IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BRISTOL DISTRICT REGISTRY

TECHNOLOGY & CONSTRUCTION COURT

[2017] EWHC 914 (TCC)

No. C41BS210

Bristol Civil and Family Justice Centre

Wednesday, 8th March 2017

Before:

HIS HONOUR JUDGE HAVELOCK-ALLAN, QC

B E T W E E N :

PALMER BIRCH
(a partnership)

Claimant

- and -

(1) MICHAEL LLOYD
(2) CHRISTOPHER LLOYD

Defendants

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MR. W. EVANS (instructed by Gresham Legal) appeared on behalf of the Claimant.

MS. K. LEE (instructed by Michelmores) appeared on behalf of the First and Second Defendants.

J U D G M E N T

(As Approved by the Judge)

JUDGE HAVELOCK-ALLAN:

Introduction

1 Before the court is an application by the defendants to strike out some, but not all, of the claims against them.

2 The action was commenced in London in November 2015, it was transferred to the Bristol District Registry by Master Kay QC on 1st November last year, following close of pleadings. The defendants then applied for it to be transferred into the Bristol Technology and Construction Court and I made the transfer Order on 8th November 2016.

3 The nature and purpose of the application to strike out will become clearer when I have described the background to the dispute. I shall do so by reference, so far as is possible, to the pleadings, rather than to the evidence filed in respect of the application.

The background to the action

4 The claim arises out of a contract, which I shall refer to as "the Building Contract", entered into between the claimant as contractor and a company called Hillersdon House Limited, or "HHL", as the employer, in or about January 2012, for extensive works to renovate and develop a Grade II listed Victorian mansion called Hillersdon House, near Cullompton in Devon.

5 The Building Contract was on the form of the JCT Standard Building Contract With Quantities, 2011 Edition. It is dated 9th January 2012. However, the contract was not signed on behalf of the claimant until shortly before 22nd March 2012. It was not signed by the first defendant, Mr. Christopher Lloyd, on behalf of HHL until sometime between 22nd August and 13th September 2012. Yet work was commenced on site in November 2011.

6 The claimant was described in the building contract as: "Palmer Birch Building Contractors". The contract administrator was named as "Johnstone Cave Associates". By a Deed of Variation dated 12th December 2013, the employer was restyled as "Mr. M. Birch and Mr. J. Palmer trading together in partnership as Palmer Birch". Nothing turns on this.

7 Under the Deed of Variation, Gates Construction Consultants Limited replaced Johnston Cave Associates as contract administrator. There is a difference of

view between the parties as to what prompted that change, but that does not matter for present purposes.

8 The contract sum was £5,114,714.95. This was significantly below the amount of the claimant's tender in September 2011, which was in a total sum of £6,923.664.93. The tender was to cover works involving repairs and alterations to the main house, a kitchen and swimming pool extension and extensive landscaping and external works.

9 The claimant's case is that a significant amount of the work excluded from the specification at the time of contracting, in order to get the contract price down to a figure near to £5 million, was subsequently added back in by variations of the contract required by the defendants. It is certainly not disputed that there were a large number of additional works.

10 The freehold of Hillersdon House is owned by Selzar Holdings Limited, which I shall refer to as "SHL". SHL is a Cypriot company in which the first defendant, Mr. Michael Lloyd, has a beneficial interest. SHL acquired the freehold of Hillersdon House in June 2010 for £3,200,000.

11 On 20th April 2011, SHL granted a lease of Hillersdon House to HHL for a term of 21 years at a base rent of £10,000 per annum and a turnover rent starting at 10% of gross turnover up to a sum of £200,000 and 15% of gross turnover on the next £100,000 and 20% on gross turnover in excess of £300,000 in any one year.

12 HHL is an English company of which the second defendant, Mr. Christopher Lloyd, is sole shareholder and director. HHL was incorporated in June 2010 for the purpose of acquiring the lease of Hillersdon House and with a view to renovating and developing the property. It was, in effect, a special purpose vehicle or “SPV”.

13 The defendants say that the refurbishment project was with a view "… to creating and running a high-end venue for hunting, shooting and fishing parties and wedding receptions". That aim was at least consistent with the terms of the lease in which the Permitted Use, as defined in clause 2.1.18, was for:

> "corporate hospitality, conferences and educational purposes together with the ancillary provision of food and drink and overnight accommodation, use of the Open Land for shooting and grazing and, subject to the landlord's consent, any other use which is specified within an Approved Business Plan."

14 An approved business plan was defined in clause 2.11 of the lease as any business plan for the commercial use of the premises approved by the landlord in writing.

15 Two Business Plans feature in this case. It is not clear to me whether either was ever an Approved Business Plan. I infer that the first of them entitled, "Business Plan 2010 to 2015" may have been approved by SHL. I shall refer to that plan as the "original Business Plan". It appears to have been drawn up before the acquisition of Hillersdon House was complete. It envisaged the property being developed in three phases, Phase 1 being the 45 acre deer park, Phase 2 being the restoration of the mansion and its immediate outbuildings with a view to obtaining income from (1) keeping horses at livery, (2) hosting events outside and (3) residential educational courses (albeit on a small scale since the mansion would only have five lettable bedrooms once refurbished), and Phase 3 being the development of a sculpture park, outside music event venue, farm shop and pheasant shoot.

16 The total potential income on completion of all three phases was estimated in the original Business Plan as being £301,000 per annum, yielding an annual profit of £59,000. There will be more anon of the original business plan and of the revised Business Plan exhibited to Mr. Christopher Lloyd's witness statement later in this judgment.

17 The Building Contract between the claimant and HHL contained in Section 4, the usual standard provisions for staged interim payments. The due date of the first monthly interim payment was stated to be 9th December 2011. It was provided in clause 4.10 that within 5 days of each due date, the contract administrator was to issue an Interim Certificate stating the sum due, based on an Interim Valuation by the quantity surveyor if appropriate.

18 The quantity surveyor named in the Building Contract was the office of Savills (L&P) Ltd in Wimborne in Dorset. The individual who was the quantity surveyor under the Building Contract in 2014 and 2015 was a Mr. James Paradise. Whether he was an employee of Savills or a substitute for Savills, I am not sure.

19 Clause 4.12 of the Building Contract contained provision for the employer to respond to an Interim Certificate with a Pay Less Notice if it intended to pay a sum less than that in the Interim Certificate. A Pay Less Notice had to be served no later than 5 days before the final date for payment of the certified sum. The final date for payment of the certified sum was itself to be fourteen days from the date on which the Interim Certificate was issued. The contractor was entitled, by clause 4.14 of the Building Contract, to give notice suspending his performance of the contract if the amount of an Interim Certificate was not

paid. The suspension would take effect 7 days after the notice, if payment was still not forthcoming.

20 Interim Certificate No. 1 was issued on 12th December 2011. Thereafter, 33 Interim Certificates were issued by the contract administrator and paid by HHL. Whether they were all paid by the due date is immaterial for present purposes. The total amount paid, namely, the gross sum certified less retention, was £6,712,078.17. The difference between the amount paid and the contract sum is largely if not wholly attributable to additional works. The claimant's case is that additional works to a value of £2,315,063.13 were invoiced, although that figure is not admitted. The contract also overran the completion date, which was 31st July 2013. The defendants say that some of the additional cost was due to this factor.

21 Interim Certificate No. 33 was issued on 24th October 2014. It was the last Interim Certificate which HHL paid. Interim Certificate No. 34 was issued on 1st December 2014 in the sum of £202,964.92. The final date for payment of Interim Certificate No. 34 was 15th December 2014. No sum was paid. Interim Certificate No. 35 was issued on 6th January 2015 in the sum of £241,333.65. The due date for payment was the 20th January 2015. Nothing was paid in respect of that Interim Certificate either. This was not wholly unexpected because, on 5th January 2015, Mr. Michael Lloyd had met with Mr. Nelson Birch and had told him that HHL had run out of money.

22 Meanwhile, during December 2014, a Certificate of Partial Possession of Hillersdon House had been issued by the contract administrator, Mr. Michael Lloyd had moved into the accommodation above the stables, and had started using some of the rooms in the mansion itself.

23 On 16th January 2015, a letter was sent by the claimant's solicitors to HHL giving notice that HHL was in default for not having paid Interim Certificate No. 34 and that the claimant intended to suspend further work.

24 On 7th April 2015, the claimant requested a further valuation of the works and of any materials on site. Following that request, on 21st April, there was a site meeting attended by Mr. Birch and the quantity surveyor at which the claimant says that the quantity surveyor valued the works and materials on site at a sum of £187,922.44. No Interim Certificate was issued by the contract administrator in respect of this valuation. The claimant says that was because Mr. Michael Lloyd prevented an Interim Certificate from being issued. Had it been issued, it would have been Interim Certificate No. 36.

25 On 22nd April 2015, the defendant's solicitors wrote on behalf of HHL to the claimants' solicitors saying:

> "The cost of the works and the aggregate value of the payments made to date by [HHL] has exceeded [HHL's] funding ability.
> …
> Our client's future ability to make any further payment to your client is entirely beholden to third-party funders.
> Presently, no third-party funder is prepared to extend any existing loan facility or provide any new funding facility to [HHL] to allow [HHL] to make any further payment to your client under the Contract or allow for the completion of the outstanding works under the Contract. Indeed, [HHL] understands that the third-party funders, if they have not already done so by the time this letter is received, will be demanding the repayment of the monies loaned to [HHL]. As [HHL] has no means of repaying its very substantial debt obligations, the inevitable consequence is that sooner or later, [HHL] will be placed in liquidation. In the event of a liquidation, there will be no distribution to your client.
> The purpose of this letter, in addition to making the above clear to your client is to give notice on behalf of [HHL] terminating the contract with immediate effect."

26 It is not contested that the sending of this letter was a repudiatory breach of the Building Contract by HHL for which HHL would be liable in damages if it had the means to satisfy a judgment. HHL has not been sued for that breach, or for the sums outstanding under Interim Certificates 34 and 35 or under the April 2015 valuation because it does not have the means to satisfy a judgment.

27 The defendants say that, on 15th June 2015, Mr. Christopher Lloyd determined that HHL was insolvent after he had been told by Mr. Michael Lloyd on 13th April 2015 that neither he (Michael Lloyd) nor HHL was prepared to provide further funds to HHL. At a meeting of the creditors of HHL on 25th June 2015, it was resolved to put HHL into creditors' voluntary liquidation. The Statement of Affairs appended to the Report to Creditors listed HHL's debts as totalling £11,310,552.06, and the assets available for preferential creditors as amounting to £36,900 - a deficiency of £11,273,652.06.

28 There is one other piece of the history to mention at this point. On 27th April 2015, Mr. Birch went to the site to clear the site compound and, in particular, to remove the contents of two shipping containers which the claimant had installed there in order to house tools, equipment and materials during the progress of the works. It is the claimant's case that at the time of the valuation by the quantity surveyor on 21st April the containers had been full of building materials which were valued as part of the valuation carried out on that date, and that there had also been tools stored in the containers. The

claimant says that when Mr Birch went to the site on 27th April he found that the locks on the containers had been changed and that the tools and materials had gone. The claimant holds the defendants responsible for having entered the containers and having removed all of their contents.

29 This is strongly denied by the defendants. However they do admit that they entered the containers, and after doing so changed the locks, but they say that this was only done in order to remove certain property which they say belonged to them and to take some sanitary ware which they claim to have already paid for under the Building Contract. The defendants say that no materials were brought onto the site after Interim Certificate No. 35 had been issued. They accept that there were materials on site on 21st April, which were listed, but they deny that they were valued as part of the valuation on that date. The defendant's case is that, so are as they are aware, there were no tools in the containers when they opened them.

30 According to the defendants, the April valuation of £187,922.44 was one prepared by the claimant's own quantity surveyor and related mainly to additional preliminaries for delay. It did not include materials and was not approved by the quantity surveyor appointed under the Building Contract.

The claimant's claims and the defendants' response

31 Stepping back for a moment, I can summarise the parties' respective positions in the following way.

32 The claimant alleges that Mr. Michael Lloyd took all the decisions about the original design and specification of the works. He gave all the instructions to the claimant, as if he was the employer under the contract, and was himself the instigator of all the instructions for variations and additional works. He was even named as "the Client" in at least two of the Site Meeting Minutes. The claimant maintains that anything Mr. Christopher Lloyd did in relation to the Building Contract was on the instructions of, and at the instigation of his brother, Mr. Michael Lloyd. The refurbishment of Hillersdon House was, the claimant says, for Mr. Michael Lloyd 's own personal benefit and in order to provide him with a private residence.

33 The claimant says that HHL only ceased to pay Interim Certificates under the Building Contract because Mr. Michael Lloyd stopped funding HHL and told his brother not to make any further payments to the claimant. It is also not accepted by the claimant that HHL lacked funds in January 2015. The claimant points to the fact that, in addition to the initial loan of £5 million from SHL to HHL, HHL was lent a further sum of £2 million, via SHL, which Mr. Michael Lloyd had procured from EFG Private Bank Limited. Further, as

the Report to Creditors shows, HHL was also lent £1,700,000 by Mr. Michael Lloyd personally, and owed another £1,741.347 to SHL on top of the admitted loans. The total debt owed to SHL and to Mr. Michael Lloyd combined was therefore £10,441,347. The claimant points out that this is £3.4 million in excess of the loans said to be directly referable to the Building Contract.

34 In addition, the claimant highlights the admitted fact that Mr. Michael Lloyd owned a property in Kenya which early in 2015 he was proposing to sell and which he did eventually sell in mid-2015. It is said that Mr. Michael Lloyd intimated to Mr. Birch when they met on site on 19th December 2014, that Interim Certificate No. 34 would be paid out of the proceeds of sale of the Kenya property as soon as possible.

35 The claimant alleges that Mr. Michael Lloyd engaged certain of the claimants' sub-contractors to work directly for him on Hillersdon House, after work under the Building Contract was suspended in January 2015, and that he paid them out of the proceeds of sale of the Kenya property when the proceeds became available in or around July of that year. It is also alleged that Mr. Michael Lloyd arranged for some of the outstanding invoices addressed to HHL for design work to be redirected to a new company called Country Sporting Experience Limited ("CSEL"), which he incorporated on 12th May 2015 and of which he was sole shareholder and director. The claimant says that CSEL purchased the assets of HHL from the liquidator and that CSEL completed the building works. According to the claimant, all this demonstrates that there were funds with which the job could have been completed under the Building Contract if Mr. Michael Lloyd had chosen to make those funds available to HHL.

36 The claimant's case is that Mr. Michael Lloyd procured breaches of the Building Contract by HHL by withdrawing funding from HHL and/or by instructing HHL not to pay Interim Certificates No. 34 and 35 and by preventing the contract administrator from issuing Interim Certificate No. 36. In consequence, the claimant says that it has lost the sum certified by Interim Certificates 34 and 35, the sum which ought to have been certified under Interim Certificate 36, the retention monies under the Building Contract and the profit which it would have earned on completing the works.

37 Further and separately it is alleged by the claimant that Mr. Michael Lloyd procured the breach of sub-contracts between the claimant and its sub-contractors by persuading those sub-contractors to work directly for him after January 2015 in order to complete some of the outstanding work.

38 Finally, it is alleged by the claimant that the defendants wrongfully interfered with materials and tools which had been stored in the containers and converted them to their own use.

39 The resulting claims are: (1) against both defendants, for damages for conversion, (2) against Mr. Michael Lloyd, for damages for procuring breach of contract, (3) against both defendants, for damages for wrongful interference with the claimant's goods, (4) against Mr. Michael Lloyd, for damages for unlawful interference with contractual relations, and (5) against both defendants, for damages for unlawful means conspiracy or conspiracy to injure.

40 The defendants deny that any of these claims is well-founded. Aside from disputing the facts surrounding the alleged wrongful interference with, or conversion of, the contents of the storage containers, the defendants deny any liability for procuring breach of contract or for unlawful interference with contractual relations or for conspiracy. They say that this is a simple case of an employer under a building contract going bust.

41 The claimant does not allege that the defendants procured the repudiatory breach by HHL of the Building Contract in its entirety. It is only alleged that they procured a breach by HHL in the non-payment of Interim Certificates 34 and 35, and in the non-issue of Interim Certificate 36 and in the breach by the sub-contractors of their respective sub-contracts. As to the former of these claims for procuring breach of contract, the defendants say that Interim Certificates 34 and 35 were simply not paid because HHL ran out of money. Interim Certificate 36 would not have been paid for the same reason if it had been issued. The defendants accept that Mr. Michael Lloyd did play a substantial role in the running of the project, because he was a qualified Chartered Surveyor and because his brother was not accustomed to handling building projects. However it is said that the role which Mr. Michael Lloyd played, was not one which excluded his brother. Christopher Lloyd was the director of HHL, and he retained responsibility for the actions taken by the company.

42 The defendants point out that Mr. Michael Lloyd warned the claimant in December 2014 that HHL was in financial difficulty and that he told the claimant on 5th January 2015 that the money had run out. It is said by the defendants that the reason why Mr. Michael Lloyd resolved not to make further funds available to HHL, either directly or through SHL, was that the project had suffered cost and time overruns, there was a dispute looming with the claimant over extensions of time and he had lost confidence in HHL's ability to control the project and bring it to a satisfactory financial conclusion.

The defendants' case is that HHL became insolvent only at the point at which no further funds were available to it. At that point, the claimant's loss was inevitable: it was not caused by the procuring of any breach of contract or by unlawful interference with contractual relations or by an unlawful means conspiracy or conspiracy to injure.

The application to strike out

43 The application before the court is expressed as one for summary judgment under CPR 24. In reality it is an application under CPR 3.4(2)(a) to strike out parts of the claimants' statement of case as disclosing no reasonable grounds for bringing the claim. It is targeted on the causes of action founded on the economic torts of procuring breach of contract, unlawful interference with contractual relations and unlawful means conspiracy and/or conspiracy to injure.

44 The defendants also seek the striking out of any allegations that the corporate structure of HHL was a "sham" or such as to justify piercing the corporate veil of HHL and holding that Mr. Michael Lloyd and/or Mr. Christopher Lloyd is personally liable under the Building Contract. The application does not apply to the claims for trespass to goods or conversion. Although those are disputed, the defendants recognise that these claims raise triable issues. There will, therefore, be a trial of these claims in any event, albeit that they fall within a narrower factual compass.

45 The application to strike out is supported by a witness statement of Mr. Offen, a partner in Michelmores, the defendants' solicitor, and is opposed by a witness statement of Mr. Nelson Birch and of the claimant's solicitor, Mr. Smeetesh Kakkad. There are witness statements in reply from each of the two defendants.

46 Both sides were represented on the strike out hearing by counsel. The claimant was represented by Mr. William Evans and the defendants by Ms. Krista Lee.

The test on striking out

47 I need say very little about the test which applies on an application to strike out. The parties are in agreement about it. A cause of action or allegation in a statement of case which stands no real prospect of success will not be allowed to proceed further. A real prospect stands in contrast to one which is fanciful.

48 There are just two aspects of how the test should be applied in a case such as the present, which deserve particular mention. The first is that summary disposal of a claim or a plea is appropriate where it is plainly of no substance, e.g. where the factual basis for it is contradicted by contemporaneous documents or other material. But as Carnwath LJ said in *Mentmore International Ltd & Ors v Abbey Healthcare (Festival) Ltd & Anor* [2010] EWCA Civ 761: "The simpler the case the easier it is likely to be to take that view and resort to what is properly called summary judgment. But more complex cases are unlikely to be capable of being resolved in that way without conducting a mini-trial on the documents". As has been said many times, the court is not to conduct a mini-trial on a summary judgment application.

49 The second point worth stressing is that, in reaching its conclusion, the court must take into account not only the evidence actually placed before it on the application for summary judgment or to strike out, but also the evidence that can reasonably be expected to be available at trial. The authority for that proposition is *Royal Brompton Hospital NHS Trust v Hammond (No. 5)* [2001] EWCA Civ 550. It was endorsed by Lewison J in *Pegasus Management Holdings and another v Ernst & Young* [2009] where he said:

> "Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus, the court should hesitate about making a final decision without a trial even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exists for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Company 100 Ltd."*

50 These observations do not, of course, mean that a claim which is wholly speculative and founded on the hope or expectation that disclosure may turn up some support for it should be allowed to proceed to trial. If there are facts which the party making the claim could reasonably be expected to have ascertained or been able to plead, the claim is liable to be struck out if those facts are absent from his statement of case. But if those facts are ones more likely to be revealed on disclosure or to be elicited in cross-examination, and the case is otherwise plausible in the sense that it is founded on assertions which are not obviously inconsistent with the contemporaneous documents, are not far-fetched and may possibly be established at trial, the claim is not one which ought to be dismissed summarily. Where an evaluative assessment has

to be made as to the side of the line on which the claim falls, in my judgment, it is right in most cases to err on the side of caution and to give the benefit of the doubt to the party resisting the striking out or summary judgment.

51 There is, however, a countervailing argument in the present case which Ms. Lee was keen to emphasise. The defendants' application is as much an attack on the claimant's pleaded case as it is an attack on the chances of the economic tort claims succeeding at trial. Here, the chronology is of some relevance. Particulars of Claim were served in November 2015. When the Defence was served in January 2016, the defendants also served a searching Part 18 Request for Further Information of the Particulars of Claim. The claimant did not answer that Request until 15th September 2016. The present application was not issued until the beginning of November 2016. Ms. Lee therefore submits that the claimant has had plenty of time to consider how to frame its case. If its statement of case is still found wanting, she submits that the claimant should not be given a second chance.

The personal liability of the defendants – piercing the corporate veil of HHL

52 I turn first to consider the argument that the claimant is seeking to pierce the corporate veil of HHL.

53 The defendants' concern about the piercing of the corporate veil of HHL arises principally from what is said in Response 34 of the Further Information provided by the claimant. The Request asked the claimant to state:

> "... the legal and/or factual basis for the implicit allegation that [Mr. Michael Lloyd] was under a duty:
>
> (a) to authorise HHL to pay the claimant; and/or
> (b) to provide HHL with funds to pay the claimant."

54 The Response to that Request was as follows:

> "The claimant's case is that the entire purpose of the purchase of Hillersdon House and the renovation works which the claimant was contracted to carry out was for [Mr. Michael Lloyd]'s personal benefit and not, as pleaded by the defendants, some business enterprise to be run by HHL. The business plan prepared by [Mr. Michael Lloyd] for HHL shows that any business to be carried out by HHL was incapable of founding the alleged investment decisions by Mr. Michael Lloyd, whether on his own behalf or that of any other company. The debt alleged to be acquired by HHL by way of loans was not capable of being serviced or ever repaid by the projected business and profit to be made

by HHL. The entire supposed enterprise and corporate structure was a sham which allowed [Mr. Michael Lloyd] to attempt to avoid contractual liabilities which were incurred for his own benefit. The decision to refuse to pay the amounts due to the claimant was made by [Mr. Michael Lloyd] not on any investment grounds, but merely to deny the claimant payments that were due. The involvement of [Mr. Christopher Lloyd] was merely a device to attempt to distance [Mr. Michael Lloyd] from the Contract to further the objective of providing a convenient means and avoiding liabilities which could and should have been satisfied."

55 This answer led those representing the defendants to believe that each of the economic tort claims rested on the assumption that HHL was itself a sham. That was a misunderstanding. There is no claim made by the claimant that either of the defendants is personally liable under the Building Contract. Mr. Evans says in paragraph 45 of his skeleton argument that the claimant has no intention of inviting the court to pierce the corporate veil. It is now clearly accepted by the claimant that HHL has a genuine legal personality which were separate from that of either the first or second defendant. However, the defendants' legal team might be forgiven for having thought otherwise when paragraph 6 of Mr. Evans' skeleton argument identifies one of the main underlying issues as being: "the extent to which Mr. Michael Lloyd did, indeed, act in effect as the contracting party".

56 The claimant's contention is, in fact, that the "contract structure" was a sham, and that is what I understand is being said in Response 34. The contention finds its original expression in paragraphs 66 and 67 of the Particulars of Claim where it is said:

"66. Further or in the alternative, the actions of [Mr. Michael Lloyd] in designing and setting up the structure used to contract with Palmer Birch when he intended to and did use it entirely for his own benefit and his actions in controlling the funds available to the detriment of Palmer Birch, amounts to unlawful interference with the rights of Palmer Birch.

67. The cooperation of [Mr. Michael Lloyd] and [Mr. Christopher Lloyd] in the events described herein, in setting up the structure involving HHL and provision of funding through SHL controlled by [Mr. Michael Lloyd] amounts to a conspiracy to act unlawfully or use unlawful means and is an unlawful means conspiracy or a conspiracy to injure Palmer Birch."

57 The way in which Mr. Evans put this aspect of the claimant's case in the course of his oral argument was to say that HHL had been portrayed as an SPV controlled by its director, Mr. Christopher Lloyd, which had entered into the Building Contract in order to develop Hillersdon House as part of a genuine commercial investment project, whereas in truth, HHL was under the control not of its director, Mr. Christopher Lloyd, but of Mr. Michael Lloyd and was funded at the whim of Mr. Michael Lloyd and entered into the Building Contract solely in order to provide a personal residence for Mr. Michael Lloyd. Mr Evans submits that the project had, in truth, no commercial viability. It was solely for Mr. Michael Lloyd's benefit. Mr. Evans says that this is apparent from the figures in the original Business Plan and the figures in the revised Business Plan, which was disclosed for the first time as an exhibit to Mr. Christopher Lloyd's witness statement and which is said by him to have been prepared in May 2014, although this date is not admitted by the claimant. I make the following observations about the two business plans.

58 First, the projected annual profit in both Business Plans takes no account of the rent due from HHL to SHL under the lease. Second, the projected annual profit of £615,700 per annum in the revised Business Plan is achieved only by increasing the income derived from Phase 2 of the development to what I consider to be an unrealistically high level. Third, the revised Business Plan takes no account of the fact that there are £700,000 worth of works still to be completed. In fact, neither Business Plan takes any account of the building costs. Fourth, the revised Business Plan assumes that the initial £5 million loan to HHL from SHL would be repaid at the rate of £500,000 per annum over 10 years starting in 2015. However, the analysis in Appendix 1 to Mr. Evans' skeleton argument discloses that that was never going to be achievable.

59 In conclusion, I am inclined to agree with Mr. Evans that the Business Plans demonstrate that the development of Hillersdon House was never a viable investment project and that HHL had no chance of ever being solvent independently of funds provided to it by Mr. Michael Lloyd, directly or through SHL. However, even if this is proven by the claimant at trial, I fail to see how it turns the contract structure under which HHL was used as the vehicle to commission the works from the claimant into a "sham" structure.

60 The claimant relies on the assertion that the contract structure was a sham structure in order to establish that the asserted interference by Mr. Michael Lloyd in the rights of the claimant under the Building Contract (e.g. by giving instructions to his brother how to act and by controlling the funds available to HHL) was unlawful interference and/or so as to prove that, insofar as Mr. Michael Lloyd combined with his brother to ensure that HHL

did not pay the sums outstanding under the building contract and repudiated the contract, they conspired together to use unlawful means.

61 In *Kensington International Limited v Republic of the Congo* [2005] EWHC 2684 (Comm), Cooke J (at para.178 of his judgment) referred to and adopted the classic definition of a sham given by Diplock LJ in *Snook -v- London and West Riding Investments Limited* [1967] 2 QB 786 (CA). Cooke J said this:

> "The classic definition of a sham appears in *Snook v London and West Riding Investments Limited* [1967] 2 QB 786 (CA). There Diplock LJ said that, if the word had any meaning in law, it meant 'acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intended to create'. For that purpose the parties to the acts or documents had to share a common intention that the actual documents were not to create the legal rights and obligations which they gave the appearance of creating. The decision in *Stone -v- Hitch [2001]* EWCA Civ 63 emphasises the need for such a common subjective intention on the part of those concerned."

He went on in para.179 of his judgment to say:

> "The decision of the House of Lords in *AG Securities Limited v Vaughan* [1990] 1 AC 417 establishes that 'sham' does have a meaning in law, namely, an attempt to disguise the true character of the agreement which it was hoped would deceive the court."

62 By the yardstick of that definition, I see no prospect at all of the claimant proving that the contract structure here was in any way unlawful. The true character of the rights and obligations under the Building Contract was as set out in that contract. The parties to the Building Contract did not intend to deceive anyone else by entering into it. The motive of HHL in entering into the contract is irrelevant.

63 The sham structure allegation is, in reality, an expression of the claimant's complaint that it was misled into entering into the Building Contract and that its services were obtained by deception. But there is no pleaded allegation that HHL deceived the claimant by inviting the claimant to tender or by inviting the claimant to enter into the Building Contract.

64 It is also to be noted that Mr. Nelson Birch's evidence as to what he understood about the project is the opposite of the way Mr. Evans characterised the sham

in the course of his oral submissions. Mr. Birch says in his witness statement that he was unaware of the original Business Plan and of the defendants' commercial objectives until February or March 2014. Up to that point, he had thought the development was entirely intended to provide a private residence for Mr. Michael Lloyd. It follows that he must have been content to enter into the Building Contract on that understanding.

65 In my view, if the claimant is to prove unlawful means for the tort of unlawful interference or the tort of unlawful means conspiracy, it must be through an unlawful act or acts other than the contract structure itself. Since there is, in my judgment, no real prospect of the claimant being able to establish that the contract structure was an unlawful sham in any way that was actionable by the claimant or by HHL, I would strike out the passage in paragraph 66 of the Particulars of Claim which imply that the contract structure was unlawful and any references in the Further Information to the same effect.

66 The reference to the sham structure in paragraph 67 of the Particulars of Claim may have a part to play in the claim for conspiracy to injure, rather than the claim for unlawful means conspiracy, so I will come back to it later in this judgment.

Procuring breach of contract

67 I turn next to consider the claim for procuring breach of contract.

68 For the ingredients of the tort of procuring breach of contract, one need look no further than the speech of Lord Hoffman in *OBG v Allan* [2008] 1 AC 1 (at paras. 39-44). The tort requires proof of: (1) the breach of a contract between the claimant and a third party, (2) conduct by the defendant which has procured or induced that breach, (3) the fact that the defendant must have known that he was procuring or inducing a breach of the contract, (4) the fact that the defendant must have intended to procure or induce the breach either as an end in itself or as a means to an end, and (5) that loss has been suffered as a consequence of the breach having been procured. The defendants say that there are no facts pleaded by the claimant to support the second, fourth or fifth of these ingredients.

69 The alleged breaches fall into two categories. The first are breaches of the Building Contract (see paragraphs 53-57 of the Particulars of Claim). These are: (1) HHL's failure to pay Interim Certificate No. 34 in a sum of £243,557.90, (2) HHL’s failure to pay Interim Certificate No. 35 in a sum of £200,740.67 and (3) the contract administrator's failure to issue Interim Certificate No. 36 in a sum of £225,506.93. The second category is the

procuring of breaches of the claimant's sub-contracts with its sub-contractors (see paragraph 58 of the Particulars of Claim).

70 As to the first category, the defendants make the following points. They say that Mr. Michael Lloyd 's acts did not cause the breach because HHL had no funds with which to pay and HHL had no entitlement to acquire funds from any particular external source. An omission, therefore, by Mr. Michael Lloyd to authorise payment or to provide funds with which payment could be made by HHL in circumstances where he was under no legal obligation to provide the money, is not a procuring or inducing of a breach of the building contract.

71 Ms. Lee says that this is the key difference between the facts of this case and the facts in *Stocznia Gdanska SA v Latvian Shipping Co and others (No 2)* [2002] EWCA Civ 889. That was a case where it was held that the torts of procuring breach of contract and of unlawful interference with contractual relations had been committed by a company called Latco which had been contractually obliged to procure finance from a service company called Capco in order to provide funds to its associate company, Latreefers, so as to enable the latter to fulfil its obligations under certain ship building contracts. Latco had broken its contract with Capco with the intention of ensuring that Latreefers would be deprived of funds with which to pay the shipyard and would default under the ship building contracts. Here, says, Ms. Lee, Mr. Michael Lloyd was under no contractual obligation to provide funds to HHL.

72 In the *Stocznia Gdanska* case it was also held that Latco had instructed Latreefers not to make payments under the ship building contracts and that this had constituted the tort of procuring breach of contract. Ms. Lee acknowledges that an instruction by Mr. Michael Lloyd to HHL not to pay Interim Certificates 34 and/ or 35, as alleged in paragraphs 55 and 56 of the Particulars of Claim, could amount to the procuring or inducing of a breach of the Building Contract; but she says that no particulars have been given of any such instruction in the Responses to the Request for Further Information. Similarly, whilst it is alleged in paragraph 57 of the Particulars of Claim that Mr. Michael Lloyd prevented the contract administrator from issuing Interim Certificate No. 36, Ms Lee points out that no act of prevention has been particularised in Response 41 to the Request for Further Information. In response to each of the relevant Requests to particularise the steps taken to procure a breach of the Building Contract and the steps taken to prevent the contract administrator from issuing Interim Certificate No. 36, the answer given by the claimant is the same:

> "The claimants' case is that Mr. Michael Lloyd conceived, planned and implemented the entire project to purchase Hillersdon House and to

contract for the refurbishment works for his own benefit. He was intimately involved in the project throughout and all of the professionals involved in working on or supervising the project acted on his instructions or only acted when and in a way that they believed was authorised by Mr. Michael Lloyd."

73 The defendants' next submission is that there is no evidence at all that Mr. Michael Lloyd's objective in not providing further funds to HHL was to avoid liability to the claimant under the building contract that could otherwise have been satisfied. They submit that there is no prospect of the element of intention being established.

74 As to loss, the defendants' case is that no loss was suffered by the alleged procuring or inducing of breaches of the Building Contract because, even if Mr. Michael Lloyd had not acted in the way he is alleged to have done, HHL would still have defaulted because it had no funds with which to pay the last two Interim Certificates.

75 As to the second category of alleged procured breaches, the defendants' case is that Responses 25, 43, 44 and 45 to the Part 18 Request for Information reveal that: (1) there are only four sub-contractors who are said to have been poached by the defendants: two decorators (Bill Bundall and Neil Greening) and two stonemasons (David and Matt Joslin) are alleged to have gone to work directly for Michael Lloyd; (2) no particulars have been provided of the terms of the sub-contracts between those individuals and the claimant which are alleged to have been breached, e.g. it is not clear whether those sub-contractors were engaged at day rates for such work as they did or were under some obligation to complete a certain amount of work for the claimant; and (3) there are no particulars of whether Michael Lloyd knew about the sub-contracts or whether he realised that he was procuring a breach of them if, indeed, the sub-contractors were breaching their contracts by going to work for him directly. So, the defendants submit, the claim for loss of profit of £21,825.10 on the work which remained to be completed under the Building Contract is unsubstantiated.

76 The defendants have also pleaded a defence of justification in paragraph 76 of their Defence. They say that Mr. Michael Lloyd was acting commercially and in his own best interest in getting the sub-contractors to complete the works. The claimant's only response to that defence is to say that Mr. Michael Lloyd was acting in his personal interest rather than that of HHL (see paragraph 28 of the Reply).

77 My conclusions on this part of the application are as follows. The claimant may succeed in establishing that Mr. Michael Lloyd procured a breach by HHL

of the Building Contract if it can prove that he took steps which directly prevented HHL from paying the Interim Certificates or prevented Interim Certificate 36 from being issued. There is enough evidence already to suggest that Mr. Michael Lloyd was the person in control of the project and that he held the purse strings. It is not to my mind surprising that at this stage of the action, the claimant cannot identify precisely what steps Mr. Michael Lloyd took to ensure that payment was not made by HHL. That is a matter very likely to be clarified by disclosure and by cross-examination. I do not think that the allegation is so hopeless or unlikely to succeed that it can or should be struck out.

78 Whether it can be shown that Mr. Michael Lloyd intended to procure a breach of the Building Contract by HHL will be a matter to be inferred from all the evidence. In my view, there is already enough material for that inference to be arguable to the requisite standard.

79 The defendants' argument that the loss was inevitable and therefore not caused by the procuring of any breach, because HHL simply had no funds, begs the question of whether funds could have been made available and, if so, why they were not. In my judgment, the evidence on this issue merits investigation. There is in my view an arguable case that Mr. Michael Lloyd did have further money available or in prospect which could have been used to pay Interim Certificates 34 and 35 and possibly to complete the project, but that he decided to pull the financial plug in order to get rid of the claimant, whether or not this was also for his own financial benefit. I am not, therefore, prepared to strike out paragraphs 55 and 56 of the Particulars of Claim.

80 I have thought carefully about the allegation in paragraph 57 of the Particulars of Claim about preventing the issuing of Interim Certificate 36 in the light of Ms. Lee's submission in reply that the claimant could have obtained evidence from the contract administrator, Gates Construction Consultants Limited, to support this contention. On balance, however, I do not consider that the absence of such evidence at this stage justifies striking out paragraph 57.

81 There is an issue as to what the valuation on 21st April 2015 comprised. This is part and parcel of the inquiry as to why no Interim Certificate was issued in respect of it. I consider that, even without further particularisation, it is just about arguable that Mr. Michael Lloyd played a direct part in ensuring that the valuation did not result in a further Interim Certificate being issued.

82 Finally, there is the allegation in paragraph 58 of the Particulars of Claim about engaging the sub-contractors. Here I take a different view because what the sub-contractors were or were not sub-contracted to the claimant to do, and

what they in fact did for Mr. Michael Lloyd, and when, is plainly a matter which the claimant can find out. This head of claim depends, first, on the terms of the sub-contracts, and, second, on the chronology i.e. on whether the sub-contractors were asked by the first defendant to switch their allegiance before or after the Building Contract came to an end. The particulars which the claimant has given on both counts are inadequate.

83 Furthermore, the loss of profit claim in paragraph 70 of the Particulars of Claim appears to be a claim for the profit that would have been earned on all of the work that remained to be done under the Building Contract, not on the work which remained to be done by the four sub-contractors who are alleged to have been poached. It should be remembered that it is not alleged that Mr. Michael Lloyd procured the repudiation of the entire building contract by the writing of the letter on 22nd April 2015. Thus the quantum of the claim for damages based on procuring breach of the sub-contracts is over-stated.

84 In my judgment, the claimant has had ample opportunity to get this head of claim right. As currently pleaded, it is not, in my judgment, coherent. I do not think that the claimant should have a further opportunity to plead it. Accordingly, paragraphs 58 and 70 of the Particulars of Claim must be struck out.

Unlawful interference with contractual relations

85 I turn now to the claim for unlawful interference with contractual relations. The claimant relies for its case in unlawful interference on the same allegations as those relied upon in support of the claim for procuring breach of contract. To borrow from the terminology used in the *Stocznia Gdanska* case, procuring breach is the "direct inducement" to HHL to break its contractual obligations, unlawful interference is the "indirect inducement". Thus, the claimant relies in paragraph 65 of the Particulars of Claim on the allegations of breach in paragraphs 55, 56, 57 and 58 which I have already referred to.

86 In paragraph 66 of the Particulars of Claim, the claimant relies also on the sham contract structure, namely, "… the actions of [Mr. Michael Lloyd] in designing and setting up the structure used to contract with Palmer Birch when he intended to and did use it entirely for his own benefit and his actions in controlling funds available to the detriment of the claimant."

87 I turn once again to the speech of Lord Hoffman in *OBG v Allan.* At paras. 45-65, he set out the ingredients of the tort of unlawful interference with

contractual relations and/or causing loss by unlawful means. The tort requires proof of two matters: (1) wrongful interference with the actions of a third party in which the claimant has an economic interest, (2) an intention thereby to cause loss to the claimant. As to the first of these ingredients, the threat must be to do something which would have been actionable by the third party (here, HHL, the contract administrator or the sub-contractors themselves) if that third party had suffered a loss. In addition the interference must have affected the third party's freedom to deal with the claimant. As to the second ingredient, intention to cause loss requires more than proof that the loss was the foreseeable consequence of the defendants' actions. The loss must have been the desired end, or the means by which the defendant intended to enrich himself.

88 The defendants' objection to the claimant's unlawful interference claim in this case is that: (1) none of the acts alleged against Mr. Michael Lloyd were, in themselves, unlawful, in the sense of being actionable either by HHL, the contract administrator or the sub-contractors, and (2) that the contract structure i.e. using HHL as the contracting party, was not itself unlawful, even if the company was deliberately created in order to avoid the defendants incurring personal liability for the sums due under the Building Contract.

89 In paragraphs 20-21 of his skeleton argument, Mr Evans has listed a number of respects in which he says that Mr. Christopher Lloyd breached his duties to HHL as a director of that company by abdicating control in favour of his brother. None of these breaches of duty is pleaded. None, in my judgment, supplies the element of unlawfulness required for the unlawful interference cause of action because, even if those breaches were established, the unlawful conduct was that of Christopher Lloyd, not Michael Lloyd. It would have been actionable by HHL against Christopher Lloyd, not against Michael Lloyd. It is Mr. Michael Lloyd who is alleged to have been guilty of unlawful interference.

90 My conclusions on the unlawful interference claim are the following: I can see no arguable basis on which the conduct of Mr. Michael Lloyd in withdrawing funding from HHL when he was under no contractual obligation to provide that funding could be said to have been unlawful, in the sense of being conduct which would have been actionable by HHL. However, Mr. Evans is right that if the conduct of Mr. Michael Lloyd went further and caused HHL to breach the Building Contract, it could have amounted to unlawful interference in the claimant's contractual relations with HHL. Thus, for example, a positive instruction by Mr. Michael Lloyd to Mr. Christopher Lloyd not to pay the claimant would have been actionable by HHL if it placed HHL in breach of the Building Contract as, arguably, it would have done. By the same token, pressure exerted by Mr. Michael Lloyd on the contract administrator not to issue Interim Certificate No. 36 would have been actionable by HHL, if HHL

had thereby been placed in breach of the Building Contract as arguably it would.

91 Since I have struck out the claim for procuring breach of the sub-contracts, the reference to paragraph 58 in paragraph 65 of the Particulars of Claim must be deleted. In my judgment, paragraph 66 of the Particulars of Claim must also be struck out since I have rejected the contention that the contract structure was unlawful because it was a sham.

92 Thus far the indirect inducement claim goes hand-in-hand with the direct inducement claim and, in my judgment, crosses the arguability threshold to the same extent. That leaves the element of intention. Once again, I am not surprised that the claimant is unable to plead any specific fact indicating that Mr. Michael Lloyd desired by his actions to cause loss to the claimant. In my judgment this is likely to depend on inference from the primary facts and from the oral evidence. I am unable to dismiss the allegation as having no real prospect of success at the pleading stage. On the material I have read I consider that it is more than merely arguable that Mr. Michael Lloyd acted so as to rid HHL of further financial obligations to the claimant under the Building Contract, knowing his actions would cause loss to the claimant, but planning to complete the works more cheaply by other means.

93 Save to the extent indicated, I am not prepared to strike out the unlawful interference claim.

Unlawful means conspiracy

94 Lastly, I turn to the claim for unlawful means conspiracy or conspiracy to injure.

95 Conspiracy to do an unlawful act or to do a lawful act by unlawful means is a separate economic tort from the other economic torts considered earlier in this judgment. It is described in the 21st Edition of *Clerk & Lindsell on Torts* at para. 2493 i8n the following terms:

> "Conspiracy to do an unlawful act is the classic form of unlawful means conspiracy. The combination of the two actors must itself be unlawful and there must be an intention to injure the claimant, but it need not be the main or predominant purpose. Conspiracy to do an unlawful act by unlawful means is conspiracy to injure. The acts done may be lawful in themselves and would be lawful if either conspirator had acted alone, but they become unlawful because the predominant purpose of the

conspirators is to do those acts specifically in order to cause loss to the claimant."

96 In paragraph 67 of the Particulars of Claim, the claimant relies on the tort of conspiracy in both of these forms. The defendants' objections are: (1) that the claimant has not identified any acts done by Mr. Michael Lloyd in conjunction with Mr. Christopher Lloyd which were arguably unlawful, aside from the alleged procuring of breaches of the Building Contract and/or the trespass to or conversion of any goods in the storage containers, (2) that if the acts which were done by Mr. Michael Lloyd and Mr. Christopher Lloyd were in themselves lawful, the claimant cannot establish that the predominant purpose of the two defendants was to injure the claimant.

97 As to the first of these objections, it follows from what I have already held that the reference in paragraph 67 to the allegedly sham contract structure ("… in setting up the structure involving HHL and provision of funding through SHL controlled by ML") is of no assistance to any case of unlawful means conspiracy. But it does not fall to be struck out solely on that account, because the contract structure may be relevant background to the alternative claim for conspiracy to injure.

98 However, I fail to understand how the alleged trespass to goods and/or conversion of the contents of the containers can support a claim for unlawful means conspiracy for all of the losses claimed in paragraph 69 of the Particulars of Claim. At best, it might be said that the trespass/conversion was an additional impediment to the claimant being able to complete the works and thus deprived the claimant of the profit claimed in paragraph 70. However I have struck out the claim in paragraph 70 of the Particulars of Claim because the alleged procuring of breach of the sub-contracts is not adequately particularised. Subject therefore to allowing Mr. Evans to address me briefly as to why the reference to "trespass/conversion" in paragraph 67 should remain, my inclination is to strike it out.

99 That leaves procuring of the breaches of the Building Contract outlined in paragraphs 55-57 of the Particulars of Claim as the foundation of the case of unlawful means conspiracy. I regard a claim for unlawful means conspiracy based on these alleged breaches as passing the threshold of arguability. It will require proof that Mr. Christopher Lloyd and Mr. Michael Lloyd acted in concert to ensure that HHL breached the Building Contract by not paying Interim Certificates 34 and 35 and that the contract administrator was prevented from issuing Interim Certificate 36, and that they intended thereby to injure the claimant. But I consider that both propositions are better than merely arguable. The element of intention is very similar to that required for a claim for unlawful interference. I have held in respect of the unlawful interference

claim that inferring intention is arguable. I find the same here. I am unable to dismiss as untenable the argument that the two defendants acted together in procuring the alleged breaches of the Building Contract. The claim for unlawful means conspiracy survives to the foregoing extent.

100 The alternative formulation of the claim as one of conspiracy to injure requires proof that everything the defendants did together, even if it was lawful, was with the predominant motive of injuring the claimant. When the claimant was asked to particularise the factual basis for this assertion in answer to the Part 18 Request, the response given was as follows:

> "The claimant's case is that [Mr. Michael Lloyd] knew that his actions in refusing payment as alleged would cause the claimant damage and his real purpose was to deny the claimant the payment, the defendants' case on the reasons for [Mr. Michael Lloyd]'s decision not to provide further funds being false, but in any event the use of the sham corporate structure was unlawful and did cause the claimant damage."

101 Alleging that: "… his real purpose was to deny the claimant the payment", does not in my judgment serve to show that the predominant purpose was to injure the claimant. It is equally consistent with an intention to rid himself and/or HHL of any further financial liability to the claimant. Moreover, the essence of a conspiracy to injure is that two or more persons combine to do something lawful in a way which is unlawful by reason of their motive. The particulars given say nothing about the involvement, let alone the motive, of Mr. Christopher Lloyd.

102 In my judgment, the claim for conspiracy to injure is not adequately particularised. I do not think that the claimant should be given another opportunity to perfect it.

103 The implicit and necessary allegation that there was a predominant motive to injure the claimant is missing. That the defendants did have that motive is not at all apparent from the evidence I have seen, and I think it highly improbable that disclosure and/or cross-examination will give substance to it since the defendants had a strong personal financial motivation for not continuing to fund HHL to the extent required to pay the outstanding Interim Certificates and to complete the works.

104 Accordingly, I hold that the alternative claim for conspiracy to injure must be struck out. That means that the words, "or a conspiracy" must be deleted from the phrase, "is an unlawful means conspiracy or conspiracy to injure Palmer Birch" in the last line of paragraph 67 of the Particulars of Claim.

Overall conclusion

105 In summary my conclusion is that: (1) paragraphs 58 and 70 of the Particulars of Claim (the claim for procuring breach of sub-contracts) should be struck out; (2) the reference to paragraph 58 in paragraph 65 of the Particulars of Claim should be struck out; (3) paragraph 66 of the Particulars of Claim (unlawful interference based on the sham contract structure) should be struck out; (4) any allegation in the Further Information that the contract structure was a sham and by implication, therefore, unlawful, should be struck out; (5) the references to trespass and conversion in paragraph 67 of the Particulars of Claim (the claim for unlawful means conspiracy) should be struck out, but subject to my hearing anything further Mr. Evans has to say about that deletion; and (6) the words, "or a conspiracy" in the last line of paragraph 67 of the Particulars of Claim (the claim for conspiracy to injure as opposed to an unlawful means conspiracy) should also be struck out.

106 Aside, therefore, from hearing anything further Mr. Evans wants to say about the reference to "trespass/conversion" in paragraph 67 of the Particulars of Claim, and Ms. Lee's response to that, the application succeeds to the extent I have indicated. I invite counsel to address me on the form of the Order and the costs of the application.

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