Neutral Citation Number: [2021] EWHC 3416 (Ch)

Case No: CH-2020-000134

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
CHANCERY APPEALS
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON

ORDER OF HHJ DIGHT CBE DATED 10 MARCH 2020

COUNTY COURT CASE NO: F10CL6567

Rolls Building

Fetter Lane

London EC 4A 1NL

Date: 17/12/2021

Before :

MR JUSTICE ADAM JOHNSON

- -

Between :

David Anthony Hinkel **App**

- and –

Simmons & Simmons LLP **Respo**

- -

- -

The Appellant (a litigant in person) did not appear

James Sharpe (instructed by **CMS Cameron Mckenna Nabarro Olswang LLP**) for the **Respondent**

Hearing dates: 1 December 2021

- -

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.

Covid-19 Protocol: This Judgment was handed down remotely by circulation to the parties' representatives by email and released to Bailii.

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Mr Justice Adam Johnson :

Introduction

1.
The Appellant, Mr Hinkel, made a claim in the Central London County Court against the Respondent firm of solicitors. His claim failed. HHJ Dight entered summary judgment for the Respondent firm. He held that the allegation of fraud which was at the forefront of Mr Hinkel's case was not properly pleaded, and that in any event, the available evidence did not justify an inference of fraud. Permission to appeal was refused by HHJ Dight.

2.
Mr Hinkel then sought permission to appeal from the High Court. His application was refused by me on the papers, by Order dated 1 December 2020. Mr Hinkel then sought to renew his permission application at an oral hearing. After a hearing on 12 January 2021, I gave detailed written reasons on 15 January 2021, again refusing permission: see [2021] EWHC 55 (Ch).

3.
I now have to deal with 8 further applications made by Mr Hinkel. These were listed for hearing before the Court on 1 December 2021. In the event, Mr Hinkel did not appear at that hearing. His position was that he was incapacitated by illness and could not do so. Nonetheless, I proceeded with the hearing, and heard submissions from the Respondent's counsel, Mr James Sharpe.

4.
At the outset of the hearing on 1 December, I indicated my position on two of Mr Hinkel's applications. The first was his application dated 2 November 2021, seeking an order that I recuse myself. The second was his application dated 17 November, seeking a deferral or adjournment of the hearing on medical grounds. I indicated that I would not recuse myself, and would not defer or adjourn the hearing, and would give my reasons in writing. I will do so at the end of this Judgment, but first I propose to deal with the substance of Mr Hinkel's other applications.

Reopening the Appeal

Background

5.
It is convenient to deal with Mr Hinkel's other applications together. In one way or another, they are all concerned with the question whether his appeal – which otherwise has been finally determined against him – should be reopened.

6.
I should say something about the background. I will not repeat all the detail in my previous Judgment. It is sufficient to note the following.

7.
Mr Hinkel's complaint against Simmons & Simmons arose out of a failed attempt to acquire an English property owned by the Republic of Iran. In the event, although there were negotiations, the sale did not materialise. Mr Hinkel's basic complaint, which HHJ Dight said was "the essence of his claim" (see [5] of his Judgment), was that when Simmons & Simmons represented to him that they acted on behalf of Iran in relation to the transaction, they acted fraudulently. In consequence, Mr

Hinkel made claims for loss and damage which he put at £1,354,750, including £500,000 exemplary compensation.

8.
As I have already noted, HHJ Dight held that Mr Hinkel's fraud allegation was not sufficiently pleaded. He also went on, however, to consider the evidence, and concluded that it did not justify an inference of fraud (Judgment at [49]). In my own Judgment on Mr Hinkel's application for permission to appeal, I agreed with that conclusion, essentially on the basis that the evidence relied on was equally well consistent with other explanations, rather than fraud, and so HHJ Dight was entitled to come to the conclusion he did.

9.
One particular point relied on by Mr Hinkel was an alleged failure to conduct due diligence and to check the identity of the individual Simmons & Simmons had contact with, and who claimed to act on behalf of the Government of Iran, a Dr Azizi. Mr Hinkel's point was that Mr Azizi had no authority on behalf of the Government of Iran and was an impostor. He said that Simmons & Simmons knew this or were reckless about it, and that was the nature of their fraud.

10.
Simmons & Simmons though had given a different explanation to the Solicitors Regulation Authority ("SRA"), who in turn had reported it to the Solicitors Disciplinary Tribunal ("SDT") in a letter of 16 May 2019. The letter said as follows:

"In terms of due diligence checks, Simmons & Simmons have explained to the SRA that the Government of Iran was an existing client of the firm albeit that their representative [i.e., Dr Azizi] was a new contact. Simmons & Simmons made it clear to the client (and to Mr Hinkel's lawyers) that they would need to visit the Iranian Embassy in London to verify the identity of the new contact and that any documents which needed to be executed would need to be executed at the Embassy. However, the purchase fell through and there was never any need to have the documents agreed and executed, so this became irrelevant."

11.
Dealing with this, I said the following at [39]-[40] of my Judgment:

"39. What is being said here, as I understand it, is that Simmons & Simmons had encountered some difficulty in verifying Dr Azizi's identity (that is consistent in the delay occasioned in trying to do so), but made it clear that that would have to happen before any transaction was eventually concluded.

40. I put this passage to Mr Hinkel during the course of the hearing before me, and I understood him to contest it on the basis that it was inaccurate and misleading. I do not think I can discount it, however. It records a statement made by a firm of solicitors to its Regulator, in the course of inquiring into a complaint. It seems to me I should take it at face value unless there is a good reason not to, and here I see no such good reason. In any event, it is not necessary for me to make any finding in relation to it for the purposes of the present application. I rely on it only as an articulation of what seems to me an entirely plausible, alternative interpretation of the events Mr Hinkel complains about, but an alternative explanation which is consistent with Simmons & Simmons behaving honestly."

12.
I concluded as follows at [42]:

“Overall, my view is that there are a number of ways of looking at the present facts which are consistent with Simmons & Simmons (or rather, their representatives) having an entirely honest motive. I would go further in fact, and say that the alternative interpretations I have identified are inherently much more likely or more plausible than the theory that Simmons & Simmons were involved in a fraud. The fraud allegation appears to me to be quite unrealistic.”

13.
Mr Hinkel says there are justifiable grounds for revisiting this basic conclusion and reopening his appeal. I will try and summarise why.

14.
Mr Hinkel’s first application (“the First Application”) was dated 19 March 2021. In form, this was put as an application for permission to appeal. Of course, there is no route of further appeal available to Mr Hinkel from a decision of this Court refusing him permission to appeal. The First Application was therefore made on a mistaken basis and is liable to be dismissed without more, but to be fair to Mr Hinkel it seems to me appropriate to treat it (as I have indicated previously I would) as an application to reopen an otherwise final appeal under CPR 52.30. In any event, the main point made in the First Application was that Mr Hinkel wished to amend his claim to include an assertion that Simmons & Simmons “be found guilty of contravening the Money Laundering Regulations.” In an accompanying document, he referred to amending his claim to include “negligence under the Money Laundering Regulations (2017) (2007 No. 2157).”

15.
Mr Hinkel’s further applications then rely on two main points. One is a new complaint now being pursued by him with the SDT, relying on an allegation that Simmons & Simmons failed properly to complete money laundering checks in connection with Mr Azizi. By his application dated 27 July (“the Second Application”), Mr Hinkel sought to introduce into evidence certain communications with the SRA and the SDT including a letter and supporting Bundle dated 23 July 2021. His point arising from these documents is that an investigation is required into the explanation given by Simmons & Simmons and reflected in the SRA’s letter of 16 May 2019 (see above at [10]). In his Witness Statement of 27 July 2021, Mr Hinkel said as follows:

“In his judgment of 15 January 2021, HHJ Johnson was of opinion that he could rely on statements made by the solicitors to their regulator, the SRA, and saw no reason why he should not do so. I stated at the time that the solicitors had made false statements to their regulator and submitted evidence proving the statements were false. It was wrong in law to rely on the statements and that is why the case must go to the Appeal Court.”

16.
Mr Hinkel’s next application (“the Third Application”) is dated 3 August 2021, and makes a different though related point. Here, he relies on an email sent to him on 6 August 2015. The email was from Mr Hooton, the partner at Simmons & Simmons with responsibility for the intended transaction involving the Republic of Iran. In his email Mr Hooton said (after referencing the property the subject of the negotiations):

“Dear David

I have now got the bank details:

BNI Bank, London

Acc. No. 30783343

Sort Code: 30783343

Islamic Republic of Iran.”

17.
In April this year, 2021, Mr Hinkel wrote to BNI Bank London with an inquiry in relation to this 2015 email. Mr Hinkel seeks to rely on a letter from BNI dated 28 July 2021, in which BNI said:

“Dear Sir,

Referring to your correspondence dated 8 th April and to the same addresses to the above on 20 th July 2021, we can convey that the account detailed below is not and has never been one of our customers, and at no time have we ever dealt with them:

Account Name: Islamic Republic of Iran

Account Number: 30783343

Sort Code: 30783343.”

18.
As I understand it, Mr Hinkel’s point here is that this letter raises a question about whether Mr Hooton can be trusted. On the basis of the BNI letter, says Mr Hinkel in his witness statement, Mr Hooton gave inaccurate information to him in 2015. What Mr Hooton believed or did not believe “must be the subject of a hearing” at which he and Ms Rose of Simmons & Simmons “can be questioned and cross-questioned.” Moreover, this latest evidence shows “why it was wrong in law for HHJ Johnson” to place reliance on the statements made by Simmons & Simmons to the SRA, and then communicated by the SRA to the SDT (see, again, the quoted text at [10] above). Mr Hinkel also seeks to rely on other documents, including a letter he sent to the Indonesian Ambassador dated 20 July 2021, to which he does not appear to have received any reply.

19.
Thereafter, the next group of applications made by Mr Hinkel are really developments of these same two points. By his application dated 5 August (“the Fourth Application”), he seeks to set aside both my Judgment and that of HHJ Dight on the basis that they had been obtained by fraud. In support of that application, Mr Hinkel relies particularly on the letter from BNI Bank referred to above. Again, although not expressed as such, I interpret this to be an application to reopen his appeal under CPR 52.30.

20.
By his application dated 18 August (“the Fifth Application”), Mr Hinkel seeks to introduce into the record his own letter to BNI Bank dated 8 April – i.e., the request which prompted BNI Bank’s reply of 28 July 2021 already referred to.

21.
Then by his application dated 19 October 2021 (“the Sixth Application”). Mr Hinkel sought to defer or delay the hearing of his earlier applications, which by then had been scheduled for determination in December 2021 (i.e., at the hearing which gives rise to this Judgment). Mr Hinkel sought to defer the hearing on the basis that more time was needed for the SRA to complete its inquiries – ongoing in

light of Mr Hinkel's letter of 23 July 2021 (see above at [15]) – into alleged breaches of "the SRA Rules and the Money Laundering Regulation 2007."

22.
The background is that the SRA wrote a letter to Simmons & Simmons on 16 September 2021, under the direction of the SDT, raising a number of detailed queries concerning Simmons & Simmons' dealings with Dr Azizi, and specifically relating to the customer due diligence carried out in connection with Dr Azizi. That was in light of the concern expressed by Mr Hinkel that no proper due diligence had been carried out in connection with Dr Azizi, although the Money Laundering Regulations ("MLR") in force at the time required it. Although Simmons & Simmons were initially requested to provide a response to the SRA's letter by 30 September, and the SRA were due to report to the SDT by 8 November, those deadlines were later extended so that the SRA's report to the SDT became due on 8 January 2022. Mr Hinkel sought to defer the December 2021 hearing in light of that.

23.
I dealt with the Sixth Application initially on the papers, and refused it on the basis that Mr Hinkel's attempt to reopen his appeal was not an opportunity for him to make out a new case based on new materials. Mr Hinkel objected and so I gave him permission to renew his application orally, at the then pending hearing which has now taken place. In the event, of course, Mr Hinkel did not appear to make that renewal application.

24.
That is a summary of the immediate background, so far as relevant. I will now refer briefly to the relevant legal principles and will then try to draw the threads together and express my conclusions.

The Law

25.
As I have been reminded by Mr Sharpe, the jurisdiction under CPR 52.30 is a very narrow one. That is apparent from CPR 52.30(1), which provides:

"(1) The Court of Appeal or the High Court will not reopen a final determination of any appeal unless —

(a) it is necessary to do so in order to avoid real injustice;

(b) the circumstances are exceptional and make it appropriate to reopen the appeal; and

(c) there is no alternative effective remedy."

26.
The important principle this rule recognises is the need for finality in litigation. This is emphasised in the authorities.

27.
In Taylor v Lawrence [2003] Q.B. 528, CA it was said (see at [55]) that the Court must consider whether "a significant injustice has probably occurred and that there is no alternative remedy".

28.
In a later decision, Lawal v Circle 33 Housing Trust [2015] H.L.R. 9, CA, the Court of Appeal summarised the relevant principles as follows at [65]:

“First, the same approach applies whether the application is to re-open a refusal of permission to appeal or to re-open a final judgment reached after full argument. Second, r.52.30(1) sets out the essential pre-requisites for invoking the jurisdiction to re-open an appeal or a refusal of permission to appeal. More generally, it is to be interpreted and applied in accordance with the principles laid down in Taylor v Lawrence. Accordingly, third, the jurisdiction under r.52.17 can only be invoked where it is demonstrated that the integrity of the earlier litigation process has been critically undermined. The paradigm case is where the litigation process has been corrupted, such as by fraud or bias or where the judge read the wrong papers. Those are not, however, the only instances for the application of r. 52.30. The broad principle is that, for an appeal to be reopened, the injustice that would be perpetrated if the appeal is not reopened must be so grave as to overbear the pressing claim of finality in litigation. Fourth, it also follows that the fact that a wrong result was reached earlier, or that there is fresh evidence, or that the amounts in issue are very large, or that the point in issue is very important to one or more of the parties or is of general importance is not of itself sufficient to displace the fundamental public importance of the need for finality.”

29.
In R. (Goring-On-Thames Parish Council) v South Oxfordshire DC [2018] 1 WLR 5161 at [15] the Court of Appeal said that, in addition to those principles, a court considering such an application must also be satisfied that there is “a powerful probability that the decision in question would have been different if the integrity of the earlier proceedings had not been critically undermined.”

Analysis and Conclusions

30.
The application of these principles in this case leads me to the conclusion that there is no proper basis for reopening the appeal. That is for the following reasons.

31.
To begin with, central to overall argument made by Mr Hinkel seems to be the proposition that it was wrong in law to place reliance on the account given in the letter sent by the SRA to the SDT on 16 May 2019 (see [10]) above. His basic challenge is to the reliability of the account given in that letter. He seeks to challenge it by means of his new complaint to the SDT, and by means of his own reliance on the BNI letter of 28 July 2021. He thus seeks to show that Mr Hooton and others from Simmons & Simmons are dishonest, and so to say it was wrong to attach any credibility to the account given by Simmons & Simmons to the SRA in 2019 (and communicated by the SRA to the SDT).

32.
The difficulty with this argument, however, is that the account given in the 16 May 2019 letter was not determinative of the result in my judgment of 15 January 2021. That was made clear in terms in the Judgment itself, in the passage at para. [40] quoted above, when I said in relation to the letter:

“In any event, it is not necessary for me to make any finding in relation to it for the purposes of the present application. I rely on it only as an articulation of what seems to me an entirely plausible, alternative interpretation of the events Mr Hinkel complains about, but an alternative explanation which is consistent with Simmons & Simmons behaving honestly.”

33.
The underlying point being made was one about the evidence relied on by Mr Hinkel himself in support of his fraud allegation. The contention advanced by Mr Hinkel before HHJ Judge Dight was (see his Judgment at [41]) that the transaction was “a fake transaction”, and Simmons & Simmons

were “never instructed in respect of it.” The Judge had to look at the evidence in the round and reach a conclusion about it. That is just what he did, and properly directed himself on the appropriate legal tests in the course of doing so (as I held in my earlier Judgment at [29]). HHJ Dight was not at all persuaded that the available evidence justified an inference of fraud by Simmons & Simmons (see his Judgment at [48]). That evidence included evidence that it was Mr Hinkel who initially contacted Mr Hooton and that Mr Hinkel was involved in “dealing directly with the vendor about the details of the sale” (Judgment at [46]).

34.
That was a decision on the facts which HHJ Dight was fully entitled to come to. It is entirely consistent with legal principle. That is because, as Lord Hobhouse said in Three Rivers DC v. The Governor and Company of the Bank of England (No. 3) [2001] UKHL 16, [2003] AC 1, at para. [161] (referenced in para. [36] of my 15 January Judgment), “Dishonesty is not to be inferred from evidence which is equally consistent with mere negligence.” The evidence put forward by Mr Hinkel was equally well consistent with the idea that Simmons & Simmons had no fraudulent or dishonest intent. For example, it was consistent with the idea that they themselves had been misled, even if they had been careless in allowing that to happen.

35.
Nothing in the materials now relied on by Mr Hinkel persuades me that there was any material deficiency in the proceedings before the Judge, or before me, such as to justify matters being reopened. The further points relied on by Mr Hinkel do not meet the relevant standard. I will take them in turn.

36.
Breach of Money Laundering Regulations: The first is Mr Hinkel’s complaint that there was a failure to comply with the MLR as in force at the relevant time. Mr Hinkel now says that further inquiries are needed, and that he must be given time to pursue them via the SRA and the SDT. But he could have pursued such inquiries at an earlier point. Mr Hinkel is no stranger to the SRA’s processes. The SRA undertook investigations at his instigation in October 2018 and March 2019. Mr Hinkel gives no explanation as to why his present complaint was not also pursued at an earlier stage. It appears to have been prompted as a reaction to the conclusions expressed in my Judgment of 15 January 2021. But the reopening of an appeal in such circumstances would be the very opposite of the principle of finality in litigation which the authorities emphasise is so important. The jurisdiction to reopen an appeal does not exist to allow a disappointed litigant to have a second bit of the cherry.

37.
In any event, this complaint adds nothing to the points that have already been determined. The question whether any civil claim lies at the hands of a third party for failure to comply with the MLR was addressed definitively by the Court of Appeal in P&P Property Ltd v. Owen White [2018] EWCA Civ. 1082, [2019] Ch 273 273, where at [31], Patten LJ said (in relation to the Money Laundering Regulations 2007 - emphasis added in the quotation below):

“The MLR do not, however (and are not intended to) create a statutory liability on the part of solicitors and estate agents towards third parties such as the purchasers in the present cases who are the victims of fraud. Although the carrying out of the necessary AML checks in the present cases may have deterred or prevented the frauds from taking place, that is not the purpose behind the MLR and any civil liability which attaches to the solicitors and agents who acted for the fraudster must therefore be established under the general law.”

38.
That, it seems to me, is determinative of Mr Hinkel's point based on the Money Laundering Regulations. Even if there were to be a finding that they were breached, that would not give him a claim. Liability would have to be established otherwise, under the general law.

39.
As to that, Mr Hinkel has had his opportunity to make out his fraud case, and has failed to do so. The substance of the point he now seeks to make, namely that there was a failure to conduct due diligence, and that from that one can properly draw an inference of fraud, has already been addressed and dismissed.

40.
I note two additional matters for completeness. One is that Mr Hinkel refers to a possible claim for "negligence under the Money Laundering Regulations." A negligence claim, however, would depend on showing that Simmons & Simmons owed Mr Hinkel a duty of care in tort. As HHJ Dight held, there is no basis for concluding that they assumed any duty of care to Mr Hinkel, because he was represented by his own solicitors: see his Judgment at [51]-[54]. The Court of Appeal in the P&P case rejected any negligence case on essentially the same basis (see per Patten LJ at [82]). There is nothing in this argument that assists Mr Hinkel in overturning HHJ Dight's determination, or in seeking to reopen his appeal.

41.
The second matter is to say that, out of fairness to Mr Hinkel, I have also considered whether HHJ Dight overlooked any other types of claim which were properly available to him, and in particular a claim for breach of warranty of authority by Simmons & Simmons. I think not, however.

42.
For one thing, as the Judgment of HHJ Dight makes clear, and as a review of the Transcript of the hearing before HHJ Dight confirms, the essential case advanced by Mr Hinkel was very clearly and emphatically one of fraud. He said so expressly at Transcript p. 38, line 13, when he confirmed that his case was one of fraudulent misrepresentation; and he repeated the point at Transcript p. 39, lines 6-7, when he said that his basic complaint was that Simmons & Simmons "pretended to act for the government of Iran, when they simply did not." He made the same point on appeal. His original Grounds of Appeal refer variously to fraud, recklessness and negligence, but in setting out his proposed amended claim summarised the overall position as follows (emphasis added):

"The Claimant seeks monetary compensation for the aforesaid time spent, solicitors' fees and company formation expenses totalling £854,750.00 plus interest and £500,000 exemplary compensation for the Claimant's loss of earnings and long term future earnings caused by his loss of business reputation in the real estate business through his involvement in the proposed transaction for which the Defendant is solely to blame by reason of the Defendant's deceit and fraudulent misrepresentation ."

43.
Mr Hinkel thus put his case very high, and indeed has been entirely consistent at all points in pursuing his basic complaint of dishonesty. Thus, the case HHJ Dight was concerned with was essentially an allegation of fraud, and he was right to reject it on the evidence before him.

44.

Further, and even assuming an appropriately clear representation could be identified, any claim based on breach of warranty of authority would require Mr Hinkel to show reliance on that representation: see, e.g., the P&P Property decision at [59]. The claim in that case failed because, even though the seller's solicitors had given a representation amounting to a warranty of authority, the purchaser's solicitor had paid over the purchase price not in reliance on the warranty as such, but instead on the basis of his belief that "the necessary due diligence had been carried out" (per Patten LJ at [61]). As P&P thus recognises, the reliance issue is essentially a question of fact. Here, HHJ Dight said at [50] that " … there is no evidence in my judgment to substantiate the claimant's alleged reliance on the representation and the losses said to have been caused." Again, it seems to me that was a factual assessment which it was entirely open to the Judge to make on the evidence before him, which as I have already noted (see [33] above) included evidence that it was Mr Hinkel who initially approached Mr Hooton, not the other way round, and that Mr Hinkel had his own ongoing direct discussions with the proposed vendor. To put it another way, HHJ Dight plainly thought it quite disproportionate to visit Simmons & Simmons with responsibility for the entirety of the claimed financial consequences said to have arisen from the inherently risky, and failed, transaction Mr Hinkel had chosen to involve himself in. I saw no basis in my earlier Judgment for interfering with that general conclusion, and I see no basis now for reopening the appeal in order to allow Mr Hinkel to try and do so yet again.

45.
The BNI Letter: Mr Hinkel's second point is the BNI letter. As to that, to begin with there is the point that the email Mr Hinkel relies on has been in his possession since it was sent to him in August 2015. There is nothing new in it, and to the extent the inquiries he now makes are of assistance to his case, they could and should have been made at a much earlier stage. Again with this point, Mr Hinkel appears to be seeking to take steps to try and plug the gaps in his own evidential case, which were revealed by the analysis conducted by HHJ Dight. That does not provide a proper basis for reopening an appeal.

46.
Further and in any event, Mr Hooton's email of August 2015 was plainly not relied on at the time it was sent since it contains an obvious mistake, which was picked up: the account number and sort code given are the same, and Mr Hinkel's own evidence (in his Witness Statement dated 3 August 2021) is that this was spotted by his own solicitor acting on the intended transaction, Mr Needham. Mr Hinkel says: "Ms Rose and Mr Hooton corresponded with my solicitor Mr Grant Needham about these details as Mr Needham found that the bank account number and sort code were the same and should not have been." No allegation is made that anything was ever paid into the account, and of course that could never have happened in any event, because the account information given was entirely wrong.

47.
One must also consider the inherent probabilities. The precise nature of the allegation made by Mr Hinkel is not clear, but it seems to be an allegation that Mr Hooton and Ms Rose, perhaps together with Mr Azizi, conspired to provide fictitious bank account details to Mr Hinkel. For instance, Mr Hinkel says in his 3 August 2021 Witness Statement at [6] that the bank account details were "false", and at [5] he says: "The probability that, as experienced solicitors, they could have believed in their minds details from a bank that says it does not and has never acted for their alleged client … is probably zero." Given the nature of the allegation, it is legitimate to ask whether it is inherently probable that Mr Hooton and Ms Rose would have conspired together in that way. I think not.

48.

As I held in my Judgment at [41], in dealing with Mr Hinkel's overarching allegation of fraud, no proper explanation is given of any dishonest motive on the part of Simmons & Simmons, and particularly why it is said to be likely that Mr Hooton and Ms Rose would knowingly have participated in a "fake transaction", and still less one which never in fact involved Mr Hinkel paying over any money to the party claiming to be the vendor of the property in question. In fact, the evidence is that the intended transaction collapsed because of a disagreement over price, but only after Mr Hinkel had indicated a willingness to pay £31.5m in May 2017 (Judgment of HHJ Dight at [28]), which apparently was rejected (Judgment of HHJ Dight at [30]).

49.
The problem is only compounded if one thinks about the details provided in relation to the BNI account. It makes little sense in the context of the alleged fraud to say that Mr Hooton and Ms Rose knowingly provided details of an account they knew did not exist, and into which (therefore) no proceeds of sale could ever be paid. What – in terms of the allegedly fraudulent plan – would be the point of them doing so? One thus comes back to the same problem, namely that the allegations relied on by Mr Hinkel are all readily explicable on bases other than fraud, e.g. on the basis that Simmons & Simmons were themselves deceived by Dr Azizi (see my earlier Judgment at [37]), albeit that they were perhaps careless in allowing that to happen.

Summary

50.
For all the reasons above, I therefore dismiss Mr Hinkel's First to Sixth Applications. His First and Fourth Applications fail because they do not raise any point which would justify the reopening of the final appeal. His Second, Third and Fifth applications – to adduce new evidence – fail because the materials relied on either were, or could have been, available to Mr Hinkel prior to the hearing before HHJ Dight, and/or are otherwise insufficient to justify any reopening of the appeal. Finally, although technically the point does not arise because Mr Hinkel did not appear to argue it, I should say that I also dismiss Mr Hinkel's renewed Sixth Application (see [23] above) to defer or delay the recent hearing, pending the outcome of his further complaint now made to the SRA/SDT. The fact of those ongoing inquiries provides no proper basis for seeking to reopen the appeal (for the reasons given at [36]-[39] above). Even if the questions raised are resolved against Simmons & Simmons, they do not give Mr Hinkel any cause of action (see [38]) above, and do not automatically imply fraud in the manner Mr Hinkel suggests.

Recusal

51.
I come back to the two other points made by Mr Hinkel, which I dealt with at the start of the hearing on 1 December. The first was his application that I recuse myself. This application was made by Mr Hinkel's Application Notice dated 2 November 2021 ("the Seventh Application"), issued the day after I had refused on the papers his Sixth Application (see above at [23]) to adjourn or defer the hearing then scheduled for 1 December 2021.

52.
Mr Hinkel served a lengthy witness statement on 2 November dealing with this topic. It is best to look at the broad themes which emerge from that witness statement. They largely relate back to the original decision to place reliance on the statements made by Simmons & Simmons to the SRA, and then related by the SRA to the SDT in May 2019. Against that background, Mr Hinkel's main point is that given my professional background as a solicitor, my views are "clouded by the belief that

solicitors can do no wrong" and my "support for his colleagues in the legal profession regardless of their character." Mr Hinkel also relies on certain research he has conducted, indicating that my former firm acted in 2012-2013 for a "party interested in purchasing" what he says was the same property he sought to acquire from the Government of Iran in 2015-2016. He says that as an experienced former solicitor, I should "be more aware than most of the sanctions against Iran and that the Ambassador of Iran and BNI Bank are extremely angry that Mr Hooton and Ms Rose sent my solicitor Mr Needham fake bank details … ." He says that I participated in a Financial Markets Law Committee report with a former Simmons & Simmons partner, and must know others at Simmons & Simmons. He says that as a new Judge, I seem to be unable or unwilling to criticise solicitors in public. He says that my initial decision to refuse to adjourn or delay the hearing scheduled for 1 December, pending the outcome of the SRA's new inquiry, is further evidence of this same bias.

53.
I am not remotely persuaded that any of these matters, or any of the other matters raised by Mr Hinkel, justify my recusal.

54.
Mr Hinkel seems to agree that the relevant test is that derived from Porter v. McGill [2001] UKHL 67, as affirmed and restated in later decisions, most recently by the UKSC in Halliburton Co v. Chubb Bermuda Insurance Ltd [2020] UKSC 48. The question is whether the circumstances would lead a fair minded and informed observer to conclude that there was a real possibility or a real danger, the two being the same, that the tribunal was biased.

55.
In Locabail (UK) Limited v. Bayfield Properties Ltd [2000] 1 QB 480, the Court of Appeal gave useful guidance on matters that might (or might not) properly give rise to a real danger of bias. At [25], Lord Bingham MR said the following (my emphasis added in the quotation below):

"It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history , nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in textbooks, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers (see K.F T C. I. C. v. Icori Estero S.p. A. (Court of Appeal of Paris, 28 June 1991, International Arbitration Report, vol. 6, 8/91)). By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try

the issue with an objective judicial mind (see Vakauta v. Kelly (1989) 167 C.L.R. 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection . ”

56.
It seems to me entirely clear, in light of this guidance, that there is nothing of substance in Mr Hinkel’s various objections. Locabail makes it clear that a Judge’s social, educational and employment background will not ordinarily provide a sound basis for concluding there is a real risk of bias. There is nothing in this case to take it out of the ordinary. Locabail also makes it clear that the receipt of previous instructions to act for or against a current party does not give rise to a real risk of bias. Thus, even assuming my former firm acted for another potential purchaser in 2012-2013 in the way alleged, that does not give rise to a real risk of bias. It is impossible to see how it could, given the issue in the present case, which concerns the alleged states of mind of certain individuals at Simmons & Simmons some 3 or 4 years later. Likewise, if it is correct (per Lord Bingham in Locabail) that membership of the same Inn, circuit, local Law Society or chambers is not a disqualifying factor, it is impossible to see how contact with persons from Simmons & Simmons via the Financial Markets Law Committee and the like can give rise to a real risk of bias. The remainder of Mr Hinkel’s points really come down to the assertion that there is bias because in my original decision, I found against him in rejecting his application for permission to appeal the Judgment of HHJ Dight. Locabail also makes it clear that a prior finding against a party is not a proper basis for concluding there is a real risk of bias. The same logic dictates there is nothing in the point that initially I determined Mr Hinkel’s Sixth Application (for a stay or adjournment) against him on the papers. He invited such a determination, and so cannot complain about it. In any event, he was then given the opportunity of renewing his application at an oral hearing, which he failed to do (see further below). What might give rise to a justifiable apprehension of bias is the fact that a Judge has expressed him or herself “in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind”, but that is not suggested by Mr Hinkel, and nor could it be.

57.
For all those reasons, I determined at the hearing on 1 December that Mr Hinkel’s recusal application was not made out, and I declined to recuse myself accordingly.

Adjournment on health grounds

58.
By his application dated 17 November 2021 (“the Eighth Application”), Mr Hinkel sought to rely on three doctor’s certificates, certifying him as unfit for work on medical grounds. I will not set out details of his medical condition, but they are of course noted. The first certificate is dated 18 August 2021 (for a period of 28 days), the second 27 September 2021 (for a period of 1 month), and the third 17 November 2021 (for a period of 42 days). Mr Hinkel also relied on his own letter dated 23 November, in which he gave information about his medication. Again, I need not I think set out the details, but they have been noted by me.

59.
As to the relevant legal principles, in Levy v Ellis-Carr [2012] EWHC 63 (Ch) Norris J gave the following guidance on the sort of evidence required to procure an adjournment on medical grounds:

“Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion and what arrangements might be made (short of an adjournment) to accommodate the party's difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case). The letter on which the Appellant relies is wholly inadequate.”

60.
That guidance has been approved in a number of later decisions, including by Lewison LJ in the Forresters Ketley v Brent [2012] EWCA (Civ.) 324 at [26], and again by the Court of Appeal in GMC v Hayat [2018] EWCA (Civ.) 2796 at [48]. In the second of these cases, the Court of Appeal overturned the earlier decision of Lang J, in which Lang J had allowed an appeal from a decision of the Medical Practitioners Tribunal on the basis that the tribunal had failed to adjourn proceedings against the appellant in light of a sick note he produced which advised that he was not fit for work. Coulson LJ at [45] said that Lang J appeared to conclude that, because the sick note post-dated earlier evidence of the appellant's condition, "it somehow trumped all that had gone before it". Coulson LJ said that was wrong in principle.

“Finally, I consider that the Tribunal was entitled to weigh up the (inadequate) sick note against all of the other material available to them. This included not only the existing medical evidence (and the fact that the sick note was broadly consistent with that other evidence, and not contrary to it) but also the fact that [the appellant] had already made three unsuccessful applications to adjourn this hearing on entirely different grounds, each without success.”

61.
In the present case, I was not at all persuaded that the evidence relied on by Mr Hinkel was adequate to justify the conclusion that an adjournment of his applications was necessary:

i)
The sick notes are short and provide little background or information. They do not (per Levy v. Ellis-Carr) “identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process”, and neither do they “provide a reasoned prognosis.” They provide no detail such as would enable one to form a judgment as to whether arrangements short of an adjournment would have been sufficient to accommodate Mr Hinkel’s medical issues. Neither do they give any clear or reasoned indication of whether those issues are likely to be resolved within 42 days.

ii)
One must also consider the particular circumstances of the case: see Teinaz v London Borough of Wandsworth [2002] IRLR 721, per Peter Gibson LJ at [22]. The fact is that Mr Hinkel’s various applications, as I have sought to explain, are all in one way or another attempts to invite the Court to reopen an appeal. That is a form of application that is often deal with without the need for an oral hearing. The Court has had the benefit of lengthy written submissions from Mr Hinkel. The degree of engagement needed from Mr Hinkel is likely to have been limited, and thus I am far from persuaded that he would not have been able to engage effectively notwithstanding his medical condition. At any

rate, the evidence does not satisfy me at all that he would not have been so able, and the burden was on him to show that he was not.

iii)
Consistently with that, and despite Mr Hinkel's submission that he was not able to engage sufficiently, the evidence is that he was nonetheless able to make at four of his eight applications on or after the date of his first doctor's certificate on 18 August 2021. These included his Sixth Application dated 19 October to adjourn the December hearing pending the further inquiries being undertaken by the SRA. It was only when the Sixth Application was refused on the papers by order dated 1 November that Mr Hinkel then made his Seventh Application (for recusal) on 2 November, and then his Eighth Application (to adjourn on medical grounds) on 17 November. This wider picture suggests that Mr Hinkel was well able to engage sufficiently with the legal process and with the disposal of the various applications listed for hearing in December 2021.

62.
Finally, I note that Mr Hinkel's various applications were made in the context of an appeal. I note the guidance given in the White Book (2021), at note 52.21.6, as to the inherent power of the Court to continue with an appeal in the absence of one of the parties. The present of course was not the hearing of an appeal, but the hearing of various applications seeking to reopen a final appeal. The same logic, it seems to me, must apply; and the discretionary factors I have mentioned above support the conclusion that it was entirely appropriate to continue to determine Mr Hinkel's various applications in his absence.

Overall Conclusion

63.
Mr Hinkel's various applications are dismissed. Since they were fundamentally misconceived, for the reasons explained above, I will dismiss his First to Sixth Applications on the basis that they were totally without merit. I will also dismiss his Seventh (recusal) Application on the same basis.