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

BL-2020-001343

BETWEEN:

(1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY (JOINT ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION))
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH (JOINT ADMINISTRATORS OF LONDON OIL & GAS LIMITED (IN ADMINISTRATION))

Claimants

- and -

(1) MICHAEL ANDREW THOMSON
~~(2) SIMON HUME-KENDALL~~
~~(3) ELTEN BARKER~~
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENTS LIMITED
~~(10) HELEN HUME-KENDALL~~

Defendants

Transcript of proceedings made to the court on

Day 17 - Wednesday, 20 March 2024

The claimants are represented by Mr Stephen Robins KC, Mr Andrew Shaw & Mr Philip Judd

Michael Andrew Thompson (D1) is represented by Miss Anumrita Dwarka-Gungabissoon

Simon Hume-Kendall (D2) & Helen Hume-Kendall (D10) settled and are no longer appearing

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

Paul Careless (D5) and Surge Financial Limited (D6) are represented by Mr Ledgister & Mr Curry

Russell-Murphy (D7) and Grosvenor Park Intelligence Investments Limited (D9) appear in person

Robert Sedgwick (D8) appears in person

Housekeeping

MR JUSTICE MILES: Yes. Good morning.

MS DWARKA: Good morning, my Lord.

Before I start with the opening statement, my Lord, I just wish to clarify a point about my advocacy experience, if I may.

I have higher rights to appear in both criminal and civil courts but have only appeared as an advocate twice in any criminal courts. I have indeed appeared frequently as an advocate in civil cases to deal with various types of application in court management hearings. I don't frequently undertake trials but I have undertaken some trials in smaller cases, but nothing of the level that I am about to do. With that point out of the way, I will make a start with the opening submissions.

Opening submissions by **MS DWARKA**

MS DWARKA: Mr Thomson's case is that he is an entirely innocent and honest man whose life has been turned upside down and whose career has been wrecked by the actions of the Financial Conduct Authority, the Serious Fraud Office and the claimants in these proceedings. The FCA effectively closed down the business of LCF when they raided its offices in December 2018 and their actions forced the business into administration. But they have never provided a coherent, definitive or convincing account of their reasons for taking the actions they did.

There have been no fewer than four official or semi-official inquiries:

(1) the FCA's own investigation;

(2) the investigation carried out by Dame Elizabeth Gloster who was commissioned by HM Treasury to carry out an investigation into the FCA's regulation of LCF;

(3) an investigation into the auditors by the Financial Reporting Council; and

(4) the investigation carried out by the Complaints Commissioner in response to dissatisfied complainants to the FCA. None of these inquiries have called upon Mr Thomson for his evidence or, so far as he is aware, that of any other director of LCF.

Indeed Dame Gloster's inquiry simply assumed the fraud and then asked why the FCA had failed to detect it sooner.

Mr Thomson was arrested and interviewed by the SFO only once in 2019. He was made the subject of a restraint order under the Proceeds of Crime Act in 2019, but he has never been charged, and that is the full extent of his dealings with the public authorities of this country.

It is, in itself, wholly extraordinary that a person should be subject to a restraint order for five years without being charged and without any apparent investigation having taken place over at least the majority of that period.

Turning to these proceedings, Mr Thomson denies that he has incurred any liability to these claimants. He set up and ran the business of LCF honestly and with integrity. He set out to establish a model business, filling a gap in the lending sector left vacant by the banks, namely, asset-based lending where the lender takes a realistic and commercial view of the value of a business asset and its ability to repay. He took, and acted upon, advice from well regarded professionals. He engaged

with internationally regarded auditors. He engaged with public authorities, including both HMRC and the FCA.

He planned to move the entire business, after only three years, into the regulated sector to make it more profitable and to provide greater security to investors. Notwithstanding all those efforts, he found that his business was closed down and taken away from him for no good or even discernible reason.

Since then, he has been subjected by the public authorities of this country, by the office holders who are the claimants in these proceedings, and by ordinary members of the public who find themself encouraged, emboldened, by officialdom to a campaign of vilification -- that is not too strong a word -- in the media and in forums and chat rooms online. The effect on him and his family has been profound. He suffers from serious, diagnosed mental illness. His wife has stood by him stoically, but it is clearly extremely difficult for her. She has had to deal with media attacks upon her husband, and strangers coming to the house and threatening personal assault and battery and arson.

Their children have been very badly impacted. Their elder daughter has developed a stress-related, life-threatening condition which leaves her prone to periods of unconsciousness and in need of constant monitoring which has resulted in immediate hospitalisation.

Her GCSEs and A levels have been severely affected. She has been home schooled for the latter, and her passion for horses and a career in eventing has been destroyed.

Their twin teenage sons have been attacked and beaten up at school by the children of bondholders and their associates on a number of occasions. Their educational attainments have been diminished by an inability to concentrate and a period of acute anxiety caused by seeing their father arrested at home in front of them and by repeated accusation in the school that their father is a criminal. Their youngest daughter is struggling to cope with her studies.

They recognise very well the impact on the people who put their money into LCF. People such as Chloe, who features in the claimant's prologue but they say that the blame which is heaped upon them is misdirected. It is also right to mention, with appropriate caution and not in any way to diminish the impact on people's lives, that the majority of the investors in LCF have been compensated by the FSCS which is now by far the largest single creditor of LCF.

Had LCF not been closed down by the authorities, in particular the FCA and its then CEO, now the Governor of the Bank of England, Andrew Bailey, the likelihood is that LCF would have thrived and that it would have collected from its existing borrowers at the maturity of their loans. More or less, the likelihood is that LCF would have moved into a regulated sector in 2019 and diversified its offering to the public and expanded its borrowers' pool.

It follows from what I have just said that the likelihood is that, had LCF not been closed down by the authorities, it would have repaid its bondholders in full.

By comparison, the administrations have been a disaster. The latest administrator's report shows realisation across both administrations to 29 January 2024 of 88,706,310 achieved at a cost of 80,740,986. Leaving a net recovery of approximately 8 million, of which 5.9 million has made its way to creditors.

No doubt some money has been held back on account of the continuing cost of this trial.

In the process, they have borrowed heavily from litigation funders at an apparent rate of 29 per cent. Mr Thomson has commented to us that, at this rate, they would have done better to borrow from LCF, whose business model they so heavily criticise. Mr and Mrs Thomson, and Mr Thomson in particular, welcomed the opportunity afforded by these proceedings to set out in a public court their position in relation to these matters for the first time in five years. Turning now to these proceedings and the legal analysis. First, let's remind ourselves of some basic rules of pleading. I have three points, my Lord. One, if it is not pleaded, you can't rely on it at trial. That is held in a case of Smith v Bottomley which, my Lord, is found at <S2/117>. This was a case about the development of a property by two individuals, one of whom then sued the other. Various financial claims were made in the pleadings but there was no claim for an account which was made for the first time in counsel's skeleton argument. Lord Justice Lloyd said, at paragraph 70:

"... [counsel] sought to treat a claim clearly set out in a witness statement as being ..."

MR JUSTICE MILES: Sorry, shall we just go to it in the ...

MS DWARKA: Yes. Paragraph 70. <S2/117>, paragraph 70.

MR JUSTICE MILES: I think it is 70, is it?

MS DWARKA: Yes.

(Pause).

Shall I continue, my Lord?

MR JUSTICE MILES: I am just looking at it. Sorry, what was the new claim? I am just -- it doesn't appear from that paragraph.

MS DWARKA: In the matter? It is a claim for an account which was raised by counsel for the first time in the skeleton in that case.

MR JUSTICE MILES: Okay. Yes.

MS DWARKA: At paragraph 70:

"... that [counsel] sought to treat a claim clearly set out in a witness statement as being a sufficient substitute for a pleaded case. That is not acceptable in litigation of this kind."

He went on to say:

"Ms Smith's claim having been set out reasonably clearly in the particulars of claim, any additional claim should have been brought into line, in terms of procedure, by amending the particulars of claim so as to make all relevant allegations, thereby putting the matter firmly and clearly in issue, with the consequences as regards evidence and disclosure that this would have."

In paragraph 71, the judge went on to observe that the time for the opposing party to object is in opening submissions, which is why we are raising these matters now.

My Lord, I don't think you need to look at the report but --

MR JUSTICE MILES: Yes.

MS DWARKA: Shall I continue?

MR JUSTICE MILES: Sorry, yes, carry on.

MS DWARKA: My Lord, the point is covered in more detail in our written opening at paragraphs 33 to 39, if you wish to have a look at that later.

There --

MR JUSTICE MILES: Let's look at that now. I would like to look at what you are referring to as we go along, please.

MS DWARKA: Sure.

MR JUSTICE MILES: Do you have a reference for the ...

MS DWARKA: The page?

MR JUSTICE MILES: Well, for Epiq. Do you have reference to where your --

MS DWARKA: Sorry, yes, I do. It is <A2/3>, paragraphs 33 to 39, I think. It is page 14 of the digital document, paragraph 33, all the way to ...

MR JUSTICE MILES: Right. Thank you.

(Pause).

Yes.

MS DWARKA: On this point, we gratefully adopt Mr Warwick's submissions about the claimant's attempt to go beyond their pleadings. We make a similar point at section C of our opening statement. That is found at page 12 of the document.

We don't think that your Lordship should make an order about this matter at this stage of the trial. Our reasons for saying that are: one, it is obvious that Mr Robins can't go beyond his pleadings, and he knows that; two, there are too many points in which he has done so for the court to make an order dealing with every point and that could give rise to controversy later about the meaning of the order. We say that the court should warn Mr Robins at this stage and intervene to stop him if he goes too far in cross-examination. Then, when it comes to writing the judgment, you will have the pleadings before you and we have no doubt that you will determine the case fairly on the pleadings.

MR JUSTICE MILES: I mean, it would be unusual for the judge to intervene in the course of cross-examination, because it would be unexpected for the judge to have sufficient familiarity with the detail of the pleadings and so on. What normally would happen is that, if you objected to certain questioning and said that it was outside the scope of the pleadings, then the court would then consider the matter, look at the pleadings with the assistance of submissions, and then decide whether the cross-examination should be allowed or not. So it wouldn't be a matter of passively waiting for the judge to intervene, because that is just not how it works.

MS DWARKA: Yes, my Lord.

MR JUSTICE MILES: Judges bear as an umpire on these matters.

MS DWARKA: We will try to intervene when required.

MR JUSTICE MILES: I will obviously hear what -- Mr Robins is going to make some submissions about the pleadings in due course, so I will obviously hear what he says about that.

MS DWARKA: Sure.

On my second point about the pleadings, it is necessary to plead fraud with particular care. My Lord, this is very well known, but, for the record, I will refer to the following provisions. Paragraph 8.2 of Practice Direction 16 states:

"The claimant must specifically set out the following matters in the particulars of claim where they wish to rely on them in support of the claim: "(i) any allegation of fraud;

"...

"(iii) details of any misrepresentation; "(iv) details of any breach of trust; and "(v) notice of knowledge of a fact."

The next provision, my Lord, is the Commercial Court Guide at section 1.3(c)(i):

"Full and specific details should be given of any allegation of fraud, dishonesty, malice or illegality, and ... (ii) where an inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged must be fully set out." My Lord, there are many cases where these principles have been set out by the High Court, but we like the formulation given by Lord Justice Millett in Armitage v Nurse.

The report is in the authorities bundle at <S2/56>, if your Lordship may care to refer to it. The relevant paragraph we are looking at is at [internal page] 256 and it is found at section G at the bottom:

"The general principle is well known."

MR JUSTICE MILES: Yes.

MS DWARKA: "The general principle is well known. Fraud must be distinctly alleged and as distinctly proved: Davy v Garrett ..."

At page 489, per Lord Justice Thesiger: "It is not necessary to use the word 'fraud' or 'dishonesty' if the facts which make the conduct complained of fraudulent are pleaded. But if the facts pleaded are consistent with innocence, then it is not open to the court to find fraud.

As Lord Justice Buckley said in Belmont Finance Limited v Williams Furniture Limited, at page 258: "'An allegation of dishonesty must be pleaded clearly and with particularity. That is laid down by the rules and it is a well recognised rule of practice. This does not import that the word "fraud" or the word "dishonesty" must be ... used ... facts alleged may sufficiently demonstrate that dishonesty is allegedly involved, but where the facts are complicated, this may not be so clear, and in such a case it is incumbent upon the pleader to make it clear when dishonesty is alleged. If he uses language which is equivocal, rendering it doubtful whether he is, in fact, relying on the alleged dishonesty of the transaction, this will be fatal; the allegation of its dishonest nature will not have been pleaded with sufficient clarity'."

In respect of my third point on the pleadings, my Lord, you can't, in a reply, either contradict your particulars of claim or introduce a new claim. If you do, you will be struck out. This is derived from the rules.

Paragraph 9.2 of Practice Direction 16 states: "A subsequent statement of case must not contradict or be inconsistent with an earlier one. For example, a reply to a defence must not bring in a new claim. Where new matters have come to light, a party may seek the court's permission to amend their statement of case."

We have included an authority Martlet Homes v Mulalley. If we could please turn up in the authorities bundle at <S2/160>.

My Lord if you could please read paragraphs 20 and 21 of the judgment.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: Obviously, we rely in particular on the sentence in paragraph 20, which reads:

"New claims must be added by amending the particulars of claim and cannot simply be pleaded by way of reply."

The distinction which comes later in the paragraph is between (a) pleading new facts to refute a point in the defence which is permissible, and (b) pleading a new claim which is not.

My Lord, I will come back to these rules of pleadings as I develop my submissions but, for now, I ask you to simply keep them in mind.

I will now turn to the structure of the claims in these proceedings.

There are five categories of claim. One, claims in fraudulent trading. There are two sections headed "Fraudulent Trading", section E of the re-reamended particulars of claim on page 23 and section G at page 53.

The claim is brought against D1 as a director and D4 as a shadow or de facto director of LCF and against D2, 3 and 5 to 8 as participants in or, more properly, using the statutory language, parties to the alleged fraud. Second category, breach of duty claims against D1 and D4.

Third category, part breach of duty claims against D2 and 3. These have gone because D2 and D3 have settled.

Fourth, knowing receipt claims against D1 to 10. And, fifth, dishonest assistance claims against D1 to 9. The others are said to have dishonestly assisted D1 and D4 to breach their duties to LCF and D1 and D4 are said to have dishonestly assisted each other. Standing back and just looking at the structure, that is a very odd way of doing it. The obvious things to have done would have been to use LCF's power in the security documents to appoint administrators to all of the ultimate borrower companies. I use the word "ultimate" because some of the loans were transferred or novated.

Then, once office holders were in place in all of the borrower's companies, it would simply be a matter of enforcement.

To the extent the security assets lacked the necessary value, possibly because the borrowed money had been taken out of the companies rather than been put into assets as the directors had promised Mr Thomson would be the case, then you would look at breach of duties claim against the directors of the borrowers' companies and unlawful distribution claims against the shareholders. That way you would bring in all the necessary individuals who had taken money out of those companies. Those claims would, it seems to me, have been unanswerable.

Then, when all the money had been retrieved and put back inside the borrower's companies, they could distribute to their creditors, principally LCF, and there would not need to be proceedings at all, except possibly between the borrower companies and their directors and shareholders. But, of

course, if you had done that in that simple way, you wouldn't have a claim in fraud against Mr Thomson. In fact, you wouldn't have a claim against Mr Thomson at all.

I am put in mind of Mr Ledgister's comment that these administrators and their lawyers Mishcon de Reya and Mr Robins turned their fraud-detection goggles up to max and saw fraud everywhere. We say that they structured the proceedings in the way they have because they felt that the public wanted Mr Thomson to be the scapegoat, but, for the reasons I have given your Lordship, it was not a sensible way to do it. I come now to fraudulent trading, which is a statutory tort.

The wording of section 246ZA which created the tort is set out at paragraph 48 of our opening statements. To save your Lordship going there, I will read it out.

1: "If while a company is in administration it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose the following has effect."

2. "The court, on the application of the administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are to be liable to make such contribution (if any) to the company's assets as the court thinks proper."

The ingredients of a tort are, therefore: (1) the business of the company has to have been carried on with intent to defraud creditors; (2) the defendant has to have participated in the carrying on of the business with that intent; (3) the defendant has to have had knowledge of the fraud.

Now, let's go to the re-reamended particulars of claim to see how it is put. That is found at <B1/2>. It is at section E on internal page 23. It is pleaded very simply. There are only two respects in which the business of LCF is said to have been carried on with intent to defraud its creditors. The first is at paragraph 21 and that relates to the getting in of the money. It is said that the money was got in by the company making false representations. The second is at paragraph 21A and there it is said that the company was run as a Ponzi scheme. Those are the only two allegations that the business of LCF was carried on with intent to defraud its creditors, ie the bondholders. (1) false representation, and (2) Ponzi scheme.

Let's examine each of those now. (1) the representations. These are set out at paragraph 7 of the re-reamended particulars of claim.

There are eight representations pleaded at paragraph 7 but please start, my Lord, by reading paragraph 8.

MR JUSTICE MILES: Yes.

MS DWARKA: It says that LCF made the representations expressly or by implication in information memorandums and brochures which were provided to bondholders. Then it simply says:

"The claimants will say that the representations are the express and/or implied meanings of the words contained in the IMs and the brochures." Then it says:

"LCF made the representations in telephone conversations and/or meetings ..."

Or via its website.

My Lord, this doesn't come close to the standard of pleading required by the rules, the guide or the authorities.

It wouldn't come close if this was a case of negligent misrepresentation. It certainly doesn't come close where there is misrepresentations that are said to have been fraudulent.

They should have set out, in relation to each alleged representation, (1) the precise words used; (2) where they were used in the IMs and brochures or on the website; (3) why the precise words can be distilled into the words used to formulate each representation. Then there are the alleged oral representations in telephone calls and at meetings.

Remember, my Lord, that the telephone calls were all recorded and that they have the recordings. They should have transcribed the recordings and put the ones complained of in a schedule and explained why the words used can be distilled into the words of an alleged representation. Instead, they produced two short summary paragraphs which tell you very little. We say, my Lord, that this is not a permissible way of pleading fraud. It does not meet the pleading standard set out in the rules and referred to in the authorities. We deal with that, for your Lordship's note, at paragraphs 66 to 72 of our opening statement. Now, let's take each representation separately and see how the pleading unfolded.

The first representation. This is pleaded at paragraph 7.1 of the re-reamended particulars of claim in the following terms:

"Monies from bondholders would be lent by LCF to numerous unconnected small and medium-sized enterprises in the United Kingdom (or, from around August 2017, UK businesses) in arm's length transactions." Now, please read what is pleaded back to it in paragraph 10 of the amended defence, found at <B2/1>. At 10.2, Mr Thomson confirms that neither the IMs nor the brochures use the words "numerous". At 10.3, he confirms that those documents didn't use the words "unconnected".

At 10.6, he confirms that, again, the IMs or the brochures did not use the words "arm's length transactions".

If we go to the reply now, which is found at <B3/1> and look at paragraph 14. At 14(1), there is an admission that it didn't use the word "numerous" but then the claimant seeks to introduce new representations.

At 14(2), there is an admission that the documents didn't use the words "unconnected", but, again, the claimant seeks to introduce new representations. At paragraph 14(3), there is an admission that the documents did not use the words "arm's length transactions", but, again, the claimant seeks to introduce new representations.

Now, we say, my Lord, that this -- isn't much left on the first representation. Omitting the words "numerous", "unconnected", and "arm's length transactions" the representation now reads: "Monies from bondholders would be lent by LCF to small and medium-sized enterprises in the UK (or, from around August 2017, UK businesses)."

MR JUSTICE MILES: That is not how I read the pleading at the moment. The pleading is saying, as I read it -- this pleading is saying, as I read it, that they are maintaining their case as set out in the particulars of claim, they accept that the documents did not include the express words "numerous", "unconnected", and "arm's length transactions", but they say that the natural meaning of those documents is that each of those features is to be, as it were, read into the document. Or another way of putting it, that the impression given by them is that the loans would be to numerous borrowers who would be unconnected and the terms would be on arm's length terms.

Now, I am just talking about the way it is pleaded. That is how I read that pleading at the moment, so I don't read them as putting forward different representations. I read it as saying that those are -- that is the case which is being advanced.

MS DWARKA: My Lord, we say that they are new representations --

MR JUSTICE MILES: I understand.

MS DWARKA: -- in the way that it has been written. We say that they are not clarifications and that the particulars should have been amended to reflect that.

MR JUSTICE MILES: Right.

MS DWARKA: We also say that it is not very promising in the way that they have set out the particulars. Our position, my Lord, is that, on that, Mr Robins seeks to salvage the first representation by introducing new versions of it in the reply, and that he is not allowed to do that. He should have amended the particulars.

It follows, my Lord, that the only representation that can go forward is the version without the words Mr Robins has admitted in the reply were not used, and we say that you cannot entertain the new representations pleaded in the reply.

My Lord, I now turn on to the second representation. It is pleaded at paragraph 7(2) of the re-reamended particulars of claim in the following terms: "Before agreeing to make any loan to any prospective borrower, LCF conducted due diligence [DD] to satisfy itself that the borrower would be able to pay interest on the loan and to repay the principal amount of the loan on maturity."

If we could please turn to paragraph 11 of the amended defence. That is at <B2/1>.

The reference to there having been pre-lending due diligence is admitted, but the criteria by reference to which the due diligence was carried out are not admitted.

MR JUSTICE MILES: Sorry, I am just -- sorry, this hasn't come up on the screen I don't think.

MS DWARKA: Sure. It is paragraph 11, amended defence.

MR JUSTICE MILES: Yes. Okay.

Yes.

MS DWARKA: So the reference to there having been pre-lending due diligence is admitted. But the criteria by reference to which the due diligence was carried out are not admitted.

Now, if we could turn to paragraph 15 of the reply. The reply is found at <B3/1>.

MR JUSTICE MILES: Yes.

MS DWARKA: We say that Mr Robins has done the same thing again. He tried to introduce new representations there, my Lord. We say that he cannot do that. My Lord, my team will go through the reply and produce a version marking the passages where Mr Robins tried to introduce new claims and we will submit to your Lordship that they must be struck out, which was the course taken by Mr Justice Pepperall in the Martlet Homes case.

The third representation, my Lord. This is pleaded at paragraph 7(3) of the re-reamended particulars of claim in the following terms:

"LCF generated income to cover its overheads and to pay interest on the bonds by charging borrowers a one-off fee equal to 2 per cent of the amount of the loan and interest in the region of 10 per cent per annum on the amount of the loan until maturity." If we could go to paragraph 12 of the amended defence, that is at <B2/1>.

(Pause).

You will see there, my Lord, that those details are admitted as an example, ie something that was said in some information memorandums.

If we now go to paragraph 16 of the reply, found at <B3/1>, my Lord, if you could please read that. (Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: It confirms that those particular details were given in some IMs, information memorandums. From the second sentence, which begins:

"More particularly ..."

Mr Robins then seeks to introduce new or different representations, which we say is impermissible for the reasons I have already given.

Standing back, where does that leave the third representation? It is alleged that some IMs put forward two figures, 2 per cent and 10 per cent, and that allegation is admitted. But so what? As an allegation of fraud, it is meaningless. There would need to be an allegation explaining which IMs said that, what the other IMs said, information memorandums, and whether the brochures or the website said anything different so that the court could see the financial parameters of the scheme which the claimants say were provided to the public. But there is nothing like that. Just two figures, which appeared in some information memorandums. The fourth representation.

The fourth representation is pleaded at paragraph 7(4) of the re-reamended particulars of claim in these terms:

"LCF only lent moneys to creditworthy borrowers which were established small and medium-sized enterprises (or, from around August 2017, UK businesses) with a strong payment covenant."

If we could go to paragraph 13 of the amended defence, found at <B2/1>.

(Pause).

The defence is that LCF didn't use the words "established" or "with a strong payment covenant". If you could please go to paragraph 17 of the reply, that is at <B3/1>.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: It asserts that the pleaded representation was made and then seeks to introduce further representations, which we say it must not do. The fifth to seventh representations.

My Lord, I can take these compendiously because the pleading is much more compressed.

The fifth is that no monies were ever (nor ever would be) advanced to any borrower before the execution of a legally binding loan agreement."

The sixth is:

"Every prior loan had been (and ever future loan would be) fully secured by debentures and other security agreements in favour of LCF over assets of the borrower, with a value materially in excess of the amount of the loan."

The seventh representation is:

"Borrowers' interests would be protected by an independent security trustee which had no connection with LCF or any of its borrowers."

Those are relatively uncontroversial and I do not need to take your Lordship to them at this stage. The eighth representation, this is pleaded at paragraph 7(8) of the re-reamended particulars of claim found at <B1/2> in the following terms: "An investment by bondholders in bonds was a secure investment which was capable of generating high returns, often in the region of 8 per cent per annum or higher." If we now go to paragraph 17 of the amended defence found at <B2/1>.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: The reference -- the defence makes reference to risk warnings, my Lord, which was included in all the materials and relevant documentations.

If we could now go to paragraph 20 of the reply, found at <B3/1>, it is said there that the risk warnings are irrelevant to Mr Thomson's liability for fraudulent trading.

What is the court to make of that? The eighth representation is clearly pleaded as being an evaluative judgment which is provided to the public as having some merit. But where do the claimants say it comes from? It is presumably said to be the meaning of various wordings, but we don't know what words were used, what meaning they are said to convey and how that is justified, or even where the words are to be found. If it is said to have been expressly stated, we need to know where and the words used. If it is said to be a distillation of the entire content of all the IMs, brochures and the website and possibly oral conversations, we need to know from what constituent parts that distillation is said to derive. My Lord, this is totally unsatisfactory as a basis of a pleading of fraud. It comes nowhere near the standard, for all the reasons I have mentioned. Moving on to falsity, my Lord.

The pleading of falsity comes at paragraph 21 of the re-reamended particulars of claim, found at <B1/2>. Will your Lordship please read that?

(Pause).

MR JUSTICE MILES: Sorry, I am just waiting for it to come up.

MS DWARKA: Sure.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: There is just a bold statement in the first sentence that each representation was false in the premises, followed by eight subparagraphs, each of which addresses the matching subparagraph and says that the company did not do what it represented. There are no particulars of falsity and no attempt to take account of the concessions made in the reply. For example, in the case

of the first representation the claimants accepted in the reply that the words "numerous, "unconnected" and "arm's length transactions" were not used, but, at paragraph 21.1, of the re-reamended particulars of claim the pleading of falsity asserts that the representation was false because LCF failed to lend to numerous unconnected borrowers in arm's length transactions. At the very least, the claimants should have updated the particulars of claim by amendment.

We say it is a mess. It falls very far short of the level of clarity and particularity required by the rules, the Practice Direction, the Commercial Court Guide, and the end high level of authorities such as Armitage.

Paragraph 21 begins by stating that the representations are false in the premises. So what are the premises in which each of the representations is apparently to be seen to be false? They are not identified. Presumably, the answer is everything from paragraphs 10 to 20. That is not satisfactory either but it is all we have.

One of the premises appears to be that the defendants received bondholder monies. That is at paragraph 10 of the re-reamended particulars of claim found at <B1/2>.

If you could please read that, my Lord. (Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: That paragraph is obviously wrong. The borrowers didn't receive bondholders' money. They received LCF monies. The monies become LCF's monies on receipt. So the pleading apparently means that the defendants received LCF's money and we discover from paragraph 12, if you could please read that too, my Lord.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: So we discover from paragraph 12 that there is a reference to money which is said to have derived originally from LCF but which the defendants received from other parties. That is part of the proprietary case, so it is difficult to see what it has to do with alleged fraudulent trading by LCF.

Another of the premises appear at paragraph 14. If you could please read that, my Lord.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: So paragraph 14 says:

"The fact that LCF's business was carried on with intent to defraud bondholders was concealed through the making of loans by LCF to various companies purportedly in bona fide arm's length transactions ... In reality, those borrowers were connected with and/or controlled by certain of the defendants ..."

That is what it says, in essence.

There is two problems with that. First, they abandoned their claim that LCF represented that it only loaned to unconnected companies. Even if they hadn't, the only connection was that Mr Thomson had carried 5 per cent interest and knew the people. Neither of those things would establish connection under all legal definitions.

Second, there is no explanation of what was concealed. That is repeated at paragraph 17, which says:

"The said loans were put in place to create a facade of legitimate business activities, in order to conceal the fact that LCF's business was carried on with intent to defraud bondholders."

The problem with that is that LCF's business was the making of loans. That was not a facade. That was all there was. If it was a facade, what was going on underneath which is said to have been concealed? How can loans be said to be a facade to conceal themselves, ie loans? It doesn't make any sense.

The conundrum is never explained.

There is no allegation that the loans were shams or misappropriations from LCF. The only particulars given at paragraph 17(1) to (16) of the re-reamended of particulars of claim are complaints that the borrowers were unsatisfactory borrowers or that the loan documentation was deficient. My Lord, if you could please read paragraph 17(1) to (16).

MR JUSTICE MILES: Does it carry on over the page or not?

MS DWARKA: Yes, it does. Next page.

MR JUSTICE MILES: Yes. Then over the page. (Pause).

Yes.

MS DWARKA: None of those complaints, my Lord, even if true, are sufficient to support an allegation of fraud because they are, in the words of Lord Justice Millett in Armitage, consistent with innocence.

In that regard, I gratefully adopt the submissions made to you last week by Mr Ledgister, who took you to at least one of the two sets of audited accounts. There was one set audited by PwC, the 2016 accounts, then a second set audited by EY, Ernst & Young, the 2017 accounts. My Lord, they are found at <L1/7> for the 2016 accounts and <L1/8> for the 2017 accounts if you wish to look at them later.

Of course, Mr Thomson's evidence will be that EY had completed their audit of the 2018 accounts, though it hadn't been completed before the FCA's raid. Those accounts establish that there was a competent, independent scrutiny of LCF's dealing and in particular its loan book and security.

The auditors signed off on it.

I won't take up time with that now because your Lordship has already seen it.

There is then a suggestion, at paragraph 18 of the re-reamended particulars of claim, that some of the borrowers created dishonest transactions. There is a reference to the 2015 exit transaction in various iterations, the Elysian SPA and the Prime SPA. But, so what if they did? What do those apparently unconnected transactions have to do with fraudulent trading in LCF? If there is said to have been a connection, it would need to be pleaded, but it is not.

In short, the first of the two ways in which it is pleaded that LCF carried on its business to defraud creditors is the allegation that it made, and then breached, the representations.

The pleading on the representations is a mess. The allegation of breach is no better. Various complaints are made but none of them is linked to a particular representation.

Crucially, and it is my most important point on this aspect of the case, the alleged fraudulent scheme is never actually described. Even if the representations were made and were false, that wouldn't, without more, be a fraudulent scheme. There would have to be a purpose, and the purpose would have to be pleaded. They would need to be an explanation, too, of whose purpose it was. Mr Thomson's or the entire board of directors'? If the former, it would have to be stated how Mr Thomson managed to bend the board of directors to his will.

It could have been said, for example, that the loans were made simply as a way of giving money away to the borrower companies and that there was no intention that they would ever be repaid. It could have been said that it was always intended that the money would then be extracted from the borrower companies unlawfully by the individual defendants as directors and shareholders and that Mr Thomson always knew that that would constitute an allegation of fraudulent trading. But none of those things are said.

On the contrary, there is no allegation that the loans were shams or misappropriations. The only allegation of misappropriation relates to money that the defendants did not receive from LCF. So there is nothing in this part of the pleading that supports the contention that the LCF was carried on to defraud creditors.

Moving on to the Ponzi scheme, my Lord.

MR JUSTICE MILES: Is that a good moment for the transcriber's break?

MS DWARKA: I would think so my Lord.

MR JUSTICE MILES: Five minutes. Thank you very much. (11.58 am)

(A short break)

(12.05 pm)

MS DWARKA: I was moving on to the Ponzi scheme, my Lord.

MR JUSTICE MILES: Yes.

MS DWARKA: The second way in which it is said LCF's business was conducted with the intent to defraud creditors is that it was run as a Ponzi scheme. That allegation appears at paragraph 21A of the re-reamended particulars of claim. If you could, please, read that, my Lord.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: My Lord, there is no legal definition of Ponzi scheme, but I think that we would all agree that the soliciting of investment from the public to fund an enterprise which was bound to the certain knowledge of the promoters to fail because of each constituent part of the business was inherently economically unviable, is a Ponzi scheme.

There are at least two problems with paragraph 21A. The first is that, although the claimants use the words "Ponzi scheme" what they allege does not amount to a Ponzi scheme as I have attempted to define it. The only complaint, at paragraph 21A, is that LCF loaned money which was used to pay interest and the inference is sought that that was the intention. But lending to enable the borrower to pay interest is a commonplace. Many loans include an interest element, which is often retained. That would not amount to a Ponzi scheme unless there was also the element of inbuilt, inevitable

collapse. But that is not intrinsic in lending to cover interest and, in any event, it is not pleaded. The second problem is that paragraph 21A appears to be entirely circular. It is like saying the business of LCF was carried on with intent to defraud creditors because it was a Ponzi scheme, ie a scheme to defraud creditors. It is circular because it does not explain why LCF was a Ponzi scheme or, indeed, whose scheme it was.

Moreover, there is no expert evidence in this case to the effect that LCF's business was bound to collapse or that it was a Ponzi scheme.

Moving on to participation and knowledge of the fraud, my Lord. The other two ingredients of the tort are that the defendant was a party to the fraudulent trading and that he had knowledge of the fraud. These are pleaded against Mr Thomson at paragraph 24 of the re-reamended particulars of claim in relation to him being a party, and paragraphs 34 to 35 of the re-reamended particulars of claim in relation to having knowledge.

Would my Lord like to have a look at the --

MR JUSTICE MILES: Yes.

Do you want me to look at those?

MS DWARKA: Paragraph 24 of the re-reamended particulars of claim and then paragraphs 34 to 35.

(Pause).

MR JUSTICE MILES: Yes, if I could go over the page, please. (Pause).

Yes, the next page, please.

(Pause).

Yes. And then 34 to 35?

MS DWARKA: 34 to 35, my Lord, yes.

(Pause).

MR JUSTICE MILES: Yes.

(Pause).

Yes.

MS DWARKA: The pleading of participation, my Lord, is not the most controversial aspect of this case. Clearly, he was a director. But there is still a point. It is said that he caused LCF to do certain things. In reality, of course, he did no such things. The board of directors did but he did not do that on his own. The pleading would need to explain but doesn't even try to, how he either imposed his will on the board or circumvented it. The pleading does neither.

So far as knowledge is concerned, Mr Robins presumably intended to plead that knowledge should be inferred. If so, and the pleading is not put in that way, he would have had to have pleaded the facts on the basis of which he invited the court to draw the inference. The facts pleaded at paragraph 34 does not support that inference. They are, in summary, that, as director, he knew how the business was being conducted, the problem for Mr Robins is that, because he has not pleaded a fraudulent scheme, Mr Thomson's knowledge of how the business was being conducted does not go far enough.

There is one exception. The particular at paragraph 34(7) which is that Mr Thomson knew that the borrowers would not repay and that LCF's collapse was inevitable. That particular stands in isolation. It is not linked to anything else. Nothing is pleaded to support it whatsoever. It is as if Mr Robins realised at that point that he had a problem but then failed to follow through in the early parts of the pleading. In conclusion, on fraudulent trading, it is my submission that there is not a pleaded case fit to proceed. The case is put in two ways: false representation and Ponzi scheme. The pleadings of both is manifestly defective and there is nothing in the re-reamended particulars of claim to link either to a fraudulent scheme.

I will now move on to breach of duty, which is the second claim against Mr Thomson: namely, that he breached his duties as a director of LCF. The entire breach of duty case, my Lord, is pleaded at paragraphs 55, 56 and 57 of the re-reamended particulars of claim. If you could please read them, my Lord.

(Pause).

MR JUSTICE MILES: Yes. I have read that.

MS DWARKA: Thank you very much.

Paragraph 55 is simply a pleading that Mr Thomson and Mr Golding were directors of LCF and owed the Companies Act duties. The duties are familiar: to act within powers; to exercise independent judgment; to exercise reasonable skill, care and diligence; to avoid conflicts; not to accept inducements; to declare interests. But they are separate and distinct and, if Mr Robins wished to assert a claim for breach of duty, he would need to identify which duties were engaged and how they were said to have been breached. Mr Golding is said to have been a de facto or shadow director, but no particulars, save for the few vague averments set out in a set of further particulars -- they are found at <B1/4> -- are pleaded to support that averment.

Mr Thomson denies that he was. There is no pleading that Mr Thomson was Mr Golding's nominee either. Paragraph 56 sets out the allegations of breach compendiously in seven bullet points which simply summarise the claim in fraudulent trading. There is no separately pleaded claim in respect of any particular duty; for example, there is no claim in negligence and, for that reason, it would not be open to the court to conclude that Mr Thomson had negligently breached a duty. Because, my Lord, it is either fraudulent trading or nothing.

Paragraph 57 is an attempt to suggest that the entire shortfall has been occasioned by breach of duty. Without particularisation, it is simply not possible for the claimants to mount that case. Unlike fraudulent trading, which is an insolvency remedy and which gives the court wide discretionary powers in relation to remedy, breach of fiduciary duty is a claim which requires proof of breach, causation and loss. None of those elements, my Lord, is addressed in this pleading. In summary, on breach of duty, my Lord, it is my submission that there is no claim fit to proceed. I will now turn to the claim in knowing receipt, which, to remind ourselves, is a claim that Mr Thomson received trust property, knowing that it was trust property.

My Lord, if you could go to paragraphs 64 and 65 of the re-reamended particulars of claim.

MR JUSTICE MILES: Sorry, can I just check a reference that you gave me to do with -- you said there were some particulars of --

MS DWARKA: <B1/4>, that is further particulars in respect of Mr Golding.

MR JUSTICE MILES: I am just looking at that, sorry, as I am listening to you. That seems to be to do with the circulation of monies. Maybe it is a different one.

MR ROBINS: I think it is page 34 of the document we are looking at actually. Paragraphs 27(1) to (1A).

MR JUSTICE MILES: Those particulars seem to be to do with -- I think to do with the circulation of -- you know, the Ponzi scheme allegation, I think, the one you gave me the reference to.

MS DWARKA: Yes, I will probably have to check that and get back you to, my Lord.

MR JUSTICE MILES: Yes. So you were going to go on to knowing receipt.

MS DWARKA: Knowing receipt. Yes.

I have asked you, my Lord, to look at paragraphs 64 and 65 of the re-reamended particulars of claim, which plead the claim compendiously against all the defendants.

MR JUSTICE MILES: Yes.

MS DWARKA: My Lord, in respect of the reference you asked for, it is not relevant to this section.

MR JUSTICE MILES: All right.

MS DWARKA: Then, my Lord, if you could please read paragraph 66 and paragraph 67, which sets out the claim against Mr Thomson only.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: It will be noted that all the payments Mr Thomson is said to have received came not from LCF but from third parties. But it is said, at paragraph 65, that, in each case, the money originated from LCF but passed through different entities, the controlling minds of which had the requisite knowledge that the money remained LCF's beneficially. As we have set out in our opening statement, Mr Thomson has a clear defence on the facts. For reference, our opening statement is at <C2/1>. In his witness statement, Mr Thomson sets out the position in respect to the sums received. It is at paragraphs 156 to 189. My Lord, if you could -- I will give you the reference. That is <C2/1>, and it starts at page 53 of that document.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: He explains there --

MR JUSTICE MILES: Sorry, I have just got as far as 160. It is quite a long passage you are referring to.

MS DWARKA: It is, my Lord.

MR JUSTICE MILES: How much of it do you want me to look at now?

MS DWARKA: You may come back to it later, my Lord. I just wanted to you have a look at it generally to see his factual case.

MR JUSTICE MILES: Yes.

MS DWARKA: They are worth having a quick look at. But it is said -- would you like me to continue, my Lord?

MR JUSTICE MILES: Yes, you carry on.

MS DWARKA: It is said there that -- so, his defence is some of the sums received arose from the 2015 exit agreement, some related to Christmas bonus from LCF, some related to consultancy fees, and some were never received at all.

We say, more significantly, for the purpose of this opening, that the claim is fundamentally flawed as a matter of law and it cannot succeed. To support this, my Lord, I need to refer to the excerpts from the relevant chapters of the Civil Fraud textbook referred to in our opening submissions at paragraph 141, and in the bundle of texts at <S3/7>.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: At 12-003 on [internal] page 367, it is said that:

"The essential requirements of a claim in knowing receipt can be derived from two Court of Appeal judgments El Ajou v Dollar Land Holdings Plc and Bank of Credit and Commerce International (Overseas) Limited v Akindele. A claimant must show:

"(1) Receipt of the claimant's asset (or their traceable proceeds) by the defendant;

"(2) Such receipt arising from a breach of fiduciary duty or trust owed to the claimant by a third party; and "(3) Knowledge on the part of the defendant that the assets he received are traceable to a breach of fiduciary duty or trust, sufficient to make it unconscionable for him to retain the benefit of the receipt."

Then, if we could go on to [internal] page 371, paragraph 12-013.

(Pause).

It is said there:

"An asset is the claimant's in this context if he has a subsisting equitable proprietary interest in it. This will include assets which the claimant owns outright, assets which are held on trust on his behalf and (probably) assets over which the claimant has a charge or mortgage. It will also include the traceable proceeds of such assets."

If we can then go to paragraph 12-015 -- I think it is on the same page -- it is said there: "It should be noted that if assets are transferred to the defendant under an ostensibly binding contract between the claimant and the defendant, they are no longer (from the point of transfer) the claimant's assets, and so no action in knowing receipt will lie, even if the contract was entered into in an obvious breach of fiduciary duty, of which the defendant knew. So long as the contract subsists, the defendant is entitled to rely upon his contract with the claimant to justify his receipt of the assets. In order to pursue an action in knowing receipt in such circumstances it is necessary, first, to set aside the contract (which it will frequently be possible to do, though the claimant will lose the benefit thereof)."

The authority mentioned, the authority for paragraph 12-015, is the decision of the House of Lords in Criterion Properties Plc v Stratford UK Properties LLC. My Lord, that authority is found at <S2/82>.

(Pause).

At paragraph 4, my Lord, Lord Nicholls says: "I respectfully consider the Court of Appeal in Akindele's case fell into error on this point. If a company (A) enters into an agreement with B under which B acquires benefits from A, A's ability to recover these benefits from B depends essentially on whether the agreement is binding on A. If the directors of A were acting for an improper purpose when they entered into the agreement, A's ability to have the agreement set aside depends upon the application of familiar principles of agency and company law. If, applying these principles, the agreement is found to be valid and is therefore not set aside, questions of 'knowing receipt' by B do not arise. So far as B is concerned there can be no question of A's assets having been misapplied. B acquired the assets from A, the legal and beneficial owner of the assets, under a valid agreement made between him and A. If, however, the agreement is set aside, B will be accountable for any benefits he may have received from A under the agreement. A will have a proprietary claim, if B still has the assets. Additionally, and irrespective of whether B still has the assets in question, A will have a personal claim against B for unjust enrichment, subject always to a defence of change of position. B's personal accountability will not be dependent upon proof of fault or unconscionable conduct on his part. B's accountability, in this regard, will be strict." Here, the loan agreements have not been rescinded. On the contrary, the administrators have relied on them and enforced certain rights under them. As an example, my Lord, the decision of the ICC Judge Jones in LCF v LOG, which is found at <S2/155>, where the current administrators' appointment as the administrators of LOG which was a director's appointment was challenged by Mr Barker, the administrators applied for recognition on an alternative basis, namely, that they had appointed themselves on the basis that LCF was a creditor and a qualifying floating charge holder of LOG. See paragraphs 17 and 20. They can only have done that on the basis that they affirmed the loan from LCF to LOG. My Lord if you want to have a look at paragraphs 17 and 20, please.

MR JUSTICE MILES: Yes.

MS DWARKA: It follows that title in the money passed from LCF to the borrower companies by virtue of the loan agreements. There has been no rescission or purported rescission.

My Lord, if you can now turn to our opening statement and read paragraphs 147 to 156. Our opening statements are at <A2/3>.

(Pause).

MR JUSTICE MILES: Yes.

MS DWARKA: There is no pleading of sham, my Lord. There could not be because, as I have mentioned, the claimant affirmed the loan agreements by using the power of appointment in the associated security documents. In summary, on knowing receipt, there is no case fit to proceed. Therefore, the case in relation to this cause of action should be struck out.

That has broader consequences than simply for Mr Thomson. The claims in knowing receipt against all the defendants are equally bad in law and must all fail. As a footnote, the result of that is that the administrators have lost any route to recovery of the monies which were paid by the resort companies to the defendants on the proprietary basis.

Coming back to my suggestion as to how the claim should have been structured had they followed that route, they would have had unanswerable claims through each residual borrower company against directors and shareholders for misappropriations and/or unlawful distributions. But those

claims are now time barred. No doubt the lawyers' team will be consulting their professional indemnity policies on this point.

MR JUSTICE MILES: There is no application to strike out, is there?

MS DWARKA: Not yet, my Lord.

MR JUSTICE MILES: Sorry, what did you say?

MS DWARKA: Not yet, my Lord.

MR JUSTICE MILES: Because that is not a merely technical point, it affects the course of the trial.

MS DWARKA: Yes.

MR JUSTICE MILES: Because, so far, we have had an opening from the claimant, we have had openings from the other defendants, this is your opening, we are about to get on to evidence. If there is an application to strike out, then the court would have to first of all consider whether it should be now entertained in all the circumstances, where we are in the middle of a trial; but secondly, how it would be dealt with. The question then would have to be not whether you are right but whether the claimant has an arguable case, a case which is better than remote or something like that. I would then have to hear further submissions on all of these points from the claimants, which is then going to lead to yet further rounds of submissions, no doubt. So I raise that as a real point. There is no application to strike out, you have said these various -- I have understood your arguments where you say these are the legal reasons why you say the case doesn't work, and that is fine, but when you go on and say the court should now strike out these claims, that is a different thing.

At any rate, I will leave it to you to decide whether to make such an application formally and, if so, the court will then have to, no doubt, hear submissions as to how it should be dealt with. But there has been -- this part of the case has been on the pleadings for a very long time, there have been previous arguments about amendments and so on, there has been a whole series of interlocutory hearings, including CMCs, and now, for the first time it seems, it is being suggested that part of the claim should actually be struck out. So I would like to you go away and think about that. I am not going to say anything more about it now.

MS DWARKA: Thank you, my Lord. I think our plan is to hear from Mr Robins in terms of his reply and what he says about the pleadings and then we will take a decision.

MR JUSTICE MILES: Well, the pleadings is one thing, because pleading points are about whether the case is properly pleaded or not. The questions of legal analysis and so on, he wouldn't have a right to reply on. He has had his go, he has chosen not to open on legal points, that is his call but that is the course he has taken. But he wouldn't have a right now to come back on legal points until closing, and I wouldn't expect him to. It would be different if he was facing a strike out application because obviously he would have to deal with that. But that would be a different matter procedurally and we are not there at the moment.

MS DWARKA: Noted, my Lord. I will take instructions and find out what the plan is.

MR JUSTICE MILES: Yes.

MS DWARKA: That brings me to the proprietary injunction in this case, and in particular the proprietary injunction against Mr Thomson.

We say the claimant has no viable proprietary claim and it follows that the court should not have granted proprietary injunctions. The court raised with Mr Slade on Monday the question whether the proprietary injunction directed to Mr Thomson was obtained by consent. That will be checked but we say that if the entire claim in knowing receipt is struck out, then the proprietary injunction will fall away with it, whether it is made by consent or not.

Dishonest assistance, my Lord.

The claim that all the defendants, apart from Mrs Hume-Kendall, dishonestly assisted Mr Thomson and Mr Golding to breach their duties as directors of LCF, and that Mr Thomson and Mr Golding dishonestly assisted each other, is pleaded in a single sentence with no particulars of assistance whatsoever. My Lord, that is found at paragraph 90 of the re-reamended particulars of claim. That is at <B1/2> if you wish to have a look.

MR JUSTICE MILES: Sorry, is this being brought up by the operator? Thank you.

(Pause)

Yes.

MS DWARKA: We say, my Lord, that there is nothing in there and that claim is not fit to proceed either. My Lord, unless I can assist you further, those are Mr Thomson's opening submissions.

MR JUSTICE MILES: Right. Well, thank you very much and I would like to commend you on your presentation of that opening.

MS DWARKA: Thank you.

MR JUSTICE MILES: Where does that leave us in terms of evidence? Because I had thought this was going to take all day.

MS DWARKA: Me too, my Lord.

MR JUSTICE MILES: You have obviously been economical. Is there a witness who is ready?

MR ROBINS: I need to take instructions, my Lord. The plan was for them all to come tomorrow, it may be possible for some to come this afternoon.

MS DWARKA: Sorry, I would be grateful to have this afternoon to be able to prepare for tomorrow, if that is possible.

MR JUSTICE MILES: Is it going to be --

MS DWARKA: It will be a day.

MR JUSTICE MILES: It will be within a day?

MS DWARKA: It will be within a day.

MR JUSTICE MILES: Right. We have had quite a lot of gaps now, it is becoming rather a gappy case. Are you able to do any this afternoon? I gathered from what I was told the other day, it must have been on Monday, that you had spent some time over the weekend preparing?

MS DWARKA: I did, my Lord, but with the fact that I had to do the opening and I had to digest quite a lot of information, I have parked that a bit. But I will be ready for tomorrow. I didn't expect to do it today. I can, if you want me to try to --

MR JUSTICE MILES: Well, I have taken on board what you have told me about your experience and so on, and I do want to ensure that, as far as possible --

MS DWARKA: And I have come quite late --

MR JUSTICE MILES: -- proper accommodation is made.

MS DWARKA: Yes, my Lord. Especially when it is only last Friday that I found out that I had to do this.

MR JUSTICE MILES: Right.

If it is on the footing that the evidence will be completed within less than a day, Mr Robins at the moment I am inclined to give Ms Dwarka a little bit more time on that basis.

MR ROBINS: We are in your Lordship's hands.

MR JUSTICE MILES: We will deal with all of your client's evidence in the course of tomorrow.

MR ROBINS: Yes. Absolutely.

MS DWARKA: Thank you.

MR JUSTICE MILES: Okay. So we will again rise now and reconvene tomorrow morning.

MS DWARKA: Thank you.

(12.50 pm)

(The hearing adjourned until 10.30 am the following day)

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