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IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

[2019] EWHC 828 (Ch)

No. CH-2018-000277

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday, 7 March 2019

Before:

HIS HONOUR JUDGE PAUL MATTHEWS

(Sitting as a Judge of the High Court)

B E T W E E N :

WEST LONDON LAW LIMITED — Claimant/Appellant

- and -

(1) GURCHARAN SINGH SANDHU
(Also known as BILL SANDHU)
(2) GURSHARAN SINGH SANDHU
(Also known as GUS SANDHU) — Defendants/Respondents

MR R. MALLALIEU (instructed by West London Law Limited) appeared on behalf of the Claimant.

MR R. LANDER (instructed by Lincoln Lawrence Solicitors) appeared on behalf of the Defendants.

J U D G M E N T

HIS HONOUR JUDGE PAUL MATTHEWS:

1 This is an appeal from a decision of Deputy Master Lloyd conditionally striking out a claim. His order is dated 4 October 2018. It arises in a claim brought by a law firm, West London Law Limited, against two brothers, to whom without disrespect I will refer as "Bill" and "Gus", because that is how they have been distinguished in the papers and in oral argument before me. West London Law Limited is therefore the appellant, and Bill is the sole respondent. Gus is not a party to this appeal.

2 Bill and Gus are the sons of Kirpal Singh Sandhu who was a client of West London Law Limited. That firm acted for him in a claim against Bill in the County Court at Central London regarding a property in West London, to which the legal title was held by the respondent, Bill. The father claimed a beneficial share in that property. The claimant/appellant acted under a legal aid contract.

3 The father was successful at trial before Her Honour Judge May QC in the county court on 25 September 2014, in that he established a 70% beneficial interest in the property. He also obtained an order for his costs (the "First Costs Order") and an order for an account and an inquiry to take place. At that inquiry, which was held on 24 June 2016, the respondent was ordered to pay his father £344,000 in damages, and ordered to pay costs of the account. That is the "Second Costs Order". In respect of that costs order he was ordered to make a payment on account of £15,000.

4 The father unfortunately died on 11 August 2016. At that point the legal aid came to an end. Gus, the second defendant to the claim, happens to be the executor of the father's will, although it is not clear that Gus has ever proved the will. From the time of the father's death, Gus instructed the claimant/appellant on a fee-paying basis to continue the litigation and in particular to oppose the appeal to the Court of Appeal that was brought by Bill against the decision of Her Honour Judge May QC.

5 On 6 October 2016 the Court of Appeal dismissed Bill's appeal. Its judgment can be found at [2016] EWCA Civ.1050. At the same time, the court ordered Bill to pay Gus's costs of the appeal. Of course, at that time Gus was acting as executor representing the estate of the father in the continuation of the litigation. That costs order, the "Third Costs Order", was supported by another order for a payment on account of £15,000. It appears however that no costs have ever been paid by Bill.

6 Gus took enforcement proceedings against his brother, Bill, using the claimant/appellant law firm. The last stage of this enforcement procedure that was actually fixed was an oral examination of Bill, due to take place on 7 December 2017. However, in fact that did not happen, because on 7 November 2017 the two brothers settled the matter without reference to their solicitors. Both of them on the same day filed notices that they were now acting in person. The settlement agreement between the two brothers was backed by a Tomlin Order of the same date, which was subsequently put before District Judge Langley at the County Court at Central London. It was sealed on 23 November 2017.

7 In the settlement agreement it was agreed that

> "the claimant [Gus] will (a) withdraw any current enforcement action against the defendant [Bill] currently before the court and (b) not take any steps in the future to

> enforce any costs against the defendant, in particular judgment orders and orders for costs against the defendant."

There are other parts to the agreement, but that is the important part for the purposes of today. The parties had effectively settled the outstanding costs issues by Gus simply giving up the right to enforce those Costs Orders against Bill.

8 I have said that the agreement was backed by a Tomlin Order. The Tomlin Order that was made by the court ordered that the claimant withdraw his application for an order that the defendant attend at court for questioning and that the hearing listed for 7 December 2017 for the defendant to attend for questioning be vacated. There was also a point about a unilateral notice which had been put on the property in favour of the claimant. Then there is this at para.9:

> "The Claimant shall arrange for the Claimant's legally aided costs to be assessed and shall serve a Bill of Costs on the Defendant within 3 months."

9 That is the way in which the matter was settled between the two brothers. The claimant/appellant's costs (the law firm's costs) in acting for the father and for Gus amounted to about £227,000, taking into account some £21,000 paid by Gus on account. The respondent, Bill, has paid nothing. The property has now, I understand, just been sold, or at least has been sold since the decision of the deputy master. It looks as though there would be a sum remaining, after deduction of outstanding liabilities, of perhaps as much as £50,000. Originally it was thought to be rather less than that, but I am told that the property was sold for a better price than anticipated.

10 In this claim, the claim form as issued seeks an order that the defendants (the two brothers) should pay the claimant's costs, meaning the costs incurred by the claimant law firm in the proceedings I have described, on the basis which is set out on that claim form. The claimant is a firm of solicitors. The claimant seeks that order on the grounds that, by the Tomlin Order, made by the court on 23 November 2017 pursuant to the agreement between the first and second defendant dated 7 November 2017, the first and second defendants have agreed to cheat the claimant out of its costs or, alternatively, compromise its claim on express or implied notice of the claimant's claim for costs without preserving the claimant's rights.

11 Then there are particulars of claim, which are quite long and detailed. They were settled by counsel – though not by counsel who now appears on behalf of the claimant. These particulars of claim plead the parties to the original litigation, the legal retainer for the father, the litigation itself including the trial, the permission to appeal stage, the account inquiry, then the death of the father and the continuation of the litigation after then, and the dismissal of Bill's appeal by the Court of Appeal.

12 The particulars then go on to deal with attempts made by Gus to enforce the orders. They then make allegations of what is called (in a cross-heading) the conspiracy to cheat the claimant out of its fees including its security for the fees. In those paragraphs there are various allegations made as to what had been done including a recitation of the important elements of the settlement between the brothers and the Tomlin Order in which the second defendant (Gus) had given up his right to enforce the Costs Orders made against the first defendant (Bill).

13 The particulars go on to recite the amount of costs owing to the claimant, the payments by Gus on account and the failure to pay by Bill. They recite in paras.23-25 as follows:

> "23. Further, while purporting to retain the right of the estate of Mr K. S. Sandhu, to commence detailed assessment proceedings against the first defendant, the purported settlement agreement (as set out in the *Tomlin* order and Schedule) has the effect of rendering such right either valueless or significantly less valuable/secure than it otherwise would have been in that:
>
> (a) no provision is made for there to be any payment by the First Defendant of the costs of the attempts to enforce the three orders;
>
> (b) while a detailed assessment may be commenced by the estate of Mr K. S. Sandhu and a final costs certificate obtained, that final costs certificate cannot be enforced against the First Defendant by reason of para.1(b) of the Schedule;
>
> (c) the unilateral notice over the title of 491 Great West Road is likely to removed;
>
> (d) the sale of 491 Great West Road is to be handled by the First Defendant rather than, as under the order of HHJ May QC dated 25 September 2014, the Second Defendant. All other things being equal, the Second Defendant would have instructed the Claimant to handle this sale meaning that the Claimant would have obtained security for part of its fees. Under the terms of the Schedule the Claimant has no security for its fees upon the completion of the sale and is dependent upon the First Defendant honouring his side of the agreement set out in the Schedule (which his payment history suggests he is unlikely to do);
>
> (e) the right of the Second Defendant to enforce the obligation on the First Defendant to pay over £30,000 on account of the Claimant's fees under the orders dated 24 June 2016 and 6 October 2016 (to which the Claimant's lien would ordinarily attach) has been compromised; and
>
> (f) the right of the Second Defendant to receive any damages (save for those notionally, but not in practice, available under para.5 of the Schedule) to which the Claimant's lien would ordinarily attach has been compromised.
>
> 24. Yet further, the Second Defendant in breach of para.9 of the *Tomlin* order has failed to arrange for his legally aided costs to be assessed in that he has not instructed the Claimant to commence detailed assessment proceedings. He has not paid

the claimant anything towards the costs of drawing a between-the-parties bill and, by serving notice of acting in person on 7 November 2017, terminated his retainer with the Claimant. He now maintains (wrongly) that there was no retainer between the Claimant and himself after 6 October 2016.

> 25. In the premises, the compromise agreement set out in the *Tomlin* order and Schedule were entered into with the purpose of cheating the Claimant out of its fees."

14 That is the first way in which the claim is put. Then the particulars of claim go on to say this:

> "26. In the alternative, the compromise agreement set out in the *Tomlin* order and Schedule were entered into with the full knowledge of the right of the Claimant to be paid its costs and/or the First and Second Defendants were on notice of the same. Indeed, according to a letter from Teacher Stern (the solicitors acting for the First Defendant) to the Claimant dated 29 November 2017:
>
> 'our retainer was terminated due to instructions from our client [the First Defendant] not to disclose the draft settlement terms to your firm. We confirm that we have had no contact with [the Second Defendant] to date nor were we involved in the negotiations of the terms of settlement which we understood took place directly between the brothers.'
>
> A copy of this letter accompanies the particulars of claim marked 'E'.
>
> 27. In the premises the Claimant, as a firm of solicitors, asks, under the inherent jurisdiction, for the intervention of the court for its protection as there is a probability of the First and/or Second Defendants having acted so as to deprive the Claimant of its costs."

15 Then there is a prayer in which the claimant seeks an order that the first and second defendants be ordered to pay to the claimant the costs due to the estate of Mr Sandhu under the three orders on a joint and several basis. Then further relief is sought in the prayer.

16 The position is that this claim was one for an order that the two defendants should be ordered to pay directly to the claimant/appellant the costs which they were not paid in the litigation about the house in West London. It was issued as a Part 8 claim, despite the facts that there were particulars of claim attached and that it was also supported by a lengthy witness statement from the solicitor from the claimant called Louise Yarranton.

17 On 7 August 2018, the first defendant, Bill, issued an application to strike out the claim on the basis that it disclosed no reasonable grounds for a cause of action and also that it was an abuse of process. That application was supported by a witness statement of Muhammad Hayat of Lincoln Lawrence, and it was in that form that the matter went before Deputy Master Lloyd in September 2018.

18 As I have said, on 4 October 2018 Deputy Master Lloyd struck out the claim but conditionally, that is to say in an 'unless' form. What he actually ordered was, first of all, that the claim should continue as a Part 7 claim. Then, in para.2, he ordered that, unless by 4 p.m. on 1 November 2018, the claimant file and serve an amended claim form, particulars of claim, the claim be struck out without further order and the claimant pay the first and second defendants' costs in the case, to be assessed on the standard basis, but subject to a detailed assessment if not agreed.

19 The judgment that supported and supplemented the order is quite a short judgment, but I need not read it all out. It appears that it was a written rather than an extempore judgment. What it says in para.7 is this:

> "From that pleading [*ie* the particulars of claim] it appears that the claimants are seeking a money claim against both Bill and Gus as a consequence of their being unable to take their costs at market rates from anything secured by the enforcement of the various costs orders obtained against Bill or, possibly the fruits of the substantive order. However the nearest the particulars of claim come to pleading a cause of action is the allegation foreshadowed in the claim form that Gus and Bill conspired 'to cheat the Claimant out of its fees (including its security for the fees)'." (I quote the heading immediately before para.14.) The cheating allegation is repeated at para.25. One might have expected that to lead to a claim for damages based on loss but that is not how the prayer for relief is worded. An alternative basis is set out at paras.26 and 27, the latter of which reads "In the premises The Claimant, as a firm of solicitors, asks, under the inherent jurisdiction for the intervention of the court for its protection as there is a probability of the First and/or Second Defendants having acted so as to deprive the Claimant of its costs" and the prayer for relief in the particulars of claim is couched in terms for which equitable relief may be forthcoming but which is not foreshadowed either as a primary ground or an alternative ground in the endorsement of the claim form."

20 Then there is para.8:

> "Mr Lewis for Bill argues that this pleading discloses no reasonable cause of action. The conspiracy claim is unsupported by the pleaded facts and the alternative claim simply pleads an equitable remedy without a coherent pleading of a basis for invoking that remedy. Kirpal was legally aided but the consequences of this are simply not addressed in the pleading. Mr Lewis argues that the solicitors have a statutory right to be paid out of the legal aid fund and as Kirpal did not have personal liability for his own costs, the claimant has no lien on the money that might be recovered from Bill, and a lien, albeit in a somewhat broad use of that term – see para.11 below) is a necessary element in the cause of action."

21 I can skip over paras.9-11, save only to say that they deal with three cases to which the deputy master has referred (and to which I will also refer). They are *Khans Solicitor (A Firm) v Chifuntwe & Anor.* [2014] 1 WLR 1185 ("*Khans*"), *Gavin Edmondson Solicitors Limited v Haven Insurance Company Limited* [2018] 1 WLR 2052 ("*Edmondson*") and

Manley v The Law Society [1981] 1 WLR 335 ("*Manley*"). Then I continue the judgment at para.12:

> "12. Mr Lewis for Bill argues that the particulars of claim misses out the fundamental building blocks which have at their root (i) the solicitor's lien which (ii) has been interfered with, and it is that which invokes the intervention of equity; he submits that that is a gateway to the grant of equitable relief, not the mere existence of an inherent jurisdiction. Mr Lewis submits that in consequence the particulars of claim is manifestly deficient and does not disclose a cause of action. He submits that the Claimants should have brought in an amended pleading but has chosen not to do so. On the issue of amendment, Mr Edwards [counsel for the claimant] sat firmly on the fence submitting that he did not wish to amend unless I was against him, in which event he did wish to amend.
>
> 13. I agree with Mr Lewis [counsel for the first defendant] in respect of the pleading as it stands. If I am wrong in holding that it does not disclose a cause of action then in its current form it fails to articulate a cause of action with any clarity and therefore is likely to obstruct the just disposal of the proceedings. This should not be a difficult case to plead in a clear and concise manner. However in my judgment it would not be right to bring this action to an end by striking out without giving the claimants an opportunity to bring in an amended or (as by the same order this is being converted into a Part 7 section) a fresh pleading. The *Khans Solicitors* and the *Edmondson* cases demonstrate that, in principle there is a potential cause of action capable of being pleaded; whether it will ultimately succeed on the facts or whether the other points taken by Mr Lewis, e.g. in respect of the workings of legal aid will suffice to defeat it is another matter and as those will be matters for a defence and trial, the less I say about them at this stage the better."

22 That was the substance of the judgment of the deputy master. It seems to me that the deputy master was holding that there was a potential cause of action on the basis of the *Khans* and *Edmondson* cases, that is, preventing the solicitor from being paid out of funds raised by the Costs Orders, but also that there was a fundamental building block missing in the case, in the form of the solicitor's lien, and that therefore there were no reasonable grounds for the claim. In addition, the deputy master was holding that, in their current form, the claim form and the particulars of claim failed to articulate the cause of action with sufficient clarity, so that they were likely to obstruct the just disposal of the proceedings.

23 These holdings refer us to CPR r.3.4(2)(a) and (b). The first provides that the court may strike out a statement of case if it appears to the court that the statement of case discloses no reasonable grounds for bringing or defending the claim. The second provides that the court may strike out a statement of case if it appears to the court that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings. It is clear that the deputy master had those two rules very much in mind.

24 In my judgment, in considering the appeal that has been brought against that decision, it is necessary to distinguish sharply between (i) the work which was performed for Kirpal, the father, by the claimant/appellant on the legal aid system, and (ii) the privately funded work which was done by the claimant/appellant for Gus, as his father's executor, after his father's death. It is plain that the problem which was foreseen in the deputy master's judgment, and which was addressed in submissions and again before me, is with the first of these two matters, that is to say the legally aided work.

25 The problem with the legally aided work is that the client (Kirpal) had no personal liability for the costs. On the face of it therefore there could be no solicitor's lien in the case. In this respect, I think I need only refer to the judgment of Lord Briggs in *Gavin Edmondson Solicitors v Haven Insurance Company Limited* [2018] 1 WLR 2052, in the Supreme Court. There the problem arose that the clients of the solicitors, who were the claimants, did deals behind their solicitors' back with the defendant insurance company to settle their claims for road traffic accidents. The claim that was made by the claimants was a claim effectively for interference by the defendants with the security which the claimants claimed to have over the settlements that were made, amounting to a fund in relation to which equity would protect the interest of the solicitors.

26 This area of the law was investigated at some length by Lord Briggs in his judgment beginning at para.30. I shall not read this all out, but in para.36 Lord Briggs referred to the recent decision of the Court of Appeal in *Khans Solicitor (A Firm) v Chifuntwe* [2014] 1 WLR 1185. He said this:

> "The fund in question consisted of a debt arising from the agreement of the Home Secretary to settle pending judicial review proceedings by a payment of a specific sum on account of the claimant's costs. The payment was made direct by the Treasury Solicitor to the claimant (by then acting in person) after express notice from the claimant's former solicitors that they claimed a lien. The Home Secretary was ordered to pay the settlement sum a second time to the solicitors, less an amount already paid by the client on account. Sir Stephen Sedley provided this summary, at para 33:
>
> > 'In our judgment, the law is today (and, in our view, has been for fully two centuries) that the court will intervene to protect a solicitor's claim on funds recovered or due to be recovered by a client or former client if (a) the paying party is colluding with the client to cheat the solicitor of his fees, or (b) the paying party is on notice that the other party's solicitor has a claim on the funds for outstanding fees. The form of protection ought to be preventative but may in a proper case take the form of dual payment.'"

27 I interpose here to say that was exactly what happened in that case. The Home Secretary was ordered to pay some of the funds a second time. Lord Briggs goes on in para.37:

> "I consider that to be a correct statement of the law. It recognises that the equity depends upon the solicitor having a claim for his charges against the client, that there must be something in the nature of a fund against which equity can recognise that his claim extends (which is usually a debt owed by the defendant to the solicitor's client which

owes its existence, at least in part, to the solicitor's services to the client) and that for equity to intervene there must be something sufficiently affecting the conscience of the payer, either in the form of collusion to cheat the solicitor or notice (or, I would add knowledge) of the solicitor's claim against, or interest in, the fund. The outcome of the case also recognised that the solicitor's claim is limited to the unpaid amount of his charges. Implicit in that is the recognition that the solicitor's interest in the fund is a security interest, in the nature of an equitable charge."

28 Later, towards the end of his judgment in that case, Lord Briggs said this:

> "57. I acknowledge that equity operates with a flexibility not shared by the common law, and that it can and does adapt its remedies to changing times. But equity nonetheless operates in accordance with principles. While most equitable remedies are discretionary, those principles provide a framework which makes equity part of a system of English law which is renowned for its predictability. I have sought to identify from the cases the settled principles upon which this equitable remedy works. One of them is that the client has a responsibility for the solicitor's charges.
>
> 58. It is simply wrong in my view to seek to distil from those cases a general principle that equity will protect solicitors from any unconscionable interference with their expectations in relation to recovery of their charges. Furthermore the careful balance of competing interests enshrined in the RTA Protocol assumes that a solicitor's expectation of recovery of his charges from the defendant's insurer is underpinned by the equitable lien, based as it is upon a sufficient responsibility of the client for those charges. Were there no such responsibility, it is hard to see how the payment of charges to the solicitor, rather than to the client, would be justified. Furthermore, part of the balance struck by the RTA Protocol is its voluntary nature. Its voluntary use stems from a perception by all stakeholders that its use is better for them than having every modest case go to court. If the court were to step in to grant coercive remedies to those affected by its misuse by others, that balance would in all probability be undermined."

29 From these paragraphs, I draw at least three important points. One is that there must be a fund in which the solicitor effectively claims an interest to get his fees paid, but which fund need not be cash; it could be a chose in action such as a settlement agreement or an order of the court. The second point is that everything that Lord Briggs was saying was based upon the existence of a responsibility by the client for the solicitors' charges, something which obviously does not exist at present in relation to legally aided work. Thirdly, it is clear also that Lord Briggs looked at the public policy aspects of these rules, although in the particular case at hand he was looking at the public policy in the context of settling modest RTA accident claims. He was not looking at the legal aid system more widely, although the legal aid system is another way in which claims can be settled through the court system for persons who cannot afford the costs of employing solicitors.

30 Where I have reached now is the particular problem with legally aided work which was identified by the deputy master. This is that it does not satisfy the usual conditions under which a solicitor's lien for his, her or its fees may arise. On this point Mr Mallalieu, on behalf of the claimant/appellant, directed my attention to the decision of the Court of Appeal in *Manley v The Law Society* [1981] 1 WLR 335. This was a rather unusual case in which all the lawyers and parties effectively put their heads together to try to agree a scheme under which a case could be compromised for the legally aided claimant without the statutory charge in favour of the legal aid fund attaching to the sums which might be made available to the claimant as a result of the compromise. The scheme that was adopted ultimately was that the defendant in effect would buy the claimant's debts from the claimant's creditors and then covenant with the claimant not to enforce them against the claimant.

31 The question was whether this form of compromise amounted to "property recovered" for him so that the statutory charge would attach. All three judges of the Court of Appeal, Lord Denning MR and Ormrod and O'Connor LJJ said, Yes, this was such property, so that the statutory charge attached. And that really was the end of the case. However, Lord Denning MR at pp.346-347 of the report added some further thoughts. It is these that are relied upon by Mr Mallalieu on behalf of the claimant/appellant. It is clear, however, that these comments are *obiter*. They were not necessary for the decision. It is also clear that Lord Denning MR was the only one of the three judges who made these comments. They were not acquiesced in or agreed by either of the other two judges.

32 At the bottom of p.346 the Master of the Rolls referred to the solicitor's lien cases. On p.347 he went on to say this:

> "Those cases do not apply directly to our present case. The plaintiff's solicitors had no lien for their costs. They looked to the legal aid fund for payment of them. The legal aid fund had no lien for costs. They had only a charge on any property when it was 'recovered'. Marconi [the defendant in the litigation] had no intention to defeat the legal aid fund. They left everything to Kennedys [their solicitors] to arrange.
>
> Now, although those cases do not directly apply, I am of opinion that the principle of them does. It is clear beyond doubt that the object of the plaintiff and his solicitors was to deprive the legal aid fund of any charge on the £40,000. That was the be-all and end-all of this elaborate transaction. The solicitors wanted to make the legal aid fund pay all their costs – and at the same time deprive the legal aid fund of any charge in respect of those costs. I do not think they should be permitted to succeed in this. I do not think the settlement itself can be set aside. It has gone too far to do that. But I think that equity can intervene so as to hold that, if and in so far as the solicitors have intentionally deprived the legal aid fund of a charge on their costs, they are themselves precluded from making any claim on the legal aid fund for those costs. It is a very old principle laid down by Lord Coke that a man shall not be allowed to take advantage of a condition that he himself has brought about..."

33 So, those are the *obiter* comments of the Master of the Rolls. Basing himself on them, Mr Mallalieu says that, in relation to legally aided work, there is an exception to the rule requiring that the client must be responsible for the costs before there can be a lien, so that

equity can still apply the principle of the solicitor's lien, and intervene, in legal aid cases *without* a lien. I have to say, first of all, that the way in which Lord Denning suggested that "the principle" of the lien cases might operate in the *Manley* case is far removed from anything that would help the claimant/appellant in the present case. Secondly, I do not think that it can possibly amount to an exception to the ordinary rules for the constitution of a solicitor's lien. It may be that there should be some way in which solicitors who act on legally aided work should be better protected than they are at the moment but, in my judgment, this is not the appropriate way to do it.

34 Mr Mallalieu also relied on s.28(1) of the Legal Aid Sentencing and Punishment of Offenders Act 2012 which says:

> "(1) The fact that services provided for an individual are or could be provided under arrangements made for the purposes of this Part does not affect-
>
> (a) the relationship between the individual and the person by whom the services are provided,
> (b) any privilege arising out of that relationship, or
> (c) any right which the individual may have to be indemnified by another person in respect of expenses incurred by the individual,
>
> except to the extent that regulations provide otherwise."

Mr Mallalieu did not argue that this provision would be sufficient to bring a lien into the legally aided work relationship. What he said was that it underpinned what he called the *Manley* exception. However, for the reasons I have given I do not think there is such an exception.

35 Mr Mallalieu also relies upon Regulation 13 of the Civil Legal Aid (Statutory Charge) Regulations 2013 which provides in para.1:

> "All money payable to or recovered by a legally aided party in relevant proceedings or a relevant dispute, whether under a court order or an agreement or otherwise, must be paid to the legally aided party's provider, and only that provider is capable of giving good discharge for the money."

Again, Mr Mallalieu says that this provision supports the *Manley* exception. Again, I have to say I am not satisfied there is any such exception and therefore I need not consider it further.

36 In my judgment, the claim, insofar as it is a claim in respect of the costs of the legally aided work, must fail because there is no prospect of the solicitor's lien remedy being available. However, in relation to the privately funded work, in principle, it could be available.

37 The question then, however, it seems to me, is whether it is sufficiently pleaded in order to get over CPR r.3.4(2)(a) and r.3.4(2)(b). As to the first of these points, that is whether or not the statement of case discloses any reasonable grounds for bringing or defending the claim, Mr Lander on behalf of the first defendant said that there were at least two points missing from the pleading. One was what was the fund over which the security interest was

claimed, and the other was an allegation that that fund (over which the security subsisted) had been the subject of payment away to another. As to that, it seems to me that although there is no doubt that the particulars of claim could have been clearer and perhaps fuller, in my judgment the security is sufficiently identified. It does not have to be described in legal terms as a lien or an equitable charge or anything else. It is sufficient if it is described so that it could be identified as the relevant fund.

38 As I have already said, there are mentions of the security in the cross-heading to para.14. Then, in para.23, "The rights of the estate of Mr Sandhu to commence detailed assessment proceedings against the first defendant..." is a rather loose description of the contents of the fund which is claimed to be the security of the claimant/appellant in this case. The settlement agreement is alleged to give up these rights, or at least to render them valueless. Therefore, I am satisfied that the claim should not be struck out under part (a) of r.3.4(2).

39 As to part (b) of that rule ("the statement of case is otherwise likely to obstruct the just disposal of the proceedings..."), the deputy master held that the pleading did not sufficiently articulate with clarity the cause of action so that it would obstruct the just disposal of the proceedings. I think, however, that Mr Mallalieu is right when he suggested that the deputy master had been slightly misled by the formulation of the cause of action as if it were two separate causes of action, one for conspiracy and the other for paying away on notice. In my judgment, again, although this could have been better done, I would not be prepared to strike out this claim on the basis of r.3.4(2)(b).

40 Therefore, in the result, I dismiss this appeal so far as relates to the legally aided work and I allow the appeal so far as it relates to the privately funded work.

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** This transcript has been approved by the Judge **