**Claim No. BL-2020-000767**

Neutral Citation Number: [2020] EWHC 3664 (Ch)

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**BUSINESS LIST (ChD)**

The Rolls Building,
7 Rolls Buildings,
Fetter Lane,
London EC4A 1NL

Date: Thursday, 19th November 2020

**Before**:

**MR JUSTICE FANCOURT**

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**Between:**

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| **MMG CONSULTING ENGINEERS LIMITED** | **Claimant** |
| **- and -** | |
| **(1) JAMES HARMON** | |
| **(2) KIERAN O'CONNOR** | |
| **(3) GERALD McCARTHY** | |
| **(4) EMILY BETTS** | |
| **(5) KATHERINE CAMPBELL** | |
| **(6) SARA KEMP** | |
| **(7) REED SMITH LLP** | **Defendants** |

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**MR PAUL PARKER** for the **THIRD DEFENDANT**
**MR CARL TROMAN** for the **FIRST, SECOND AND FOURTH TO SEVENTH DEFENDANTS**

Hearing dates: 18 and 19 November 2020

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# Approved Judgment

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

**Mr Justice Fancourt:**

1. I have before me a number of applications by parties in this claim. The principal application is by the defendants, but there are also a number of applications issued by the claimant. The claimant is a limited company that sometime ago made a claim for damages for breach of contract from HOC Property Consultants Limited ("HOC"). The first and second defendants were the directors of HOC and the third defendant was the liquidator of HOC. HOC was dissolved in 2017 or 2018. The fourth defendant is a barrister who acted on behalf of HOC in a previous action. The fifth and sixth defendants are individual solicitors who were employed by the seventh defendant firm, which was instructed by HOC in that action.

2. The principal application (as I referred to it) is in fact three separate applications, but all to substantially the same effect, issued by various defendants seeking, first, the striking out of this claim by the claimant company on the grounds that it is either an abuse of the court's process, or alternatively that it discloses no proper cause of action as pleaded, or alternatively for summary judgment for the defendants against the claimant on its claim. There are ancillary claims raised in those application notices seeking an order that Ms Mary Geary, who is the sole shareholder and director of the claimant company, be added as a party to the proceedings for the purpose of making against her an extended civil restraint order and an order for costs. That relief is sought in addition to an extended civil restraint order and an order for costs against the claimant company.

3. The claimant's applications were all issued relatively shortly before the hearing of the defendants' applications, on 29th October 2020. There were four separate application notices. One of those was considered on paper by Mann J on 5th November 2020. That was for orders that the defendants cease harassing Ms Geary personally by writing letters to her; to strike out the non-party civil restraint order and costs applications made against her; to declare a power in the Business and Property Courts protocol regarding remote hearings *ultra vires*; and to declare that the hearing of the defendants' applications was a final and not an interim hearing; to consider whether a 3-day hearing of those applications was appropriate; and to direct that a High Court judge be allocated to hear the applications. That application of the claimant was dismissed by Mann J as being totally without merit in all respects.

4. The other remaining applications that are before me are, first, an application to strike out the defendants' applications on the grounds that they are an abuse of process; second, for judgment for the claimant in default of any defence from the defendants; and, third (and rather remarkably), for a restraint order against three firms of solicitors, one of which is the seventh defendant but the other two of which are not defendants to the claim, to prevent them from conducting litigation in their professional capacity in the courts.

5. On 11 November 2020 the solicitors acting for the third defendant, the former liquidator, informed the court that the claimant had indicated that it would not be attending the hearing. On that basis, the solicitors requested a remote hearing of the applications. On 16th November, two days before the hearing was due to start, Ms Geary, as director of the claimant, filed a note in advance of the hearing which

confirmed that MMG would not attend a hearing of the defendants' applications. Paragraphs 2 and 3 of the note read as follows:

> "2. Claimant wishes to advise the court it will not attend the three day hearing of the Defendants' application' listed in a 5-day window from 16 November 2020. The applicants are fraudulent through and through and an unlawful means of conspiracy per se. Submissions in support of such applications are fraudulent per se and reflecting the Mr Watson witness statement dated 25 June 2020 and the Mr Brown witness statement of 1 July 2020, as the Claimant believes they will, the skeleton argument will be in themselves fraudulent through and through. The fraud all pervasive, the court does not have jurisdiction to hear such applications. Judgments and orders consequent on such proceedings are judgments and orders in form only and have no legal force.
>
> "3. The Claimant will not participate in such proceedings, neither will the Claimant lend the Defendants and their legal team credibility by its attendance. Neither will the Claimant be defamed in person or allow its director, through whom it acts, to be bullied and harassed in person, the continuing conspiracy to injure is clearly evident in the statement in support of the applications, the applications themselves and in recent communications..."

Later that day Ms Geary sent an email making certain observations about the content of the hearing bundles that had been filed.

6. In view of Ms Geary's indication of non-attendance and the other parties' wish to have a remote hearing, I directed that preparations be made for a remote hearing. MMG's suggestion that the court does not have jurisdiction to hear the applications is, of course, plainly wrong, as Mann J had already indicated in his reasons for dismissing one of the claimant's applications. The assertion in another of the claimant's applications that the court should strike out the defendants' applications summarily as an abuse of process rather than hear the applications and decide whether they succeed or fail is also misconceived. It will be most convenient to revert to the content of the rest of those claimant applications once I have decided the defendants' applications.

7. It is a matter of regret that Ms Geary has chosen not to attend the hearing on behalf of MMG or on her own behalf. She was, of course, sent the Teams link for the hearing in case she changed her mind. Following the hearing of argument on the first day of the hearing, I adjourned it until 2 o'clock today and Ms Geary was informed again of her right to attend and provided with the Teams link, but she has not exercised her right to attend.

8. The determination of the defendants' applications requires a certain amount of history to be rehearsed, in particular the fate of two previous claims brought by the claimant company. Claim HC-2014-000950 was the claim against HOC for damages for repudiatory breach of an oral agreement made in about December 2007 to provide project management services in relation to the development and sale of a property, 77

The Broadway, London SW19 ("the 2014 claim"). A fee was agreed for the claimant of 15% of the total profits. As I have said, HOC went into members' voluntary liquidation in 2014. The third defendant was appointed liquidator in 2015 and it was dissolved in about 2017.

9. In the 2014 proceedings, the company alleged that HOC wrongly sold the property without developing it. Having obtained planning permission for a redevelopment in 2009, it then marketed it in 2010 and sold it in July 2012 for £675,000. That released a meagre profit for HOC of only £10,000, of which £1,500 was payable to the claimant company, in addition to about £20,000 worth of fees that had previously been paid to it. The claimant contended that had the property been redeveloped pursuant to the planning permission and then sold, it would have made a profit of in the region of £1.2 million, entitling the claimant to something over £180,000 as its profit share plus apparently £36,000 in respect of commissioning of architectural services.

10. HOC applied to strike out the claim or for summary judgment on the basis that there was no arguable claim that it was obliged to carry out any particular redevelopment, or that the claimant was entitled to an opportunity to earn anything other than the share of profit that eventuated. In February 2015 the claimant provided HOC with draft amended particulars of claim and applied for permission to amend. Those amended particulars were an important document in the history of this matter, as it turned out. In the draft the claimant alleged that the sale of the property in 2012 was not a genuine sale for £675,000, but that it had in fact been sold to the purchasers for a greater sum, with HOC retaining the commercial parts of the property for itself and concealing the true profits from the claimant. The claimant also put in evidence and prepared written submissions alleging that there was no genuine sale at the apparent price and specifically alleging deceit by HOC in concealing the true purchase price.

11. At the hearing of HOC's application in July 2015 Deputy Master Cousins asked Ms Geary, who represented the claimant, whether she was pursuing her application to amend the particulars of claim. According to the Deputy Master, Ms Geary said that she was not relying on the amended pleading and she withdrew her application to amend. The claimant therefore elected at that stage, with knowledge of the allegations that it had pleaded in draft, not to pursue them. The Deputy Master in his judgment held that there was no plausible basis on which the claimant could establish at trial any binding contract given the fact that the discussions were undocumented and vague. Birrs J refused permission to appeal to the claimant, and at a renewed hearing Nugee J also refused permission to appeal, but on different grounds. He held that there was a contract for 15% of the profits, but that there was no arguable basis on which a term could be implied requiring HOC to carry out a redevelopment or entitling the claimant to the opportunity to work as a project manager on such a redevelopment. The claimant then applied to Nugee J to reopen the matter on the basis of an alleged sale at an undervalue, by which was meant the deceit that had been practised on the claimant, as pleaded in the draft amended particulars of claim, but that application was dismissed by the judge as being totally without merit.

12. Following the end of the 2014 claim, the claimant promptly issued another claim, HC-2017-0001765. The defendants to that claim were the same as the defendants to this claim. (I refer to that claim as the 2017 claim.) The 2017 claim alleged an extensive and elaborate conspiracy to defraud the claimant, involving all the defendants. The basis of the conspiracy was that the first and second defendants were alleged to have

conspired to conceal the true nature of the sale of the property by carrying out a marketing exercise with Lambert Smith Hampton as a front, while all the time having agreed a deal with the eventual purchasers to sell to them at a later stage. It was alleged that £450,000 of advance payment by those purchasers was concealed by the directors. The property was alleged to have been marketed subject to a retention of valuable commercial space in order to suppress its value. A further concealed payment to HOC of about £700,000 was also alleged. The third defendant, the liquidator, is alleged to have become a party to the conspiracy to defraud the claimant after his appointment in 2015. It is said that he allowed the directors to give dishonest instructions to HOC's lawyers, knowing and intending that the claimant would be cheated out of its entitlement. HOC's solicitors, the seventh defendant, had instructed the fourth defendant to advise and appear as counsel on behalf of HOC. Those lawyers together with the individual fee-earners, the fifth and sixth defendants, are said to have appreciated that HOC was seeking to defraud the claimant, knowing that there was no true defence to the claimant's claim and to have joined in that dishonest enterprise, doing so by advancing a dishonest defence of the 2014 claim and seeking to impede the claimant's conduct of its case.

13. All defendants in the 2017 claim applied to strike out that claim, or alternatively for summary judgment. That application came before Deputy Master Bartlett on 28 and 29 March 2018 and he handed down a detailed, cogent and clear reserved judgment on 22 June 2018, striking out the claim as an abuse of process so far as the first and second defendants were concerned, and so far as the third to seventh defendants were concerned also on the basis that there were no reasonable grounds for bringing a claim against them. He also held that he would otherwise have given summary judgment in favour of all the defendants.

14. In his judgment, he explains that he sought clarification at the hearing that the essence of the alleged conspiracy to defraud was essentially as I have just summarised it and as set out in his judgment in paragraphs 14 to 16; that Ms Geary confirmed that that was the position and that that was the only cause of action alleged, that is to say conspiracy to defraud. There was no claim therefore to set aside the previous judgment in the 2014 action on the basis that it was obtained by fraud.

15. The Deputy Master held that by virtue of the draft amended particulars of claim in the first action and the evidence and written submissions before Deputy Master Cousins it was clear that all the allegations of a fraud involving the directors of HOC in the sale of the property must have been and were known to the claimant at the time of the July 2015 hearing, and that if the company wished to allege a fraud by the directors in that regard it could and should have done so in those proceedings, instead of which it elected not to make the amendment to allege deceit and concealment. Accordingly, the attempt in the 2017 claim to allege fraud in the sale of the property was an abuse of process. Further, if there was no fraud in the sale of the property that could properly be alleged against the directors, it was not possible to allege a conspiracy by the remaining defendants to assist the directors to defraud the claimant, and that in any event there was no reasonable prospect of the claim against the directors succeeding because there was no proper factual basis for any allegation that the marketing exercise was a deception and that other monies passed between the purchasers and HOC. The Deputy Master considered those allegations to be fanciful.

16. As for the remaining defendants, they could only be liable in conspiracy to defraud if they had knowingly and dishonestly assisted in the fraud on the claimant and the court, and the pleaded facts, such as they were, could not possibly give rise to an inference that the liquidator and the lawyer defendants knew of a fraud on the claimant and had assisted the directors to deceive the claimant and the court. Paragraph 64 of Deputy Master Bartlett's judgment bears repetition in this judgment. He said by way of conclusion:

> "When one stands back from the details and looks at this claim as a whole I am unable to escape the conclusion that it represents in substance a refusal on the part of the Claimants to accept that they were unsuccessful in the previous action. This has led to a conviction that the decision against them must have been procured by illicit means and the construction of an elaborate conspiracy theory as to how that was achieved. Facts which are in themselves either innocuous or equivocal are then sought to be prayed in aid as evidence of that conspiracy. I regret to have to say that it is an attempt to make bricks without straw."

On handing down his judgment the Deputy Master made a limited civil restraint order against the claimant for the residue of that claim.

17. The claimant sought to appeal. Rose J considered it on paper on 6 November 2018. She referred to 80 pages of grounds of appeal. She summarised the decision that the Deputy Master had reached. In her order, Rose J tried to encapsulate in one paragraph the essential grounds of appeal. Then she said:

> "In my judgment there is nothing in these grounds of appeal which casts any doubt on the correctness of the analysis and decision of the Deputy Master in striking out the claim. The claim is hopeless and this appeal is hopeless.
>
> "Pursuant to CPR 52.3(4A)(a) the appellant may not request this decision to be reconsidered at a hearing. This decision is final and is not subject to review or appeal."

One might have thought in light of that indication that the claimant would have left matters there and got on with its other business affairs. But this was just the beginning of the claimant's and Ms Geary's attempts to make its unsubstantiated allegations of fraud stick.

18. On 15 April 2019 the claimant applied to reopen Rose J's refusal of permission to appeal, notwithstanding the indication by her that the claimant might not do so, and without applying first for permission under the terms of the civil restraint order. That application therefore stood dismissed and Falk J so confirmed by order of 17 April 2019. On 8 May 2019 the claimant applied again, this time in compliance with the civil restraint order for permission to apply to reopen Rose J's decision under Part 52.30 of the Civil Procedure Rules. That was an attempt to overturn Deputy Master Bartlett's order. The basis was said to be that his judgment had been obtained by fraud. The application was supported by a 55-page witness statement and a 108-page so-called skeleton argument. On 20 May 2019 Deputy Master Bartlett gave judgment on that

application, dismissing it as being totally without merit on the basis that it was largely a repetition of points already dealt with in the June 2018 judgment and by Rose J in rejecting the grounds of appeal. Insofar as the argument contended that those orders had also been obtained by fraud, the Deputy Master said the following:

> "It may be that the best analysis of this allegation is that it is suggested that it was a continuation of the alleged conspiracy to deceive the court in the earlier proceedings. If as alleged the defendants were acting dishonestly in defending the earlier claim, it follows that they must be acting dishonestly in defending this claim. This line of argument is also hopeless. If it depends on the original conspiracy being established, that has already been rejected as fanciful. If what is alleged is some distinct new conspiracy, there is no factual basis advanced for it."

The Deputy Master also noted that the application had sought to add Ms Geary as a personal claimant in order to claim her losses arising from the alleged fraud.

19. After some months, the claimant then, improbably, applied on 25 February 2020 for permission to apply to set aside the Deputy Master's order refusing permission to apply to reopen Rose J's decision on the permission to appeal application. It is worth noting that that application was supported by a witness statement of Ms Geary running to 209 pages. In it, Ms Geary requested the court to make a declaration that all judgments and order in the 2017 claim and in the 2014 claim had no effect and to set aside all judgments and orders on the ground that they were obtained by fraud. There was an application made at the same time for Ms Geary to be joined personally as a claimant in the 2017 action to claim exemplary damages against the fourth to seventh defendants. This was supported by a further witness statement of Ms Geary running to 32 pages. Permission for the claimant's application was refused by Master Clark on 6th March 2020 as being totally without merit. She observed that the matters complained of could only be raised on appeal, or in separate proceedings.

20. Prompted perhaps by that observation and the dead-end that the 2017 claim had reached, the current claim was issued by the claimant alone on 22 May 2020. The claim form contains a long list of remedies and findings that the claimant seeks, including the same remedies as were sought in the 25 February 2020 application and also the striking out of a so-called false defence in the 2014 claim and of false applications to strike out made in the 2017 claim. It also contains a claim for Ms Geary to be added personally as a claimant in the 2014 and 2017 claims to pursue claims against the fourth, fifth and seventh defendants. One of those claims is intended, apparently, to be a defamation claim, because the claim form requests a finding that the one-year limitation period for defamation claims is in breach of Article 6 of the European Convention on Human Rights.

21. It is unnecessary to burden this judgment with a rehearsal of the three pages of remedies sought in the claim form. I agree with Mr Troman, who appears on behalf of all the defendants apart from the third defendant, that there must be a cause of action to found a claim for any of the listed relief and factual findings that the claimant wishes to have. I have considered carefully the scope of any causes of action revealed by the claim form. In my judgment, he is right that there is only one identifiable cause of action

known to the law, namely that the judgments and orders obtained by HOC and the defendants in the previous claims were procured by fraud. That that is the true basis of the claim is sufficiently clear from paragraph 1 of the particulars of claim, which reads as follows:

> "The Claimant brings this action for relief from all judgments and orders in proceedings, under Case No. HC-2014-000950, and the subsequent related proceedings, under Case No HC-2017-001765, on the grounds that they were procured by fraud and/or undue influence in unlawful means conspiracies by the Defendants, to enable its claim for conspiracy to defraud, under Case No. HC-2017-000950, to proceed. The Claimant has a substantive right to bring such an action without the leave of the court and asserts that right."

Paragraph 16 of the particulars of claim states that the evidence of the fraud in the sale of the property and its concealment is set out in witness statements of the claimant in the 2017 proceedings up to and including the evidence dated 25 February 2020. The particulars of claim then explain that there was what they call a "prior fraud", i.e. the fraud in the sale of the property to deprive the claimant of its profit share, followed by an underlying conspiracy in the defence of the 2014 claim, which conspiracy succeeded in obtaining a judgment by fraud in July 2015 and was then followed by a conspiracy in the 2017 claim. Paragraphs 50-52 are particularly material and read as follows:

> "50. The evidence of the conspiracy and the subsequent proceedings and its analysis is set out in detail in the application of 25 February 2020. The Claimant alleges that the Defendants and their legal teams were co-conspirators in an unlawful means conspiracy to have the claim unlawfully dismissed adopting a strategy similar to the unlawful means conspiracy in the underlying proceedings, relying on its successes, and causative of the outcome, as it was in the underlying proceedings, the continuing defamation of MMG/Ms Geary.
>
> "51. Each Defendant filed a false application to strike out and/or for summary dismissal of the claim predicated on the false premise that the claim before the court was a dispute as to the sale price of the Property, a false claim not evidenced in the particulars of claim; the applications unlawful means conspiracies per se are fraud on the court and the Claimant, both deceived. All submissions and acts in support of these applications are therefore fraudulent per se and in breach of the legal representatives' statutory duty to the court and duty of candour and fairness to MMG. The filing of these applications, their collateral purpose being to have the claim unlawfully dismissed, have no outcome that legal proceedings provide and ground causes of action in the tort of abuse of process.
>
> "52. And it is that the whole of the proceedings was itself an unlawful means conspiracy to have the claim unlawfully dismissed – every written and oral submission was knowingly

> false and deliberately misleading with false documents signed with statements of truth; unlawful acts in breach of statutory duty and relevant unlawful means and unlawful acts per se. These submissions were predicated on the impugned proceedings and the fraudulently obtained judgments and orders of the underlying proceedings and on misrepresentations and/or denials and/or concealments of MMG's submissions in both sets of proceedings and on the false witness statements of the Second and Fifth Defendants. The judgments predicated on these false submissions are judgments obtained by fraud and orders predicated on these false judgments are orders obtained by fraud."

In paragraph 86 of the particulars the following brief summary appears:

> "The Claimant submits that all judgments in both sets of proceedings predicated on knowingly false applications supported by knowingly false written and oral submissions were obtained by fraud and all orders predicated on such judgments are orders obtained by fraud and it seeks to have all such judgments and orders set aside."

What is therefore asserted is that all acts that were taken by the defendants in seeking to strike out the 2017 claim were false and fraudulent because the underlying claim of the claimant against HOC was a true claim, and the defence of that claim had itself been fraudulent. It was therefore fraudulent of the defendants to defend the 2017 claim on the basis of the outcome of the 2014 claim, which itself was obtained by fraud.

22. Unsurprisingly, the defendants applied promptly to strike out the 2020 claim, having written first to warn the claimant and Ms Geary personally that the claim was an abuse of process and that they would, if the claim was not withdrawn, apply to strike it out and for civil restraint orders and costs against the claimant and Ms Geary personally. In the witness statement of Mr Matthew Watson dated 24 June 2020 on behalf of the third defendant salient features of the particulars of claim were identified, including a statement at paragraph 31 as follows:

> "… The evidential basis for the Claimant's case therefore appears to be exactly the same as that which was before the court in each of the two previous actions."

And that:

> "… There is no new evidence relevant…that has come to light since the hearing of the strikeout application in the second action."

In the witness statement dated 1 July 2020 of George Brown in support of the other defendants' application, he says at paragraph 20:

> "… The Claimant puts forward no new evidence of fraud. All that the claimant is doing is presenting the Court with evidence which has already been considered by the Court. … "

And he exhibits schedules comparing allegations in the statements of case and evidence in the 2017 claim and the current claim. As Mr Troman said in argument, both statements were in effect challenging Ms Geary to identify any new evidence of fraud on which the claimant relied to seek to set aside Deputy Master Bartlett's order.

23. The substantive evidence of Ms Geary was provided not in response to the defendants' applications, but in support of the claimant's own applications issued on 29 October 2020. However, it did not lack for quantity. The witness statement in support of the application to strike out the defendants' applications runs to 446 paragraphs over 141 pages. It contains lengthy sections challenging the jurisdiction of the court to entertain applications under Rules 3.4 and 24 of the Civil Procedure Rules, much shorter sections that essentially rehearse the content of the particulars of claim as regards the prior fraud, conspiracy in the 2014 claim and the conspiracy in the 2017 claim, and then a further long section addressing the court's jurisdiction to make civil restraint orders and cost orders against non-parties. At paragraph 189 Ms Geary identifies in a helpful table the main documents relied upon as evidence of unlawful conspiracies and so the basis for the allegations of fraud in the 2014 claim and the 2017 claim. All but one of the documents identified are documents that precede the judgment of Deputy Master Bartlett. The only exception is letters written by the law firms acting for the defendants to say that they oppose the claimant's application for permission to reopen Rose J's refusal of permission to appeal. In paragraph 193 of her witness statement Ms Geary states:

> "The four false witness statements of 6 November 2017 by the Second and Fifth Defendants and Mr Watson and Ms Clover, included by Mr Brown, were the Defendants contribution to the unlawful means conspiracy of the second proceedings. Mr Watson includes the documents he relies upon in support of his re-run of his fraudulent second proceedings submission, the falsely submitted to be 'three statements of case' and the 'redline' comparison that is not a comparison and on this occasion the amended particulars of claim itself."

All of these documents predate the judgment of Deputy Master Bartlett.

24. Then at paragraphs 207-217 Ms Geary addresses specifically paragraph 31 of Mr Watson's witness statement, but she neither disputes in terms the suggestion that no new evidence is relied upon in support of the 2020 claim, nor identifies any new evidence that has come to light since the date of the judgment that is said to reveal the alleged fraud. At paragraph 246 Ms Geary states:

> "The Claimant's allegations of unlawful means conspiracies of this false claim are no more than that the First and Second Defendants were assisted in various ways to conceal that fraud by parties who it alleges must have known of the fraud; in the

> first proceedings by the alleged misconduct of the Third to Sixth Defendants and in the second proceedings by making applications to strike out the claim knowing it had merit, the applications therefore false and the legal teams submission in support of such applications therefore also false. …"

In other words, the third to seventh defendants must have known of the prior fraud and then assisted HOC and the directors to conceal that matter in the 2014 claim and made false applications in the 2017 to seek to rely on the effect of the judgment in the 2014 claim.

25. In summary, the fraud alleged against the defendants in relation to the 2017 claim and the defence of it is that, knowing of the prior fraud and the fraudulent 2014 judgment, the defendants defended the 2017 claim by dishonestly relying on the prior decisions of the court and what had happened previously, when they must have known that the claimant had a valid claim against HOC. It is not alleged that, since June 2018, Ms Geary became aware of some new fact relating to the conduct or knowledge of any of the defendants capable of demonstrating that the basis on which the 2017 claim was defended was fraudulent. Rather, it is presented as inevitably the case, that the defence of the 2014 having been fraudulent, the defence of the 2017 claim must have been so too. It was, in other words, a continuation of the alleged fraud that Deputy Master Bartlett had rejected in his judgment, and the attempts to appeal against it which Rose J had considered so hopeless that the claimant was deprived of its right to seek to renew its application at an oral hearing.

26. The only attempt made by Ms Geary to suggest that she had discovered something new comes in paragraph 48 of her witness statement in support of the 25 February 2020 application. She says:

> "It was Rose J's order dated 6 November 2018 dismissing the appeal against the Deputy Master's judgment that brought the false claim of the applications to the claimant's attention. If it were not for the words in that order that the judge understood the claim before the court to be a dispute about the sale of the property, it is doubtful if the claimant would ever have discovered the false premise of these applications."

I find that wholly incomprehensible, in that Rose J's reasons for her refusal of permission to appeal largely rehearsed the reasons given by the Deputy Master in his judgment and the arguments advanced in the grounds of appeal. The only part of her decision that is in any sense new material is the short paragraph that I have already referred to, which could not possibly have revealed to Ms Geary for the first time any falsity in the facts as presented to the court. It may be that the way that Rose J expressed the essence of the underlying claim caused Ms Geary to see it in a different way, but that is not the same as finding new evidence of dishonesty.

27. As is well known, the way to impeach a final judgment on the ground of fraud is by a new action, in which the particulars of the fraud must be precisely set out and then proved cogently by evidence at trial. That is so in any claim based on deceit and it should be thought to be all the more so where what is being alleged is that the defendants have deceived the court into giving a false public judgment in their favour.

It is necessary to prove a conscious and deliberate dishonesty in relation to particular facts or their suppression, which must be material in the sense that the true facts demonstrate that what was misrepresented or concealed was an operative cause of the court's decision – see *Royal Bank of Scotland plc v Highland Financial Partners LP* [2013] 1 CLC 596 at 606, per Aikens LJ, approved by Lord Kerr of Tonaghmore in *Takhar v Gracefield Developments Ltd* [2020] AC 450 at 456. In his judgment, Lord Kerr referred to and approved the decision of the New South Wales Court of Appeal in *Toubia v Schwenke* [2002] NSWLR 46, in which Handley JA said:

> "Where the action seeks the judicial rescission of a judgment, the plaintiff must prove that he and the court were deceived and he can only do this by showing that he has discovered the truth since the trial. Where this is done, and the fresh facts are material, fraud is established. …"

Lord Sumption in his judgment in *Takhar* referred to a requirement for decisive new evidence to become available for the later proceedings.

28. It follows, in my judgment, that if the claimant knew at the time of the previous judgment sought to be impugned the material on the basis of which fraud is now alleged, the claim cannot succeed. That is because the claimant was not deceived by any fraud, and the court was only misled by the claimant's failure to bring the evidence of fraud to its attention at the time. Linden J came to the same conclusion in *Elu v Floorweald Ltd* [2020] EWHC 1222 (QB). In that case the claimant knew of the evidence of fraud but was not permitted to put it before the court, having been in breach of the court's directions and failed to obtain relief against sanctions. At paragraph 153 of his judgment, Linden J set out what he regarded as an essential ingredient of a cause of action to set aside a judgment in fraud:

> "Second, a key ingredient of the cause of action is that the party and the court were deceived by the fraudulent evidence of the other party. For this reason the court requires "fresh" or "new" evidence or facts. Mr Jones submitted that evidence or facts which were not before the court in the earlier proceedings will be sufficient, but I do not accept this. In my judgement, the facts or evidence relied on must be materials which were not known, at the time of trial, to the party now alleging that it was deceived."

As the judge then demonstrated, that proposition is established by ample authority.

29. To succeed on its claim to set aside the 2018 Order of Deputy Master Bartlett, the claimant must therefore have and plead, and in due course prove, fresh evidence of fraud which must be pleaded with sufficient particularity to be capable in law of establishing a fraud on the court and on the claimant. In her note prepared for this hearing, which she said was not a skeleton argument, Ms Geary focuses on the nature of the applications brought by the defendant and submits that they are fraudulent and abuse of process. She invokes Lord Sumption's observations about cause of action and issue estoppel in the *Takhar* case and says that the claim is unsuitable to be determined on a summary basis. She complains that the defendants have not included in the hearing bundle documents relating to the prior fraud, yet she says that the prior fraud is not in

issue in this claim. She argues that the evidence of fraud and of attempts to obtain a judgment by fraud is indisputable, and then the attempt to obtain a decision on a summary determination is evidence of the same fraud. She calls it an all pervasive fraud. She summarises the 2020 claim as a claim alleging "fraudulent claims in fraudulent applications supported by fraudulent submissions in unlawful means conspiracies to have the claims in the two earlier sets of proceedings dismissed, and in parallel an ongoing conspiracy to deceive the claimant and Ms Geary that was causative of the judgments being obtained by fraud". She then rehearses various matters relating to the conduct of the 2014 claim and the 2017 claim, all of which were plainly known to her at the time.

30. I regret to say that it is impossible to discern in the claim form, the particulars of claim or any of the copious material that Ms Geary has adduced in relation to the claimant's current claim, any fresh evidence of fraud committed by any of the defendants in obtaining the judgment that they did from Deputy Master Bartlett. Rather, the position is that the defendants were arguing in defending that claim that the claimant should have brought its deceit claims in the 2014 action and that in any event there was no factual material relied on by the claimant capable of being evidence of any fraudulent conspiracy by any of the defendants. The Deputy Master accepted that submission for the reasons that he gave.

31. The claimant, through Ms Geary, now seeks to allege again that everything the defendants did was fraudulent, but all that is alleged is that the defendants sought to defend the 2017 claim and presented the arguments that they did. The fifth and sixth defendants are employees of the seventh defendant, a large, well-known and respected City law firm. The fourth defendant is a barrister at a large and respected set of chambers in Lincoln's Inn. The notion that any of these defendants would, for no identified personal advantage or other reason, perpetrate a fraud on the court as well as on the claimant is so inherently unlikely that clear factual allegations supported by cogent evidence is required to support the allegations made against them. Despite the hundreds of pages that Ms Geary has written, there is not a shred of fresh evidence to support such allegations. To paraphrase Deputy Master Bartlett, when he refused to allow the claimant to reopen the refusal of permission to appeal, insofar as the claimant relies on the allegations of fraud that it advanced in the 2017 claim these have already been rejected as hopeless. To the extent that any different or additional fraud is suggested relating to the conduct of the 2017 claim, there is not a single particular of any evidence of any of the defendants having acted fraudulently. All that the claim amounts to is that the defendants contested the 2017 claim by legal means available to them in court process and argued that there was no fraud in connection with the 2014 claim. The claim amounts to this: since the claimant asserts fraud in relation to the sale of the property, the defendants must have known that and the defences were necessarily fraudulent too. That is a hopeless argument and the 2020 claim to set aside the prior judgments on the basis of fraud must fail, no fresh evidence of fraud of which Ms Geary became aware after June 2018 having been identified.

32. Insofar as the claimant seeks to establish that the dismissal of the 2014 claim was obtained by fraud, it has a further problem. In the 2017 claim it alleged that the defendants conspired together to defraud the claimant in the dismissal of the 2014 claim. The claimant sought to overturn that conclusion, but failed to do so. Although it did not in the 2017 claim allege that the judgment of Deputy Master Cousins had been

obtained by fraud, it could and should have done if it wished not just to obtain damages from the conspirators but to revive the 2014 claim against HOC. It is the clearest abuse of process for the claimant to seek to do so now, on the basis of the same evidence of the prior fraud and the conduct of the defendants in the 2014 claim that was considered by Deputy Master Bartlett in his judgment. It would amount to re-litigation of the same allegations on the same evidence, since evidence of what the defendants did in conducting the defence of the 2017 claim has no materiality on the question of whether the judgment in the 2014 claim, obtained in 2015, was obtained by fraud.

33. Although raising another claim in later proceedings is not necessarily abusive – see *Johnson v Gore Wood & Co* [2002] 2 AC 1 – raising a different claim that in substance is re-litigating the previous claim but seeking different relief is an abuse of process. To hold that this kind of abuse of process exists, the kind that would previously have been called *Henderson v Henderson* issue estoppel, is not to err by holding that the impugned judgment creates a cause of action estoppel or issue estoppel that prevents the new claim being heard. That is what Lord Sumption explained in paragraph 61 and 62 of his judgment in the *Takhar* case. In bringing a claim to set aside a prior judgment for fraud, the claimant is not re-litigating the original cause of action but is pursuing a separate cause of action. If the claimant is right, anything decided in the previous claim is vitiated by fraud and cannot bind the parties. But that does not prevent a second claim for the same relief, or that raises the same issue, from giving rise to an estoppel. Neither does it mean that there can be no abuse of process by belatedly raising a claim to set aside a prior judgment when it could and should have been pursued, if at all, in other proceedings brought to challenge the prior judgment. The attempt by the claimant to set aside the judgment in the 2017 claim is not in this category, because apart from protracted attempts to appeal the Deputy Master's judgment no previous claim had been brought to impugn that judgment. However, for the reasons that I have given, the claim discloses no valid cause of action.

34. The claim therefore falls to be struck out under Rule 3.4(2)(a) of the Civil Procedure Rules. I would also strike it out under Rule 3.4(2)(b) as an abuse of process for two reasons. First, for the reasons just given, to the extent that the claim seeks to set aside the judgment in the 2014 claim for fraud; second, the claim as a whole is vexatious and unjustified. It makes very serious allegations against professionals in a wholly unfocused way with particulars of claim that are verbose, repetitive and incoherent.

35. Having regard to the 209-page witness statement of February 2020 which preceded it and the 141-page witness statement that supported an attempt to strike out the defendants' applications, I have come to the conclusion that this claim is not a reasonable attempt by the claimant as a business to recover losses that it suffered when its claim against HOC was defeated, but a yet further and more determined attempt by Ms Geary to fight to the bitter end those whom she regards as responsible for the undeserved defeat of the original claim. The claims as they have evolved have taken on a distinctly personal air, with the claimant (or in reality Ms Geary) seeking relief to enable her to add in personal claims for alleged defamation and harassment, as well as claims for personal losses – see the application for permission to reopen the refusal of permission to appeal dated 8 May 2019, the witness statement of 25 February 2020 (paras 2.8, 2.12 and 2.16), the claim form in the 2020 action (paras 8, 14 and 16) and the relief sought in the application notice dated 29 October 2020 seeking judgment in

default of defence. This has every appearance of being an attempt to obtain personal vindication, or at least to cause maximum inconvenience to the professional defendants.

36. In that regard, and as a reason for that conclusion, I note in particular the application issued on 29 October 2020 for an order restraining the firms of solicitors acting for the defendants form conducting any litigation in their professional capacity on the ground that they are unlawful conspirators. Two of the firms in question are not even defendants to the claim. This wholly irrational and unjustified application can only have been brought with a view to causing maximum difficulty and embarrassment for the lawyers involved. It is indicative of the attitude that underlies the bringing of the 2020 claim. Ms Geary has, however, been astute to avoid exposing herself personally to any liability so far as she can. The 2020 claim did not include personal claims brought by her, and when the firms of solicitors acting each wrote to her warning that they would seek costs and a civil restraint order against her personally she took exception to that, first in a letter to the court dated 18 June 2020, in which she said that the defendants were trying to deny her the protection of incorporation, and then by applying to strike out the defendants' applications against her for non-party orders – an application which Mann J dismissed as totally without merit. It is notable too that the last filed abbreviated accounts of the claimant show that it has a deficit of assets over liabilities of around £200,000. It is also the case that over £150,000 of costs owing to the defendants have not been paid.

37. For all the reasons that I have given, I therefore strike out the claimant's claim. The claim was totally without merit.

38. As for the claimant's outstanding applications in the claim, the application for judgment in default of defence was always misconceived because the defendant had, within the time allowed by the Rules, issued applications to strike out the claim and/or for summary judgment – see Rule 12.3(3)(a), which prevents the court from entering judgment in default in such circumstances. The other relief claimed in that application seems to me to have been intended to follow from the entering of judgment, and so it too falls away. The application is dismissed, and it was made totally without merit. As I have said, the application for an order restraining three large law firms from conducting litigation business was abusive and plainly wrong from the outset. I can think of no circumstances in which it might have been arguable that such a far-reaching order should be made even if at trial the claimant had proved its case, especially as regards those firms who were not defendants to the claim. A referral to the Solicitors Regulation Authority would have been the obvious step at that stage and in those circumstances, which I emphasise have not remotely arisen. I dismiss that application too as being totally without merit.

39. Having granted the defendants the relief that they sought on their applications, it necessarily follows that the claimant's application to strike out those applications must be dismissed. It was brought on unarguable grounds that the court had no jurisdiction to hear the defendants' applications and that they were an abuse of process and fraudulent. That application was totally without merit. The proper course would have been for the claimant to engage with those applications and appear through a lawyer or Ms Geary to explain why they should not be granted. Regrettably, the claimant and Ms Geary did not take that course, ostensibly on the basis that she would not lend the defendants and their legal teams credibility by attending the hearing of fraudulent applications that the court did not have jurisdiction to hear.

40. That concludes my judgment on the substantive applications. I think we will take a short 5-minute break and then I will turn to the civil restraint orders, and at that stage if Ms Geary or anyone else on behalf of her or the company is now present on the call, I will hear what they have to say.

**(The hearing was adjourned for 5 minutes)**

41. Is there anyone who wishes to make any submissions on behalf of Ms Geary? (No response). In which case I will proceed to give the second part of my judgment in relation to the application for civil restraint orders. All the defendants seek extended civil restraint orders against the claimant and Ms Geary personally. I shall address the application against the claimant first.

42. Apart from the conclusions that I have reached today and that Mann J reached on 5 November 2020, which themselves amount to 5 claims or applications that were totally without merit, there have been a number of other such applications even since the date of Deputy Master Bartlett's judgment. Since that time, Rose J rejected the application for permission to appeal as being totally without merit; Deputy Master Bartlett himself refused an application to reopen that decision as being totally without merit; and then Master Clark rejected a yet further application to set aside Deputy Master Bartlett's refusal as totally without merit. The only express criterion for an extended civil restraint order is that a party has persistently issued applications or claims that are totally without merit. That is clearly satisfied in this case so far as the claimant is concerned. Not only has it issued far more than three (which is the minimum requirement) but they are all related to the same underlying complaint and dispute, and so in that sense are persistent applications. I have little doubt that if a civil restraint order is not made further applications will be made by the company, probably starting with an attempt to challenge my own decision other than by way of an appeal. Ms Geary has already alleged that the conduct of these applications by the defendants is fraudulent.

43. I am also wholly satisfied that an extended civil restraint order is necessary to protect both the court's own resources and the defendants' resources against further such applications. The allegations being pursued by the company are, as Rose J said in November 2018 and as I have concluded, hopeless. I am satisfied that an extended civil restraint order in relation to the proceedings in this claim is sufficient to provide the necessary protection against the claimant issuing further applications or claims relating, or leading to, or touching upon their subject matter, and that a general civil restraint order is not warranted. I will therefore make an extended civil restraint order against the claimant for a period of 2 years from today.

44. Turning to the application against Ms Geary herself, the defendants seek, first, to join Ms Geary to the 2020 claim for the purpose of making an order against her. Making a civil restraint order against a non-party is an exceptional order to make, at least in the sense in which that expression was used in the context of non-party costs orders, because Ms Geary has not been a party to any of the claims and it is unusual to make orders of that kind against non-parties.

45. The first question in my mind is whether it is appropriate to consider making a civil restraint order against Ms Geary today. It is axiomatic that a non-party in such circumstances must be given notice and a reasonable opportunity to address the

substance of the serious allegations made against them and to defend the application. For that reason it is usual first to join the relevant non-party and then adjourn the application to a future hearing. The defendants say that an adjournment is not necessary or appropriate in this case. They say that Ms Geary was put on notice expressly in letters dating from 12 June 2020 that if the claim was persisted in an application would be made for (among other relief) costs and a civil restraint order against her personally. As I have mentioned, she objected to that and sought to deny the legality of it. The defendants' applications when they were issued did expressly seek such orders and the witness statements in support of those applications explained quite fully the basis on which such orders would be sought against Ms Geary personally. The defendants submit, therefore, that Ms Geary was fully on notice, understood the implications of the orders that were sought against her, had an opportunity to raise any factual arguments or legal arguments against such orders, and indeed that she took that opportunity by making detailed submissions in her first witness statement in support of the 29th October 2020 application to strike out that part of the defendants' applications. Paragraphs 338 and 446 of that witness statement address the applications for civil restraint orders and costs against a non-party. The majority of those arguments about civil restraint orders are concerned with the lawfulness of the Civil Procedure Rules, but Ms Geary does attempt to explain why in her opinion it would be wrong retrospectively to hold her responsible for the conduct of the claimant.

46. Ms Geary was aware of the hearing date for these applications and the subject matter of the hearing, and was provided with a link to join the remote hearing. Following the conclusion of the defendants' argument at the end of day one, I adjourned the hearing until 2 o'clock today and instructed my clerk to notify Ms Geary that she should join the hearing today if there was anything that she wished to say on the question of whether an extended civil restraint order or costs order should be made against her personally. That email was sent, but Ms Geary has not attended. In my judgment, she has clearly waived her right to attend and participate in the hearing not just on behalf of the claimant but in her own right as a personal respondent to the defendants' applications. There is no doubt that she was aware that the court would proceed to hear and determine the defendants' applications against her, and since they were issued in the summer of this year there has been ample time for her to prepare any focused submissions on those matters. In her note for this hearing Ms Geary does not address the ECRO application, but in relation to the non-party costs application she focuses only on the alleged inability of the court to add someone as a party to proceedings for the purpose of making an order against them.

47. I have considered carefully whether justice requires Ms Geary to have a further chance to change her mind and defend the applications against her. Delay will result in further costs being incurred by the defendants and a further hearing having to be accommodated at short notice in the court's diary at an extremely busy time for High Court judges, which inevitably prejudices the hearing of other litigants' cases. It might also present a window of opportunity for Ms Geary (notwithstanding the ECRO made today against the claimant) to seek to issue a new claim or further application in her own name, which too could cause further prejudice of the kind that I have identified. It is unknown whether any further costs that would be incurred by such a course could be recovered from Ms Geary if a personal costs order is made against her. On the other hand, a civil restraint order is a significant restraint on the liberty of the individual to access the courts urgently should that be needed, and a non-party costs order is

exceptional in nature. The reality, however, is that there is nothing the court can do to require Ms Geary to engage with the applications against her. She has chosen, despite undoubted knowledge of what is being sought by the defendants, to absent herself from this hearing. She has been given a further warning that if she wishes to address the court on these matters she should join the hearing today. She has not done so, and therefore again, in my view, she has waived her right to address the court. It is unlikely she would treat any adjourned hearing differently and by adjourning prejudice to the defendants and to the Court Service would be caused. I therefore on balance will not adjourn consideration of whether to make an extended civil restraint order against Ms Geary.

48. The court has power to make a non-party civil restraint order – see *Sartipy v Tigris Industries Inc* [2019] 1 WLR 5892. In setting out the preconditions for making a civil restraint order Males LJ said as follows:

> "Third, only claims or applications where the party in question is the claimant (or counterclaimant) or applicant can be counted (although this includes a totally without merit application by the defendant in the proceedings). A defendant or respondent may behave badly, for example by telling lies in his or her evidence, producing fraudulent documents or putting forward defences in bad faith. However, that does not constitute issuing claims or making applications for the purpose of considering whether to make an ECRO. Nevertheless such conduct is not irrelevant as it is likely to cast light on the party's overall conduct and to demonstrate, provided that the necessary persistence can be demonstrated by reference to other claims or applications, that an ECRO or even a general civil restraint order, is necessary.
>
> Fourth, as Newey J also held in *CFC 26 Ltd v Brown Shipley & Co Ltd*, the term 'a party who has issued' such claims or applications refers not only to the named party but also to someone who is not a named party but is nevertheless the 'real' party who has issued a claim or made an application. Again, I respectfully agree. Although 'the real party' is not a concept expressly found in the Civil Procedure Rules, it is a concept which has been deployed from time to time, for example in the context of funding proceedings (cf *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (Associated Industrial Finance Pty Ltd, Third Party)* [2004] 1 WLR 2807, para 25), while security for costs may be ordered against a claimant who 'is acting as a nominal claimant' (CPR r 25.13(1)(f)). It is unnecessary to explore in this appeal the limits of the 'real party' concept, but it must extend to a person who is controlling the conduct of the proceedings and who has a significant interest in their outcome."

49. The defendants submit that since the allegations of fraud were first raised in February 2015, the real party behind the 2014 claim, the 2017 claim and the 2020 claim has been Ms Geary. That is because from that time she caused the claimant to conduct the proceedings improperly for three reasons: first, the allegations of fraud were unfounded; second, they were made against reputable professionals; and, third, they

were made repeatedly. Further, Ms Geary controls the claimant and she therefore potentially benefits from the claims. I do not accept this argument in two respects.

50. First, the 2014 claim was undoubtedly conducted for the benefit of the claimant – it and not Ms Geary had the claim for 15% of the profit from the development. The fraud allegations, though raised, were initially only made against the directors of HOC and were not pursued in that claim, which was decided as a matter of interpretation of the contract. The allegation of the prior fraud was relied on for the first time in the 2017 claim and the court held that it could not be. The claim was not dismissed as totally without merit, and even if the claims against the professionals were extravagant and improbable the claim against HOC's directors might have been an effective claim in the sense of one that could proceed to trial if it had been raised earlier. At some point in the 2017 claim the allegations moved from being weak to being hopeless and irrational, such that no reasonable company director would have expended the company's resources on pursuing it. In my judgment, that point came at the very latest when Rose J refused permission to appeal on the basis that it was hopeless. That assessment of the time is probably being generous to Ms Geary. But thereafter, I accept the claim was advanced on an irrational basis that could not be justified on the basis of commercial judgment, or indeed as being in the interests of the company's creditors if it was by then balance-sheet insolvent. It cannot therefore be regarded, from that time, as a claim pursued for the benefit of the claimant.

51. The second aspect that I do not accept is that a non-party ECRO is justified on the basis that Ms Geary controlled the proceedings and stood to gain from them financially. Of course the only director and shareholder of a company controls the company's proceedings, but not every such director is therefore liable for a non-party costs order. The persons principally liable to benefit from any genuine proceedings against the defendants were the creditors of the claimant, not the shareholders.

52. However, I agree that when such a director and shareholder is controlling proceedings that are no longer rationally for the financial benefit of anyone but are pursued apparently for an ulterior reason, and the proceedings are conducted improperly, then the real party to the proceedings can be said to be the person in control who is causing the company to pursue improper claims or applications. In view of the findings that I have made as regards Ms Geary's personal motives and interests in pursuing this litigation, I am satisfied that the real party for the purposes of the question whether a party has persistently issued totally without merit claims or applications is Ms Geary, at least from the date of the application for permission to reopen Rose J's order, so from about May 2019. Since that date 7 claims or applications have been held to have been made totally without merit. They all relate to the same issues. In my judgment, for the same reasons as I have given in relation to the claimant, Ms Geary has persistently made applications that are totally without merit for the purposes of para 3.1 of PD 3C.

53. The express criterion condition therefore being satisfied, the question is whether, as a matter of discretion, it is necessary and appropriate to make an extended civil restraint order in order to protect the court's resources and to prevent unfair harassment of and the incurring of costs by the defendants as a result of further meritless or abusive applications or claims. I bear in mind that Ms Geary indicated in her 18 June 2020 letter to the court that she considers that it is necessary to set aside the order of Deputy Master Bartlett in order to pursue her personal claims. It is also the case that by virtue of the extended civil restraint order made against the claimant she cannot make a further

application without merit through that company. What therefore is the risk or likelihood that she will make a personal claim of a meritless or abusive character? In view of the finding that I have made that there is a personal animus against the defendants driving these applications and claims, I consider that there is a real risk of such a claim being brought if a civil restraint order is not made against Ms Geary. Ms Geary has indicated defamation and harassment claims against some of the lawyer defendants as well as a claim to seek to recover personal losses arising from the prior fraud and the subsequent conduct of the defendants. I consider it quite likely that, if the company is restrained, Ms Geary may reconsider whether the claims that she wishes to make can be brought without first setting aside the Deputy Master's order. In my view, new claims of that nature should not in the circumstances of this case be brought without the court having first considered whether they are meritless or abusive.

54. For these reasons, I do consider that it is appropriate to make an extended civil restraint order against Ms Geary too, in order to confer the necessary protection against further abusive or meritless applications relating to the subject matter of these proceedings. A limited civil restraint order would not prevent Ms Geary from starting other proceedings, and protection against that is, in my judgment, necessary. I will therefore join Ms Geary as a second claimant to the 2020 claim and make an extended civil restraint order against her for a period of 2 years from today's date.

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**This judgment has been approved by Fancourt J.**