Neutral Citation Number: [2023] EWCA Civ 171

Case No: CA-2022-000994

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
M.H. Rosen KC (sitting as a Deputy High Court Judge)
[2022] EWHC 721 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/02/2023

Before:

LORD JUSTICE NEWEY
LORD JUSTICE SINGH
and
LORD JUSTICE NUGEE

- -

Between:

(1) QUANTUM CARE LIMITED **(2) GURPREET GILL MAAG**	**Claimants/ Appellants**
- and -	
LALIT MODI	**Defendant/ Respondent**

- -
- -

Tony Singla KC and Jessie Ingle (instructed by **Mishcon de Reya LLP**) for the **Appellants**
Ian Mill KC and Jonathan Price (instructed by **BlackLion Law LLP**) for the **Respondent**

Hearing dates: 1 & 2 February 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 21 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. This is an appeal from a decision of Mr M.H. Rosen KC, sitting as a Deputy High Court Judge ("the Judge"). In a judgment dated 30 March 2022 ("the Judgment"), the Judge held the defendant, Mr Lalit Modi, to be contractually liable to the first claimant, Quantum Care Limited ("Quantum"), but dismissed a claim for deceit. The Judge further explained his decision in a judgment dated 14 April 2022 ("the PTA Judgment") in which he refused the claimants permission to appeal. However, the claimants now challenge in this Court the Judge's rejection of the deceit claim.

Basic facts

2. This section of this judgment seeks to provide a summary of events by reference to matters which are not (at any rate before us) in dispute.

3. Mr Modi is a well-known businessman. He was formerly the vice-president of the Board of Cricket Control of India and was instrumental in the foundation in 2007-2008 of its "Twenty20" cricket competition known as the "Indian Premier League".

4. The second claimant, Mrs Gurpreet ("Blu") Gill Maag, has been a venture capital investor for more than a decade. In November 2018, her portfolio included six investments totalling more than $10 million. She and her husband Daniel, a Swiss banking professional, are based in Singapore.

5. Quantum is an investment vehicle for Mrs Maag. It is a wholly-owned subsidiary of Tamares Business Limited ("Tamares"). Mrs Maag is a director of both companies and the sole shareholder of Tamares.

6. In 2016, inspired by his wife's battle with cancer, Mr Modi set up a venture called "Ion Care" to own and operate oncology treatment centres which would provide advanced non-invasive image guided single-dose radiotherapy ("SDRT"). The treatment had been developed by the Champalimaud Centre for the Unknown ("CCU") in Portugal and, in particular, by Dr Carlo Greco and Professor Zvu Fuks of CCU.

7. The Judge said this in paragraph 54 of the Judgment about the position in relation to Ion Care in April 2018, when the meeting at the heart of these proceedings took place:

> "[Mr Modi] had been trying to launch [Ion Care] for approximately two years and had in use various investment proposal documents to seek the extensive funding needed, but seems only to have obtained advances from [a United Arab Emirates-based business called] Ellington and Mr [Ravi] Jaipuria. In the meantime, Ion Care had already incurred large debts and ongoing contractual obligations required for collaboration with CCU and its personnel, and for the Medanta hospital centre and would be necessary also for any of the other treatment centres which had been floated and might be pursued."

8. On 13 April 2018, Mr and Mrs Maag encountered Mr Modi in the Four Seasons DIFC Hotel in Dubai, where they were all staying. As the Judge explained in paragraph 12 of the Judgment, "Mrs Maag seems to have known Mr Modi well and they referred to each other warmly as friends".

9. At Mr Modi's invitation, the Maags met him in his hotel suite after dinner that evening. The meeting, which began after 10 pm, lasted some three hours. During it, Mr Modi invited Mrs Maag to invest in Ion Care and, in doing so, used certain documents. These included a hard copy of either the "Investor Pitch Deck" ("the IPD") which was before the Judge or "something so similar as for present purposes to be sufficiently evidenced by the IPD" (see paragraph 69 of the Judgment and also paragraph 8 of the PTA Judgment). The Maags were shown, too, something referred to as the "Leadership Board" and a video of "a celebrity waxing lyrical about the CCU and Dr Greco" (see paragraph 9 of the PTA Judgment).

10. The IPD comprises 215 pages, some of them bearing the words, "Investor Pitch Deck". The names of six well-known people (including Mr Kofi Annan, the former Secretary-General of the United Nations) featured, with photographs and brief biographies, in a section of the document dealing with "The Patrons". 21 further individuals were shown in the next section of the document, dealing with "The Leadership Team", again generally with photographs and brief biographies. The pages relating to two of those listed, Sheikh Nahyan bin Mubarak Al Nahyan, who had been the Minister of Culture and Knowledge Development in the United Arab Emirates, and Dr Thaksin Shinawatra, a former Prime Minister of Thailand, included the words "Co Chair and Trustee". A later section of the document concerned "Ion Care Management Team". Those recorded once again included Dr Shinawatra, this time with the description "The Ion Care Chairman" and the statement, "He is Chairman of ION CARE Limited". Some of the other pages in the IPD were, as the Judge noted in paragraph 56(a) of the Judgment, "virtually blank apart from a template [heading] or palpably inapplicable or incomplete".

11. The "Leadership Board", as the Judge explained in paragraph 56(b) of the Judgment, consisted of "magazine covers or publicity photographs for some 50 individuals many famous, commencing with Sheikh Nahyan, Dr Shinawatra and the former secretary-general of the United Nations Kofi Annan, and about one third of them behind a heading 'brand ambassadors' including media, fashion and sporting celebrities such as Roger Federer from tennis and Cristiano Ronaldo from football".

12. The Maags explained that they left their meeting with Mr Modi with copies of the IPD and "Leadership Board" or extracts, but the documents were subsequently discarded or mislaid in their Singapore office (see paragraph 57 of the Judgment and paragraph 13 of the PTA Judgment).

13. On 14 April 2018, Mr Maag messaged Mr Modi to say that it had been a pleasure to "spend an insightful few hours" with him and that he would write shortly "pertaining … the investment into the holding company". He also inquired whether there was already a "pitch book". In response, Mr Maag was on 16 April sent an "Information Memorandum" by Mr Munesh Khanna, a financial consultant to Mr Modi. The "Information Memorandum" included a page headed "Board of Directors" on which 12 people, among them Sheikh Nahyan (misspelt as "Nayhan"), were shown, but with "*Proposed" at the foot of the page.

14. On 22 April 2018, Mr Maag told Mr Khanna in a message, "We are evaluating an investment of up to 2%". On 27 April, Mr Maag similarly wrote to Dr Greco that he was "considering an investment into Ion Care". In an email of 24 May, Mr Maag told Mr Khanna, "Once we have the PPM [i.e. Private Placement Memorandum] we will have it vetted by our lawyer and will then be in a position to take a final call".

15. Mrs Maag caused Quantum to be incorporated on 4 July 2018 with a view to investing in Ion Care. On about 29 July, Tamares borrowed £2 million from Dunbridge Investments Limited, a company owned by an uncle of Mrs Maag.

16. On 31 August 2018, Mr Modi posted a message in a WhatsApp chat with the Maags in which he said, "Ioncare board member trustee kofi Anan funeral in Accra on 13". Mr Maag replied, "Yes what a tragic loss".

17. Unum in Infinitum Inc, another company owned by Mrs Maag, eventually acquired shares in Ion Care's Swiss parent company, Ion Care AG, and Quantum paid Ion Care AG $1 million on 13 November 2018 as the first half of its investment.

18. The Judge said this about what happened next in paragraph 21 of the Judgment:

> "Shortly following Quantum's investment into Ion Care, Mrs Minalini Modi died in December 2018. Her family were deeply affected and Mr Modi's active involvement in Ion Care virtually ended. By April 2019, Ion Care had run out of funds with which to meet its expenses, and had not been able to develop any outpatient treatment centres which would have allowed it to generate revenue."

19. On 14 April 2019, Mr and Mrs Maag attended a meeting with Mr Modi at his house in London. Mr Modi "in essence … agreed to repay Quantum its $1 million investment if no viable business plan was produced by 1 May 2019" (paragraph 22 of the Judgment). In the event, "[n]o viable business plan materialised by May 2019 or at all, and the Maags sought the repayment by Mr Modi of Quantum's $1 million investment" (paragraph 23 of the Judgment). $200,000 was repaid on 9 July, but nothing more was paid.

20. The present proceedings were issued on 7 December 2021. By them, Quantum sought the $800,000 balance of the $1 million which Mr Modi had agreed to repay. Damages for deceit were also claimed, initially by Mrs Maag personally and later by Quantum, on the basis that Mr Modi had made false representations to Mrs Maag, notably at their meeting on 13-14 April 2018. Among other things, it was alleged that Mr Modi had "represented to Mrs Gill Maag, with the intention that Mrs Gill Maag should rely on the representation and invest in Ion Care", that individuals specified in the IPD "were patrons of Ion Care" (the "Patrons Representations") or "were part of the leadership team of Ion Care" or "had agreed to perform a leadership role once Ion Care became operational" (the "Leadership Representations"). It was further alleged, first, that Mr Modi "orally represented to Mrs Gill Maag, with the intention that she rely on the representations", that certain individuals, including Sheikh Nahyan and Dr Shinawatra, "had made financial commitments to Ion Care's business" (the "Funding Representations") and, secondly, that Mr Modi "represented, with the intention that Mrs Gill Maag should rely on the representation, that each of the individuals whose

photograph was contained in the pack [i.e. the 'Leadership Board'] was involved in Ion Care's business, either as part of its management and/or as a funder, or as a 'brand ambassador'". But for Mr Modi's deceits, it was said, Quantum would have invested the $2 million allocated to Ion Care in either Livspace, a business providing interior design and renovation services, or B1T, a blockchain and cryptocurrency investment company.

21. As already mentioned, the contractual claim for the $800,000 balance of Quantum's investment succeeded. The Judge said in paragraph 108 of the Judgment that the obligation which Mr Modi had assumed was "certain" and "[t]he promise was not gratuitous, out of good will or compassion".

22. In contrast, the deceit claim failed. The Judge concluded in paragraph 112 of the Judgment that he "decline[d] to find that Mr Modi made actionable misrepresentations as alleged to Mr and Mrs Maag". He continued, "Even if that were wrong, apart from its $1 million investment which is subject to Mr Modi's contractual promise of repayment (now to be the subject of judgment) I am not persuaded that it suffered any recoverable loss."

The Judge's rejection of the deceit claim

23. The Judge said in paragraph 89 of the Judgment that he did "not consider that Quantum has proved that Mr Modi made material misrepresentations with the meanings it alleges, or that he intended or that the Maags understood such to be the meanings". In paragraph 90, the Judge said that, if (contrary to his finding) Mr Modi had made the representations alleged, "they were false when made" but he was "doubtful that they were relied on when Quantum invested in Ion Care and/or caused Quantum not to invest all or part of $2 million as it would otherwise have done in Livspace or alternatively B1T". In paragraph 98, the Judge said:

> "Whilst I would be prepared to proceed on the basis that, if Mrs Maag had decided to invest in Livspace or to invest more in B1T, she might hypothetically have formed and used Quantum for that purpose rather than one of her other existing companies or a new SPV, I am sceptical as to the likelihood of this. Quantum has provided no detailed accounts nor corroboration for the finances of Mrs Maag's other offshore companies and their investments."

24. Mr and Mrs Maag and Mr Modi had all given evidence before the Judge. In the Judgment, the Judge said of Mr and Mrs Maag that they "were both impressive people, clearly experienced and sensible in business" (paragraph 61), but, having expressed certain reservations about their evidence, said in paragraph 63, "on matters of undocumented detail regarding the 13/14 April 2018 meeting, I am on the whole not content to rely only on Quantum's witness evidence". With regard to Mr Modi, the Judge said in paragraph 60:

> "Mr Modi was in short an unreliable witness. Apart from his very poor recall (which I thought genuine) he tended to speeches regarding his aspirations and the closeness of his friendships with innumerable famous people, rather than

> attempting to focus on objective reality, with which his relationship seemed fluid and sometimes even distant or at least secondary. He seemed to have little if any grasp of the detail or contemporaneous documentation."

25. The succeeding paragraphs of the Judgment include the following:

i) In paragraph 62:

> "neither Mr nor Mrs Maag seemed to me at all gullible and despite Mr Modi's past achievements and connections, I would expect them to have taken some of [Mr Modi's] possible boasts and 'puffs' (as I did) with at least a pinch of salt";

ii) In paragraph 75, after the Judge had noted that the page in the "Information Memorandum" in respect of the "Board of Directors" bore "the legend '*Proposed'":

> "Mr and Mrs Maag came to know who were the directors and knew that most of the non-Modi individuals had not been appointed" and "[t]heir case that they were misled into believing that Sheikh Nahyan and others outside the Modi group including Dr Shinawatra had agreed to be appointed later is evidentially thin, at the very least";

iii) In paragraph 78:

> "whilst it is plausible that Mr Modi referred to Sheikh Nahyan, Dr Shinawatra, Mr Browne, Mr Annan and other politicians and even royalty during what was obviously a first, preliminary meeting, and it is not impossible that he said that Sheikh Nahyan and/or Mr Browne among others had 'assigned' land in their countries for use as possible treatment centres, I am not at all satisfied that he stated orally that Sheikh Nahyan had 'committed' $100 million and Dr Shinawatra $60 million as alleged in paragraph 21 of the Particulars of Claim";

iv) In paragraph 80:

> "The fact that the hard copy stapled pack of the IPD and ['Leadership Board'] taken away by the Maags from the 13/14 April 2018 was later discarded or mislaid may be symptomatic of how unimportant it had become";

v) In paragraph 81:

> "In fact, despite opportunities over some months to check or inquire on the progress of specific future investment promises of the sort intimated at their first, preliminary meeting with Mr Modi, the Maags do not appear to have done so";

vi) In paragraph 83:

> "In his confused account of what was vision and what was reality, it emerged as unlikely that Sheikh Nahyan or Dr Shinawatra had definitively agreed to lead Ion Care as the Maags claim was represented to them";

vii) In paragraph 84:

> "that meeting [i.e. that of 13-14 April 2018] was obviously only the start of a more formal process in which significant matters and conditions would be investigated and discussed before any 'commitment'";

viii) In paragraph 85:

> "Given Mr Modi's way of socialising/dealing, it would have been wholly unrealistic to take it that everyone or anyone mentioned by him (he would say because he thought they would probably later participate) was already bound to participate";

ix) In paragraph 86:

> "Mr Modi seemed to me indeed predominantly aspirational and however shrewd, inclined to the emotional as well as the grand, and not always very practical. Mr and Mrs Maag are confident, intelligent people. They were unlikely to be seriously misled by what I might call Mr Modi's 'adoption' for Ion Care of so many famous people, simply because he believed as he said that they or some of them would probably support Ion Care later"; and

x) In paragraph 87:

> "One striking reference by [the claimants'] counsel at trial was to Mr Modi's announcement by WhatsApp on 31 August 2018 regarding the death of his alleged friend Mr Annan, whom he called an 'Ion Care board member/trustee'; but whilst consistent with Mr Modi having previously so misdescribed Mr Annan, Mr and Mrs Maag could certainly not have believed that Mr Annan was bound to participate once he was deceased."

26. It is also relevant to quote paragraph 82 of the Judgment, which reads:

> "Mr Modi probably did know and had approached for Ion Care most if not all of the 30 'patrons' and 'leaders' to whom he may have referred at the 13/14 April 2018 meeting, including Sheikh Nahyan, Dr Shinawatra, Mr Browne and Mr Annan. He even knew some of the 'brand ambassadors' identified in the last third of the ['Leadership Board'] such as Messrs Federer and Ronaldo and the fashion model Naomi Campbell, although

> he admitted that he had not (yet) approached them to assist in Ion Care (or its related charitable foundation). I do not necessarily accept that his protestation that 'the personalities mentioned were [merely] illustrative of the kinds of person [he] envisaged in' the various roles, save as to a hit list of 'brand ambassadors', may smack suspiciously of a con-man's excuse."

27. Something has evidently gone wrong with the last sentence of the passage set out in the previous paragraph. When, however, seeking permission to appeal from the Judge, the claimants took the sentence as a finding that Mr Modi's "protestation" smacked suspiciously of a con-man's excuse, and the Judge did not dissent from that in the PTA Judgment.

28. In the PTA Judgment, the Judge expanded to some extent on his reasons for rejecting the deceit claim. In paragraph 8, after noting that the IPD "contained written statements and images, referring to many notable individuals as 'patrons', or as part of the leadership team, or as attributed specific roles within Ion Care's future business", the Judge said that he "did not accept that in context that meant, or was intended to mean, or was understood by the Maags to mean, that the individuals named had already agreed to fulfil the roles attributed or allocated for them". I should, I think, set out in full what the Judge said in the next paragraphs of the PTA Judgment:

> "9. As I made clear from the outset of the Judgment, the IPD document was not to be taken in isolation. Indeed Quantum's present submissions emphasise that the IPD did not exist in a vacuum, as it was shown to the Maags along with the so-called Leadership Board and a video of a celebrity waxing lyrical about the CCU and Dr Greco (and they also claim that Mr Modi boasted orally about having raised huge sums of money for another of his business ventures called 'Honor' when in fact he had not).
>
> 10. But other circumstances around the IPD were illuminating – the late-night, informal, setting between people who knew each other socially soon after a chance meeting, with plenty of time, opportunity and contact afterwards for any relevant confirmation or further investigation; and what use was made of the IPD or parts of it, as a manifestly incomplete draft, alongside what oral explanations and answers to questions might have been sought or given alongside it, was not fully and sufficiently clear from the evidence at trial. Indeed, the Information Memorandum which started the formal process soon after did not mention the allegedly participating outside individuals, save for Sheikh Nahyan and Mr Pellegrini (leaving aside Dr Greco and Professor Fuks of CCU) on the proposed board of 12 directors.

> 11. Be that as it may, I do not consider that it is necessary to explain what as a positive alternative to Quantum's case, the IPD document or extracts of it, in context or in isolation, meant or may have meant. Mr Modi's evidence was that the IPD represented his 'vision' and that the individuals mentioned in the IPD were 'merely illustrative' of the kinds of person he envisaged in the various roles. Whilst I was not that impressed by the way he expressed the latter, the former characterisation was consistent with other evidence and with what I consider Mr and Mrs Maag's approach to Mr Modi and his preliminary presentation, both oral and written in the sense that he used documents, at the 13/14 April 2018 meeting in Dubai.
>
> 12. If it be necessary to make this explicit, I hope it now suffices to summarise: I consider that the roll-call of outside individuals identified in the IPD was no more than aspirational, like so many of Mr Modi's statements - a grandiose 'vision' which included a pool of many famous people whom he 'envisaged' at one time as participating in due course.
>
> 13. What matters more perhaps is that Mr and Mrs Maag did not prove that they understood and relied on the IPD at the time as meaning that the individuals had in fact already committed to proposed roles. On the contrary, if it indeed would help Quantum better to understand my judgment, I can say plainly that I did not believe the Maags' evidence to that effect and consider it possible that the document (discarded but rediscovered after Quantum's investment, in the Ion Care dropbox in December 2018) only became part of their case on deceit later.
>
> 14. As for ground (2), my overall conclusion was not that there were no written representations (at the 13/14 April 2018 meeting in Dubai) but was that no actionable misrepresentations were made (or intended or understood), in writing or oral. The assessment of written and oral evidence said to add up to that is pre-eminently a matter for the trial judge."

The ingredients of deceit

29. Liability for the tort of deceit arises where (a) the defendant made a representation to the claimant which was false, (b) the defendant knew that the representation was false or was reckless as to whether it was true or false, (c) the defendant intended that the claimant should act or refrain from acting in reliance on the representation, (d) the claimant in fact acted or refrained from acting in reliance on the representation and (e) the claimant has suffered loss as a result.

30. In the present case, that summary needs to be amplified in two respects. First, "[t]o establish liability in deceit it is incumbent on the representee to show that the representor intended his statement to be understood by the representee in the sense in which it is false": see *Goose v Wilson Sandford & Co* [2001] Lloyd's Rep PN 189, at paragraph 41, per Morritt LJ. Thus, in *Akerhielm v De Mare* [1959] AC 789, Lord Jenkins, giving the judgment of the Privy Council, said at 805:

> "the Court of Appeal construed the language of representation (c) as they thought it should be construed according to the ordinary meaning of the words used, and having done so went on to hold that on the facts known to the defendants it was impossible that either of them could ever have believed the representation, as so construed, to be true. Their Lordships regard this as a wrong method of approach. The question is not whether the defendant in any given case honestly believed the representation to be true in the sense assigned to it by the court on an objective consideration of its truth or falsity, but whether he honestly believed the representation to be true in the sense in which he understood it albeit erroneously when it was made".

31. Secondly, the claimant must have understood the representation in the sense in which it was false. In *Arkwright v Newbold* (1881) 17 Ch D 301, Cotton LJ said at 324-325:

> "In my opinion it would not be right in an action of deceit to give a plaintiff relief on the ground that a particular statement, according to the construction put on it by the Court, is false, when the plaintiff does not venture to swear that he understood the statement in the sense which the Court puts on it. If he did not, then, even if that construction may have been falsified by the facts, he was not deceived."

The appeal

32. As was recognised by Mr Tony Singla KC, who appeared for the claimants with Ms Jessie Ingle, appellate Courts do not lightly interfere with findings of fact made by a trial judge. In *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600, Lord Reed (with whom Lords Kerr, Sumption, Carnwath and Toulson agreed) said at paragraph 67:

> "in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified".

33. Mr Singla argued that, in the present case, it is nonetheless appropriate to allow the appeal and order a re-trial. He submitted that the Judge both failed to consider relevant evidence and arrived at an unreasonable conclusion. He contended, too, that

the Judge did not give adequate reasons for his decision. In that connection, he cited *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413, [2019] 4 WLR 112 ("*Simetra*"), in which Males LJ, with whom McCombe and Peter Jackson LJJ agreed, said this about judgments at paragraph 46:

> "Without attempting to be comprehensive or prescriptive, not least because it has been said many times that what is required will depend on the nature of the case and that no universal template is possible, I would make four points which appear from the authorities and which are particularly relevant in this case. First, succinctness is as desirable in a judgment as it is in counsel's submissions, but short judgments must be careful judgments. Second, it is not necessary to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered. Which points need to be dealt with and which can be omitted itself requires an exercise of judgment. Third, the best way to demonstrate the exercise of the necessary care is to make use of 'the building blocks of the reasoned judicial process' by identifying the issues which need to be decided, marshalling (however briefly and without needing to recite every point) the evidence which bears on those issues, and giving reasons why the principally relevant evidence is either accepted or rejected as unreliable. Fourth, and in particular, fairness requires that a judge should deal with apparently compelling evidence, where it exists, which is contrary to the conclusion which he proposes to reach and explain why he does not accept it."

34. While Mr Singla took issue with other aspects of the Judge's decision as well, he accepted that it was crucial to the appeal's success that he could impugn the Judge's findings that Quantum had not proved that "Mr Modi made material misrepresentations with the meanings it alleges, or that he intended or that the Maags understood such to be the meanings" (paragraph 89 of the Judgment) and that "Mr and Mrs Maag did not prove that they understood … the IPD at the time as meaning that the individuals had in fact already committed to proposed roles" (paragraph 13 of the PTA Judgment). In the light of the principles mentioned in paragraphs 29-31 above, those findings were of themselves fatal to the deceit claim. The appeal cannot therefore succeed unless they can be impeached.

35. Mr Singla argued that the Judge did not adequately explain these conclusions. The Judge, Mr Singla said, did not "make use of 'the building blocks of the reasoned judicial process' by identifying the issues which need to be decided, marshalling (however briefly and without needing to recite every point) the evidence which bears on those issues, and giving reasons why the principally relevant evidence is either accepted or rejected as unreliable" (to quote Males LJ in *Simetra*). While he addressed the "Funding Representations" specifically in paragraph 78 of the Judgment, the Judge otherwise dealt with the representations alleged by the claimants compendiously, without (as Mr Singla contended) properly explaining why the claimants' case as regards each of them was rejected. In fact, the Judge did not even

say in the Judgment what meaning he considered Mr Modi to have intended the IPD to convey or the Maags to have derived from it. In the PTA Judgment, the Judge went further, expressing the view that "the roll-call of outside individuals identified in the IPD was no more than aspirational", but that, Mr Singla said, did not suffice, especially given the Judge's dismissal of the idea that "the individuals on the IPD were 'merely illustrative' of the kinds of person [Mr Modi] envisaged in the various roles" (see paragraph 11 of the PTA Judgment and also paragraph 82 of the Judgment).

36. Turning to the substance, Mr Singla submitted that, in finding that the meanings alleged by the claimants had been neither intended by Mr Modi nor understood by the Maags, the Judge failed to consider relevant evidence and arrived at an unreasonable conclusion. Mr Singla stressed in this connection the express terms of the IPD, which, he said, this Court is able to interpret for itself. He also advanced a number of specific points as showing failure by the Judge to consider or understand significant evidence. *First*, he said that the confusion between "what was vision and what was reality" to which the Judge referred in paragraph 83 of the Judgment made it highly likely that Mr Modi had made the misrepresentations alleged. At points during cross-examination, Mr Modi appeared to claim that Sheikh Nahyan and Dr Shinawatra had agreed to have leadership roles in Ion Care, which, Mr Singla said, rendered it more probable that he would have made representations along those lines at the 13-14 April 2018 meeting. *Secondly*, Mr Singla argued that the distinction between "illustrative" and "aspirational" which the Judge drew in paragraphs 11 and 12 of the PTA Judgment was an artificial one of the Judge's own invention. Mr Modi's case had been that he had introduced his "vision" to the Maags and, *as part of that*, included the names of people as "illustrative of the kinds of person" he envisaged in the roles (to quote from paragraphs 21, 23 and 27 of the amended defence). In any event, Mr Modi can be seen from his use of the present tense in certain places to have been talking about the position at the time rather than a future "vision". Thus, the IPD stated of Dr Shinawatra, "He *is* Chairman of ION CARE Limited" (emphasis added). *Thirdly*, the August 2018 message in which Mr Modi spoke of "Ioncare board member trustee kofi Anan" confirmed that Mr Modi had previously so described Mr Annan, but the Judge instead observed that the Maags "could certainly not have believed that Mr Annan was bound to participate once he was deceased". *Fourthly*, although the Judge referred to "possible boasts and 'puffs'" from Mr Modi (see paragraph 62 of the Judgment), Mr Modi had never suggested that things he had said could be discounted as "boasts" or "puffs". *Fifthly*, the fact that Ion Care was in need of money (as is apparent from paragraph 54 of the Judgment) increased the likelihood of Mr Modi having made the representations alleged. Mr Modi was looking to raise money for a failing business, Mr Singla said. *Sixthly*, the Judge failed even to mention evidence that Mr Modi had made false representations on other occasions. Soon after the 13-14 April 2018 meeting, Mr Modi told Mrs Maag in a message that he had "[s]old 11 teams for 50 mn each already" in a venture called "Honor" which was "[r]ight up your alley", but no sales had actually been effected. There was evidence, too, that an April 2017 presentation in respect of Ion Care asserted that Ion Care had "entered into a partnership with the [CCU] to use their world-class … SDRT technologies" when no such agreement had been concluded. *Seventhly*, the Judge made two clear errors in the Judgment. In paragraph 82, he said that "Mr Modi probably did know and had approached for Ion Care most if not all of the 30 'patrons' and 'leaders' to whom he may have referred at the 13/14 April 2018 meeting" and

"even knew some of the 'brand ambassadors' identified in the last third of the ['Leadership Board'] such as Messrs Federer and Ronaldo and the fashion model Naomi Campbell", yet (a) Mr Modi had accepted in cross-examination that he did not know the King and Queen of Spain, Princess Haya or Sheikh Mansour bin Zayed Al Nahyan, all of whom were amongst the "30 'patrons' and 'leaders'", (b) Mr Modi did not claim in evidence to have known Messrs Federer and Ronaldo and (c) Mr Modi said in cross-examination that he had not approached Mr Browne and that he did not know whether he had approached a number of the other individuals named in the IPD. Further, while the Judge said in paragraph 80 of the Judgment that the claimants "did not put to Mr Modi in cross-examination any alleged misrepresentations subsequent to the 13/14 April 2018 meeting", their then counsel can be seen to have asked Mr Modi questions about the "Information Memorandum", which post-dated the meeting.

37. While, however, the IPD and "Leadership Board", were documents, they were shown to Mr and Mrs Maag at a meeting. The Judge noted in paragraph 10 of the PTA Judgment that "what oral explanations and answers to questions might have been sought or given alongside [the IPD] was not fully and sufficiently clear from the evidence". One thing that is clear is that the IPD was presented in conjunction with the "Leadership Board" and "a video of a celebrity waxing lyrical about the CCU and Dr Greco", and the combination was, I think, capable of casting light on how Mr Modi intended the IPD to be understood and what the Maags took from it. In particular, the fact that the "Leadership Board" was for the most part just a collection of "magazine covers or publicity photographs" might have been thought to lend support to the idea that, at the meeting, Mr Modi was seeking to put forward a "vision" rather than a present reality and that the Maags would have appreciated that. At any rate, the meanings which the IPD and "Leadership Board" were intended and understood to convey cannot be reliably determined simply by reading their words. As the Judge said in paragraph 9 of the PTA Judgment, "the IPD document was not to be taken in isolation" and "did not exist in a vacuum".

38. The Judge, unlike us, saw Mr Modi and the Maags give evidence. With the benefit of that, the Judge commented that Mr Modi's relationship with "objective reality" "seemed fluid and sometimes even distant or at least secondary" (paragraph 60 of the Judgment) and that he seemed "predominantly aspirational and … inclined to the emotional as well as the grand" (paragraph 86 of the Judgment). As regards the Maags, the Judge thought them "impressive … , clearly experienced and sensible in business" and not "at all gullible" (paragraphs 61 and 62 of the Judgment). Those assessments will of themselves have provided reason to think that Mr Modi was intending to convey a "vision" and that the Maags will have realised that. In paragraph 85 of the Judgment, the Judge said that, "[g]iven Mr Modi's way of socialising/dealing, it would have been wholly unrealistic to take it that everyone or anyone mentioned by him … was already bound to participate" (paragraph 85 of the Judgment). The Maags' experience, sense and lack of gullibility will have tended to make it likely that they discerned that Mr Modi's "way of socialising/dealing" meant that he was not to be taken to be representing that "everyone or anyone mentioned by him … was already bound to participate".

39. There are further reasons for considering that the Judge was entitled to conclude that Mr Modi was intending to convey a "vision" rather than present reality and that the Maags appreciated that. In the first place, as the Judge said in paragraph 10 of the

PTA Judgment, the IPD was "a manifestly incomplete draft": some of its pages were "virtually blank apart from a template [heading] or palpably inapplicable or incomplete" (paragraph 56(a) of the Judgment). Secondly, the 13-14 April 2018 meeting was a "late-night, informal" one "between people who knew each other socially soon after a chance meeting, with plenty of time, opportunity and contact afterwards for any relevant confirmation or investigation": see paragraph 10 of the PTA Judgment. Thirdly, the fact that the IPD and "Leadership Board" were "later discarded or mislaid" (paragraph 80 of the Judgment) may be symptomatic not only of "how unimportant it had become" (as the Judge said in terms in paragraph 80 of the Judgment), but of the fact that the Maags had never taken everything in them as representing present reality. That, "despite opportunities over some months to check or inquire on the progress of specific future investment promises of the sort intimated at their first, preliminary meeting with Mr Modi, the Maags do not appear to have done so" (paragraph 81 of the Judgment), arguably pointed in the same direction.

40. Turning to the various points mentioned in paragraph 36 above, *first*, the Judge was much better placed than we are to assess whether Mr Modi's "fluid", "distant" or "secondary" relationship with "objective reality" (see paragraph 60 of the Judgment) is likely to have implied, on the one hand, that he intended to represent as fact matters that were not "objective reality" (as, I think, Mr Singla would argue) or, on the other hand, that he did not mean words that might normally be taken to refer to "objective reality" to do so and, further, that the Maags would have realised that. *Secondly*, the distinction which the Judge drew between "illustrative" and "aspirational" makes sense if, in doubting that those to whom there was reference were merely "illustrative", the Judge was discounting the idea that Mr Modi had intended to represent no more than that people *like* those identified should be involved. The Judge's view, I think, was that Mr Modi was envisaging that those *specific* individuals, with many of whom he was acquainted, should participate, not just that *similar* people should do so. It is noteworthy in this context that Mr Modi does not himself seem to have used the word "illustrative" in either his witness statements or his oral evidence, albeit that it did feature in his amended defence. *Thirdly*, with regard to the August 2018 message referring to Mr Annan's death, (a) it is evident from paragraph 87 of the Judgment that the Judge knew that the message was "consistent with Mr Modi having previously so misdescribed Mr Annan" and (b) the message is not of itself fatal to the proposition that Mr Modi had been intending to convey a "vision" in which Mr Annan would be "Ioncare board member trustee" rather than that he actually was or had agreed to be such. *Fourthly*, the Judge had suggested to the claimants' then counsel during closing submissions that "quite a big issue" in the case related to the difference between "specific statements of fact" and "what we used to refer to as puff, you know, where the salesman makes grand general statements about capacity or future intentions and so on". So understood, the Judge's reference to "possible boasts and 'puffs'" squares with Mr Modi's case that he was intending to share his "vision" with the Modis. *Fifthly*, it by no means follows from the fact that Ion Care was in need of money that Mr Modi intended to make false representations to the Maags. *Sixthly*, the misrepresentations which Mr Modi is alleged to have made on other occasions were not mentioned in the claimants' pleadings and, anyway, did not bear directly on what the Judge had to decide and, in so far as they might have cast light on Mr Modi's credibility, would have added nothing to the Judge's assessment that Mr Modi was "an unreliable witness". Further, (a) paragraph 9 of the PTA Judgment confirms that the Judge was aware of the claim

that Mr Modi "boasted orally about having raised huge sums of money for another of his business ventures when in fact he had not", (b) it was not put to Mr Modi in terms in cross-examination that he had knowingly made false representations in relation to the "Honor" venture or through use of the April 2017 presentation and (c) "[a]n appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it" (*Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48, at paragraph 2(iii), per Lewison LJ). "[T]here is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case" (*Eagil Trust Co Ltd v Pigott-Brown* [1985] 3 All ER 119, at 122, per Griffiths LJ) and it is not the case that "every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained" (*English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, [2002] 1 WLR 2409, at paragraph 20, per Lord Phillips, giving the judgment of the Court). *Seventhly*, the Judge can, I think, be seen to have gone too far in paragraph 82 of the Judgment, not least because it is plain that Mr Modi did not know and had not approached "*all*" of "the 30 'patrons' and 'leaders' to whom he may have referred at the 13/14 April 2018 meeting". It is less clear, however, that the Judge was wrong to think that Mr Modi "probably did know and had approached for Ion Care *most*" of those mentioned, and there is in any event no question of any overstatement in paragraph 82 being of such significance as to warrant allowing the appeal. Likewise, while the fact that Mr Modi was cross-examined about the "Information Memorandum" may mean that it was not strictly correct for the Judge to say that the claimants "did not put to Mr Modi in cross-examination any alleged misrepresentations subsequent to the 13/14 April 2018 meeting", the "Information Memorandum" post-dated the meeting by only a couple of days and the Judge addressed it in detail in the Judgment (see especially paragraphs 72-77). The point provides no basis for impugning the Judge's overall conclusions.

41. In all the circumstances, I have not been persuaded either that the Judge's decision "cannot reasonably be explained or justified" (to use words of Lord Reed in *Henderson v Foxworth Investments Ltd*) or that it is open to challenge on the basis that there was "a demonstrable failure to consider relevant evidence" (to cite Lord Reed again). To the contrary, it seems to me that the Judge was entitled to conclude on the evidence, as he did, that Quantum had not "proved that Mr Modi made material misrepresentations with the meanings it alleges, or that he intended or that the Maags understood such to be the meanings".

42. With regard to Mr Singla's contention that the Judge did not adequately explain his conclusions, my own view, with respect, is that it would have been preferable if the Judge had made more use of "the building blocks of the reasoned judicial process" to which Males LJ referred in *Simetra*, quoting the judgment of the Court given by Henry LJ in *Glicksman v Redbridge Healthcare NHS Trust* [2001] EWCA Civ 1097, at paragraph 11. The finding that Quantum had not "proved that Mr Modi made material misrepresentations with the meanings it alleges, or that he intended or that the Maags understood such to be the meanings" in paragraph 89 of the Judgment followed what the Judge described earlier in the paragraph as "an overarching summary of what … were some of the most telling aspects of the evidence on liability for deceit", but the Judge did not spell out in the Judgment which features of that evidence had led him to his conclusion. While, however, "want of reasons may be a

good self-standing ground of appeal" (*Flannery v Halifax Estate Agencies Ltd* [2000] 1 WLR 377, at 381, per Henry LJ, giving the judgment of the Court), that is not the case here. The Judge explained his thinking further in the PTA Judgment and, taking the Judgment and PTA Judgment together, it is possible, in my view, to see sufficiently why the Judge decided as he did.

43. The conclusions I have arrived at thus far of themselves mean that the appeal must be dismissed. I do not therefore need to address the other aspects of the Judge's decision with which Mr Singla took issue.

Conclusion

44. I would dismiss the appeal.

Lord Justice Singh:

45. I agree.

Lord Justice Nugee:

46. I also agree.