. So checked, the present case provides no justification for protecting absolutely what the solicitor said in the court."

43. Lord Hutton in *Darker* applied the last dictum saying at p. 468:

> "The predominant requirement of public policy is that those who suffer a wrong should have a right to a remedy, and the case for granting an immunity which restricts that right must be clearly made out. In *Mann v O'Neill* (1997) 71 ALJR 903 the judgment in the High Court of Australia of Brennan CJ, Dawson, Toohey and Gaudron JJ states, at p. 907: "the general rule is that the extension of absolute privilege is 'viewed with the most jealous suspicion, and resisted, unless its necessity is demonstrated'." And in *Roy v Prior* [1971] AC 470, where this House held that a defendant was not entitled to the absolute immunity which he claimed, Lord Wilberforce stated, at p. 480: "Immunities conferred by the law in respect of legal proceedings need always to be checked against a broad view of the public interest.""

44. Our attention was drawn to *Surzur Overseas Ltd v Koros* [1999] 2 Lloyds L.R. 611, where it was alleged that the defendants had conspired together by submitting false evidence supported by forged documents to remove three vessels from the ambit of a freezing injunction granted against them. Waller L.J. held at p.619:

> "The real question is whether this action for conspiracy is against parties or witnesses for the evidence they gave … so as to bring it within the immunity rule. …
>
> What the above [review of the authorities] demonstrates is that it is certainly not every cause of action which includes an averment that false evidence was given will be struck out on the basis of witness immunity. It also seems to me that what the above demonstrates is that it is not permissible to divide allegations up as Mr Schaff sought to do into those that involve giving evidence and those which do not. …
>
> Albeit there may not be a cause of action without a conspiracy for abusing the process of the Court, … abuse of process can very arguably be the unlawful means on which a conspiracy can be founded. Clearly a conspiracy simply to give false evidence falls within the witness immunity rule … Equally however a conspiracy which had its aim and objective of defeating an order of the Court and obtaining the release from a

> *Mareva* of assets by persons who were not, I emphasize, parties to the original action, must be a conspiracy to abuse the process very akin to the malicious arrest which was the subject of *Roy v Prior*. There is no logic in creating an exception for malicious arrest, and not a conspiracy to abuse the process entailing the defeating of something very close to an arrest, a *Mareva* injunction."

Discussion

45. In her judgment the deputy judge reached this conclusion:

> "39. However, although there may be a strong case for the application of immunity, I cannot be certain that the claim will fail on that ground. First, the judgment of Laddie J. in *Staines v Walsh* [2003] EWHC 1486 (Ch), upon which the majority of the claim is based, has injected some uncertainty into the law as to the duties arising in relation to a cross-undertaking given in support of a freezing order. Rather than the duty to make full disclosure being owed solely to the court, Laddie J held:
>
> > 'Certainly, so long as the freezing order is in force, it appears to me that there is a continuing obligation on a claimant not only to be willing to honour the cross-undertaking in damages, but to draw at least the defendant's attention to any material change for the worse in his financial position …'
>
> In the circumstances, therefore, I accept Mr Irvin's submission that there is uncertainty as to the position concerning financial statements in a witness statement in support of a cross-undertaking in damages. It is appropriate that the question of whether a free-standing duty is owed in such circumstances to the defendant as well as the court and the full nature and consequences of that duty be considered at trial.
>
> 40. I also take account of the exceptions to the witness immunity rule considered in cases such as *Surzur v Koros* and *Roy v Prior* referred to above. Although the label "abuse of process" is not used in the particulars of claim, there must be a reasonable prospect that the facts pleaded albeit under the head of deceit will be held to amount to such an abuse. To put the matter another way, although I consider that there is a strong case for the application of principle, I cannot be certain that the claim will fail as a result."

46. I regret that I do not agree. In the first place the case before us is not about a conspiracy to injure by unlawful means such as abusing the process of the

court: it is not the kind of conspiracy envisaged by *Surzur v Koros* as constituting another exception to the immunity rule; nor has any attempt been made to amend the pleading to effect that dramatic reconstitution of the claim. On the contrary, this is a conspiracy to do an unlawful act, namely to deceive. The deceit, certainly in respect of the First Representation, lies in what was said in Mr Staines' affidavit. As Waller L.J. put it, it is "an action for conspiracy against parties or witnesses for the evidence they gave." The affidavit is vital to prove the representations contained within it. It is a discrete claim: there is no question of dividing up the allegations in the way which would have met with Waller L.J.'s disapproval. It seems to me to be beyond argument that Mr Walsh is suing in respect of evidence given to the court by Mr Staines.

47. Secondly, this is not the case to examine whether a free-standing duty is owed by a party, and particularly by his solicitors, not just to the court but to the other side as has been suggested by Laddie J. as set out at [5] above. We are concerned with a well-recognised tort – conspiracy – and, as I see it, this interesting question does not arise for decision by us. I should, however, note that the observations of the learned judge were obiter and were not concerned with witness immunity. He was concerned with the duties owed to the court and the duty to the court may arguably encompass an obligation to conduct a trial fairly and justly by giving certain information to the other side. I say no more about it save to observe that Laddie J.'s views are difficult to reconcile with the judgment of this Court in *Al-Kandari v J.R. Brown and Co* [1988] Q.B. 665 where Lord Donaldson of Lymington M.R. said at p. 672:

> "A solicitor acting for a party who is engaged in "hostile" litigation owes a duty to his client and to the court, but he does not normally owe any duty to his client's opponent: *Business Computers International Ltd v Registrar of Companies* [1987] 3 W.L.R. 1134. This is not to say that, if the solicitor is guilty of professional misconduct and someone other than his client is damnified thereby, that person is without a remedy, for the court exercises a supervisory jurisdiction over solicitors as officers of the court and, in an appropriate case, will order the solicitor to pay compensation: *Myers v Elman* [1940] A.C. 282. …
>
> I would go rather further and say that, in the context of "hostile" litigation, public policy will usually require that a solicitor be protected from a claim in negligence by his client's opponent, since such claims could be used as a basis for endless re-litigation of disputes: *Rondel v Worsley* [1969] 1 A.C. 191."

Bingham L.J. expressed the principle in this way at p. 675:

> "In the ordinary course of adversarial litigation a solicitor does not owe a duty of care to his client's adversary. The theory underlying such litigation is that justice is best done if each party, separately and independently advised, attempts within the limits of the law and propriety and good practice to achieve the best result for himself that he reasonably can without regard to the interests of the other party. The duty of the solicitor, within the same limits, is to assist his client in that endeavour, although the wise solicitor may often advise that the best result will involve an element of compromise or give and take or horse trading. Ordinarily, however, in contested civil litigation a solicitor's proper concern is to do what is best for his client without regard to the interests of his opponent."

In that case the solicitors were held liable in negligence, but that is far removed from the case before us. This is a claim for the tort of conspiracy to deceive. Either the elements of deceit are made out, or they are not.

48. It seems to me plain that no action can lie against Mr Staines for the falsity of the matter stated in his affidavit, no matter how reprehensible his conduct may have been in failing to disclose the truth. I note the warnings of Lord Wilberforce and Lord Hutton, (see [42] and [43] above) but this is, in my judgment, a clear case of witness immunity involving, contrary to Mr Irvin's

submission, no extension of the established rule. If and in so far as the solicitors have been complicit in any wrongdoing, there is no need to restrict the application of the rule because there are alternative remedies available to give redress, for example, through wasted costs orders. Nor, as Mr Irvin again suggests, is Mr Walsh in the same predicament as Dr Roy, who had no chance to refute the allegations in the evidence given against him. Here Mr Walsh had the opportunity to challenge the accuracy of Mr Staines' affidavit when the matter returned to the court on 2nd May. He chose not to do so.

49. It seems to me, therefore, inevitable that paragraphs 4 and 5 of the particulars of claim be struck out least vis à vis Mr Staines. Can they survive to make a case against SGH and Mr Judge? In my judgment they cannot. The representations were made in the affidavit sworn by Mr Staines. SGH and Mr Judge as solicitors did not themselves make any representation by "putting forward" that affidavit on their client's behalf. If the act of the conspirator, Mr Staines, cannot be proved against him, it cannot survive against the co-conspirators. The claim in deceit against SGH and Mr Judge pleaded in paragraphs 4 and 5 cannot succeed against them either.

50. That leaves the Second Representation in the letter of 13th August. As I have already indicated at [30**]**, the immediate response from Mr Walsh's solicitors was that the letter "reinforces our client's view that Mr Staines' true financial worth has been misrepresented to the Court". That is an altogether too shaky a base upon which to build a case of deceit even one where the implied representation is pleaded in a way which I doubt can be spelled out from the terms of the letter. But there are other difficulties.

51. In *Watson v M'Ewan* the Earl of Halsbury C.J. said at p. 487:

> "… the privilege which surrounds the evidence actually given in a Court of justice necessarily involves the same privilege in the case of making a statement to a solicitor and other persons who are engaged in the conduct of proceedings in Courts of justice when what is intended to be stated in a Court of justice is narrated to them - that is, to the solicitor or writer to the Signet. … It is very obvious that the public policy which renders the protection of witnesses necessary for the administration of justice must as a necessary consequence involve that which is a step towards and is part of the administration of justice - namely, the preliminary examination of witnesses to find out what they can prove."

52. It seems to me that this must be extended to cover instructions given to solicitors and repeated by them as their instructions in their correspondence with the other side. Everything written was capable of being the subject of cross-examination and so given in evidence were Mr Staines called upon, as he could have been, to justify his assertions in an application to set the injunction aside. I do not see this as an unacceptable extension of witness immunity for as Lord Hoffmann recently said in *Arthur J.S. Hall and Co v Simons* [2002] 1 A.C. 615, 687:

> "The rule confers an absolute immunity which protects witnesses, *lawyers* and the judge. The administration of justice requires that *participants in court proceedings* should be able to speak freely without being inhibited by the fear of being sued, even unsuccessfully, for what they say. The immunity has also been extended to statements made out of court in the course of preparing evidence to be given in court," with emphasis added by me.

It would, as Mr Jonathan Phillips submits on behalf of the appellants, circumvent the policy which underpins the immunity if the solicitors were to be sued for any inaccuracy in the party to party correspondence.

53. Consequently, in my judgment, the Second Representation should also be struck out.

54. The Third, and implied, Representation was that there had been no material change in Mr Staines' financial position "from that which it had been alleged to be in April 2002". Here, in addition to all his other manifold difficulties, the problem for Mr Walsh is that if he cannot prove what the position in April 2002 was alleged to be because he cannot put the affidavit in issue in his claim, then he cannot prove that there was no change in that position. Without the affidavit, the whole foundation of his case crumbles in ruins.

Conclusion

55. For those reasons I am satisfied that this appeal must be allowed. Nothing in this judgment should be taken in the slightest way to condone any impropriety or misconduct by solicitors in the course of the performance of their retainer. The Court relies upon the honourable behaviour of those conducting litigation in the courts and the courts will not flinch from taking condign steps to stamp out improper conduct by wasted costs orders and/or by reporting it to the Law Society or the Bar Council. In this case the allegations against these defendants have been assumed and I have proceeded upon that assumption and so in fairness to SGH and Mr Judge, I should add that nothing in this judgment is intended to suggest they have been guilty of such impropriety.

Lord Justice Moore-Bick:

56. I agree.

Lord Justice Rimer:

57. I also agree.

EXHIBIT: CE-FILE-SS-18-01-2024

The Claimant exhibits below a screen shot, illustrated for ease in reference, of the CE File case log taken on 18 September 2024 showing that on 28 September 2023 Mr Millinder's 21-page witness statement darted 25 September 2023 and the 2 exhibits referred to in it were accepted by the clerk and available for the judges on the court file.

The evidence proves that Fancourt and Miles knew they had no jurisdiction to make the orders that they did, as one cannot contravene the principle of nemo judex in causa sua (I shall not be judge of my own cause).

The witness statement and evidence by Mr Millinder substantiates his allegation that Miles and Fancourt have perverted by concealing material facts and evidence:

Case Events

Submitted Date	Filed Date	Type	Document Description	Filed By
17-01-2024	17-01-2024	Non Originating Application (Companies Act) - Within proceedings on notice	Within proceedings on notice	Mr Martin Richard Walsh
17-01-2024	17-01-2024	Order by Judge - Order	Order	
28-09-2023	28-09-2023	Filing - Witness Statement/evidence/Affidavit	Witness statement of Mr Millinder dated 25 September 2023 and his 2 exhibits	
25-09-2023	25-09-2023	Filing - Notice of Acting	Notice of Acting	
21-09-2023	21-09-2023	Non Originating Application (Insolvency Act) - Within proceedings on notice	Within proceedings on notice - NOT yet listed awaiting a certificate of urgency	Mr Martin Richard Walsh
20-09-2023	20-09-2023	Order - Other	Order - approved by Miles J 20.09.23	
12-09-2023	13-09-2023	Filing - Witness Statement/evidence/Affidavit	Witness Statement of THE OFFICIAL RECEIVER	
11-09-2023	11-09-2023	Non Originating Application (Insolvency Act) - Within proceedings on notice	Within proceedings on notice - ATF 21/9/23	Mr Martin Richard Walsh

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EXPM-24.pdf

EX-PM-27-10-2020.pdf