



Neutral Citation Number: [2021] EWHC 3194 (Ch)

Case No: CH-2021-000164

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)
ON APPEAL FROM THE ORDER OF DEPUTY MASTER BRIGHTWELL DATED 19TH JULY 2021

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 29/11/2021

Before :

MR JUSTICE EDWIN JOHNSON

Between :

- (1) **CRYPTON DIGITAL ASSETS LIMITED**
(2) **CRYPTON PARTNER MANAGEMENT LIMITED**

- and -

- (1) **BLOCKCHAIN LUXEMBOURG SA**
(2) **BLOCKCHAIN (GB) LIMITED**
(3) **STEPHEN JONES**
(4) **PETROS-ALEXANDER KOUMPAS**
(5) **MARK CURTIS**
(6) **CASTRAMET LIMITED**

Niranjan Venkatesan (instructed by **Goodwin Procter (UK) LLP**) for the First and Second
Defendants/Appellants

James Sheehan (instructed by **Ashurst LLP**) for the Claimants/Respondents

Hearing date: **9th November 2021**

Draft judgment sent to parties: 22nd November 2021

Claim
Respon

Defen
App

Defen

APPROVED JUDGMENT

I direct that no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic

MR JUSTICE EDWIN JOHNSON

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10:00am on 29th November 2021

Introduction

1. In this case the First and Second Defendants, to whom I will refer collectively as Blockchain, seek to challenge parts of an order made by Deputy Master Brightwell on 19th July 2021. By the relevant parts of this order ("the Order") the Deputy Master dismissed the bulk of Blockchain's application to strike out various parts of what are now the Amended Particulars of Claim in this action.

2. The Deputy Master refused to grant permission to appeal against the relevant parts of the Order. Blockchain renewed its application for permission to appeal to the appeal court (the High Court). By an order made on 23rd September 2021 Miles J. directed that the application for permission to appeal should be listed for an oral hearing, with the hearing of the appeal (if permission to appeal was granted) to follow.

3. The hearing of the application for permission to appeal/the appeal came before me on 9th November 2021. This is my reserved judgment on the application for permission to appeal/the appeal.

4. At the hearing Blockchain was represented by Mr. Niranjan Venkatesan, counsel. The respondents, the Claimants in this action, were represented by Mr. James Sheehan, also counsel. There are other Defendants to the action, but they are not directly affected by this particular dispute, and were not represented at the hearing.

5. Both counsel sensibly approached the hearing on the basis that all the arguments which would be engaged by the substantive appeal should be addressed at the hearing, subject to the reservation, on Mr. Sheehan's side, that this was without prejudice to his contention that permission to appeal had not been granted and should not be granted. I am grateful to both counsel for their assistance, both in their skeleton arguments for the hearing and in their well-organised oral submissions.

6. For ease of reference I will, unless otherwise indicated, use the expression "the Appeal" to refer to what is both an application for permission and, if permission should be granted, an appeal. It goes without saying that my use of this expression does not pre-empt my decision on the application for permission to appeal.

Summary of the claims in the action

7. The following summary of the claims in this action is taken from the Amended Particulars of Claim in the action. Blockchain has not yet, by reason of its strike out application, pleaded to the Amended Particulars of Claim. It is however apparent that the content of the Amended Particulars of Claim is substantially in dispute between the Claimants and Blockchain. My summary is intended only to set the scene for the arguments in the Appeal. The summary does not contain any findings of fact.

8. The Claimants, to whom I shall refer collectively as Crypton, describe themselves in the Amended Particulars of Claim as technology and research companies. Crypton says that, during the period relevant to this claim, it used a combination of quantitative data science and artificial intelligence to implement optimised trading strategies in respect of exchange-based cryptocurrencies and other digital assets which use blockchain technology.

9. The Second Claimant, Crypton Partner Management Limited (“Crypton PM”), is described as a wholly owned subsidiary of the First Claimant, Crypton Digital Assets Limited (“Crypton DA”). Crypton says that Crypton PM was formed for the purposes of exploiting the work which was being done to create a new investment platform for cryptocurrency dealing.

10. The First Defendant, Blockchain Luxembourg SA (“Blockchain SA”), is described as a major cryptocurrency wallet provider, operating a cryptocurrency exchange on which it seeks to encourage cryptocurrency-based trading. The Second Defendant, Blockchain (GB) Limited (“Blockchain GB”), is described as a wholly-owned subsidiary of Blockchain SA.

11. In addition to Blockchain there are four other Defendants to the action. As I understand the position these four other Defendants have all pleaded to the Amended Particulars of Claim and, in the case of the Sixth Defendant, a counterclaim has been made. As the remaining Defendants are relevant to the arguments in the Appeal, I should identify them.

12. The Third Defendant, Stephen Jones (“Mr. Jones”), is described as a former employee of Crypton DA, as a former director of Crypton DA and Crypton PM, and as Crypton’s former Chief Investment Officer, with responsibility (among other things) for creating Crypton’s signals, investment strategies and algorithms in respect of what is referred to as the Crypton Platform, as well as for artificial intelligence.

13. The Fourth Defendant, Petros Alexandros Koumpas (“Mr. Koumpas”), is also described as a former employee of Crypton DA, as a former director of Crypton DA and Crypton PM, and as Crypton’s former Chief Technology Officer, with responsibility for data, analytics and artificial intelligence in respect of the Crypton Platform.

14. The Fifth Defendant, Mark Curtis (“Mr. Curtis”), is described as having worked for Crypton DA pursuant to a contract for services, referred to as the Curtis Contract. Mr. Curtis is described as having been Crypton’s Principal Engineer, with responsibility for the creation of the Crypton Platform infrastructure, in particular its core software, source code and private network.

15. The Sixth Defendant, Castramet Limited (“Castramet”) is included as a Defendant to the action on the alternative basis that the Curtis Contract was between Crypton DA and Castramet, in which event Crypton claims against Castramet in contract, and on the basis that Castramet was vicariously liable for the alleged wrongdoing of Mr. Curtis.

16. So far as the essential complaints of Crypton in this action are concerned, it is most convenient to adopt the same course as the Deputy Master in his judgment, and quote the summary of the claim which appears in paragraphs 9-16 of the Amended Particulars of Claim. This summary is in the following terms (*italics have been added to all quotations in this judgment*):

“9. Between August 2018 and early 2020, Crypton developed a valuable bespoke institutional-grade multi-asset high-frequency, low latency trading platform using AI, with a focus on digital assets, specifically cryptocurrencies (the “Crypton Platform”), designed to function as a digital asset / fund manager.

10. From August 2019 onwards, Crypton engaged in discussions and negotiations with a number of third parties with a view to attracting investment into Crypton. One such third party was Blockchain SA. In late 2019 the negotiations between Crypton and Blockchain SA developed into a proposed acquisition by Blockchain SA of the entire share capital, business and assets of Crypton, including the Crypton Platform.

11. However, instead of seeing through the negotiations with Crypton to a concluded acquisition, Blockchain instead entered into a wrongful combination with Mr Jones, Mr Koumpas and Mr Curtis (and/or Castramet) pursuant to which these individuals simply purported to resign from Crypton and were engaged by Blockchain almost immediately thereafter.

12. Blockchain and the individual Defendants referred to above then proceeded to solicit other key staff from Crypton, and (it is to be inferred) Blockchain is now exploiting the Crypton Platform, using Crypton's intellectual property, and/or seeking to rebuild that platform using the ideas and concepts used to create it, and the skill, expertise and know-how of those of its employees and contractors who had contributed to its development.

13. Blockchain has made no payment of any kind to Crypton in return.

14. As set out in more detail below, the wrongful combination between the Defendants first involved Mr Jones, Mr Koumpas and Mr Curtis seeking to take control of the process of negotiation between Crypton and Blockchain SA, and of Crypton's technology assets and data. They did so:

14.1. With a view to ensuring that they were able to decide on whether and (if so) on what terms the acquisition took place, purporting in breach of duty to agree terms which were contrary to Crypton's interests and instead favoured Blockchain SA and these individuals. Blockchain SA had offered a bonus pool to transferring employees and, as Mr Jones explained at the time, he wanted to "keep the head count down" so that there was "more money in the pot for us". Mr Jones and Mr Koumpas used these negotiations with Blockchain SA to secure an increase in the salary to be paid to them personally after the acquisition.

14.2. Later, in order to enable them to exploit the opportunity presented by Blockchain SA's interest in Crypton's business, but without Blockchain SA having to acquire that business from Crypton for value.

15. In February 2020 this conduct culminated in the collapse of the acquisition negotiations and in:

15.1. The near-simultaneous resignation from Crypton of Mr Jones, Mr Koumpas and Mr Curtis, together with a number of more junior members of staff who had been solicited by Mr Jones, Mr Koumpas and Blockchain itself;

15.2. The Defendants' pursuit of Crypton's essential business through Blockchain without any payment to Crypton;

15.3. The Defendants gaining control over the code on which the Crypton Platform was built, and Crypton's access to that code and other valuable data being cut off; and

15.4. The resultant destruction of the entire value of Crypton's business.

16. Crypton accordingly claims against each of the Defendants for breach of fiduciary duty, breach of contract, infringement of copyright, breach of confidence, inducing breach of contract, dishonest assistance, unconscionable receipt and unlawful means conspiracy, as set out in more detail below."

17. As can be seen, and so far as Blockchain is concerned, Crypton accuses Blockchain of using unlawful means, in combination with Mr. Jones, Mr. Koumpas, and Mr. Curtis (and/or Castramet), to acquire the business of Crypton, including the Crypton Platform, thereby avoiding having to purchase that business pursuant to its original negotiations with Crypton. Although Blockchain has not pleaded to the Amended Particulars of Claim it was made clear to me, in the argument on the Appeal, that Crypton's account of what happened is very much in dispute. In particular, Blockchain's case is that it terminated the negotiations with Crypton because it had been misled, it is said deliberately, about various aspects of Crypton's corporate structure and business.

The Amended Particulars of Claim

18. At this point it is convenient to summarise the structure of, and the claims made in the Amended Particulars of Claim. This structure is important, in the context of the arguments in the Appeal.

19. The Amended Particulars of Claim are lengthy; running to 109 paragraphs and being divided into 9 sections (excluding the prayer) lettered A to I. In the remainder of this judgment references to Sections and Paragraphs mean, unless otherwise indicated, the sections and paragraphs of the Amended Particulars of Claim.

20. Sections A to I divide up the Amended Particulars of Claim in the following fashion:

(1) Section A (Paragraphs 1-8) identifies the parties to the action, whom I have identified above.

(2) Section B (Paragraphs 9-16) summarises the claim, as quoted above.

(3) Section C (Paragraphs 17-26) pleads what are said to have been the obligations owed to Crypton by the Defendants.

(4) Section D (Paragraphs 27-44) deals with the development of what is referred to as the Crypton Platform; that is to say (to quote from the Amended Particulars of Claim) a "multi-asset high-frequency, low latency trading platform using AI, with a focus on digital assets, specifically cryptocurrencies (the "Crypton Platform"), designed to function as a digital asset / fund manager.". Crypton says, in Paragraph 37, that the discussions with and proposed sale of its business to Blockchain were a manifestation of the business opportunity which Crypton had created through the Crypton Platform. This business opportunity is defined as the Crypton Platform Opportunity.

(5) Section E (Paragraphs 45-61) deals with what is said to have been the proposed acquisition of Crypton's business by Blockchain.

(6) Section F (Paragraphs 62-82) is central to the Appeal. Section F is headed "**The Defendants' wrongful appropriation of the Crypton Platform Opportunity**". Paragraphs 62-82 then set out how it is alleged that this wrongful appropriation took place, and what its consequences have been.

(7) Section G (Paragraphs 83-106) is also central to the Appeal. Section G identifies what are said to be Crypton's various causes of action against the Defendants.

(8) Section H (Paragraphs 107-108) sets out a claim to the loss and damage caused to Crypton by the alleged wrongful acts of the Defendants, and seeks an inquiry into damages, on one or more of the bases set out in Paragraph 108.

(9) Section I (Paragraph I) sets out the claim for interest, either as statutory interest or as interest pursuant to the Court's equitable jurisdiction.

21. The claims made against Blockchain in the Amended Particulars of Claim can be summarised as follows:

(1) A claim for alleged infringement of Crypton's intellectual property; the specific causes of action being alleged breach of copyright and alleged breach of a common law duty of confidence.

(2) A claim for alleged inducing of breach of contract on the part of Mr. Jones, Mr. Koumpas, and three further individuals (Mr. Jirman, Mr. Calvi, and Mr. Kisil) who are alleged to have had contracts for services with Crypton DA.

(3) A claim for alleged dishonest assistance in breaches of fiduciary duty on the part of Mr. Jones and Mr. Koumpas.

(4) A claim that Blockchain engaged in an unlawful means conspiracy, in combination with Mr. Jones, Mr. Koumpas, and Mr. Curtis (and/or Castramet), against Crypton.

22. The above summary does not include a claim made against Blockchain of unconscionable receipt of assets, which was contained in the original Particulars of Claim, but has since been abandoned.

23. There are two further particular and related features of the Amended Particulars of Claim which, in my view, are particularly to be noted. The first feature is that the same facts are relied upon for the purposes of pleading more than one cause of action. The second feature, which is to some extent a product of the first feature, is that there is considerable cross-referencing between the different parts of the Amended Particulars of Claim. So, in Section G, one finds repeated cross-referencing back to Section F which contains what may be described as the core or central facts which are said to give rise to the causes of action in Section G.

The application to strike out and the decision of the Deputy Master

24. By application notice dated 15th December 2020 Blockchain applied to strike out certain specified parts of what were then Crypton's Particulars of Claim. In overall summary, Blockchain sought to strike out the claims made against it for (i) inducing breach of contract, (ii) dishonest assistance, (iii) unconscionable receipt, and (iv) unlawful means conspiracy.

25. The application was made pursuant to [CPR Rule 3.4\(2\)](#), which provides as follows:

"(2) The court may strike out a statement of case if it appears to the court—

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order."

26. The application was heard before the Deputy Master on 25th March 2021. For the reasons set out in a judgment handed down on 11th May 2021 ("the Judgment") the Deputy Master decided that the application succeeded to a limited extent. The Deputy Master decided that the claim in unconscionable receipt should be struck out on the basis that the relevant paragraph of the Particulars of Claim did not disclose reasonable grounds for bringing the claim. The Deputy Master also decided that part of the claim in dishonest assistance should be struck out, on the basis that the relevant part of the claim was not sufficiently particularised in that it did not allege acts of assistance with the relevant breaches of fiduciary duty pleaded in the Particulars of Claim. The Deputy Master

declined however to strike out the claims in inducing breach of contract, and unlawful means conspiracy, and declined to strike out a substantial part of the claim in dishonest assistance.

27. Following the handing down of the Judgment the Deputy Master made an order on 11th May 2021 which gave Crypton the opportunity to amend the Particulars of Claim in order to try to save the claim in unconscionable receipt and the relevant part of the claim in dishonest assistance. By the same order consideration of any such amendment and all other matters consequential upon the Judgment were postponed to a separate hearing on 19th July 2021. It was at that separate hearing that the Order was made. In the event Crypton did apply for and obtained permission to amend the Particulars of Claim at that separate hearing. The amendments did however accept the decision of the Deputy Master in relation to the claim in unconscionable receipt and in relation to the struck out part of the claim in dishonest assistance.

28. The Appeal is therefore concerned with challenging the decision of the Deputy Master not to strike out (i) the claim in inducing breach of contract, (ii) the claim in unlawful means conspiracy, and (iii) the remaining parts of the claim in dishonest assistance.

29. In terms of the pleading of the relevant claims against Blockchain matters have moved on in one other way, following the handing down of the Judgment. On 11th June 2021 Blockchain served a request for further information on Crypton pursuant to [CPR Part 18](#). By this request (“the Request”) further information was sought, in respect of the pleading of the claims in inducing breach of contract, in dishonest assistance, and in unlawful means conspiracy. The Request was answered by a response (“the Response”) dated 5th July 2021.

The grounds of the Appeal

30. The first ground of appeal is that the Deputy Master erred in concluding that the unlawful means conspiracy is properly pleaded and particularised. The Deputy Master ought, so it was contended, to have concluded that the claim was not properly pleaded and particularised, and should have struck it out. This first ground of appeal, as it was advanced at the hearing of the Appeal, engaged three arguments, as follows:

(1) The allegation that Blockchain was a party to a combination was said to be entirely unparticularised.

(2) The allegation that Blockchain shared the objects of the alleged combination was also said to be wholly unparticularised.

(3) The Amended Particulars of Claim were said not to contain any properly particularised allegation that the object of the combination was to injure Crypton by the use of unlawful means.

31. The second ground of appeal is that the Deputy Master erred in concluding that the claim in the tort of inducing breach of contract was properly pleaded and particularised. The Deputy Master ought to have concluded, so it was contended, that the claim was not properly pleaded and particularised, and should have struck it out. This second ground of appeal rested on the argument that Crypton had failed adequately to plead its case on inducement. The case on inducement, so it was said, was unclear, and not one to which Blockchain could fairly be expected to respond.

32. The third ground of appeal is that the Deputy Master erred in concluding that the claim in dishonest assistance (so far as not struck out) is properly pleaded and particularised. The Deputy Master ought to have concluded, so it was contended, that the claim in dishonest assistance was not

properly pleaded and particularised, and should have struck it out in its entirety. This third ground of appeal rested on the argument that there were two fundamental flaws in the pleading of the remaining parts of the claim in dishonest assistance. The first was that Crypton had failed properly to plead or particularise the conduct which was said to constitute the alleged assistance. The second was that Crypton had failed properly to particularise the allegation that such assistance, if there was any, was dishonest.

My jurisdiction on the Appeal

33. There was some debate before me as to the nature of the jurisdiction which I was exercising on the Appeal. Strictly speaking of course, the debate concerned the jurisdiction I was exercising on the substantive appeal, assuming the grant of permission to appeal. There was no dispute over the test for permission to appeal. Subject to this point, it is convenient to continue to refer to the Appeal in my consideration of this question of my jurisdiction.

34. Both counsel were agreed that I was not reviewing the exercise of a discretion by the Deputy Master, where my ability to interfere with the decision of the Deputy Master would be limited to circumstances where the Deputy Master had gone wrong in law or principle, or had made a decision outside the margins within which reasonable disagreement is possible.

35. Mr. Venkatesan also submitted that this was not an appeal against a case management decision of the Deputy Master, where the appeal court should be slow to interfere with the decision of the lower court. Mr. Venkatesan's argument on the Appeal was that the relevant parts of the Amended Particulars of Claim, which pleaded the claims in inducing breach of contract, unlawful means conspiracy, and dishonest assistance, failed to comply with the common law rules of pleading and, as such, fell to be struck out. As such, Mr. Venkatesan submitted that the Deputy Master had not been carrying out an evaluative exercise, or making a multi-factorial decision. The question was simply whether the Deputy Master had been wrong to decide that the relevant parts of the Amended Particulars of Claim satisfied the common law rules of pleading. If I came to the conclusion that the Deputy Master had been wrong, I was entitled to overturn his decision.

36. Mr. Sheehan's position was somewhat different. He submitted that while the decision of the Deputy Master was not technically a case management decision, the Deputy Master was not making a decision of law, such as he would have made if he had been construing a contract. Rather, the Deputy Master was making an evaluative decision, so that the principles relating to evaluative judgments applied. As such, so Mr. Sheehan submitted, I should not interfere with the Deputy Master's decision unless the Deputy Master made some error of principle, or failed to have regard to something he should have had regard to, or vice versa. As Mr. Sheehan put it, I was required to show due deference to the role the Deputy Master was performing, and the nature of his analysis or, as he also put the matter, to give weight to the decision of the Deputy Master.

37. As between these competing arguments I prefer, in the particular circumstances of this case and without laying down any general principle, the analysis of Mr. Venkatesan. The application which came before the Deputy Master and is now the subject of the Appeal is narrowly focussed. Although Blockchain's application notice made reference to [CPR Rule 3.4\(2\)](#), the application is effectively made under sub-paragraph (a) of Rule 3.4(2), which applies where a statement of case discloses no reasonable grounds for bringing or defending the relevant claim. Blockchain's case is that the relevant parts of the Amended Particulars of Claim fail to disclose an adequately pleaded case against Blockchain, either in inducing breach of contract, or in unlawful means conspiracy, or in dishonest assistance. The application is not made under sub-paragraph (c) of Rule 3.4(2); namely failure to

comply with a rule, practice direction or court order. The application is only made under subparagraph (b) of Rule 3.4(2), namely abuse of process or obstruction of the just disposal of proceedings, to the extent that the alleged failure adequately to plead the relevant causes of action in the Amended Particulars of Claim may also be characterised as abuse of process or obstruction of the just disposal of this action.

38. In order to assess the merits of Blockchain's case it seems to me that it is necessary to carry out what may be characterised as a fairly mechanical exercise of going through the Amended Particulars of Claim and deciding, in the case of each of the relevant causes of action, whether what is pleaded is sufficient to meet the requirements for pleading the relevant cause of action, as those requirements may be found in the case law, or in the CPR, or elsewhere. I can see that there may be some element of evaluation in this exercise, but it does not strike me as an exercise where I am required to approach the decision of the Deputy Master as one which cannot be interfered with unless some error of principle was made, or unless some factor was wrongly disregarded or wrongly taken into account.

39. As it happens, I derive support for this conclusion from the Judgment itself. At paragraph 14 of the Judgment the Deputy Master described the task before him in the following terms:

"I was addressed by Mr Hossain on the footing that the adequacy of Crypton's pleading is to be assessed by an essentially granular consideration of the elements of each cause of action relied upon, and of the contents of the particulars of claim, in order to determine whether each cause of action is supported by pleadings of fact which, if established at trial, would enable each element of each claim to succeed. Mr Sheehan did not demur from this approach which is replicated, particularly, in his skeleton argument. He did, however, urge against a formalistic approach, submitting that the claim in conspiracy was unusually compelling, given the (alleged) concealment by Blockchain and the other defendants of the appropriation of Crypton's business."

40. It seems to me that paragraph 14 of the Judgment correctly describes what is required of a court which is called upon to consider Blockchain's case on its application to strike out. The court is required to consider what is pleaded, in relation to each of the relevant causes of action, and to decide whether what is pleaded is sufficient to meet the requirements for pleading the relevant cause of action. This is, to borrow the Deputy Master's phrase, a granular exercise which requires careful analysis of the relevant parts of the Amended Particulars of Claim, and a consideration of whether what is pleaded in relation to each of the relevant causes of action satisfies the relevant requirements for such a pleading.

41. Drawing together all of the above discussion it seems to me that the position can be summarised as follows, in terms of the exercise required of the appeal court in the particular circumstances of this case. In order to decide whether the Deputy Master was right, in the part of his decision which is challenged in the Appeal, it is necessary for me to carry out a similar exercise to that carried out by the Deputy Master, and to decide whether the pleading of the relevant causes of action satisfies the relevant requirements for pleading such causes of action. If and to the extent that I decide that the pleading of any of the relevant causes of action is inadequate, I should set aside the decision of the Deputy Master. The position does not seem to me to be one where, if I disagree with the decision of the Deputy Master, I should then ask myself whether the Deputy Master made an error of principle, or wrongly disregarded or took into account some factor.

42. One other point which can conveniently be added in this context, which follows from the exercise which I have to undertake, is that for the purposes of the Appeal I have to assume, as the Deputy

Master also had to assume, that the facts alleged in the Amended Particulars of Claim are true; see paragraph 13 of the Judgment. I did not understand this to be in dispute between counsel.

The pleading requirements – relevant principles

43. Before coming to my consideration of the specific grounds of appeal I should identify the principle which governs generally the pleading of a cause of action. I should also identify the particular principles which govern the pleading of a claim in dishonesty.

44. In terms of the general function of pleadings, I start with what Lord Millett said in *Three Rivers DC v Bank of England (No. 3)* [2003] 2 A.C., at [185], albeit in the context of pleading fraud or dishonesty.

“185. It is important to appreciate that there are two principles in play. The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him. If the pleader means “dishonestly” or “fraudulently”, it may not be enough to say “wilfully” or “recklessly”. Such language is equivocal. A similar requirement applies, in my opinion, in a case like the present, but the requirement is satisfied by the present pleadings. It is perfectly clear that the depositors are alleging an intentional tort.”

45. I also find it useful to remind myself of what Saville LJ (as he then was) said of the function of pleadings in *British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Limited* (1994) 45 ConLR 1, at 4-5:

“The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this basic purpose and to seek particularisation even when it is not really required. This is not only costly in itself, but is calculated to lead to delay and to interlocutory battles in which the parties and the court pore over endless pages of pleadings to see whether or not some particular point has or has not been raised or answered, when in truth each party knows perfectly well what case is made by the other and is able properly to prepare to deal with it. Pleadings are not a game to be played at the expense of the litigants, nor an end in themselves, but a means to the end, and that end is to give each party a fair hearing. Each case must of course be looked at in the light of its own subject matter and circumstances. Thus general statements to the effect that global or composite claims are embarrassing and justify striking out, to be found for example in *Hudson on Building and Engineering Contracts* (11th edn, 1994) para 8-204 are not automatically applicable to every case. With regard to the particular pleadings in question, I remain unpersuaded that either McAlpines or PDP were put to any sort of material unfair disadvantage by the way the matter had been set out by the plaintiffs.”

46. In the specific context of pleading fraud or dishonesty, and returning to *Three Rivers*, Lord Millett said this, at [184]-[186] (repeating [185] for this purpose):

“184. It is well established that fraud or dishonesty (and the same must go for the present tort) must be distinctly alleged and as distinctly proved; that it must be sufficiently particularised; and that it is not sufficiently particularised if the facts pleaded are consistent with innocence: see *Kerr on Fraud and Mistake* 7th ed (1952), p 644; *Davy v Garrett* (1878) 7 Ch D 473 , 489; *Bullivant v Attorney General for Victoria* [1901] AC 196 ; *Armitage v Nurse* [1998] Ch 241 , 256. This means that a plaintiff who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the

defendant was dishonest and not merely negligent, and that facts, matters and circumstances which are consistent with negligence do not do so.

185. It is important to appreciate that there are two principles in play. The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him. If the pleader means “dishonestly” or “fraudulently”, it may not be enough to say “wilfully” or “recklessly”. Such language is equivocal. A similar requirement applies, in my opinion, in a case like the present, but the requirement is satisfied by the present pleadings. It is perfectly clear that the depositors are alleging an intentional tort.

186. The second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud. It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved.”

47. In terms of the pleading of primary facts, in a case of fraud or dishonesty, Flaux J. (as he then was) said this in *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm), at [20]:

“20. I agree with Mr Gourgey QC that this overstates what is required for a valid plea of fraud. The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. As Lord Millett put it, there must be some fact “which tilts the balance and justifies an inference of dishonesty”. At the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud. If the plea is justified, then the case must go forward to trial and assessment of whether the evidence justifies the inference is a matter for the trial judge. This is made absolutely clear in the passage from Lord Hope’s speech at [55]-[56] which I quoted above.”

48. The relevant principles were usefully summarised by Arnold LJ, in *Sofer v Swissindependent Trustees SA* [2020] EWCA Civ 699. The case was not included in the authorities before me, but was referred to by the Deputy Master, at paragraph 17 of the Judgment. Arnold LJ said this at [23]:

“23. More important for the purposes of this appeal are the principles governing the pleading of dishonesty. There was little dispute as to these before either the Judge or us. They were summarised, in my judgment accurately, by counsel for the Claimant as follows:

i) Fraud or dishonesty must be specifically alleged and sufficiently particularised, and will not be sufficiently particularised if the facts alleged are consistent with innocence: *Three Rivers District Council v Governor and Company of the Bank of England (No.3)* [2003] 2 AC 1 .

ii) Dishonesty can be inferred from primary facts, provided that those primary facts are themselves pleaded. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be pleaded: *Three Rivers* at [186] (Lord Millett).

iii) The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence: *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [20]-[23] (Flaux J, as he then was).

iv) Particulars of dishonesty must be read as a whole and in context: *Walker v Stones* [2001] QB 902 at 944B (Sir Christopher Slade)."

49. It is convenient to add at this point, by way of general guidance in the Appeal, what Arnold LJ went on to say at [24]:

"24. To these principles there should be added the following general points about particulars:

i) The purpose of giving particulars is to allow the defendant to know the case he has to meet: *Three Rivers* at [185]-[186]; *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775 at 793B (Lord Woolf MR).

ii) When giving particulars, no more than a concise statement of the facts relied upon is required: *McPhilemy* at 793B.

iii) Unless there is some obvious purpose to be served by fighting over the precise terms of a pleading, contests over their terms are to be discouraged: *McPhilemy* at 793D."

50. Mr. Venkatesan identified two principles or requirements which, so he submitted, apply to the pleading of dishonesty. These principles or requirements were as follows:

(1) Mr. Venkatesan described the first principle or requirement as the sufficiency requirement. While dishonesty can be inferred from primary facts, provided that the primary facts are pleaded, it must be the case, on the basis of the primary facts pleaded, that an inference of dishonesty is more likely than one of innocence or negligence. It is not enough if the primary facts pleaded are equally consistent with an inference of honesty.

(2) Mr. Venkatesan described the second principle or requirement as the identification requirement. In pleading dishonesty the primary facts which, if true, support the inference of dishonesty and thus satisfy the sufficiency requirement, must be identified. The claimant cannot simply plead a narrative of various primary facts, leaving it to the defendant and the court to work out which are said to give rise to the inference of dishonesty and which are not. Although identified as a second principle or requirement, the identification requirement was described by Mr. Venkatesan as being anterior, in terms of its application, to the sufficiency requirement.

51. Mr. Venkatesan placed particular emphasis on the identification requirement, the existence of which he said that the Deputy Master had overlooked.

52. I accept Mr. Venkatesan's characterisation of the sufficiency requirement and the identification requirement, as requirements which fall to be observed when pleading fraud or dishonesty. I add two qualifications to Mr. Venkatesan's characterisation of the identification requirement. First, what is required to be pleaded in any particular case, in order to comply with the identification requirement, is a case sensitive exercise. Second, it is important to keep in mind that the basic purpose of a

pleading is to enable the opposing party to know what case is being made, in sufficient detail to enable that party properly to prepare to answer it. The application of the identification requirement is not a rigid exercise.

53. Mr. Venkatesan also submitted that the identification requirement applied equally to the claims in inducing breach of contract and in unlawful means conspiracy. If primary facts were relied upon to draw the inference that some particular element of either tort was established, those primary facts required clear identification. I did not understand Mr. Sheehan to dispute this. The point made by Mr. Sheehan was that the particular requirements for pleading dishonesty or fraud, as they emerge from the case law cited above, did not apply across the board to the claims in inducing breach of contract and in unlawful means conspiracy, simply because those other claims involved intentional wrongdoing. Mr. Sheehan drew my attention to what Leggatt J. (as he then was) said in *ED&F Man Sugar Ltd v T&L Sugars Ltd* [2016] EWHC 272 (Comm), at [32] and [33]:

“32. The fourth and final limb of the defendants’ application asks the court to strike out the claim against the two individual defendants, Mr. Bacon and Mr. Widmer. As mentioned, the claim pleaded against those defendants is that they were parties to the alleged conspiracy to injure the claimant by unlawful means. Mr. Howe submitted that an allegation of conspiracy is tantamount to an allegation of fraud, for which proper particulars are necessary. That is all the more so where the conspiracy claim includes an allegation that the defendants were parties to a deception. He submitted that none of the matters pleaded in support of the allegation that Mr. Bacon and Mr. Widmer were participants in the alleged conspiracy provides a proper or reasonable basis for that allegation.

33. I think it is going too far to equate a case of unlawful means conspiracy with an allegation of fraud as a general matter. Dishonesty is not a necessary element of the tort. However, some reasonable basis needs to be pleaded to support an allegation that an individual was involved in such a conspiracy; and where, as here, the conspiracy is said to have involved deception, all the strictures that apply to pleading fraud are directly engaged.”

54. Applying the above principles (governing the pleading of a case in fraud or dishonesty) to the present case, it seems to me that the position can be summarised as follows:

(1) In relation to the remaining parts of the claim in dishonest assistance the requirements for pleading a claim in fraud and dishonesty, as set out in the cases referred to above, apply in their full rigour.

(2) In relation to the claims in inducing breach of contract and unlawful means conspiracy the above requirements for pleading a claim in fraud and dishonesty only apply in so far as these claims are alleged to have involved dishonesty. I do however accept, whether or not this was common ground between counsel, that what Mr. Venkatesan characterised as the identification principle does apply across the board. By this I mean that where particular elements of the torts of inducing breach of contract and unlawful means conspiracy are said to be established by inference from primary facts, the primary facts relied upon must be identified. It is not sufficient for Blockchain to be left to identify those facts for itself.

55. With all of the above principles in mind, and with all of the relevant case law cited to me in mind (whether or not specifically cited in this judgment), I turn to the specific grounds of appeal.

The first ground of appeal - discussion

56. The first ground of appeal is that the Deputy Master erred in concluding that the unlawful means conspiracy was properly pleaded and particularised. There were three ways in which it was said that the pleading fell short, as follows:

(1) The allegation that Blockchain was a party to a combination was said to be entirely unparticularised.

(2) The allegation that Blockchain shared the objects of the alleged combination was also said to be wholly unparticularised.

(3) The Amended Particulars of Claim were said not to contain any properly particularised allegation that the object of the combination was to injure Crypton by the use of unlawful means.

57. I will take each of these arguments individually but, before doing so, it is convenient to set out the overall structure of the pleading of the unlawful means conspiracy.

58. The starting point is Section B, where Crypton's claims are summarised. The alleged conspiracy is summarised in Paragraphs 11-14, in the following terms:

"11. However, instead of seeing through the negotiations with Crypton to a concluded acquisition, Blockchain instead entered into a wrongful combination with Mr Jones, Mr Koumpas and Mr Curtis (and/or Castramet) pursuant to which these individuals simply purported to resign from Crypton and were engaged by Blockchain almost immediately thereafter.

12. Blockchain and the individual Defendants referred to above then proceeded to solicit other key staff from Crypton, and (it is to be inferred) Blockchain is now exploiting the Crypton Platform, using Crypton's intellectual property, and/or seeking to rebuild that platform using the ideas and concepts used to create it, and the skill, expertise and know-how of those of its employees and contractors who had contributed to its development.

13. Blockchain has made no payment of any kind to Crypton in return.

14. As set out in more detail below, the wrongful combination between the Defendants first involved Mr Jones, Mr Koumpas and Mr Curtis seeking to take control of the process of negotiation between Crypton and Blockchain SA, and of Crypton's technology assets and data. They did so:

14.1. With a view to ensuring that they were able to decide on whether and (if so) on what terms the acquisition took place, purporting in breach of duty to agree terms which were contrary to Crypton's interests and instead favoured Blockchain SA and these individuals. Blockchain SA had offered a bonus pool to transferring employees and, as Mr Jones explained at the time, he wanted to "keep the head count down" so that there was "more money in the pot for us". Mr Jones and Mr Koumpas used these negotiations with Blockchain SA to secure an increase in the salary to be paid to them personally after the acquisition.

14.2. Later, in order to enable them to exploit the opportunity presented by Blockchain SA's interest in Crypton's business, but without Blockchain SA having to acquire that business from Crypton for value."

59. I pause to observe that these Paragraphs contain a good deal of what might be described as introductory information about the alleged unlawful means conspiracy.

60. I then move to Section G, where Crypton's causes of action are set out. The cause of action in unlawful means conspiracy is set out in Paragraphs 104-106, in the following terms:

"104. Paragraphs 62 to 81 above are repeated as to the combination or agreement entered into between the Defendants and the acts carried out pursuant to it.

105. The Defendants intended by such combination or agreement to injure Crypton, in particular in that such injury was the obverse side of the coin to the financial gain which they sought for themselves by the exploitation of the Crypton Platform Opportunity.

106. The unlawful acts pleaded in paragraphs 69.5 and 83 to 103 above were carried out as unlawful means pursuant to the said combination or agreement."

61. Paragraph 104 thus sends one back to Section F, which contains Paragraphs 62-81, in relation to the alleged combination and the acts carried out pursuant to that combination. Paragraph 106 sends one back to the previous parts of Paragraph G (Paragraphs 83-103) and to Paragraph 69.5 in Paragraph F for an identification of the unlawful means employed pursuant to the alleged combination.

62. Turning specifically to the first argument in support of this first ground of appeal the combination which is alleged between the Defendants can be found set out in Paragraphs 62-64, which are in the following terms:

"62. On a date or dates prior to 14 February 2020, which Crypton is presently unable to particularise further (but in respect of which it will seek to plead further as appropriate upon provision of further information upon disclosure or otherwise), Mr Jones and Mr Koumpas entered into a combination or agreement to act in their own interests and against Crypton's interests with regard to the Crypton Platform Opportunity and the proposed Blockchain SA acquisition. Mr Curtis (and/or Castramet) and Blockchain were also party to the said combination or agreement. Crypton will seek to plead further (on the basis set out above) as to the date or dates on which these Defendants joined.

63. Initially, pursuant to the said combination or agreement, in January and February 2020 Mr Jones and Mr Koumpas, together with Mr Curtis (and/or Castramet), sought to take control of the negotiations with Blockchain SA, in particular through:

63.1. Taking over negotiations with Blockchain SA representatives and conducting those negotiations without reference to Crypton DA's board, and in their own interests and the interests of Blockchain, rather than in the interests of Crypton;

63.2. Seeking to oust other members of Crypton DA's board; and

63.3. Gaining control of Crypton's technology assets and data.

64. Subsequently, the said combination or agreement evolved into one pursuant to which, rather than Blockchain SA acquiring Crypton's business (and in particular the Crypton Platform) for value, Mr Jones, Mr Koumpas and Mr Curtis would instead simply join Blockchain, solicit other key Crypton staff, and pursue the Crypton Platform Opportunity through Blockchain, without any payment to Crypton in return."

63. So far as the alleged combination is concerned, the allegations in these Paragraphs seem clear to me. The combination between the Defendants is alleged in Paragraph 62. It was originally a combination between Mr. Jones and Mr. Koumpas, subsequently joined by Mr. Curtis and/or Castramet and Blockchain. Paragraphs 63 and 64 then describe how this combination evolved. As Paragraph 62 makes clear, and as must be the case with many allegations of conspiracy, Crypton is not currently able to particularise the dates when the combination was formed or joined by Blockchain.

64. The evolution of the combination is dealt with further in Paragraph 72, which is in the following terms:

“72. Subsequently, at a time which Crypton is unable to identify precisely prior to disclosure but which it believes to have been between 10 and 14 February 2020, the combination or agreement between the Defendants evolved into one pursuant to which, rather than Blockchain SA acquiring Crypton’s business (and in particular the Crypton Platform) for value, Mr Jones, Mr Koumpas and Mr Curtis would instead simply join Blockchain, solicit other key Crypton staff, and pursue the Crypton Platform Opportunity through Blockchain, without any payment to Crypton in return.”

65. One then moves to Paragraph 65 which is stated to set out further particulars of the allegations in Paragraphs 62-64. As I understand Paragraph 65, the further particulars referred to are the contents of the remainder of Section F; that is to say Paragraphs 66-82, although Paragraph 82 is principally concerned with the consequences of the activities of the Defendants alleged in the previous Paragraphs of Section F.

66. In oral submissions, and in response to a question from me, Mr. Venkatesan helpfully summarised his essential complaint in relation to the first ground of appeal in the following terms. Section F contains, at Paragraph 66 through to Paragraph 82, a mass of pleaded facts without identification of what facts are relied on as facts from which the required elements of the tort of unlawful means conspiracy can be inferred. This constitutes, so Mr. Venkatesan submitted, a failure to comply with the identification requirement.

67. In relation to his first argument, in respect of the alleged combination, Mr. Venkatesan’s essential point was that it was impossible to know, from the mass of pleaded facts, what overt acts were relied upon as raising the inference that there was a combination as alleged in Paragraphs 62-64. Mr. Venkatesan accepted, as a matter of principle, that the case could be pleaded on the basis that the existence of the combination could be inferred from primary facts, but in the present case, so it was submitted, those primary facts were not identified.

68. I do not agree. Paragraph 104 identifies that Paragraphs 62-81 are relied upon “as to the combination or agreement entered into between the Defendants”. This brings in Paragraphs 66-81, as those Paragraphs are introduced by Paragraph 65.

69. Accordingly, as it seems to me, if one is asking the question as to what acts are relied upon in support of the allegation that there was a combination as alleged in Paragraphs 62-64, the answer is all the acts alleged in Paragraphs 66-81 are relied upon. More accurately, and taking into account the terms of Paragraph 72, the answer is that the acts relied upon in support of the original combination are set out in Paragraphs 66-71, and the acts relied upon in support of the existence of the combination as it evolved are set out in Paragraphs 73-81. Whether all or any of those acts do support the allegation that there was such a combination, either in its original or evolved form, remains to be seen. The pleaded position seems clear to me.

70. In this context Mr. Venkatesan relied heavily upon the decision of Moore-Bick J., as he then was, in *Paragon Finance plc v Hare*. I believe that the case is unreported (save for a summary in the *Times Law Reports*), but the case reference is CH 1997 P No. 3021. The case was not cited to the Deputy Master, but I do not think that this is material, as I accept the submission of Mr. Venkatesan that authority to a similar effect was cited to the Deputy Master. Mr. Venkatesan relied upon *Paragon* as authority for the existence of the identification requirement, when pleading fraud or dishonesty. Mr.

Venkatesan also relied upon this case in support of his argument that the combination said to found the conspiracy in the present case was inadequately pleaded.

71. Paragon was concerned with a claim by Paragon Finance, a mortgage lender, that it had been the victim of a fraudulent conspiracy, by reason of which it had been induced to lend far more on the security of certain properties than it otherwise would have done. An application was made to strike out the statement of case by one of the defendants, a firm of solicitors, accused of being a party to the fraudulent conspiracy. The application to strike out was made on the basis that the fraudulent scheme was inadequately particularised. By a previous decision in the same case Carnwath J. decided that the allegation of fraudulent conspiracy should be struck out on this ground. The question which then arose, for Moore-Bick J., was whether the pleading of the fraudulent conspiracy could be saved by amendment of the statement of case to provide the required particulars. In approaching that question, Moore-Bick J. directed himself in the following terms:

“Mr. Parker submitted that the critical issue in this case so far as Ranga's adherence to the conspiracy is concerned is that of knowledge. To a large extent I would agree with that. Common sense suggests that the plaintiffs are unlikely to be able to state exactly when, where and in what terms they say an agreement was made between Mr. Jayatilaka and Mr. Thompson; their case that there was such an agreement will almost inevitably be one of inference to be drawn from other facts. Of these, knowledge on the part of Mr. Jayatilaka of the other elements of the fraud and of Ranga's place in it is likely to be of great importance. Mr. Parker submitted that the plaintiffs' case concerning Ranga's knowledge is fully set out in the pleading, but in a case of this kind it is not sufficient for a plaintiff simply to include all the necessary allegations without pleading the inferences which he says are to be drawn from them. It is incumbent on him both to plead the primary facts on which he relies and to set out clearly how they give rise to the inference that the defendants were parties to a conspiracy. That, it seems to me, is what Carnwath J. had in mind when he said that the plaintiffs had to make clear the logical connection between the facts pleaded and the substantive allegations. If that is not done the defendant is placed in a difficulty because he is unable to identify clearly the nature of the case to which he must plead and which he must meet at trial.”

72. Mr. Venkatesan's submission was that his client was in the same position as the relevant defendant in Paragon. The logical connection between the pleaded facts and the alleged combination was not made.

73. While this was the position in Paragon, I do not accept that Blockchain is in the same position in the present case, essentially for the reasons which I have just set out. In my view Crypton has identified the primary facts from which, so it says, it can be inferred that the combination alleged, in its initial and evolved forms. It seems to me that Crypton has done this in Section B, by way of summarised introduction, and then substantively in Paragraphs 62-64, in Paragraph 72, and in Paragraph 104. The primary facts relied upon, as I read the Amended Particulars of Claim, are those set out in Paragraphs 66-81.

74. The Deputy Master dealt with this part of Blockchain's case at paragraph 63 of the Judgment, where he said this:

“I consider that the overt acts which it is alleged Blockchain carried out before and after 14 February 2020 are acts from which a combination involving Blockchain could be inferred. It is pleaded that at least some of the relevant pleaded acts were coordinated with Blockchain. I further consider that a trial judge could find that the matters pleaded by Crypton as to Blockchain's involvement lead, in the

absence of satisfactory explanation, to the necessary inference that Blockchain was a member of the combination: see *Bird v O'Neal* [1960] AC 907 at 920-921.”

75. I do not entirely follow this reasoning, although this may reflect a difference in the terms of the argument before the Deputy Master. The Deputy Master seems to have approached the matter on the basis that the pleading of overt acts, from which a trial judge could draw the inference that there was a combination as alleged to which Blockchain was a party, could be found in particular parts of the Amended Particulars of Claim. As I understood Mr. Venkatesan’s argument, or at least principal argument before me, the question was not whether there were facts pleaded in the Amended Particulars of Claim from which a trial judge could infer the existence of the alleged combination. Rather, the question was whether the Amended Particulars of Claim sufficiently identified the primary facts which were relied upon as giving rise to the inference that the alleged combination did exist.

76. This point also seemed to me to affect part of Mr. Venkatesan’s submissions in relation to the first ground of appeal. Mr. Venkatesan pointed out that some of the factual material contained in Section F does not mention Blockchain, and thus could not be factual material from which Blockchain’s participation in the alleged combination could be inferred. This seems to me to confuse two separate questions. The first question, which engages the identification requirement, is whether the primary facts have been adequately identified, from which it is said that it can be inferred that Blockchain was a party to the alleged combination. In my view, and for the reasons which I have given, it seems to me that Crypton has done that. The second question is whether those facts, or any of them are facts from which such an inference can properly be drawn. In the case of events in which Blockchain is not alleged to have been involved, the short answer to the second question may be that no such inference can possibly be drawn, because no involvement in the relevant event by Blockchain is alleged. It seems to me however that any such short answer is for Blockchain’s pleaded response to the pleading of this element of the claim in unlawful means conspiracy. Equally, the question of whether any such short answer is a good answer does not seem to me to be for this stage of this action.

77. This point was well brought out by Mr. Venkatesan in his closing oral submission, in reply to Mr. Sheehan. Mr. Venkatesan referred me to paragraph 1 of CPR Practice Direction 3A. Paragraphs 1.4 and 1.7 of PD3A provide as follows:

“ 1.4

The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):

- (1) those which set out no facts indicating what the claim is about, for example “Money owed £5,000”,
- (2) those which are incoherent and make no sense,
- (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.

1.7

A party may believe he can show without a trial that an opponent’s case has no real prospect of success on the facts, or that the case is bound to succeed or fail, as the case may be, because of a point of law (including the construction of a document). In such a case the party concerned may make an application under [rule 3.4](#) or [Part 24](#) (or both) as he thinks appropriate.”

78. As Mr. Venkatesan stressed, the application to strike out in the present case falls within the terms of paragraph 1.4, and specifically within sub-paragraph (3). The application does not fall within the terms of paragraph 1.7. This was plainly correct, but it also goes to emphasize the importance of observing the dividing line between (i) an argument that what is pleaded, if true, does not disclose the relevant cause of action, and (ii) an argument that what is pleaded, if true, discloses a cause of action which, for some legal or evidential reason, is bound to fail at trial. At times Mr. Venkatesan's argument seemed to me to stray into the latter argument, particularly in relation to the new point raised on the Appeal (to which I shall come), and thereby to run into the difficulty that Blockchain was not in a position, at least before me, to demonstrate that, for some legal or evidential reason, a particular cause of action in the Amended Particulars of Claim, if adequately pleaded, was bound to fail at trial.

79. Ultimately, I do not think that the possible difference between my approach and that of the Deputy Master, which I have identified above, matters. In my view, and for the reasons which I have set out, the Amended Particulars of Claim do sufficiently identify the primary facts relied upon as giving rise to the inference that the alleged combination existed, in its original and evolved forms. As such, I agree with the Deputy Master that the first argument, in support of the first ground of appeal, fails.

80. In saying what I have just said I have not overlooked the fact that Mr. Venkatesan also argued that, in the present case, there was the same lack of logical connection, between the primary facts pleaded and the allegation of a combination, as existed in Paragon. In Paragon it was considered that the pleading of the fraudulent conspiracy failed to make clear the logical connection between the facts pleaded and the substantive allegations. I accept that Crypton's reliance upon the facts alleged in Paragraphs 66-81, as facts from which the existence of the alleged combination can be inferred, is very wide. I have to say however that Crypton's case that there was a combination between the relevant parties, including Blockchain, does not seem to me to suffer from the lack of logical connection which was found to exist in Paragon. It seems to me that if the chain of events set out in Paragraphs 66-81 is found to be true, it would be perfectly possible for the trial judge in this case to infer the existence of the alleged combination. Whether it would be appropriate for the trial judge to draw this inference is not for me to decide.

81. This brings me to the second argument, which is that the allegation that Blockchain shared the objects of the alleged combination is wholly unparticularised.

82. I have some difficulty in following this argument. It seems to me that the Amended Particulars of Claim make it perfectly clear (i) what the objects of the alleged combination were, and (ii) that Blockchain shared in those objects. One does not have to travel beyond Paragraph 14 in order to find an identification of the shared objects of the alleged combination. The ultimate object of the alleged combination, as Paragraph 14 makes perfectly clear, was for the Defendants, including Blockchain, to use the opportunity created by Blockchain's negotiations to purchase Crypton's business in order to acquire Crypton's business without paying for it.

83. The alleged combination, in its original and evolved forms, is pleaded in Paragraphs 62-64 and in Paragraph 72. These Paragraphs make it quite clear that Blockchain shared in the objects of the alleged combination, which are identified in Paragraph 64 and 72. In particular, it is alleged that Blockchain shared in the ultimate objective of the alleged combination which was, as I have said, to acquire the business of Crypton without paying for it.

84. It is not clear to me what more Crypton should, or could have done to particularise the allegation that Blockchain shared in the objects of the alleged combination. In my view the pleading that Blockchain shared the objectives of the alleged combination is adequately pleaded.

85. As with the first argument, the Deputy Master appears to have approached this second argument on the basis that the question was whether a trial judge could find, on the basis of what is pleaded in the Amended Particulars of Claim, that Blockchain did share in the objects of the alleged combination; see paragraph 64 of the Judgment. Again, I do not entirely follow this reasoning although, as with the first argument, this may reflect a difference in the terms of the argument before the Deputy Master. Again, I do not think that this matters. In my view, and for the reasons which I have been able to set out very briefly, the Amended Particulars of Claim do adequately plead the allegation that Blockchain shared in the objects of the alleged combination. As such, I agree with the Deputy Master that the second argument, in support of the first ground of appeal, fails.

86. This brings me to the third argument, which is that there is no properly particularised allegation that the object of the combination was to injure Crypton by the use of unlawful means.

87. Again, I have some difficulty in following this argument. For ease of reference, I repeat Paragraph 106:

“106. The unlawful acts pleaded in paragraphs 69.5 and 83 to 103 above were carried out as unlawful means pursuant to the said combination or agreement.”

88. Paragraph 106 thus makes reference to the entirety of Section G, up to Paragraph 103. These Paragraphs set out the series of unlawful acts which Crypton says have been committed by the Defendants, including the claims in inducing breach of contract and dishonest assistance made against Blockchain. The only qualification to this is that Paragraph 103, which set out the claim in unconscionable receipt, has now been removed by amendment, following the Judgment. Paragraph 69.5 is also referenced, which sets out a series of false representations which Mr. Jones and Mr. Koumpas are alleged to have made.

89. Paragraph 106 pleads that all of these unlawful acts were carried out as “unlawful means pursuant to the said combination or agreement”. As Mr. Sheehan pointed out in his skeleton argument, as a matter of ordinary language “pursuant to” means “in accordance with”. If therefore the unlawful acts were carried pursuant to the alleged combination, it seems to me that this can be taken to mean that the unlawful acts were carried out in accordance with what the Defendants, by the alleged combination, had agreed to do. As such, it seems to me that Paragraph 106 is making it clear that the Defendants intended, by the alleged combination, to carry out the unlawful acts identified in Paragraph 106. Paragraph 105 makes it clear that the intended object of the Defendants, by these unlawful acts, was to injure Crypton.

90. In the light of the above analysis I have considerable difficulty in understanding how it can be said that there is no properly particularised allegation that the object of the combination was to injure Crypton by the use of unlawful means. Paragraphs 105 and 106 seem to me to make it clear that the object of the alleged combination was to injure Crypton by the use of unlawful means, and those unlawful means are set out, in some detail, in the preceding parts of Section G and in Paragraph 69.5.

91. The Deputy Master dealt with this third argument at paragraphs 65 and 66 of the Judgment. The analysis of the Deputy Master does not seem to have been quite the same as my analysis. In rejecting the third argument, the Deputy Master placed particular emphasis on Paragraphs 72-74. I agree with

the Deputy Master's analysis of these Paragraphs, but it seems to me that the essential pleading of Crypton's case that the object of the alleged combination was to injure Crypton by the use of unlawful means is to be found in Paragraphs 105 and 106, which cross refer to the particulars of these unlawful acts which can be found in the earlier part of Section G and in Paragraph 69.5.

92. In any event, in my view there is a properly particularised allegation in the Amended Particulars of Claim that the object of the combination was to injure Crypton by the use of unlawful means. As such, I agree with the Deputy Master that the third argument fails.

93. It follows that the first ground of appeal fails.

The second ground of appeal - discussion

94. The second ground of appeal is that the Deputy Master erred in concluding that the claim in the tort of inducing breach of contract was properly pleaded and particularised. As I have said, this second ground of appeal rested on the argument that Crypton had failed adequately to plead its case on inducement.

95. The cause of action in inducing breach of contract is pleaded in Paragraphs 94-99. It is pleaded that Blockchain intentionally induced breaches of contract by Mr. Jones and Mr. Koumpas (Paragraph 96) and by Mr. Jirman, Mr. Calvi, and Mr. Kisil (Paragraph 99). The second ground of appeal is however concerned with, or is at least principally concerned with the pleading of the claim that Blockchain intentionally induced breaches of contract by Mr. Jones and Mr. Koumpas.

96. The starting point is therefore Paragraph 96, which pleads as follows:

"96. By its conduct as pleaded in paragraphs 72 to 81 above, Blockchain intentionally induced the breaches of contract by Mr Jones and Mr Koumpas pleaded in paragraphs 85.6 to 85.8 above."

97. As I understand Blockchain's argument, it is that Paragraphs 72-81 do not plead any conduct by which it can be said that Blockchain intentionally induced the breaches of contract by Mr. Jones and Mr. Koumpas pleaded in Paragraphs 85.6 to 85.8.

98. The next step is to identify the relevant breaches of contract at Paragraphs 85.6 to 85.8. They are as follows:

"85.6. Mr Jones and Mr Koumpas are in breach of their contractual obligations as set out in clause 22 and Appendices A and B of the Jones/Koumpas Contracts insofar as they have misused (and therefore also failed to deliver up) Crypton's Intellectual Property as pleaded separately hereinbelow.

85.7. In joining Blockchain immediately on leaving Crypton and prior to the expiry of their respective notice periods as pleaded in paragraph 74 above, Mr Jones and Mr Koumpas were in breach of their non-competition obligations in clause 23.3 and Appendix C paragraphs 1.2.1 and 1.2.2 of the Jones/Koumpas Contracts.

85.8. In soliciting Mr Jirman, Mr Calvi and Mr Kisil to join Blockchain as pleaded in paragraph 75 above, without informing the board of Crypton DA, Mr Jones and Mr Koumpas acted in further breach of the Jones/Koumpas Contracts in that they:

85.8.1. Failed to use their best endeavours to promote the interests of Crypton (clause 4.1.2);

85.8.2. Failed to comply with their reporting obligation in clause 4.1.3;

85.8.3. Were in breach of their non-solicitation obligations in clause 23.3 and Appendix C paragraphs 1.2.5 and 1.2.6.”

99. The next step is to travel to Paragraphs 72-81, in order to see whether it is correct that they contain no allegation of conduct by which it can be said that Blockchain intentionally induced these breaches of contract.

100. I cannot see that it is correct to say that Paragraphs 72-81 contain no allegations of conduct by which it can be said that Blockchain intentionally induced these breaches of contract.

101. The pleaded case, in Paragraph 96, is that Crypton relies upon all the conduct of Blockchain pleaded in Paragraphs 72-81. Without going through every item of conduct alleged in this part of the Amended Particulars of Claim, I can refer to the analysis of the Deputy Master on this question. In terms of conduct capable of amounting to inducement, the Deputy Master identified, in paragraphs 31 and 32 of the Judgment, the following parts of Paragraphs 72-81 as pleading such conduct:

“31. It is in fact expressly pleaded that Blockchain coordinated the resignations of Messrs Jones, Koumpas and Curtis (paragraph 74.2), and that Blockchain solicited the resignation of the other named employees. As a matter of plain language, I consider the allegation that resignations were coordinated or solicited by Blockchain to constitute a pleading that Blockchain persuaded, encouraged or assisted the relevant resignations in breach of contract. I therefore consider that Crypton has pleaded the conduct on the part of Blockchain said to constitute an inducement to commit the breaches particularised at paragraph 85.7 and 85.8.

32. To the extent that such conduct is not further particularised and as far as paragraph 85.6, the alleged misuse of Crypton’s intellectual property, is concerned, I consider that Crypton must rely and is entitled to rely on the allegation of inconsistent dealings, as explained above. Crypton has pleaded a course of conduct in the days around 14 February 2020 according to which Blockchain collaborated with the other defendants in procuring the resignation from Crypton and employment with Blockchain of the various named actors, following which the use of the Crypton Platform, including identified intellectual property rights, would be pursued through Blockchain. Crypton pleads at paragraph 74.2 that none of the individuals concerned would have sought to resign from Crypton without an assurance of future employment from Blockchain, on beneficial terms. I consider these offers of employment, and the use of Crypton’s intellectual property, to be a pleaded inconsistent dealing such that Crypton has sufficiently pleaded that Blockchain persuaded, encouraged or assisted the relevant breaches of contract.”

102. I agree with this analysis, so far as it goes. The analysis of the Deputy Master seems to me to contradict the claim that Paragraphs 72-81 do not plead any conduct by which it can be said that Blockchain intentionally induced these breaches of contract.

103. In arguing that the Deputy Master was wrong in this analysis Blockchain took a point which I understand was not argued below, in relation to inducement of the breaches of contract alleged in Paragraphs 85.7 and 85.8. The point was that the contracts between Crypton, on the one side, and (respectively) Mr. Jones and Mr. Koumpas, on the other side, had non-competition provisions which only lasted for one month. The contracts between Crypton, on the one side, and (respectively) Mr. Jirman, Mr. Calvi, and Mr. Kisil, on the other side, all had notice periods of one month. As such, so Mr. Venkatesan argued, the conduct of Blockchain alleged in Paragraph 74.2 was equally consistent with Blockchain having given an assurance of future employment to Mr. Jones and Mr. Koumpas after the one month non-compete period had expired, and was equally consistent with Blockchain inducing Mr.

Jones and Mr. Koumpas to solicit the resignations of Mr. Jirman, Mr. Calvi, and Mr. Kisil after they had given the required notice period of one month.

104. I do not follow this argument. Paragraph 85.7 pleads, in terms, that Mr. Jones and Mr. Koumpas breached the non-competition obligations in their contracts of employment by joining Blockchain immediately on leaving Crypton. The facts relied upon as giving rise to these breaches of contract are stated to be those alleged in Paragraph 74. Paragraph 74 pleads the resignations of Mr. Jones and Mr. Koumpas during the evening of 14th February 2020. Paragraph 74 also pleads that these resignations were “obviously coordinated” by Blockchain. It is quite obvious that Crypton is not saying that Blockchain engaged in conduct which might or might not have induced a breach of the non-compete obligations. Crypton is saying that Mr. Jones and Mr. Koumpas breached the non-compete obligations in their contracts of employment, and Crypton is saying that these breaches were induced by Blockchain.

105. Turning to Paragraph 85.8, different reasoning applies. Paragraph 85.8 pleads in terms that Mr. Jones and Mr. Koumpas solicited Mr. Jirman, Mr. Calvi, and Mr. Kisil to join Blockchain in breach of various obligations in the contracts of employment of Mr. Jones and Mr. Koumpas. The facts relied upon as giving rise to these breaches of contract are stated to be those alleged in Paragraph 75. Paragraph 75 pleads the resignations of Mr. Jirman, Mr. Calvi, and Mr. Kisil between 14th February and 16th February 2020, following solicitation from Mr. Jones, Mr. Koumpas, and Blockchain. It is however important to focus on the breaches of contract which are alleged in Paragraph 85.8. The breaches of contract alleged against Mr. Jones and Mr. Koumpas, which Blockchain is said to have induced, do not depend upon the proposition that Mr. Jones and Mr. Koumpas solicited Mr. Jirman, Mr. Cavil, and Mr. Kisil to leave Crypton immediately, without giving the prescribed period of one month’s notice. What is alleged is that in soliciting these individuals to join Blockchain, Mr. Jones and Mr. Koumpas breached various obligations in their contracts of employment. As Mr. Sheehan pointed out, these breaches of contract would still have been alleged, even if Mr. Jirman, Mr. Cavil, and Mr. Kisil had given the required period of notice to Crypton before leaving.

106. I therefore conclude that this particular point is misconceived, and does not provide any grounds for undermining the analysis of the Deputy Master.

107. Mr. Sheehan contended that it was not open to Blockchain to raise this particular point on appeal, because the point had not been raised before the Deputy Master. As the point was purely a point of argument, in a dispute which is purely concerned with the terms of the Amended Particulars of Claim, it seems to me that the point was one which could be raised in the Appeal. The real problem with this particular point seems to me to be that it is misconceived.

108. There was a footnote to Mr. Venkatesan’s skeleton argument, for the hearing of the Appeal, which asserted that the new point raised on the Appeal applies equally to Crypton’s case that Blockchain itself induced Mr. Jirman, Mr. Calvi, and Mr. Kisil to breach their contracts for services with Crypton. This argument, as I understood it, was that these individuals were quite entitled to resign from Crypton by giving one month’s notice, as required by their respective contracts. As such, so it was argued, it does not follow that Blockchain induced any breach of contract on the part of these individuals, in soliciting these individuals to resign from Crypton.

109. I do not see how this argument can support the striking out of this part of Crypton’s claim. Paragraph 97 pleads that Mr. Jirman, Mr. Calvi, and Mr. Kisil resigned from Crypton without notice, and thereby breached their respective contracts with Crypton. Paragraph 75 pleads that Blockchain solicited these individuals to join Blockchain. Paragraph 99 pleads that Blockchain thereby

intentionally induced these breaches of contract on the part of Mr. Jirman, Mr. Calvi, and Mr. Kisil. It may be that the alleged breaches of contract on the part of these individuals were not particularly material, because these individuals had the ability to resign on one month's notice in any event. I cannot however see that this possibility can justify the striking out of this part of Crypton's claim. It is clearly pleaded, in Paragraph 99, that Blockchain induced the breaches of contract pleaded in Paragraph 97. The merits of this particular claim are not, as it seems to me, properly the subject of this application to strike out.

110. The second way in which Blockchain sought to challenge the analysis of the Deputy Master at paragraphs 31 and 32 of the Judgment was by arguing that even if the required plea of inducement could be found in Paragraph 74.2, the Amended Particulars of Claim did not state that the allegation of inducement was confined to Paragraph 74.2. As such, so it was contended, the case which Blockchain was required to meet on inducement was left wholly unclear.

111. In this context reference was made to the Response. For ease of reference I will refer to the numbered paragraphs of the Request and the Response as Request 1 and Response 1, and so on. Request 1 was in the following terms:

"1. In relation to the allegation that Blockchain '[b]y its conduct as pleaded in paragraphs 72-81 above' induced the breaches of contract pleaded in paragraphs 85.7 and 85.8:

(1) Please identify each passage within paragraphs 72-81 which is alleged to be the 'conduct' by which Blockchain induced those breaches.

(2) In particular, does Crypton rely on any passage other than paragraph 74.2 in this respect? If so, please identify each such passage."

112. Response 1 gave the following response to this request:

"1. Crypton's case is that Blockchain has, together with the other Defendants, pursued a course of conduct by which they have exploited the Crypton Platform Opportunity through Blockchain, as pleaded in paragraphs 72 to 81, and by which (among other things) Blockchain has induced breaches of contract by Mr Jones and Mr Koumpas. Pending disclosure and/or further information, Crypton relies in particular on the conduct pleaded and particularised in the APoC in the paragraphs referred to below, by which conduct Blockchain encouraged, assisted and/or persuaded, and thereby induced, Mr Jones and Mr Koumpas to act in breach of contract as alleged in paragraphs 85.7 and 85.8 of the APoC:

1.1. 74.2. It is to be inferred that Blockchain gave the assurance referred to in that paragraph.

1.2. 75.1. Mr Jones and Mr Koumpas would not have taken the steps pleaded unless authorised by Blockchain to do so, and it is accordingly to be inferred that Blockchain gave such authorisation.

1.3. 75.3, by which conduct Mr Tuff encouraged, assisted and/or persuaded Mr Jones and Mr Koumpas in their own steps to solicit Mr Jirman, Mr Calvi and Mr Kisil to join Blockchain as pleaded in paragraph 75 of the APoC.

1.4. 75.4 and 75.6. As pleaded in paragraph 75.6, none of Mr Jirman, Mr Calvi or Mr Kisil would have resigned from Crypton without an assurance of future employment by Blockchain. For the avoidance of doubt it is to be inferred from this and from the matters pleaded in paragraph 75.4 that Blockchain gave such assurance, thereby encouraging, assisting and/or persuading Mr Jones and Mr Koumpas in

their own steps to solicit Mr Jirman, Mr Calvi and Mr Kisil to join Blockchain as pleaded in paragraph 75 of the APoC.

1.5. 77 (Blockchain's employment of each of the individuals referred to).

1.6. 80 and 81. In employing (among others) Mr Jones and Mr Koumpas to exploit the Crypton Platform Opportunity using Crypton's Intellectual Property, Blockchain has encouraged, assisted and/or persuaded Mr Jones and Mr Koumpas to compete with Crypton, and continues to do so."

113. I can see the point that Response 1 identifies a number of Paragraphs, within Paragraphs 72-81, as containing pleas of inducement on the part of Blockchain. This is however consistent with what is pleaded in Paragraph 96, which is that Blockchain "By its conduct as pleaded in paragraphs 72-81 above" intentionally induced the specified breaches of contract by Mr. Jones and Mr. Koumpas. All that Response 1 seems to me to do is to specify particular Paragraphs, within Paragraphs 72-81, which are relied upon in support of Crypton's case on inducement. I also note that, in Response 1, these specific Paragraphs are introduced by the words "Crypton relies in particular". I take these words to signify, consistent with Paragraph 96, that Crypton continues to rely on the entirety of Blockchain's conduct, as set out in Paragraphs 72-81, as the particulars of its case that Blockchain induced the relevant breaches of contract on the part of Mr. Jones and Mr. Koumpas.

114. The real problem with the second ground of appeal seems to me to be this. The second ground of appeal engages two arguments. The first argument is that if one looks at Paragraphs 72-81, there is no conduct alleged which is capable of constituting the inducement which is a necessary ingredient of a cause of action in inducing breach of contract. That argument seems to me to be wrong because, if one looks at Paragraphs 72-81, there is conduct alleged which is capable of constituting the required inducement. In this context Blockchain's new point, namely that Paragraph 74.2 does not plead conduct which necessarily induced breaches of contract, seems to me to be misconceived, for the reasons set out above.

115. The second argument is that Crypton has failed to identify whether its case on inducement is confined to the conduct alleged in Paragraph 74.2, or also relies upon other parts of Paragraphs 72-81. The answer to the second argument seems to me to be supplied by Paragraph 96. Crypton relies upon all the conduct of Blockchain pleaded in Paragraphs 72-81. So, to state the obvious, all the conduct of Blockchain pleaded in Paragraphs 72-81 is relied upon as particulars of Blockchain's intentional inducement of the relevant breaches of contract on the part of Mr. Jones and Mr. Koumpas. This is confirmed by Response 1. Response 1 does identify particular Paragraphs which are relied upon as pleading and particularising the conduct of Blockchain in inducing the relevant breaches of contract. As I read Response 1 however, Crypton continues to rely on all the conduct of Blockchain pleaded in Paragraphs 72-81 as particulars of its case on inducement. I do not see an inconsistency between the Response and the Amended Particulars of Claim.

116. Mr. Venkatesan drew my attention to the decision of Rose J. (as she then was) in *Kaplan v Super PCS LLP* [2017] EWHC 1165 (Ch). In refusing to grant permission to the claimants to amend their particulars of claim, the judge said this, at [37] and [38]:

"37. I recognise that the pleading may need to be lengthy simply because there are five Claimants and now four individual Defendants said to have made different false statements. But it is the Claimants' obligation to put the case forward in a manner which does not involve the Defendants having to chase back through multiple cross-references to other paragraphs in the pleading which may then say something different leading to a lack of clarity about what the allegation actually is. I agree with the

Defendants that the proposed amended Particulars of Claim are properly described as unnecessarily prolix and embarrassing. They fail fairly to identify the claims being pursued in a way which can be reasonably understood or responded to by the Defendants.

38. I have therefore concluded that to accede to the application to amend the Particulars of Claim in anything like their current form would be likely to obstruct the just disposal of the proceedings within the meaning of [CPR 3.4\(2\)\(b\)](#). The individual Defendants are professional people authorised under [ES MA](#) who have been accused of deceitfully inducing prospective investors to enter into a scheme by issuing a Business Proposal which was materially inaccurate and compounding that with false oral representations. These are serious allegations and each of the Defendants is entitled to be told simply and clearly what the case is against him.”

117. It seems to me that the position of Blockchain in the present case comes nowhere near the situation of the defendants in Kaplan, where the relevant particulars of claim clearly suffered from serious defects. In the context of Crypton’s case on inducement it seems clear to me what is relied upon as the relevant conduct of Blockchain; namely all the conduct of Blockchain pleaded in Paragraphs 72-81. Whether that conduct, in whole or in part, provides a good basis for Crypton’s case on inducement remains to be seen.

118. Drawing together all of the above discussion, I conclude that the second ground of appeal fails.

The third ground of appeal - discussion

119. The third ground of appeal is that the Deputy Master erred in concluding that the claim in dishonest assistance (so far as not struck out) is properly pleaded and particularised. The third ground of appeal engaged two arguments. The first was that, for various reasons, Crypton had failed properly to plead or particularise the conduct which was said to constitute the alleged assistance. The second was that, for various reasons, Crypton had failed properly to particularise the allegation that such assistance, if there was any, was dishonest. I will take these arguments in turn.

120. So far as assistance is concerned, the starting point is Paragraph 101, which pleads as follows:

“101. By its conduct as pleaded in paragraphs 72 to 81 above, Blockchain assisted in the said breaches of fiduciary duty.”

121. So, as with Crypton’s case on inducement, all of Blockchain’s conduct as pleaded in Paragraphs 72-81 is relied upon as particulars of Blockchain’s assistance in the breaches of fiduciary duty alleged in Paragraph 83(b) and (c).

122. Crypton’s case on assistance has also been the subject of the Request. Request 7 is in the following terms:

“7. In relation to the allegation that Blockchain assisted in the breach of fiduciary duty pleaded at paragraph 83(b):

(1) Please identify each passage within paragraphs 72-81 which is alleged to be the ‘conduct’ by which Blockchain assisted in the said breach of fiduciary duty.

(2) In particular, does Crypton rely on any passage other than paragraph 75 in this respect? If so, please identify each such passage.”

123. Response 7 is as follows:

"7. Crypton relies on the conduct pleaded and referred to in responses 1.2 to 1.5 above."

124. Request 8 is in the following terms:

"8. In relation to the allegation that Blockchain assisted in the breach of fiduciary duty pleaded at paragraph 83(c), please identify each passage within paragraphs 72-81 which is alleged to be the 'conduct' by which Blockchain assisted in the said breach."

125. Response 8 is as follows:

"8. Crypton relies on:

8.1. The conduct pleaded and referred to in response 1 above.

8.2. The matters pleaded in paragraphs 72 to 79 of the APoC more generally, in support of the inference that Blockchain is (together with the other Defendants) exploiting the Crypton Platform Opportunity and, in doing so, making use of Crypton's Intellectual Property as pleaded in paragraphs 80 and 81 of the APoC."

126. As can be seen, Response 7 does narrow down the conduct of Blockchain which is relied upon in relation to the allegation that Blockchain assisted the breaches of fiduciary duty alleged in Paragraph 83(b). The relevant conduct is narrowed down to the Paragraphs identified in Responses 1.2 to 1.5. In relation to the allegation that Blockchain assisted the breaches of fiduciary duty alleged in Paragraph 83(c), the relevant conduct remains, as I read Response 1, all the conduct of Blockchain alleged in Paragraphs 72-81, with particular reliance on the conduct alleged in the Paragraphs which are identified in Responses 1.1 to 1.5.

127. I do not see that there is any lack of clarity in this case. Subject to one qualification, Paragraph 101 makes it clear that the conduct of Blockchain which is relied upon, by way of particulars of the alleged assistance, is all of the conduct of Blockchain alleged in Paragraphs 72-81. As with Blockchain's case on inducement, whether that conduct, in whole or in part, provides a good basis for Crypton's case on assistance remains to be seen. The qualification relates to Crypton's case on Blockchain's alleged assistance of the breaches of fiduciary duty alleged in Paragraph 83(b). Response 7 states that the conduct of Blockchain relied upon by way of particulars of this alleged assistance is confined to the conduct alleged in the particular Paragraphs identified in Responses 1.2 to 1.5. In this respect there is a narrowing down of what is pleaded, by way of the conduct constituting the alleged assistance, but it seems to me that the case still remains clear, provided that one reads the Amended Particulars of Claim with the Response. Strictly speaking, it might be said that there needs to be an amendment of Paragraph 101 in this respect, but that seems to me to be an unnecessary formality, given the terms of Response 7.

128. Accordingly, and in so far as Blockchain's complaint is that it is not clear what conduct is relied upon by Crypton as particulars of the alleged assistance, it seems to me that this complaint is not well-founded. In my view Crypton's case is clear, from Paragraph 101, and from the Response. I do not accept that Blockchain is unable to respond to this case, or that Blockchain cannot reasonably be expected to respond to this case.

129. In the Judgment the Deputy Master dealt with this part of the third ground of appeal in a rather different way. In relation to the breaches of fiduciary duty which Crypton is alleged to have assisted, being the breaches of fiduciary duty alleged in Paragraph 85(b) and (c), the Deputy Master said this, at paragraphs 45 and 46 of the Judgment:

“45. As to the next allegation, that Mr Jones and Mr Koumpas breached their fiduciary duties in soliciting Mr Jirman, Mr Calvi and Mr Kisil to join Blockchain, I consider that Blockchain’s inducement or assistance is properly pleaded. Paragraph 75 itself alleges that Blockchain itself solicited these employees, and that it provided them with an assurance of future employment. The allegation that this was all done as part of a combination also supports the claim that Blockchain was assisting Mr Jones and Mr Koumpas in the breaches of fiduciary duty alleged against them.

46. This leaves the final alleged breach of fiduciary duty, whereby it is claimed that Blockchain generally assisted Mr Jones and Mr Koumpas in pursuing the Crypton Platform opportunity (as set out in paragraph 72 and particularised in the following paragraphs). In this regard, I consider that the acts summarised at paragraph 23(viii) to (x) above are capable of constituting assistance with the alleged breaches of fiduciary duty. These acts are the solicitation of the resignation of other members of staff, and the ongoing use of Crypton’s assets and intellectual property. The latter breach of fiduciary duty is alleged by paragraph 83.2 to be ongoing.”

130. As I read these paragraphs of the Judgment, the Deputy Master was considering whether allegations of conduct amounting to assistance could be found in the Amended Particulars of Claim, and decided that such allegations could be found in the parts of the Amended Particulars of Claim which he specified in these paragraphs. As I have already commented, in relation to other parts of the Judgment, the Deputy Master appears to have approached this part of Blockchain’s argument on the basis that the question was whether a trial judge could find, on the basis of what is pleaded in the Amended Particulars of Claim, that Blockchain did assist in the breaches of fiduciary duty alleged in Paragraph 83(b) and (c). As I have also already noted, I do not entirely follow this reasoning, although this may reflect a difference in the terms of the argument before the Deputy Master. As I understood Blockchain’s principal argument on this part of the Appeal, the complaint was that the conduct relied upon by Crypton as particulars of the alleged assistance is not identified. In my view, and for the reasons which I have given, that conduct is sufficiently identified.

131. In relation to Crypton’s case on assistance, Blockchain sought to deploy its new point that Mr. Jones and Mr. Koumpas, in soliciting Mr. Jirman, Mr. Calvi, and Mr. Kisil to join Blockchain, were not necessarily in breach of fiduciary duty, because the relevant individuals were quite entitled to leave Crypton after giving the required period of one month’s notice. This point seems to me to be misconceived, for much the same reason as I have set out in dealing with this new point in the context of the second ground of appeal. The breaches of fiduciary duty alleged against Mr. Jones and Mr. Koumpas in Paragraph 83(b) and (c) comprise alleged failure to promote the success of Crypton and alleged acting contrary to the interests of Crypton. In relation to the complaint of solicitation of Mr. Jirman, Mr. Calvi, and Mr. Kisil, the complaint is not that Mr. Jones and Mr. Koumpas solicited these individuals to join Blockchain without giving the required period of notice of their departure from Crypton. The complaint is that Mr. Jones and Mr. Koumpas solicited these individuals to join Blockchain. As I read Paragraph 83, the breaches of fiduciary duty which are said thereby to have occurred do not depend upon whether or not these individuals gave the required notice before departing from Crypton.

132. It seems to me that this new point applies, if it applies at all, to the breaches of fiduciary duty alleged in Paragraph 83(b). If and in so far however as this new point is said to apply to the breaches of fiduciary duty alleged in Paragraph 83(c), it seems to me that the new point fails, for the same reason as I have identified in my previous paragraph.

133. In summary therefore, it seems to me that Crypton has properly pleaded and particularised the conduct which is said to constitute the alleged assistance.

134. This leaves the second argument in support of this third ground of appeal, which was that, for various reasons, Crypton had failed properly to particularise the allegation that the alleged assistance in the relevant breaches of fiduciary duty, if there was any, was dishonest.

135. I start by reminding myself of the principles which govern the pleading of a case in dishonesty, as helpfully summarised by Arnold LJ in *Sofer*.

(1) The dishonesty must be specifically alleged and sufficiently particularised, and will not be sufficiently particularised if the facts alleged are consistent with innocence.

(2) Dishonesty can be inferred from primary facts, provided that those primary facts are themselves pleaded. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be pleaded.

(3) The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence.

(4) Particulars of dishonesty must be read as a whole and in context.

136. It seems to me that this summary of the relevant principles includes the sufficiency requirement and the identification requirement, as they were helpfully characterised by Mr. Venkatesan. If and in so far as the summary does not do so, I accept that the sufficiency principle and the identification principle apply to the pleading of the claim in dishonesty subject, in the case of the identification principle, to the qualifications stated earlier in this judgment.

137. The case in dishonesty is pleaded in Paragraph 102, in the following terms:

“102. Such assistance was dishonest by ordinary standards. In support of that contention Crypton relies on the following:

102.1. Blockchain had knowledge of, alternatively was reckless as to, the non-solicitation, non-competition and notice obligations to which Mr Jones and Mr Koumpas were subject and the notice obligations under the Contracts for Services.

102.2. Blockchain (including in particular Mr McGarraugh) must have known that it was wrong for Mr Jones and Mr Koumpas as directors of Crypton DA and Crypton PM, having spent significant time and effort developing the Crypton Platform (and overseeing its development by others) and thus creating the Crypton Platform Opportunity, instead to exploit that opportunity outside of Crypton.

102.3. It was in any event dishonest by ordinary standards for Blockchain (acting in particular through Mr McGarraugh), having pursued negotiations for an acquisition of Crypton in return for payments of significant value, for several months and to an advanced stage, to decide instead to exploit the Crypton Platform Opportunity for itself, having been involved in the solicitation of Crypton’s staff as pleaded in paragraph 75 above, and without any payment to Crypton.

102.4. Blockchain SA put forward reasons for withdrawing from the negotiations with Crypton which were not genuine commercial reasons but a false pretext put forward in an attempt to justify its conduct, as set out in paragraph 78 above.”

138. Mr. Venkatesan argued that the allegation of dishonesty in Paragraph 102 was not properly particularised. In order to make good this argument, Mr. Venkatesan attacked the pleading of each of the individual sub-paragraphs of Paragraph 102. In summary, his points were as follows:

(1) The allegation of knowledge in Paragraph 102.1 was irrelevant, and confused, and did not, in any event, justify any inference of dishonesty. As such, the allegation of dishonest assistance in relation to the breaches of fiduciary duty alleged in Paragraph 83(b) ought, at least, to have been struck out.

(2) The allegation of dishonesty in Paragraph 102.2 was wholly unparticularised, was impossible to analyse in circumstances where the assistance said to have been dishonest had not been pleaded, and in any event related only to the breaches of fiduciary duty alleged in Paragraph 83(c).

(3) Paragraph 102.3 concerned Blockchain's own activities, not any assistance rendered to Mr. Jones and Mr. Koumpas to do the same things.

(4) The content of Paragraph 102.4 did not justify any inference of dishonesty.

139. It will be noted that all of these various points take the sub-paragraphs of Paragraph 102 individually. That seems to me to be the wrong approach. As Arnold LJ made clear in *Sofer*, particulars of dishonesty must be read as a whole, and in context. This is particularly important given the need, in considering whether a claim in dishonesty is adequately pleaded, to stand back and consider whether, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. It seems to me that this test is not properly applied if the relevant particulars are separated into individual compartments, and tested in isolation from each other.

140. It is convenient, as the next step in considering this part of the third ground of appeal, to look at what the Deputy Master decided in this context. In paragraph 50 of the Judgment, the Deputy Master set out the following analysis of the case in dishonesty in Paragraph 102:

"50. I consider that each of the allegations set out at paragraph 102 are allegations which are, read as a whole and in context and if all the factual averments made by Crypton are true, more likely to lead to an inference of dishonesty than an inference of innocence or negligence:

i) The allegation that Blockchain knew or was reckless as to the relevant contractual obligations of Mr Jones and Mr Koumpas (and the other relevant employees) is not made in vacuo. It is made in the context of an allegation that Blockchain combined to procure breaches of others' employment contracts and to compete with Crypton. I do not agree that this could be read as an allegation that Blockchain merely knew the terms of the employees' previous contracts of employment.

ii) The first allegation must be read together with paragraph 102.2, which is an allegation that Blockchain knew that it was wrong for Mr Jones and Mr Koumpas as directors (i.e. as fiduciaries) to exploit an opportunity belonging to Crypton outside of Crypton.

iii) The allegation at paragraph 102.3, which is a plain plea of dishonesty, is placed squarely in the context of the alleged assistance of Mr Jones and Mr Koumpas in soliciting staff, and in exploiting the Crypton Platform opportunity together with them. It is not just a plea of primary wrongdoing.

iv) The allegation that Blockchain put forward a false pretextual explanation might not justify a finding of dishonesty when divorced from all other allegations, but it is expressly linked to a plea that Blockchain was not innocently withdrawing from negotiations. If found to be true, that plea would justify an inference of dishonesty not least as it thus clearly refers back to the allegation (pleaded immediately before, in paragraphs 73 to 77) that Blockchain assisted Mr Jones and Mr Koumpas in

soliciting the resignation and re-employment by Blockchain of other employees, in what is said to be a breach of fiduciary duty on their part.”

141. I cannot improve upon this analysis, which I respectfully adopt. As the analysis demonstrates, if one reads the primary facts pleaded in Paragraph 102.1-102.4, in whole and in context, those primary facts, if true, are more likely to lead to an inference of dishonesty than an inference of innocence or negligence.

142. This analysis also provides answers to most of the points made by Mr. Venkatesan in this part of his argument on the Appeal. I can therefore take the points relatively briefly, by reference to each of the individual sub-paragraphs of Paragraph 102.

143. Dealing first with Paragraph 102.1, as the Deputy Master pointed out, the allegation that Blockchain knew or was reckless as to the relevant contractual obligations of Mr Jones and Mr Koumpas and as to the obligations under the contracts for services of Mr. Jirman, Mr. Calvi, and Mr. Kisil are not made in a vacuum. They are made in the context of the allegation that Blockchain combined with the Defendants to procure breaches of these obligations and to compete with Crypton. It is obvious that Paragraph 102.1 contains more than a bare allegation that Blockchain happened to know of these obligations. Nor is knowledge of the relevant obligations to which Mr. Jones and Mr. Koumpas were subject irrelevant to the claim in dishonest assistance. It is part and parcel of why it is said that Blockchain dishonestly assisted Mr. Jones and Mr. Koumpas in the breaches of fiduciary duty alleged in Paragraph 83(b) and (c).

144. Equally, knowledge of the notice obligations under the contracts for services of Mr. Jirman, Mr. Calvi, and Mr. Kisil cannot be taken in isolation. This alleged knowledge is, to repeat, part and parcel of why it is said that Blockchain dishonestly assisted Mr. Jones and Mr. Koumpas in the breaches of fiduciary duty alleged in Paragraph 83(b) and (c). Nor is this position changed by Blockchain’s attempt to deploy its new point in the Appeal in this context.

145. The further point made in respect of Paragraph 102.1 is that knowledge of contractual obligations is irrelevant, because the claim in dishonest assistance is confined to the breaches of fiduciary duty alleged against Mr. Jones and Mr. Koumpas. Crypton is accused of eliding contractual and fiduciary obligations. This point seems to me to be misconceived. The contractual obligations owed to Crypton, and the breaches of those contractual obligations which are alleged are all part and parcel of the claim that Mr. Jones and Mr. Koumpas breached their fiduciary obligations to Crypton. I cannot see that there is any confusion between or elision of contractual and fiduciary obligations.

146. The final point made in respect of Paragraph 102.1 was that it is the only sub-paragraph which gives particulars of the alleged assistance of the breaches of fiduciary duty alleged in Paragraph 83(b). This is plainly wrong. The particulars given in Paragraph 102.1-102.4 are not pleaded in this way and are not, in my view, to be read this way. I do not read Paragraph 102.1 as containing a hermetically sealed set of particulars, which are alone applicable to the alleged assistance of the breaches of fiduciary duty alleged in Paragraph 83(b). Indeed one can test this point by making reference to Paragraph 102.3, which makes explicit reference to Blockchain “having been involved in the solicitation of Crypton’s staff as pleaded in paragraph 75 above”. Paragraph 75 makes specific reference to the solicitation of Mr. Jirman, Mr. Calvi, and Mr. Kisil by Mr. Jones and Mr. Koumpas, and thus relates directly to the allegation of breaches of fiduciary duty in Paragraph 83(b).

147. Turning to Paragraph 102.2, it does not seem to me that this allegation is wholly unparticularised. It is quite clear that Crypton is saying that Blockchain must have known that it was

wrong for Mr. Jones and Mr. Koumpas to act as they are alleged to have acted. I do not agree that the assistance said to have been dishonest has not been pleaded, for the reasons already set out in this section of the judgment. Nor do I agree that it is not possible to analyse this allegation of dishonesty.

148. Finally, in relation to Paragraph 102.2, it was also argued by Mr. Venkatesan that this subparagraph is confined to assistance of the breaches of fiduciary duty alleged in Paragraph 83(c). I do not think that Paragraph 102.2 falls to be read in this restricted fashion, for the same reasons as I reject the argument that Paragraph 102.1 must be read in an equivalent restricted fashion.

149. Turning to Paragraph 102.3 the argument was that Paragraph 102.3 concerned Blockchain's own activities, in soliciting Crypton's staff and in its own alleged exploitation of the Crypton Platform Opportunity. Paragraph 102.3 was not, so it was argued, concerned with any assistance rendered to Mr. Jones and Mr. Koumpas to do the same things. I do not follow this argument. As I have already noted, Paragraph 102.3 makes specific reference to Paragraph 75, which contains the allegation that all three of Mr. Jones, Mr. Koumpas, and Blockchain were involved in the solicitation of Mr. Jirman, Mr. Calvi, and Mr. Kisil. This confirms that Paragraph 102.3 is not confined to Blockchain's own activities. Even if there was not the specific reference to Paragraph 75 however, it seems to me perfectly clear that the references to the solicitation of staff and the exploitation of the Crypton Platform Opportunity in Paragraph 102.3 include references to the activities of Mr. Jones and Mr. Koumpas in this respect, which Blockchain is alleged to have assisted. As the Deputy Master succinctly put the matter, Paragraph 102.3 is not just a plea of primary wrongdoing.

150. This leaves Paragraph 102.4, the content of which, so Mr. Venkatesan argued, did not give rise to any inference of dishonesty. I agree with the Deputy Master's answer to this point, which was that the allegation in Paragraph 102.4 was expressly linked to a plea that Blockchain was not innocently withdrawing from the negotiations. If that latter plea was found to be true, it would justify an inference of dishonesty in relation to the false pretextual explanation alleged in Paragraph 102.4. Putting the matter another way, it seems to me that the reference, in Paragraph 102.4, to Blockchain's conduct as alleged in Paragraph 78 inevitably raises the inference of dishonesty in relation to the putting forward of the false pretext in Paragraph 102.4. Put more simply, the context of what is alleged in Paragraph 102.4 seems to me clearly to raise the inference of dishonesty, if the false pretext was put forward as alleged.

151. In summary therefore, it seems to me that Crypton has properly pleaded and particularised the allegation that the alleged assistance given by Blockchain was dishonest.

152. Drawing together all of the above discussion, I conclude that the third ground of appeal fails.

A further point

153. There was some debate before me, as there appears to have been before the Deputy Master, as to whether, in cases involving allegations of concealed wrongdoing, a more generous ambit is given to the pleading of such claims, in terms of the particularisation of claims of concealed wrongdoing. The point was raised in the Appeal as part of a respondent's notice filed by Crypton.

154. The Deputy Master recorded this debate in paragraph 77 of the Judgment, where he said as follows:

"77. Finally, I would note that I received submissions, by reference to the Bord Na Mona Horticulture case and the decisions cited within it, on the question whether the more generous ambit given to claimants in claims for infringements of competition law by cartels, which are by their nature

clandestine, applies more generally to claims in conspiracy. For the avoidance of doubt, I have not considered it necessary to decide this point in order to determine the application. The unlawful means conspiracy claim is sufficiently pleaded without the need for separate reliance on this principle.”

155. In common with the Deputy Master I have not found it necessary to decide the Appeal on the basis that any such more generous ambit should be granted to Crypton in the pleading of its case in unlawful means conspiracy, inducing breach of contract, and dishonest assistance. As such, it has not been necessary to decide whether any such more generous ambit would have been available in the present case.

Should permission to appeal be granted?

156. The test for whether permission to appeal should be granted is that set out in [CPR Rule 52.6](#); namely whether the appeal would have a real prospect of success, or there is some other compelling reason for the appeal to be heard.

157. I do not think that the present case is one where there was any compelling reason for the substantive appeal to be heard. It does seem to me to follow however, from my discussion of the grounds of appeal, that the substantive appeal is one which can be said to have had a real prospect of success. As such, I consider that the substantive appeal is one for which permission to appeal should be granted.

Should the substantive appeal be allowed?

158. It follows from my discussion of the grounds of appeal that, in my view, there is no reason to interfere with the decision of the Deputy Master to refuse those parts of Blockchain’s application to strike out which he did refuse. As such, it seems to me that the substantive appeal should not be allowed, but should be dismissed.

159. I should add that this is the decision at which I would have wished to arrive on the substantive appeal. This action was commenced over a year ago. As I understand the position, the remaining Defendants to the action have already pleaded to the claims made against them by Crypton and, in the case of Castramet, a counterclaim has been made. As Mr. Venkatesan correctly emphasized to me, the claims made against Blockchain involve serious allegations of dishonesty, conspiracy and deliberately inducing breach of contract. It seems to me important for all parties that this action should move forward, and that Blockchain should now plead its case in response to Crypton’s claims. I have not taken any of this into account in reaching my decision on the substantive appeal. In my view, the exercise which I was undertaking did not permit me to take into account matters of this kind. Now that I have made my decision on the substantive appeal, I take the opportunity to add that, in my view, the battle over the pleading of what are now the Amended Particulars of Claim should come to an end, and the action should move forward.

160. A question which was raised before me was what should happen if I decided to allow the substantive appeal, in whole or in part. On that hypothesis the question would have arisen as to whether I should strike out the relevant parts of the Amended Particulars of Claim, or give Crypton the opportunity to retrieve the position by further amendment of the Amended Particulars of Claim. Counsel sensibly agreed that argument on this question should await the outcome of the Appeal. In the event, and because I have decided that the substantive appeal should be dismissed, this question does not arise.

The outcome of the Appeal

161. There are two decisions which I have to make in respect of the Appeal. The first is whether permission to appeal should be granted. The second, if permission to appeal is granted, is what should happen to the substantive appeal.

162. So far as permission to appeal is concerned, for the reasons which I have set out, I conclude that permission to appeal should be granted.

163. So far as the substantive appeal is concerned, for the reasons which I have set out, I conclude that the substantive appeal should be dismissed.

164. There will therefore be an order granting permission to appeal, but dismissing the substantive appeal. I will hear the parties on the terms of the order which falls to be made, consequential upon my decision, if and to the extent that the terms of the order cannot be agreed (subject to my approval) between the parties.