Neutral Citation Number: [2018] EWHC 2877 (Ch)

Case No. HC-2016-002106

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

Rolls Building, Fetter Lane,

London EC4A 1NL

Date: 23/10/2018

Before

HIS HONOUR JUDGE SIMON BARKER QC

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BETWEEN:

(1) LIBYAN INVESTMENT AUTHORITY
(2) LIA ADVISORY SERVICES (UK) LIMITED
(3) MAPLECROSS HOLDINGS INVESTMENTS COMPANY LIMITED

Claimants

-v-

(1) WARWICK STREET (KS) LLP
(2) ROGER MILNER KING
(3) INTERNATIONAL GROUP LIMITED
(4) BEESON PROPERTY INVESTMENTS LIMITED
(5) STOKE PARK ESTATES
(6) CHARLES MONTGOMERY MERRY
(7) CONRAD STRATEGIC PARTNERS LIMITED

Defendants

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David Halpern QC (instructed by **Hogan Lovells International LLP**) for the Claimants

Miles Harris (instructed by **Mayer Brown International LLP)** for the First Defendant

Jonathan Adkin QC and Rachel Tandy (instructed by **Croft Solicitors Limited**) for the Second to Seventh Defendants

Hearing dates : 2-3 and 10 October 2018

JUDGMENT APPROVED

HHJ Simon Barker QC

Introduction

1. There are three applications before the court. The first two in time are the claimants' applications for permission to amend their amended particulars of claim ('the RAPOC application'). These are treated as one application. The third application is the second to seventh defendant's application for an order striking out the claim form and the amended particulars of claim or the RAPOC, depending on the outcome of the RAPOC application, or granting summary judgment on the basis that the claims against the second to seventh defendants have no real prospect of success and there is no other compelling reason for a trial ('the second to seventh defendants' strike-out application').
2. The RAPOC application is not opposed by Warwick Street KS Limited, the first defendant, which has been referred to by its former name, the name at the time of the relevant facts, King Sturge; not opposed, that is, on the Mastercard basis, a reference to Mastercard Inc v Deutsche Bahn AG [2017] EWCA Civ 272, ie on the basis that the reamendment does not relate back to the date of the claim form but only relates back six years from the date of the order or possibly the date of issue of the application. The second to seventh defendants do not oppose the RAPOC application. That the reamendment should relate back to the date of the claim form, which was issued on the brink of the expiry of the relevant limitation period, is essential to the claimants.
3. The strike-out application was supported silently and without participation by the first defendant, King Sturge, and obviously opposed by the claimants. It was

argued on the basis that permission was treated as given for reamendment, so that the claimant's claim was attacked in its most up-to-date and comprehensive form.

4. In its present form with amended particulars of claim the claimants make the following claims:

   1. against King Sturge for deceit;

   2. against King Sturge for breach of fiduciary duty;

   3. against the second to seventh defendants for conspiracy; and

   4. against the second to seventh defendants for inducing or procuring King Sturge to commit a breach of fiduciary duty.

   By reamendment, the claimants seek to introduce King Sturge as co-conspirator with the second to seventh defendants in an unlawful means conspiracy claim.

Factual Background

5. On 19 July 2010, the third claimant, Maple Cross Holdings Investment Company Limited, which is owned and controlled by the first claimant, the Libyan Investment Authority ('the LIA'), entered into a joint venture with certain companies of the second defendant, Roger King, namely the third defendant, International Group Limited, the fourth defendant, Beeson Property Investments Limited, and another company, which is now in liquidation, Maplecross Properties Limited ('MPL'). This was done through a subscription and shareholders agreement with those entities.

6. MPL's wholly owned subsidiaries owned two sites at Maple Cross, which is itself at or near the Hertfordshire/London border. One property had the benefit of

planning permission and associated section 106 and 207 agreements for the building of a 207 bedroom hotel. The proposal was for the hotel to be a Crowne Plaza Hotel, and heads of term had been agreed with the Intercontinental Hotels Group ('IHG'), for a 25 year management contract. The second and adjacent property gave access to the M25, and was itself adjacent to another site that was available for purchase and development, potentially as a retail outlet village.

7. Under the joint venture agreement, the third claimant, Maplecross Holdings Investment Limited, acquired a 50 per cent interest in MPL for a consideration of £10.5 million in the knowledge that £10.25 million would be distributed as a special dividend to the fourth defendant, Beeson Property Investments Limited, a company also within the control of the third defendant's group, and which owned or controlled MPL's shares.
8. The joint venture transaction completed and the dividend was paid, but the hotel has not been built. Relations between the parties broke down in or about 2013.
9. The second defendant, Mr Roger King, is the founder and leading light of the International Group companies and businesses, including the third defendant, International Group Limited itself, the fourth defendant, Beeson Property Investments Limited, and the fifth defendant, Stoke Park Estates, which at the time was known as Beeson Investments, an unincorporated entity.
10. The sixth defendant, Mr Charles Merry, is the principal of the seventh defendant, Conrad Strategic Partners Limited, and is a business colleague of Mr King. The sixth and seventh defendants were involved with the second to fifth defendants in the relevant events which led to the making of the joint venture agreement.

11. At the core of the claimant's claim is the proposition that the claimants needed to be persuaded to part with £10.5 million for a 50 per cent stake in a venture that was worth considerably less, and this was done, ultimately, through the promulgation of a letter report which has been referred to as, and which I shall refer to as "the letter", from King Sturge to the second claimant, then known as Dalia Advisory Limited, now known as LIA Advisory Services (UK) Limited, which is the UK arm of the first claimant, the Libyan Investment Authority. Although there is no claim against him, it is part of the claimants' case that the second claimant's director at the time, a Mr Rajab Layas, was a participant in the conspiracy. Put shortly, the claim is that the property the subject of the joint venture, with the full benefit of the detailed planning permissions and agreements, was worth very much less than £21 million and the sending of the letter was a fraudulent misrepresentation which was relied upon and caused the claimants to suffer loss and damage.

12. The letter is dated 23 June 2010. It runs to 14 pages. It was based on instructions received initially on 18 June 2010 which set a deadline of 1.00 pm on 23 June for delivery of the letter as a report. In the event, the letter or report was sent later, during the early evening of 23 June. The urgency, from the claimants' point of view, was that the LIA's board was to meet on 27 June in Tripoli, Libya. On the claimants' case, and this is clear also from the fourth defendant's audited accounts, the fourth defendant had a bank loan of £10 million which fell due for repayment on 30 June, and this gave rise, so the claimants allege, to the second to fifth defendants' pressing need to obtain £10 million from some third party source.

13. I shall return to consider the letter and the surrounding circumstances in some detail, but at the moment it is suffices to note that: (1) the letter contains extensive caveats and disclaimers, (2) the addressee and subject matter of the letter are identified at the outset of the letter as the second claimant having asked King Sturge to review the proposed development project at Maple Cross, and (3) King Sturge's summary and conclusion was expressly “Based on the information that we have been given, including the valuations by Messrs Strutt & Parker, we support the assumptions made and we consider an enterprise value of £21 million appropriate”. The Strutt & Parker valuations included, as was noted in the letter, that the hotel site was worth £18 million. King Sturge did not undertake a property valuation as such itself.

Procedural Background

14. The gestation of the claimants’ claim has been slow. This is regrettable in a case where dishonesty is alleged and the state of mind of a number of people is in issue. However, in no small measure the delay has been caused by uncertainty and wrangling over control of the LIA and difficulties in accessing documents at the LIA, not least because of Foreign and Commonwealth Office advice against travel to Libya, operative since 2014. In the end, the claim was issued on 18 July 2016. It was not served until November 2016. By agreement, the proceedings were stayed until March 2017. Due to the control issue, the claimants’ solicitors, Hogan Lovell International LLP, continued to experience difficulty in obtaining instructions and in June 2017 came off the record. The claimants’ difficulty was resolved in September 2017 by a court order appointing

receivers and manager under section 37 of the Senior Courts Act 1981. That, of itself, addressed the issue of who could give instructions but not how to gather the information necessary to formulate and give those instructions. Thus, the claimants' task in formulating a claim has been beset by difficulties over and above the usual one where fraud is alleged of sparsity of documentation.

15. Pausing here, of course I do not automatically infer from the absence of documentation that dishonesty, either in deceit or conspiracy, is readily to be inferred. The claimants have also had access to King Sturge's file, and certain other documents from the defendants, but at the pleadings stage disclosure is still for the future.

The RAPOC application

16. In his concise, clear and helpful skeleton argument for King Sturge, Mr Harris of counsel, summarised the relevant law, authorities and issues, and also the various iterations leading to the draft RAPOC for which the claimants seek permission. The present draft RAPOC is at least the fourth and may be the fifth iteration or version.

17. The genesis of the proposed conspiracy claim against King Sturge appears to have been a letter from King Sturge's solicitors, Mayer Brown International LLP, dated 30 January 2018, drawing attention to an allegation at paragraph 49 of the then current particulars of claim under the heading "Claims against the remaining defendants", ie those other than King Sturge, where the claimants alleged : "In the premises, the remaining defendants and each of them conspired with Mr Layas and/or [King Sturge], and/or with one another to injure one or more of

the claimants by unlawful means, viz: 49.1 By deceiving them by means of the letter and/or 49.2 By inducing or procuring [King Sturge] to breach its said fiduciary duty to the Claimants".

18. There being no other reference to King Sturge as a conspirator, by unlawful means or otherwise, in the particulars of claim, the claimants were invited by Mayer Brown to delete the words "and/or [King Sturge]" from that paragraph. The claimant's response was to forward a draft of the amended particulars of claim alleging King Sturge were co-conspirators and to ask King Sturge to consent to reamendment.

19. This initial revised pleading was refined and a further version followed, accompanied by an amendment application on 5 March this year. King Sturge took exception to this version on the basis that unlawful means conspiracy was not properly pleaded and that there was no application to amend the claim form. The application was to be heard at an adjourned CMC then listed for 20 April. On 22 March, the claimants' third version was served with a further amendment application also seeking to amend the claim form.

20. The second to seventh defendants then served their application and the amendment application hearing was further adjourned in the event until 2 October 2018.

21. On 18 June, the claimants circulated a yet further version of the reamended particulars of claim, which is the version in respect of which the permission is now sought.

22. It is common ground that a claim against King Sturge alleging unlawful means conspiracy is a new cause of action, and that the claimants are seeking to

introduce this claim after the expiry of the six year limitation period. King Sturge does not object to the reamendment, provided the reamendment is not to relate back to the date of issue of the claim, but only operative from, at the earliest, the issue of the first amendment application on 5 March 2018. That would render the reamendment pointless from the claimants' point of view.

23. Accordingly, the sole issue on this application is whether the criteria under section 35(5) of the Limitation Act 1980 and CPR 17.4(2) are satisfied, namely : that the new cause of action, unlawful means conspiracy, "arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings".

24. Mr Harris accepted that if that test is met, the court should permit reamendment, but submitted that the test is not met.

25. Both Mr Halpern QC, who is the claimant's counsel, and Mr Harris, have referred me to Ballinger Limited and another v Mercer Limited and another [2014] 1 WLR 3597, and in particular the judgment of Tomlinson LJ. At paragraph 27, Tomlinson LJ gave a reminder that the court is being invited to make a summary determination that a limitation defence should not be available and accordingly the burden of proof properly rests on the claimant to show that the limitation defence is not reasonably arguable.

26. Both counsel referred me to paragraphs 33 to 38 of Tomlinson LJ's judgment in which express reference was made to Mr Justice Colman's judgment in BP plc v Aon Limited [2006] 1 Lloyds Rep 549 at paragraphs 52 to 58, the Welsh Development Agency case [1994] 1 WLR 1409, and in particular the judgment of Glidewell LJ at page 1418, and Paragon Finance PLC v Thakerar (a firm) [1999]

1 AER 400. I treat paragraphs 33 to 38 of Tomlinson LJ's judgment as read into this judgment, and I bear in mind in particular that :

(1) the premise of which section 35(5), and therefore CPR 17.4(2), is based is that the party against whom the proposed amendment is directed will not be prejudiced because that party will, for the purposes of the matters already in issue, be bound to investigate the same or substantially the same facts;

(2) the court's approach is primarily and principally one of analysis or evaluation, and the court resorts to 'impression' only at the borderline. In this context, I also bear in mind a paragraph, namely [35], in the judgment of Sales LJ in Mastercard Inc v Deutsche Bahn AG; and,

(3) that "the same or substantially the same" is not synonymous with "similar".

27. Returning to the basic premise, a party should be permitted to advance any cause of action which substantially arises from the facts alleged provided that will not require the respondent party to investigate facts and obtain evidence of matters "completely outside the ambit of and unrelated to those facts which the party could reasonably be assumed to have investigated for the purpose of defending the unamended claim".

28. Referring to Paragon Finance, Mr Halpern QC agreed with Mr Harris that an allegation of intentional wrongdoing would not arise out of the same or substantially the same facts for the purpose of section 35(5) and CPR 17.4(2) as an allegation of unintentional wrongdoing; but Mr Halpern made the point that the allegations against King Sturge have always included intentional wrongdoing.

29. As to what new or different enquiries King Sturge would have to make if required to answer a claim that King Sturge was party to an unlawful means conspiracy

with some or all of the second to seventh defendants, Mr Harris identified two lines of inquiry. First, what were King Sturge's relations with the second to seventh defendants? Secondly, whether or not King Sturge had a financial motivation, and, if so, what is it was?

30. Mr Halpern's answer was that consideration of the relationship between King Sturge and the second to seventh defendants is already an inevitable and necessary part of the claim made against and of any answer given by King Sturge.

31. The circumstances and facts of King Sturge being instructed by the second to seventh defendants on behalf of the claimants are alleged at paragraphs 15, 16, 17, 19 and 20 of the amended particulars of claim. These allegations engage the thinking on the part of King Sturge personnel, Mr Gee as the author of the letter, about accepting instructions from the second to seventh defendants and about allowing the second to seventh defendants to review and vet the letter before its transmission to the claimants.

32. There is also an allegation that the fee agreed was "remarkably high" and a challenge to the motivation underlying acceptance of a guarantee of the second to seventh defendants of that fee. Lines of inquiry or cross-examination expressly adverted to include: why King Sturge did not think, as appears to have been the case, to communicate directly with the claimants for confirmation of the instructions and to preparation and review of the letter. The claimants have also already put in issue changes to the drafts of the letter passing between King Sturge, on the one hand, and the second and sixth defendants on the other, and what was said by those parties at the time (see paragraphs 25, 26 and 27 of

the amended particulars of claim).

33. Further, in the claim against King Sturge, as formulated in the amended particulars of claim at paragraphs 41 to 48, the claimants allegations include that King Sturge dishonestly misrepresented to the claimants that the value of the property was £21 million, when in fact it was barely £3 million. Also, at paragraph 49 in the claim against the second to seventh defendants, the claimaints allege that the second to seventh defendants deceived the claimants by the letter, alternatively that they induced or procured King Sturge to breach its fiduciary duties to the claimants. These allegations will inevitably and necessarily involve exploration and consideration of the relationship between the second to seventh defendants and King Sturge. A legitimate, if not inevitable, aspect of that exploration will be King Sturge's motivation.

34. Those were Mr Halpern's submissions.

35. Mr Harris submitted that dishonesty on the part of King Sturge, whether in deceit or in breach of fiduciary duty, would not require consideration of the relationship between King Sturge and the second to seventh defendants, or the financial context of King Sturge's engagement. Further, such matters were front and centre to allegations of parties acting in combination; but, they were peripheral to a case of solo dishonesty, ie the claim as presently pleaded against King Sturge. Amplifying these points, Mr Harris submitted that to allege that King Sturge were acting in combination with others dishonestly and with intent to injure, by which King Sturge would be looking to achieve a common end with the second to seventh defendants, would be to set off on a new course.

36. Mr Harris submitted those points are readily apparent from the new paragraph 53

of the proposed re-amended particulars of claim where the claimants seek to introduce King Sturge to the conspiracy as alleged beguilingly prefaced by the phrase "For the avoidance of doubt …".

37. Mr Halpern's answer was that paragraph 53 did no more than draw express attention to : (1) paragraphs relating to the instructing of King Sturge which naturally and inescapably involved the interchange between King Sturge and those giving the instructions, and expressly involved the purpose of the instructions, thereby engaging the state of mind of all the defendants; and, (2) King Sturge's state of mind and intentions. Particular lines of inquiry would include: what took place at the meeting of 18 June 2010 between King Sturge and Mr Merry? Why the instructions came, and what King Sturge thought and did about the instructions coming, not from the second claimant as foreshadowed on 18 June, but from the second to seventh defendants? What King Sturge made of the requirement to subject the letter to vetting by the second to seventh defendants? Why King Sturge agreed to that term? Also, that the reason for creating the letter was to pass it off as a valuation of the sites, intending the claimants to rely on it as such.

38. Mr Halpern submitted that far from investigating facts and matters so completely outside the ambit of, and unrelated to, those facts which King Sturge could reasonably be assumed to have investigated in order to defend the claim as formulated in the amended particulars of claim, when answering the RAPOC, King Sturge will not be called upon to make peripheral or merely similar investigations and enquiries, but will be making substantially the same investigations and enquiries.

39. I accept Mr Halpern's submissions. It is artificial to regard King Sturge as facing a solo claim in deceit and intentional breach of fiduciary duty with no, or no substantial, overlap into King Sturge's relationship and interplay with the second to seventh defendants. The communications and dealings between, and the intentions and motivation of, King Sturge and the second to seventh defendants are already in play in the action as it stands.

40. Accordingly, I shall make an order permitting reamendment of the amended particulars of claim and, if required, amendment of the claim form as sought by the claimants. Whether the claim in its reamended form has any realistic prospect of success is of course a different and the next question.

The second to seventh defendants' strike-out application

41. CPR 3.4(2)(a) provides that a court may strike-out a statement of case if it appears to the court that it discloses no reasonable grounds for bringing the claim. Under this head a court may only strike out a statement of case if it satisfied that it is bound to fail. Conversely, if the case raises a serious issue of fact requiring oral evidence for proper determination, it should not be struck out but should go forward to trial.

42. CPR 24.2 provides, so far as relevant, that the court may give summary judgment against a claimant on the whole of the claim or on a particular issue if it considers that the claimant has no reasonable prospect of succeeding on the claim or issue and if there is no other compelling reason why the case or issue should be disposed of at a trial.

43. Mr Adkin QC, who appears with Miss Tandy for the second to seventh

defendants, and Mr Halpern QC drew attention to the Court of Appeal decision in ED&F Man Liquid Products Limited v Patel another [2003] EWCA Civ 472, and the judgment of Potter LJ at 7 and 8 with which Gibson Peter LJ agreed. After referring to Swain and Hillman [2001] 1 All ER 91 and the judgment of Lord Woolf MR at page 92j, where the phrase "real prospect of success" was aligned with ‘realistic’ and distinguished from ‘fanciful’ prospects of success, Potter LJ observed in ED&F Man that the statement of case under attack must carry some degree of conviction if it is to have a real prospect of success. At paragraph 10, Potter LJ observed that the court does not have to accept without analysis everything that is said by a party in his statements before the court. Thus, where factual assertions are contradicted by or are inconsistent with contemporaneous documents, the court may conclude that there is no substance to the allegations or case and dispose of them or it summarily.

44. Of course, it is improper for the court to embark on anything approaching a mini-trial when conducting or deciding a summary judgment application. The question at this stage is not one of probability or likelihood, rather the question is of the presence or absence of reality about the allegations or case under challenge.

45. Given the detailed factual nature of the allegations and case under challenge, and given the emphasis placed on the interpretation to be given to the central document, King Sturge's letter report of 23 June 2010, ie the letter, consideration of the RAPOC in the context of the contemporaneous documentation available was inevitable. This was done not with a view to testing whether the RAPOC sets out a claim which is likely to succeed, but whether it sets out a claim which

is unrealistic. If it does, summary determination furthers the overriding objective by saving costs and avoiding the delay of an inevitable outcome.

46. At this stage it is necessary to bear in mind that disclosure is incomplete and there is little of the witness evidence that would or may be available at trial before the court. Moreover, a trial judge will have a number of advantages : the advantage of hearing and seeing witnesses and documents tested by cross-examination; the trial judge will also hear more detailed submissions; and, because it is a trial and inevitably a longer proceeding, in this case expected to be three weeks which is to be contrasted with the two days for this application, have more time to reflect upon the strengths and weaknesses of the case. What this comes to is that unless the applicant for summary judgment satisfies the judge that the case has no real prospect of success, ie that it is tantamount to fanciful, the judge must permit the case to go forward to trial even though (s)he may think it inherently weak.

47. If the case under attack is unrealistic, the question arises : is there some other compelling reason for a trial? The fact that serious allegations are made, as here, of deceit by a professional firm and conspiracy by that firm with others, of itself is not a compelling reason to permit a trial.

48. As to some other compelling reason for the trial, Mr Halpern QC submitted that the facts set out in the RAPOC should cause disquiet in the judge's mind about the activities of the second to seventh defendants, and that that reason, coupled with the acknowledgement of the difficulties the claimants have faced and continue to face in gathering evidence, including, as explained in the witness statement of Mr Ditchburn of Hogan Lovells, suffice as a compelling reason for

the claim to go forward to trial.

49. Mr Adkin QC submitted that judicial disquiet, even where the case otherwise just falls short of a case with a realistic prospect of success, cannot, either of itself or on a tipping the balance of the scales basis, constitute some other compelling reason for a trial. Mr Adkin further submitted that this is not a case of giving rise to a novel or important question of law, nor is it a case where public interest, in its proper sense, might influence the need for the trial.

50. On those points I do not accept Mr Halpern's submission. Disquiet alone will not suffice as an other compelling reason. The view I take of any disquiet that I may feel - and I do feel some disquiet as to (1) the role, conduct and motives of Mr Layas (but he is not a defendant at the moment and is unlikely to put himself forward as a witness), (2) the role, conduct and motives of Mr Roger King, the second defendant, particularly in the context of the disinstruction of Savills on 17 June, the pressing need to raise £10 million to repay a bank loan on 30 June; and the lack of evidence, at least at present, as to any other source of £10 million than the half share of the Maple Cross venture, and (3) the concerted efforts of Mr Layas, Mr King and Mr Charles Merry, the sixth defendant, to secure the LIA board's approval on 27 June to investment in the venture. These matters go to the reality of the claim, rather than standing on their own as an independent or other compelling reason for a trial. Thus, these matters constitute some weight in the scale of reality.

51. A useful starting point is the claim form which sets out brief details of the claimants' claim. Against King Sturge the claimants allege (1) fraudulent misrepresentation by sending the letter to the second claimant as agent for the

first and third claimants, for which damages are sought, and (2) the intentional breach of fiduciary duty for which equitable compensation is sought. Briefly, the dishonest misrepresentations were that King Sturge regarded the assumptions and calculations on the basis of which it advised as being reasonable, and/or that the claimants could rely on the letter as a valuation notwithstanding the disclaimers therein. Against the second to seventh defendants originally, and now against all defendants, on the conspiracy claim the brief details of claim seek : (1) damages for conspiracy for having unlawfully conspired with one or more of the other defendants, and or with others (which I take to be a reference to Mr Layas) by means of the letter to induce the third claimant to enter into the joint venture agreement and the first and third claimants to pay £10.5 million and a further £1.76 million to MPL, a company, as already noted, connected to Mr King and now in liquidation, and (2) damages against the second to seventh defendants for inducing King Sturge to intentionally breach its fiduciary duty to the claimants.

52. At the core of the claim is an allegation that the letter is deceitful and that, by sending the letter on the evening of 23 June 2010, King Sturge and the second to seventh defendants, as co-conspirators, inducers or procurers, made a false representation to the claimants knowing that the contents were false, or being reckless as to whether the contents were true or false, intending that the claimants would act in reliance on the contents, which they did, thereby or as a result suffering loss. So far as King Sturge alone is concerned, these elements satisfy the tort of deceit. So far as all the defendants as conspirators are concerned, and so far as any of them acted together, and/or with Mr Layas or

another, they have carried out an unlawful means conspiracy. It is common ground that combining or acting together need not be in performance of an agreement, formal or informal, all that is required is combining together deliberately to achieve a common end, in this case, misleading and deceiving the claimants to induce them to part with £10.5 million or more for an allegedly much less valuable investment. Here I must note that in the pleading the investment is confined to the property.

53. It is also common ground that the alleged fraudulent misrepresentation need not be the sole or main cause of the claimants acting so as to sustain a loss or damage. It suffices that the claimants did rely and that such reliance played a role in inducing the claimants to act. Moreover, the claimants need not have believed that the false representation was true. Indeed, they may have suspected that it was not, see Zurich Insurance Co plc v Haywood [2017] AC 142, the speech of Lord Clarke at paragraph 19 and the speech of Lord Toulson at paragraphs 68 and 71. What matters is that the defendants' knowing or reckless making of a false representation impacted on the claimants causatively. That suffices for liability; loss is then required for recoverability, see the speech of Lord Toulson at paragraph 58.

54. Mr Halpern QC aligned the claimants' claim with the circumstances and nature of the claim in the case of Whife v Michael Cullen and Partners [1993] WL 963029, and referred to the case in the claimants' pleading in the context of disclaimers and the letter being disregarded and not operating on what would or might otherwise be representations. In Whife the essential fact was that what appeared to be a straightforward lease to be granted at a premium contained terms "(a) so

obscurely drafted as to be likely to be escape detection by the tenants and their solicitors, and (b) so onerous as to oblige the tenants soon to surrender or otherwise terminate the lease, thereby losing the substantial premium paid for it". As to this, Leggatt LJ made clear that a defendant is not relieved of the consequences of deceit if it could have been detected by the exercise of due diligence. Stuart-Smith LJ described the lease in Whife as a wolf in sheep's clothing, on the face of it an apparently ordinary 15-year lease with a rent review clause operative every 3 years, apparently in accordance with RPI but in fact containing a serious trap leading to "unsustainable" rent increases. That the claimant or his agents was or might have been foolish or negligent enough to enter into the lease was nothing to the point.

55. Mr Adkin QC described the letter in this case as "a sheep in sheep's clothing", transparent and clear, and containing no hidden traps. He submitted that Whife has no bearing on the circumstances of this case.

56. Addressing the background, Mr Adkin drew attention to a subject to contract letter dated 12 May 2010 from the second claimant, by Mr Layas, to the second defendant, Mr King, as chairman of the third defendant, International Group Limited, acknowledging the LIA's interest in purchasing a 50 per cent interest in a special purpose vehicle company owning the Maple Cross freehold for £10.5 million "as advised by Strutt & Parker" and referring to working together on the Crowne Plaza and potential retail park. The reference to Strutt & Parker was to a letter from Strutt & Parker to Mr King as chairman of Beeson Investments Limited (in fact, no such company exists or existed and this is taken as a reference to the fourth defendant as it was then known, the unincorporated

business, Beeson Investments). That letter was dated 11 December 2009. In it, Strutt & Parker valued the hotel site based on certain operational and financial assumptions at £18 million. Mr Adkin made the point that the claimants have not suggested that this valuation by Strutt & Parker was negligent or otherwise criticised it.

57. I also note at this point that by May 2010, and in December 2009, the financial or banking crisis had already made its mark on property values. Mr Adkin drew attention to an earlier Strutt & Parker valuation prepared for the Bank of Scotland and dated 4 September 2007. This was a more detailed report, running to 34 pages, which demonstrated Strutt & Parker's knowledge of the area and their approach to valuing the freehold of the Maple Cross hotel site in its then present condition with detailed planning consent for development of a 207 bedroom hotel and taking account of the proposal that IHG would manage the hotel as a Crowne Plaza hotel. At that time, September 2007, which was before the financial or banking crisis - or at least before it had actually surfaced, Strutt & Parker valued the site at £17 million. As the 11th December 2009 Strutt & Parker valuation letter makes clear, at that point the second to seventh defendants had "reached an understanding with [IHG] for a 25 year management agreement", though not yet concluded or formally exchanged contracts, and IHG had provided its own revenue and cost forecast which Strutt & Parker had reviewed and regarded as "fair and reflect[ing] prevailing market conditions".

58. Thus, submitted Mr Adkin, there was a basis for supporting a joint venture valuation of £21 million as at December 2009.

59. By 14 June 2010, the claimants, that is Mr Layas, had instructed Savills to advise

and Savills' terms of engagement were to provide market values of the hotel site and the other land owned by companies controlled by the second defendant, as already mentioned. The valuation was to be undertaken in summary format by 23 June with a full report to follow in due course and the agreed fees were £20,000 plus disbursements plus VAT for the hotel site valuation and £5,000 plus disbursements and VAT for the valuation of the other land with access to the M25. Savills described their fee quote as a valuation fee quote, which the second claimant accepted on 15 June. By 16 June, the LIA's in-house lawyer was chasing the second claimant, by Mr Layas, for a valuation report. On 17 June, Mr Layas spoke to a Mr Giles Furze at Savills. It is clear from email exchanges that Savills' view of the value of the sites were a "revelation" and would not justify a £21 million valuation. Mr Layas then terminated the instruction to Savills.

60. By 10.06 am on 18 June, Mr Merry, the sixth defendant, had contacted King Sturge about providing to the LIA a similar letter to the Strutt & Parker 2009 valuation letter. Mr Merry provided King Sturge with the Strutt & Parker letter and Strutt & Parker's opinion of the hotel project and estimated returns over 10 to 12 years and IHG's 10-year trading forecast. A meeting was scheduled for that afternoon.

61. Even though disinstructed, that afternoon Savills informed Mr King that their view of the hotel site value was £5.7 million, ie less than one third of Strutt & Parker's value. Savills opined that Strutt & Parker might have settled upon a much higher exit value but could not advise further without seeing Strutt & Parker's detailed calculations.

62. Thus, Mr King at least was put expressly on notice that Strutt & Parker's £18 million valuation could well be grossly excessive. That said, Mr King had not received that email at the time of King Sturge's meeting on that day with Mr Merry. There is no allegation that Savills's valuation or even the fact that Savills had recently been instructed by the LIA in relation to the Maple Cross sites and the LIA's proposed investment was ever brought to King Sturge's attention. The claimants have had disclosure of King Sturge's file and I infer that there was no such communication by the second to seventh defendants to the first defendant from that fact. This speaks at a registerable volume against the second defendant, who appears not to have made or caused anyone to make any efforts to put King Sturge fully in the picture, but not against King Sturge itself.

63. King Sturge's note of 18 June meeting is disclosed. That note of the background included that the estimated joint venture value was £21 million with £18 million attributed to the hotel and that the joint venture was to be on a 50:50 basis. The services required of King Sturge were, as noted, (1) a letter addressed to the LIA on a similar basis to Strutt & Parker's December 2009 letter outlining the potential investment return of the hotel development in the long term, (2) a second letter to the LIA supporting Strutt & Parker's approval of the other Maple Cross land at a value of £4 million, (3) that the two letters should be available by 23 June, although that could possibly be deferred until 24 June, and (4) that the LIA had to approve a fee which was estimated at £20,000.

64. Later on that day, 18 June, Mr Merry emailed King Sturge that he would arrange for an instruction to be sent by the second claimant - this never happened - and

that, in addition to confirming his belief that the LIA would agree to a fee £20,000, he would introduce King Sturge to the LIA with a view to more work or, as he put it, “a wider role”.

65. Mr Halpern submitted that these events indicate that the second to seventh defendant were looking for a more pliant or compliant surveyor who would do the necessary. That is as may be but, as Mr Adkin submitted, that does not provide a basis for alleging or concluding that King Sturge would not bring independent professional thought to bear on Strutt & Parker's letter report and King Sturge's own task.

66. At this point the documents sent to King Sturge also included at least one 10-11 year project cash flow document. This document was headed “Maple Cross – Project Cashflow” and was said in the covering email to relate to development of the retail village. This showed as assumptions the site cost at £4 million and total construction costs at £45.7 million; rental and other income was forecast over a 10 year period to show a substantial net cash inflow of £41 million. Also in the evidence before me is another project cash flow document headed “Crowne Plaza Maple Cross – Project Cashflow”. This showed as assumptions the site cost at £18 million and hotel construction costs and expenses at more than £28 million. This cash flow linked these costs to revenue from the hotel and other receipts and showed a net cash inflow of more than £ 25 million. If and to the extent that these documents were put forward as forecasts reflective of actual or likely site costs (as opposed to values) they appear to me, on the evidence before me, to be baffling if not materially incorrect.

67. The weekend of 19 and 20 June then intervened. By 9.00 am on 21 June the

second defendant, Mr King, emailed Savills stating that another large and leading estate agency had given an assurance acceptable to the LIA that that agency would reach the same conclusion as Strutt & Parker, giving the Maple Cross sited a combined value of £21 million. Mr King asserted that three of the agency's partners had studied Strutt & Parker's work and taken the retail opportunity and "blue chip" quality of the development into account. This was intended as a riposte to Savills' valuation. It is not clear whether there was any basis for this email. For present purposes, I assume that there at least may have been, but of course I also have to recognise that there is nothing to that effect in the disclosure given on the King Sturge file, at least nothing has been drawn to my attention in relation to that.

68. On 22 June, Mr King wrote to King Sturge. He asserted that a joint venture investment had been agreed with the LIA. That was untrue. He also stated that Beeson Investments Limited owned the sites. That was also untrue. He further said that following lengthy discussions and written advice from Strutt & Parker the value of the partnership, ie the joint venture, has been agreed at £21 million. That too was untrue. Nevertheless, it formed the basis or part of the basis of King Sturge's instructions.

69. Mr King's letter was written as chairman of Beeson Investments and the Intentional Group of Companies. Thus, he embraced in his letter at least the third to fifth defendants within his assertions and untruths.

70. The remainder of the letter is important because it constitutes the actual instruction expressly given to King Sturge. That is at pages 376 to 377 of the hearing bundle. The relevant paragraphs are:

"I confirm that initially King Sturge are hereby instructed to provide a draft letter to Beeson Investments Ltd which after acceptance by Beeson Investments Ltd will then be readdressed to the Libyan Investment Authority as to be detailed by Charles Merry supporting the Partnership's proposal for the new hotel and proposed retail village to include an analysis of the investment returns over a 10 to 12 year hold period and estimated future values after recovery of the current recession with a commencing - current value of the two freehold sites Nos 1 Denham Way circa one acre and the hotel site known as Whitney Place circa four acres, for £21.0m.

Specifically, King Sturge are to comment on the following:-

1. Strength of the location.

2. Existing hotel competition.

3. Quality of the facilities & design of the hotel.

4. Terms of the management agreement with IHG (the largest hotel management company in the world).

5. Summary of IHG's position in the global hotel market [that of course has just been stated].

6. IHG's 10-year revenue/cost forecast.

7. Build costs and the capability of the construction company John Sisk& Sons.

8. Estimated future capital of the hotel and investment returns.

9. Viability of the proposed retail village and potential value/investment returns.

I confirm that the LIA have in the first instance asked Charles Merry (Beeson Investments Ltd) to review your draft letter and that once it is in its final form it is to be readdressed to the LIA, as aforesaid.

I hereby confirm that upon receipt of an acceptable letter by King Sturge to the LIA that should for any reason the LIA not pay a fee of £20,000 for the said letter to King Sturge then Beeson Investments Ltd will pay King Sturge the £20,000 fee i.e. your fee is guaranteed either way, although of course it is understood that you will be paid direct by LIA".

71. Beeson Investments Ltd, of course, is the non-existent company. So, features of this letter include that Mr King instructed that King Sturge's letter be provided as a draft to a non-existent company; once accepted in draft the letter was to be readdressed to the LIA; the content was to include an analysis of investment returns over 10 to 12 years for the hotel and proposed retail village with estimated future values after recovery of the current recession and with a commencing value of £21 million. Further, nine topics were specified and listed for specific consideration in the letter and indeed they formed the framework of King Sturge's letter. The sixth defendant, Mr Merry, was to review the letter in draft before it was readdressed to the LIA. The £20,000 fee was guaranteed by a company which did not exist, Beeson Investments Ltd.

72. Pausing here, the second defendant's, that is Mr King's, instruction letter referred to Mr Merry as the second to fifth defendants retained property consultant. In the RAPOC at paragraph 18, the claimants alleged that the second and sixth defendants had a close relationship and that it is to be inferred that the sixth defendant knew that the joint venture had not been agreed at that time. At this stage, for the purposes of this application, I accept that such an inference is reasonable. However, that does not mean that King Sturge also knew or had any reason to believe that the joint venture had not been agreed. That is of some

significance when it comes to understanding the second defendant's, Mr King's, letter of instruction and the response of King Sturge. For example, carrying out the instructions was to involve one half of the joint venture, as King Sturge understood it, reviewing a letter in draft before it was sent in final form to the other half of an existing joint venture. Mr Halpern was critical of King Sturge for not alluding to this in the letter or for not independently seeking clarification and instructions from the LIA because King Sturge could see from the letter itself from Mr King that the LIA were not recipients or copied in on the letter.

73. Quite separately, this letter of instruction also raises issues about the identity of King Sturge's clients for the purposes of including its own duties.

74. The claimants' case at this point is at paragraph 20 of RAPOC. At paragraph 20.3 the case is that King Sturge was instructed by one or more of the second to fifth defendants, with the sixth defendant acting as their agent, and that "there can be no bona fide explanation for requiring advice to the claimants to be subject to agreement with the very party with whom the claimants were negotiating". As just noted, King Sturge had been expressly told that there was already a joint venture partnership, ie negotiations had led to an agreement. There was no allegation that King Sturge knew or had reason to believe that that was untrue.

75. Complaint is also made at this paragraph under subparagraph 4, that is paragraph 20.4 of RAPOC, of King Sturge accepting "a commencing - current value of £21 million" without demur. Earlier in the same letter Mr King had stated that following lengthy discussions and written advice from Strutt & Parker the value of the partnership, ie the joint venture, "has been mutually agreed at

£21 million". Just as auditors are watchdogs and not bloodhounds and do not start off by approaching clients' books records and communications on the basis that they are or are likely be to be fraudulent, so too surveyors and valuers receiving commercial instructions need not approach their instructions on the basis that they are or are likely to be fraudulent. If the instruction that one joint venture partner was to review King Sturge's report in draft before it was sent on the other should have put King Sturge on inquiry, and for present purposes I accept that that is arguable, a failure to follow through in the way suggested by Mr Halpern may point to negligence but that is not the claimant's case. Without more, it cannot suffice for a case in deceit.

76. As to the more, paragraph 20.5 of RAPOC, is where Mr Halpern characterised King Sturge's fee as "remarkably high" for a report to be drafted over three or possibly four days. At paragraph 20.5, Mr Halpern also contrasted King Sturge's work for £20,000 with that of Savills, who for £20,000 were to produce a bona fide valuation of the hotel site. However, King Sturge's instructions required, as I have already read into this judgment, them to comment and opine on nine express topics relating to the project or venture. To some extent those points could, or perhaps even probably could, be addressed or answered from existing data resources of an established firm such as King Sturge. However, even the cutting and pasting, if that were possible, would require some editing. More cogently, the nine point task list required independent review and thought to be applied to such data and information as was provided with the instructions or otherwise available to or obtained by King Sturge. That this was so is apparent from the 14 page letter itself. Specialist review work was undertaken on the

construction cost aspect and the author was a different King Sturge partner with experience in the hotel sector.

77. Accepting that Savills were to provide their own site valuation, they were also provided with Strutt & Parker's 11 December 2009 valuation. There is nothing in the RAPOC or the evidence to suggest that Savills' instructions were more onerous so that by comparison King Sturge's fee is arguably “remarkably high”. The claimants’ allegation is the sort of assertion that is not required to be taken at face value and given the breadth of the instructions to King Sturge, I regard that allegation as unrealistic.

78. At paragraph 20.6 of RAPOC reference is made to the lack of explanation for requiring King Sturge to work urgently to a tight timetable and that this must at least have prompted King Sturge to suspect that £21 million was not a mutually agreed value of the sites and, further, that King Sturge should have inquired as to the status of the joint venture. None of these allegations have any bearing on King Sturge as a deceiver or conspirator or an intentional breacher of fiduciary duties.

79. At paragraphs 20A and 20B of RAPOC the claimants refer to Mr King's riposte email to Savills on 21 June as a basis for inferring that King Sturge was the agency referred to, with which I agree, and further for inferring that King Sturge had agreed at the meeting on 18 June that it would support a figure of £21 million notwithstanding that the letter was not written until 23 June and that that assurance led to King Sturge being instructed. In other words, that it was a precondition of King Sturge's being instructed and agreed upon 18 June that King Sturge would sign up to a £21 million figure.

80. As Mr Adkin pointed out in his submissions, the last two bullet points of the note of 18 June meeting show that King Sturge had not agreed to “do the job”, as Mr Adkin put it, or “provide the service”, as the note itself puts it, and, further, that the fee of £20,000 had not been approved or agreed. Accordingly, the inferences that the claimants seek to draw at these paragraphs of RAPOC go too far.

81. Moving on, that Mr Layas was prepared to lie to the LIA is clear from an email he sent on the LIA's in-house lawyer on 21 June. He said that Savills had advised that they could not produce the executive summary by 23 June and therefore King Sturge had been instructed because they were willing to produce a report by 24 June. Mr Layas must have had a reason for misleading the LIA about Savills. An obvious one is that, like the second defendant or the other defendants and in cahoots with them, he did not want to alert the LIA to the possibility that 50 per cent of the joint venture might be worth much less than £10.5 million. However, there is no basis for connecting the conduct and motives of Mr Layas and/or the other defendants to King Sturge by reference to this communication.

82. It appears from a 9.05 am email from Mr King's secretary to Mr Gee at King Sturge that Mr King and Mr Gee spoke on 22 June. The claimants allege that it is to be inferred that they discussed King Sturge's instructions and the letter. I accept that. By the email Mr King also asked for a draft of the letter by 1.00 pm that day for checking by himself and Mr Merry. Mr King's PA said that Mr King would revert within 10 minutes of receiving the draft. By reference to this email, the claimants repeat their observations at paragraph 20.6 of RAPOC. Again, I do not read this email in a way which is capable of having an adverse bearing on King Sturge's conduct or motivation.

83. Indeed, King Sturge's - that is Mr Gee's - reply supports this proposition. It supports the proposition in this way : Mr Gee said that King Sturge were working hard on the tasks set out by the second defendant's instruction letter : "We really are doing our best. We are only having a conversation with IHG at 13.00 hours as the right guy is only available then. We understand the urgency and I am sending a draft in this morning".

84. Mr Halpern's draft, the RAPOC, does not refer to this email. There is therefore no allegation by the claimants that it was other than straightforward.

85. Mr Adkin did refer to that email and placed some weight on it. He submitted that it shows that (1) King Sturge had been working hard and genuinely feeling the time pressure; (2) King Sturge was not just falling in with a plan to submit a report without genuine scrutiny; and, in particular, the IHG aspect was being vetted - Why else, Mr Adkin asked rhetorically, search out and wait to speak to the right guy? Why not just sign off the report? This is a significant submission. Unless King Sturge was so astute as to anticipate a deceit conspiracy suit and the need to lay a false trail pointing to its innocence, and there is no such allegation, this reply is telling.

86. Paragraph 20 of RAPOC, including subparagraphs 20A and B, is important to the mounting of the claimants' case. However, the allegations overlook the important difference between the instructions to King Sturge (namely an extant joint venture where the partners had mutually agreed a value of £21 million and King Sturge is to undertake an analysis to confirm support to the co-venturers) and the facts hidden from King Sturge (that the parties were still negotiating and no value had been agreed upon).

87. Viewed in its correct context and perspective, the worst that could be alleged against King Sturge on these facts is a degree of naivety or incompetence. There is no realistic or proper factual basis for alleging or inferring that on 18 June King Sturge had agreed, or by 22 June King Sturge had given an assurance, that it would write a report that would support or confirm the figure of £21 million. The contemporaneous documentation is convincingly to the contrary.

88. Returning the factual chronology, although at 9.33 Mr Merry emailed Mr Gee to arrange a meeting at King Sturge's offices at 2.00 pm that day, it appears that no meeting took place because at 2.26 pm a consultant at King Sturge emailed the first draft letter to Mr Merry. Between 2.26 pm and 6.00 pm, when the final version was sent by King Sturge to the claimants, there were three versions in total. At this stage I should proceed on the basis that such changes as the claimants seek to rely on were the product of discussion between or comments of on the one hand Mr Merry and Mr King and on the other hand King Sturge.

89. Changes from version 1 to version 2 relied on are :

(1) inserting a supporting comment "which we believe to be achievable subject to the hotel facilities [being] of a high standard" as a comment on the assumption by IHG of stabilised occupancy at 77 per cent based on a high quality leisure offering;

(2) under future capital value and hotel returns, deletion of a reference to a given value of £45.6 million for the completed hotel equating to £220,000 per room and insertion instead of a statement that the calculations provide a value of £57 million on trading maturity provided projections are achieved at a 7 per cent

yield;

(3) changing the comment on the project internal rate of return of 10.2 per cent from “reasonable in this case” to “acceptable and will improve if the construction cost is reduced”;

(4) deleting the caveat under marketing and letting as part of the retail appraisal : "However, this is a very high level appraisal which will need to be considered before the project is advanced and any decisions are made”;

(5) under summary and conclusion, first, deleting the reference to the information provided as having been “limited”; secondly, deleting the overall caveat : “However, due to high level nature of the appraisal and in particular the omissions on the tenant incentives and details on construction costs and programme, we recommend that further work is commissioned prior to the making of any investment decisions”; and, thirdly, instead inserting an opinion under the heading “Enterprise Value” : “Based on the information provided to us, including the valuation by Strutt & Parker, we consider an enterprise value of £21 million appropriate”.

Mr Halpern submitted that two important red flags were thereby removed. Clearly significant caveats were removed.

90. Moving from the second version to the final version there were further changes. Reliance is placed on the rephrasing of the summary and conclusion. The two conclusions were rolled into one and the subheading “Enterprise Value” was deleted. So, the final version of the conclusion was : “Based on the information that we have been given, including the valuation by Strutt & Parker, we support the assumptions made and we consider an enterprise value of £21 million

appropriate”.

91. Mr Halpern submitted that King Sturge's support of the assumptions carried with it King Sturge's own endorsement of Strutt & Parker’s £18 million site price for the hotel site. At this stage, that must be taken as fair comment on the construction of that conclusion as such, but it must also be read in the context of the letter as a whole.

92. Just after 6.00 pm on 23 June, the finalised letter signed by Mr Gee was sent to the second claimant, effectively Mr Layas, and it was copied to Mr Merry. The letter was described as King Sturge's due diligence letter.

93. In the first paragraph of the letter King Sturge state the instructions as being from “You” that is from Dalia Advisory Limited, the second claimant, “to review the proposed development project at Maple Cross”. Mr Gee also set out a summary of his experience in hotel development.

94. On 24 June at 11.55 Mr Layas forwarded the email with the attachment showing Mr Merry as a recipient to the LIA's in-house lawyer and he, Mr Layas, described it as “King Sturge's Valuation Report”. That afternoon the lawyer replied describing the King Sturge letter as "more an opinion on the feasibility and profitability of the project rather than a proper valuation of the site".

95. Referring to page seven of the King Sturge letter, the lawyer asked Mr Layas for the valuation by Strutt & Parker of the land at £18 million. Mr Layas forwarded that to the lawyer. The documentary evidence before me also contains another document forwarded by Mr Layas to the LIA, that is the “Crowne Plaza Maple Cross – Project Cashflow” referred to above, which stated, under assumptions, the site hotel cost at £18 million.

96. On 27 June, the LIA's board met in Tripoli. The translation of the LIA board minute refers to the project as one of a four star hotel and a garden in London with related development work being funded by a £30 million bank loan and the LIA paying £10.5 million for 50 per cent of the value of the company that owns the project in partnership with the Beeson Group and that investment was approved.

97. The claimants' pleaded case at paragraph 41 of RAPOC is that the letter was treated by the claimants as a valuation of the property at £21 million. By sending the letter King Sturge represented that they honestly believed that the property was worth £21 million, alternatively that sending the letter constituted an implied representation that the letter could be relied upon as a valuation of the property to that effect.

98. Any conclusion as to the meaning of the "Summary and Conclusion" section of King Sturge's letter cannot be reached without regard to the entirety of the letter, taking it both incrementally and as a whole.

99. At page 6, King Sturge stated :

"You have asked for our opinion of the market value of the freehold interest of the subject hotel on the following basis

- Market value of a 207-bedroom Crowne Plaza hotel as fully fitted and equipped, operational under completion of the development.

  As agreed, our comments in relation to the valuation information provided constitutes an informal opinion only and is subject to certain limitations as detailed below.

  We have not inspected the site and have relied on the information provided to

us by you.

The opinions of value expressed herein should not be used for any purpose other than general guidance. Our opinions of value are subject to a full, formal report which will set out the assumptions, conditions and caveats which underlie and qualify the valuations. In providing a full report we would need to carry out further due diligence".

This caveats both the calculations which provide a value of £57 million on maturity at a yield of 7 per cent, ie the IHG calculations and the statement : "This is assuming the land is worth £18 million as per the valuation comp[l]eted by Strutt & Parker."

100. In relation to the retail village, King Sturge stated that they had interrogated the assumptions and values attributed to the scheme, which are at a very high level.

101. Immediately following, and on the same page as the "Summary and Conclusion" under the heading "Disclaimer" King Sturge included the following : "The basis of valuation should not be used for the purpose of secured lending or any other purpose, save for general guidance and informal opinion."

102. Thus, on a heavily qualified basis King Sturge expressed a view as to the value of an enterprise, a joint venture relating to the proposed Crowne Plaza hotel and retail village at Maple Cross.

103. The burden of persuading the court to strike out the claim or give summary judgment for the second to seventh defendants fell on Mr Adkin. He focused on King Sturge and submitted that, if King Sturge were merely negligent, which was an action which could not succeed given the caveats and disclaimers in the letter, the case against all the defendants must fail.

104. Starting with the question of what, if any, representation was made, Mr Adkin submitted that the only representation made by King Sturge, and as conspirators the second to seventh defendants, was as to an enterprise value. Further, the claimants sought and obtained before the board meeting the Strutt & Parker valuation and a further project cash flow, the "Crowne Plaza Maple Cross – Project Cashflow" already referred to and showing an assumed site cost for the hotel of £18 million. In the letter, read as a whole, King Sturge accepted at face value Strutt & Parker's site value and they expressly stated as much and that they had not visited the site and gave no more than an informal opinion. Thus, the allegations at paragraph 41 of RAPOC that the letter constituted an express representation that the property was valued at £21 million and was treated as such by the claimants and at paragraph 42 that, alternatively, it was an implied representation are hard, if not impossible, to understand.

105. Mr Adkin submitted that paragraph 43 of RAPOC added nothing to the alleged implied representation. None of (1) permitting the second to sixth defendants to alter the wording of the letter in draft to give a more favourable impression, (2) King Sturge agreeing at the outset to support £21 million, which is contradicted by the contemporaneous evidence, as already noted, (3) the phrasing of the letter, or (4) the facts and ratio of the Whife case assist. As to the Whife case, Mr Adkin submitted that there is no allegation of hidden traps in letter, rather the allegation is that it was submitted as a property valuation or in such a way as to be treated as a property valuation and that is flatly contradicted by, first, the LIA's in-house lawyer's immediate response, secondly, the evidence of the LIA board meetings in June and August 2010, and thirdly, the witness statements of the LIA

director and secretary at that time, which do not assist the claimants' allegation. Moreover, Mr Adkin submitted, on any fair reading of the King Sturge letter, it simply cannot be taken as a property value.

106. As to falsity, Mr Adkin submitted that even if the lower site values in evidence, such as the £5.7 million or the pleaded £3 million, are correct, without more it does not follow that King Sturge's enterprise value is false or that King Sturge did or could have believed it to be false or were reckless as to its falsity. Mr Adkin submitted, that King Sturge's own work, including speaking to "the right man" at IHG at 1.00 pm on 23 June, credibly and compellingly evidence to the contrary.

107. Turning to the acceptance of instructions from the defendants, that is in particular the second and sixth defendants, in conjunction with permitting them to actually have significant editorial input as the claimants allege in RAPOC, it was Mr Layas who asked for an alternative surveyor to Savills. Looking at the work done by King Sturge, there is nothing to suggest the way in which the instructions were given or the reviewing of the work of Strutt & Parker involved any form of dishonesty on King Sturge's part. The claimants' points are not strengthened by the level of fee or the urgency of the work; and, as to the changes to the letter, Mr Adkin submitted that even though the alterations to the conclusion were material, they did not of themselves or with the other allegations point to deceit by King Sturge or to King Sturge's involvement in a conspiracy, or to a conspiracy at all.

108. Addressing reliance, Mr Adkin submitted that it is clear beyond argument that the claimants did not view or regard or act on the letter as a property valuation.

109. Viewed in the round, therefore, there was no false representation, no intent and

no reliance. Accordingly, there is no scope for a claim in fraudulent misrepresentation against King Sturge and, if the deceit claim has no prospect of success, the fiduciary claim fails also.

110. Mr Halpern made six submissions on the fraudulent representations by King Sturge. First, Mr Adkin focused entirely on King Sturge and said hardly a word about the second to seventh defendants, not least because they have no appetite for the court looking into their conduct.

111. Secondly, that if King Sturge was a fool and not knave then paragraph 49(1) of RAPOC is apt to cover the conspiracy claim against the second to seventh defendants. Thus, even if there is no real prospect of success against King Sturge for fraudulent misrepresentation or intentional breach of fiduciary duty or as a conspirator, the utilisation of King Sturge by the second to seventh defendants is not also rendered unfit for trial.

112. Thirdly, the second to fifth defendants were highly motivated to mislead by reason of the bank loan obligation due on 30 June and the accounts show that £10.5 million was so used. Further, considering the documents, the interaction between King Sturge and the second to seventh defendant and King Sturge's own solicitor's initial misunderstanding of who King Sturge's client were, initially thinking they were the second to seventh defendants, cry out for exploration by way of cross-examination and therefore a trial. Moreover, the use of the term enterprise value has to be viewed in the context of the LIA wanting a property valuation (see the statement of Mr Khalifa, the former secretary to the LIA board) and that the term was selected to mislead as in the Whife case. In other words, enterprise value had a subjective meaning in the context of the letter. Mr Halpern

further submitted that the facts and evidence are at a preliminary stage at this point and, whatever the difficulties the LIA may have faced, disclosure is still ongoing and typically fraud cases do not have much documentation early on. Finally, on his third submission, Mr Halpern submitted that, viewing the case in the round, an important anchor point is that in May 2010 Mr Layas and Mr King agreed in principle, subject to contract, on a deal at £10.5 million for a 50 per cent shareholding as advised by Strutt & Parker, ie for the properties.

113. Fourthly, Mr Halpern submitted, in relation to reliance, that Mr Layas forwarded the letter as a valuation report and, given the subjective meaning at least arguably capable of being attributed to 'enterprise value', the LIA's evidence that it would have required a property valuation as well, the letter should be taken and seen as just that.

114. Fifthly, turning to breach of fiduciary duty, Mr Halpern did concede that if the claimants fail on deceit, the claimants are not likely to succeed on fiduciary duty.

115. And, finally, Mr Halpern made a 'some other reason' point but I have already dealt with that in this judgment.

116. In reply, Mr Adkin first addressed the submission that if King Sturge was a fool and not a knave, the claims against the second to seventh defendants might still progress. Mr Adkin submitted that paragraph 49.1 cannot provide such a route because there is no plea that any of the second to seventh defendants made a representation when the only alleged unlawful act is deceiving by means of the letter and only King Sturge is sued for the tort of deceit.

117. That is a valid point. The logic of the story, if put on the basis of King Sturge having been duped, does not emerge on any fair reading of the current RAPOC.

The pleading would require refinement, perhaps considerable refinement and reworking, were the case to be put in that way.

118. The stumbling blocks to the claimants' case for me are, first, that King Sturge's own conduct is apparent from the contemporaneous documents. The documents are consistent only with genuine work to arrive at a true opinion. Secondly, although the circumstances of King Sturge's instructions were unusual, it was not in any sense an indicator or badge of dishonesty on its part that it failed to clarify its instructions and the second and sixth defendant's editorial input directly with the claimants. Further, there is nothing before me to suggest that King Sturge were, or might have been, other than honestly willing to make the changes that were made. Thirdly, whether read in sections or as a whole, the letter simply cannot reasonably or realistically be construed as a property valuation. Both the opening sentence as to instructions and the express language of the conclusion focus on a business valuation not a property valuation. Further, in the detailed sections sandwiched in between, over 14 pages, the detail of the letter does nothing to detract from the fact that King Sturge is addressing a business valuation and not a property valuation. On the contrary, what it serves to confirm is that their conclusion is as to an enterprise value. Fourthly, that the claimants or the LIA required a property valuation may well be so, but they were provided with that in at least one and probably two ways: first, the Strutt & Parker valuation was sent on by Mr Layas and, secondly, the project cash flow forecast actually forwarded by Layas included a property or site cost. That document was not prepared by King Sturge.

119. The case against King Sturge based on deceit, falsity, dishonest intention and

state of mind is, in my view, far-fetched. In other words it is unrealistic.

120. The contention that the claimants or the LIA received the letter as, and relied upon it as, a property valuation rather than a business valuation is, in my judgment, untenable.

121. I therefore reach the conclusion that the RAPOC has no realistic prospect of succeeding at trial.

122. That said, I now return to the position of the second to seventh defendants. If there is a basis for reformulating the claim against them on the basis that King Sturge was not a knave, I would not be minded to strike out the action against them at this stage. For example, in the pleading at the moment no reference has been made to the project cash flow document showing the cost of the site at £18 million which was forwarded to the LIA's board by Mr Layas. It is conceivable, on the material to which I have been referred, that that might form a realistic element of such a claim. For the avoidance of doubt, as presently pleaded, the RAPOC does not plead a case having a real prospect of success. The claim against King Sturge must be dismissed. The claim against the second to seventh defendants, but not the RAPOC, might proceed further.

123. That is my judgment.