Neutral Citation Number: [2021] EWHC 2417 (QB)

Case No: G00TR912

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS AT BRISTOL (QBD)
BUSINESS LIST

Date: 31/08/2021

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between :

MATTHEW WILLIAMS	**Claimant**
- and -	
(1) RICHARD MERRICK **(2) MERRICKS SOLICITORS LIMITED** **(sued as MERRICKS SOLICITORS)**	**Defendants**

- -
- -

Peter Wareing (**Direct Access**) for the **Claimant**
Benjamin Wood (instructed by **Browne Jacobson LLP**) for the **Defendants**

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Hearing date: 18 May 2021
Draft judgment circulated to the parties: 27 July 2021

- -

Mr Justice Henshaw:

(A) INTRODUCTION

1. The Defendants, Mr Richard Merrick ("***Mr Merrick***") and Merricks Solicitors ("***Merricks***") apply, by notice dated 23 December 2020, for summary judgment or the striking out of the claim. The claim, brought by Mr Matthew Williams ("***Mr Williams***"), was issued on 24 November 2020 and alleges that the Defendants, as his former solicitors, were negligent and caused him losses of over £2.7 million.

2. The claim relates to two series of events:

    i) allegedly negligent advice or "*representations*" given by the Defendants in connection with the recovery of compensation from a bank, NatWest, arising from a base rate swap deal that Mr Williams had entered into; and

    ii) alleged failure to carry out Mr Williams' instructions, and the giving and carrying out by the Defendants of undertakings without Mr Williams' instructions, relating to a proposed partnership agreement with a Mr Hardick and the sale of land to Mr Hardick or his company.

3. The essence of the Defendants' position, as set out in the supporting witness statement of their solicitor, Judith Cummings of Browne Jacobson, is that aspect (i) of the claim is time barred, and aspect (ii) is so poorly pleaded that it ought to be struck out, but is in any event fatally undermined by the contemporaneous documents. The application is resisted by Mr Williams, who has served a witness statement in response to the application.

4. For the reasons set out below, I have come to the conclusion that neither element of Mr Williams' claim has any real prospect of success, and there is no other reason why the case should proceed to trial; and that the Defendants' summary judgment application must therefore succeed.

(B) FACTS: BASE RATE SWAP

5. Mr Williams' pleaded case is that *"[p]rior to and co-terminus with"* the proposed partnership arrangement referred to in section (C) below – which occurred in 2016 – Mr Williams and his accountant met Mr Merrick and were advised about an application for compensation arising from a base rate swap which Mr Williams's bank, NatWest, had proposed. It is said that NatWest was the mortgagee of one of Mr Williams' properties, known as Britannia Yard, Penryn, Cornwall.

6. It appears that in or about 2008, Mr Williams and Ms Karen Williams had entered into an interest rate hedging product with NatWest, in the form of a swap. By May 2014, NatWest had offered redress in respect of the sale of the product, in the amount of £349,796.11 (including interest). By October 2014, Mr Williams had accepted the offer and received the redress payment in the amount stated.

7. NatWest appointed Law of Property Act receivers over Britannia Yard in December 2014, and it is said in an email from one of the receivers to Mr Merrick (dating from May 2016) that Mr Williams had been in default with NatWest "*for a considerable period prior to [the receivers'] appointment*".

8. Mr Williams alleges that:

> "21. During an extended meeting with the Claimant, throughout which his accountant was present, the 1st defendant opined on the suitability of the proposed deal for the Claimant, advising on what he described as the "advantageous" terms of the compensation on offer and in respect of which terms he provided to the Claimant individual pieces of advice; which included the representation that it would be Nat West who would be called on if there was any tax liability that was later said to arise in consequence of receiving compensation from that agreement.
>
> 22. The 1st Defendant himself completed the application for the base rate compensation on behalf of the Claimant, who entered into that arrangement in reliance on the express representations made by the 1st Defendant and in reliance on his purported expertise on the matter.
>
> 23. That advice later transpired to be fallacious, as the compensation realised was significantly less than had been expected and less than the Defendants had opined on and, additionally, the Bank later denied liability for a tax liability that arose from that transaction."

9. Mr Williams' skeleton argument for the present application cites, as evidence that Mr Williams suffered loss as a result as having entered into the hedging product, a letter from NatWest dated 20 October 2014. That letter began by stating:

> "We previously wrote to inform you of our redress determination (the Offer) in relation to the sales included in the review. You have accepted the Offer and have received the final redress

> payment. A breakdown of all redress payments made to you is set out below. The Independent Reviewer has completed a final review of your file and they are satisfied that calculations below represent fair and reasonable redress."

The letter then set out the redress payment and calculation relating to the swap, and that a redress payment after tax of £349,796.11 had been made. The letter concluded:

> "This completes our review of the past business sale of your IRHPs in accordance with the standards and review principles published by the FCA. We thank you for your patience during the review."

(C) FACTS: HARDICK TRANSACTIONS

10. Mr Williams was a landowner and business owner, running a business from Britannia Yard and the adjoining Trelan Farm in Cornwall, both of which he owned. Mr Williams alleges that Knight Frank and local land agents valued these properties collectively at £1,907,867 and £1,150,000 respectively.

11. The Particulars of Claim allege that in or around mid 2016 Mr Williams was considering developing the land for the purposes of commercial letting of buildings which he imagined would be constructed there.

12. The documents include a Merricks retainer letter dated 15 March 2016 indicating they had been instructed by Mr Williams to act for him "*in connection with the sale of [51.34 acres at Trelan Farm]*".

13. By May 2016, the receivers appointed by NatWest, referred to in section (B) above, appear to have decided that "*there is no reason to delay a sale [of Britannia Yard] and… the Receivers now intend to offer the Property for sale via auction*".

14. The Particulars of Claim do not refer to that development, but state that having investigated the possibility of doing the project himself (including scoping out the possibility of obtaining planning approval from the local authority) Mr Williams concluded that he would, on his own, be unable to raise the finance necessary for such a project. As a result, he began looking for alternatives that would help him finance and realise the proposed project, one of which was the possibility of a partnership. He was introduced to a man named Rory Hardick, whom Mr Williams was assured had the requisite contacts and ability to finance such a project.

15. The Particulars of Claim continue as follows:

> "8. Following that introduction, the Claimant met with Mr. Hardick in the presence of the 1st Defendant and, following positive discussions, Heads of Terms were agreed with a view to constituting a partnership between the Claimant and Mr. Hardick and others, which parties included a Company of which he was a Director, Brechin Investments No.1 Ltd.

> 9. The Claimant duly gave instructions to the 1st Defendant and therefore by extension to the 2nd Defendant also, to formalise that partnership proposal through the drafting and provision of the relevant documents.
>
> 10. Those documents were to include, as a minimum, a formal partnership agreement or Deed.
>
> 11. It was agreed that the Claimants contribution to the partnership would be the value of the land and that he would be an "equal partner" in the proposed Joint Venture."

16. The documents indicate that Mr Hardick set out a proposal (which appears to be the product of negotiation) for Mr Williams in an email of 27/28 October 2016, and sent Mr Williams a further proposal on 15 November 2016.

17. The Particulars of Claim note that:

> "Co-terminus with the partnership planning and as a direct result of previous negligence by the 1sl Defendant involving a base rate swap deal with a High Street Bank; the Claimant had run into some cash-flow difficulties, which resulted in Claim for allegedly outstanding Vat (which was at that time under appeal) and an application from HMRC for the winding up of his Company consequent on alleged debts owed in respect of taxes and receipt of a couple of warning letters from finance and credit card companies, threatening to terminate access to such facilities." (§ 14)

18. On 22 November 2016 Mr Merrick wrote to Mr Williams, noting that he was facing a potential bankruptcy petition from HMRC and that "*the financial difficulties… that you are facing are extreme*". The letter included the following passages:

> "The position which you are currently in does not leave you with many options it has to be admitted. You currently are in the position that your trading company Onyx is the subject of a winding up petition. Your main trading company Homeshed has had filed against it a petition against it for it to be wound up by HMRC and a statutory demand has been issued against yourself personally also by HMRC.
>
> The winding up petition against Homeshed is currently stayed for 42 days but that stay expires early December.
>
> The statutory demand period for payment and avoiding a bankruptcy petition being filed expires on 22 November at midnight. Thereafter HMRC can file a bankruptcy petition.
>
> To compound, matters further, Nat West had appointed receivers of both your units at Penryn and they have also now appointed receivers of the land at Trelan.

The financial difficulties therefore that you are facing are extreme.

Rory Hardwick has made an offer to purchase your units at Penryn for £900,000 and to grant back to you a tenancy outside The Landlord and Tenant Act at a rent of £45,000 per annum. He is, so 1 understand, also agreeing to lend to you £450,000. The £450,000 Loan is to be secured against your land at Stithians, being Trelan Farm.

In a perfect world we would have in place a joint venture agreement between yourself and Rory Hardwick which was enforceable which dealt with the development of the Penryn sites which you currently own. Time is not going to permit there to be any sort of agreement in writing which is legally enforceable."

…

Further, as indicated aforesaid, if planning is obtained then the nature of the sharing of any profits is unclear and certainly not enforceable.

From my conversation with Tracey Bridgwater, it is proposed that there is a loan and not an acquisition of the land at Trelan. The loan would replace the loan of Nat West. The sale price to Neil Fessy is only £400,000. I have no instructions from anyone whether or not Rory would consent to a sale at £400,000. Orally you advised that Rory was not intending to sell Trelan, but was going to apply for planning to develop it etc. We need clarification as to what Rory's attitude is to Trelan and whether or not he is intending to purchase, or merely be a loan replacement.

As stated at the beginning of this letter, your present predicament is exceedingly precarious financially. Very shortly you will have lost control of all the property which you currently own. If could be argued that since receivers have been appointed for all the land that you own, that you already have.

The purpose of this letter is to advise you that on a basis on what is proposed by yourself with Roy Hardwick, you will be taking exceeding risks for which I will not be responsible.

I am sending you a copy of this letter by way of confirmation that I have advised you that if the matter proceeds as currently proposed, you will have no enforceable legal action against Rory should he vary from what he has proposed to you orally. From my discussions with you I do not believe that it has been really clarified what Rory is going to share with you. I appreciate that there is an urgency here and I appreciate that your position is

> precarious. The sale to Rory may well get Nat West and the receivers off your back now together with HMRC. What it will provide over and above settling the HMRC and Nat West liabilities I am unsure. Some form of Heads of Terms would be better than nothing. Please ask Rory."

19. Mr Merrick emailed Mr Williams on 8 December 2016 telling him that *"As regards the deal generally, the position is that we need to attempt to finalise the terms with [Mr Hardick], if we are proceeding with [Mr Hardick]. By the terms I mean what your interest will be in the build out and what options you have should planning consent not be achieved."*

20. The documents indicate that on 9 December 2016 a meeting took place between Mr Williams, Mr Merrick and Mr Hardick. After the meeting Mr Merrick emailed Tozers, solicitors acting for Mr Hardick, about matters arising from the meeting, copying in Mr Williams. The email indicates that the discussion at the meeting covered *"[Mr Williams'] debts, purchase price and what was being acquired potentially"*. The essential elements of the proposal were said to be for Mr Hardick (or a company controlled by him) to purchase the Penryn site and Trelan land, for a sum that would cover Mr Williams's indebtedness to NatWest and various other debts, and to grant a 3-year lease of the Penryn site to a new trading vehicle for Mr Williams. The email noted that the purchase price would be paid to Merricks, who would make the payments direct to NatWest and other creditors.

21. Mr Merrick on 15 December 2016 wrote a further, long letter to Mr Williams, "*to summarise where we are and the advice given*". This letter is important and it is necessary to quote from it at some length:

> "8. Throughout the past months and your financial difficulties, as you have tried to sell Trelan and proceed with the project to transform the site of Homeshed into student accommodation I have constantly advised you that the most important element to enable you to profit from the development of the Homeshed site is that you do not become a bankrupt. If you become a bankrupt then all assets and out of those assets will be paid your debts. The land at Trelan and the site of Penryn are all in your sole name and any rights against Nat West and thereafter would pass to your trustee in bankruptcy which you' currently have will be transferred to your Trustee in Bankruptcy."
>
> …
>
> "10. In the background, as your financial world has collapsed, has been Rory Hardick who appears to have the money to apply for Planning Consent on the Home Shed site and development/expansion of the site. From my discussions with you, it would appear that the Planning Application involving the construction and erection of student accommodation, covers more than just the Home Shed site. Rory Hardick is, so it would appear, a Banker. We have had meetings with both his Accountants, Francis Clark, and his Solicitors, Tozers. Initially

the deal with him was for him to come into a joint venture for the development of the site. You at one stage were agreeing with him that there would be a split with the eventual profits 50/50. Following the demise of Homeshed and Onyx and your own difficulties, those proposals and the joint venture has become impossible to pursue and we are now facing the position that what is being offered by Rory's team is quite simply settlement of the Natwest debt, plus £100,000 worth of costs on top, those costs in practical terms being debts of yours. In return for those payments, Rory would become owner of both the Home Shed site in total and the 51 acres of Trelan unsold. We had a meeting last Friday, and a copy of my attendance note is annexed. The forced sale value of Penryn without a tenant and of Trelan from arguably is not greater than he is paying"

…

Your options are therefore limited. I suspect that the option of passing the key back to NatWest will not produce a substantial sum. I further suspect that you will be unable to find backers to either re-mortgage the Nat West debt and/or progress from having redeemed the NatWest debt. It is your decision as to how you proceed from here but objectively it would appear that the only chance of your receiving any substantial funds out of the sale of Trelan Farm and the Britannia Yard is with Rory Hardick. It is not for me to make recommendations as to financial deals. That is your decision and I must not be held responsible for that decision. You should take guidance from your accountant and any other financial advisors whom you feel could assist. You should be wary of barrack room lawyers giving advice on potential claims. Your predicament is such that if a solution is not found then it is likely that you will be made bankrupt by HMRC whereupon any claims which you might have will pass to the receiver / trustee in bankruptcy.

This letter is lengthy and I apologise for that. My conclusions in suggesting that Rory Hardick is your only sensible prudent choice is one which I only suggest and do not recommend. With Rory Hardick it will be impossible to have a binding contract with him as to what you will be able to receive. The reason I state this is because until there is a planning consent there is no guarantee of any development gain. Once planning consent is obtained there is then the issue of the costs of exploiting that planning consent and/ or selling the land with the benefit of that planning consent. Because the planning consent is not in existence, one cannot calculate costs or calculate profit. I am certainly not in a position to advise on what profits are reasonable from the development since I am not aware of the nature of the exact development proposed on the Homeshed site. In the time available now, with your having a creditors meeting

> of Homeshed tomorrow, a winding up petition faced by Homeshed on Monday 19th December 2016 and an application to set aside a Statutory Demand listed for 19th January 2017, there is not time to make full and proper investigations. The decision on how to proceed as to be yours alone. As stated above, I suspect that in circumstances you have little choice.
>
> When we met Rory Hardick last Friday 9 December 2016, I attempted to extract from him, details of the deal. For the above mentioned reasons it is impossible for specifics to be given. I appreciate you need funds now and the deal on the table is not producing cash now. The debts which Rory is settling of yours will give you some access to cash, but it will depend on a great extent on the reaction of your credit card providers on the clearing of the balances. The arrangement proposed by Rory Hardick is that payment will be made by myself direct to various creditors. He wants assurance that you will not become a bankrupt immediately. It is in Rory Hardick's interest that you do not immediately go bankrupt because there would be a question mark over whether or not the sale price in an undervalue sale and contestable. An undervalue sale would and could be contested by your trustee in bankruptcy. Rory Hardick would, if the sale price was contested be in unenviable position that having paid he would be fighting to retain it. That is a matter for him not us.
>
> The issues for us/ you is to decide how you wish to proceed. The purpose for this letter is to explain to you the position you are in. It is to explain the consequences on going bankrupt. It is further to explain the difficulties you will have in rebutting fully the VAT claim if you take the stock."

22. Though the point was not foreshadowed in Mr Williams' witness statement in opposition to this application, nor in his counsel's skeleton argument, counsel at the hearing noted that the copy on file of this letter was unsigned, and that there was no evidence that it was sent by email. He initially suggested that the letter might have been created after the event in order to "negate" Mr Williams's claims. Towards the end of the hearing, following reply submissions by counsel for the Defendants, Mr Williams' counsel indicated that he was not submitting that the letter was a forgery, but his instructions were that Mr Williams had not seen the letter before. Even that is a somewhat extraordinary suggestion, bearing in mind that (a) the Defendants' subsequent letter of 11 March 2020 made express reference to *inter alia* the 15 December 2016 letter; (b) Ms Cummings' witness statement of 23 December 2020 in support of this application referred to, quoted (in part) and exhibited the letter; (c) the letter was listed as one of the enclosures to the Defendants' response to Mr Williams' notice of claim; and (d) Mr Williams' witness statement in opposition to the application refers to Ms Cummings' witness statement but makes no suggestion that she had relied on a letter that Mr Williams had not seen at the time it purported to be sent. In my view there is no basis for any suggestion that the 15 December 2016 was not sent to Mr Williams on the date it bears.

23. The contemplated transactions with Mr Hardick's company were completed a few days later, on 23 December 2016. Mr Williams' pleaded case is as follows:

> "12. The Claimant never gave any instruction to the 1st or 2nd Defendants, at any time or in any way, to sell the land or to dispose of it otherwise that in accordance with the partnership intention and, in defiance of express instructions from the Claimant, the 1st Defendant failed to draft or present any form of partnership agreement along the lines discussed.
>
> 13. The Defendants were negligent in failing to draft or present the partnership agreement or deed that he instructed them to construct to the Claimant for approval and signature at the material times, or at all.
>
> …
>
> 15. Although these were separate and discreet matters, and without any related express instructions to the Defendants from the Claimant; the 1st Defendant gave undertakings to Mr. Hardick and his Company in a letter of 22nd December 2016.
>
> 16. In that undertaking, without any instructions from the Claimant, either express or implied; the 1st Defendant undertook to Mr. Hardick to transfer the lands at Britannia Yard and Trelan Farm to his Company for the significant undervalued sum of only £318,390.
>
> 17. Additionally, the 1st Defendant also undertook to Mr. Hardick, again without any form of express or implied instruction from the Claimant; to deduct sums from the sale proceeds of the land so as to settle a series of finance and other debts said to be owed at that time by the Claimant, many of which he disputed either the existence or extent of; as well as his own fees which, astonishingly and considering what little work the Claimant had requested of the Defendants was largely unfinished or not started; were said to amount to some £14,000.
>
> 18. The Defendants were negligent and / or acted without instructions in respect of the undervalued sale and disposal of the land owned by the Claimant"

24. The documents indicate that on 22 December 2016 (under cover of an email sent at 13.14) Mr Merrick sent a letter to Mr Williams *"with the purpose of clarifying and ensuring that the extent of my obligations to you are understood by you"*. The letter included the following:

> "The transactions on which I have accepted instructions from you are as above; the sale of Trelan Farmhouse, the sale of Trelan farmland in two segments and the sale of the units at Penryn. You have serious financial difficulties. I am not advising you in

connection with your insolvency. You have been consulting Jeffrey Kirk in connection with the insolvency of Homeshed Limited and you were instructing Bishop Fleming in connection with the solvency of ONYX. Jeffrey Kirk has advised me, when communicating with him in connection with the Homeshed insolvency position, that he could not act for you in connection with your own personal insolvency. Jeffrey Kirk is aware of my professional relationship with Derek Jeale. Once again, the position over your insolvency is not a matter within my remit and is not one where I have accepted instructions.

The threat of bankruptcy against you personally has consequences should bankruptcy occur. I have advised you that transactions made within five years of your bankruptcy can be reviewed by your Trustee in Bankruptcy. You should be consulting an insolvency practitioner to learn and to be advised of your position and of your obligations to your creditors. I particularly refer to obligations of not having preferential treatments of creditors and of undervalue transactions.

Turning to the proposed development of the Penryn site for student accommodation with Rory Hardick, the extent of your instructions to me have not extended to dealing with the proposed "deal"' with Rory Hardick. We have had discussions, but I have declined to prepare any agreement and have indicated that I do not have the time produce a legal document with Rory Hardick detailing any proposed deal with him. I emphasise this element of the sale of the Penryn site particularly. I am not aware of what properties will be included in the project other than your site. I am not aware, and have not been privy to the negotiations between you and Rory save for the meeting fourteen days ago. At that meeting Rory Hardick made it clear that he was not in a position to enter into a legally binding agreement. As stated, I have not accepted instructions from you to be able to create such an agreement. I am aware from brief conversations with you that you have spoken to another lawyer in connection with the proposed agreement with Mr Hardick. You should be relying upon his advice not mine as to the legal and enforceability aspect of any discussions which you may have had with Mr Hardick. You must also bear in mind the costs of those negotiations would be borne by yourself.

Finally in this letter, we are on the cusp of probably completing the sale of the site at Penryn and of the farmland to Mr Hardick. I will be asked to provide undertakings to Mr Hardick's lawyers, Tozers, in connection with the division of the proceeds of sale. Due to their knowledge of your financial position they require that the debts which you have disclosed to them are paid out of the proceeds of sale. I have attached an email from Nick Tippet of Francis Clark which sets out the debts to be paid and which

Mr Hardick's solicitors are expecting me to undertake to pay from the proceeds of sale. By giving that undertaking to them I have no choice but to pay those debts. You cannot authorise me or instruct me once I have given those undertakings not to pay those debts.

The purpose of this letter is to advise you that your consent to my paying the debts listed on the attached is irrevocable. If and when the matter completes, it will be on the basis that I pay the attached debts.

Returning to the VAT position, I anticipate that I will have to give an undertaking to Mr Hardick's solicitors to pay the VAT arising on the sale to him, or his Company to HMRC. I, as stated above, have had no dealings with your VAT affairs, either personally or for your Company. There will be a calculation of VAT payable following the sale. You will need to instruct an accountant to deal with that element. Once again in relation to the undertaking which I give, that undertaking to pay HMRC will be irrevocable. I must pay HMRC the VAT which is due and payable currently by yourself resulting from this transaction. This transaction means the sale of the Penryn site and of Trelan Farm and farmlands. You need to instruct an accountant to calculate the amount of VAT payable on those transactions. We have had discussions as regards the deductions of the VAT which will have been paid by yourself in respect of payments for architects fees, my fees etc. There are also fees payable in connection with the receiverships affecting Trelan and the Penryn site. You will need to instruct an accountant to prepare the VAT returns. If no return is prepared then I will simply remit the VAT chargeable on the sale price. My undertakings to Tozers will be binding on me irrevocably. For there to be deductions in respect of the aforesaid, the accountant instructed at your cost will need to have confirmed that it is in order to deduct those sums from the VAT charged on the sale price of the Penryn unit.

As with some of my other clients there has been a communication between us which on official letters has been one way only i.e. I write and I do not receive much of or any acknowledgment. So that it is clear and indisputable that the above issues are understood by you I need you to acknowledge receipt of this email. An acknowledgment by email will suffice. I cannot give the undertakings required to complete without that acknowledgment.

You are aware, since I remitted to you yesterday, of the threat of seizing possession of land and units from NatWest. In practical terms you have to complete or lose control of the units and probably face bankruptcy. Please there acknowledge receipt of this advice and give me the authorities or otherwise instruct me."

25. The letter was accompanied by a copy of the email, referred to in the text, listing a total of £118,104 of Mr Williams' debts which Mr Hardick's solicitors were expecting Mr Merrick to undertake to pay from the proceeds of sale. As the 15 December letter had indicated, Mr Hardick had an interest in Mr Williams' debts being paid in order to avoid Mr Williams being made bankrupt, which could give rise to the prospect of the transaction with Mr Hardick being challenged as an undervalue transaction. Merricks' 22 December letter made clear that once Mr Merrick had given the undertaking, he would have no choice but to use the sale proceeds to settle the debts, and Mr Williams would be unable to instruct him to the contrary.

26. Mr Merrick emailed a second letter to Mr Williams, at 14.10 on 22 December 2016, summarising the proposed transaction, including the sale prices of £1,095,036 and £400,000 for the Penryn and Trelan properties respectively. The letter noted that Mr Williams had already signed the transaction documents but with the prices left blank. It also referred to the fact that after completion Mr Williams would have only a tenancy at will (at nominal rent) of the properties. In addition:

> "Further the terms of the sale of the site with Mr Hardick's company provide that the aforesaid debts are paid by myself out of the proceeds of sale. On the face of it therefore you will receive nothing save for the clearance of debts and that by the repayment of debt to the Receiver for ONYX owed by you personally for the certain kit and stock of ONYX you will receive the stock of ONYX (and through the payment of certain HP agreements and leasing agreements on equipment of ONYX / Homeshed) you will receive title to those vehicles."
>
> "The exchange of contract and completion is anticipated to take place simultaneously because of the threats from NatWest to repossess through the receiverships which affect both parcels of land subject to the sale to Mr Hardick.
>
> I wrote at great length last week over your options. I have written today separately advising that I cannot and have not accepted instructions in relation to creating a formally binding contract with Mr Hardick over the development of the Britannia Yard site.
>
> You must accept that the sale of the units is an independent exercise clearing debts and giving you the opportunity to start again with certain assets. …"
>
> "As stated in the separate letter of today's date, I am giving irrevocable undertakings to Mr Hardick's solicitors in connection with the settlement of the debts specified in Nick Tippet's email of yesterday. I need your acknowledgement and understanding of the terms of this letter so that I may then proceed to exchange and complete if Mr Hardick instructs his solicitors to proceed to an exchange."

27. At 15.44 on 22 December 2016, after transmission of both of Merricks' letters of that date, Mr Williams emailed Mr Merrick enclosing a handwritten document, signed and dated by him, saying:

> "Dear Richard,
>
> Sale of Trelan & Penryn
>
> As requested I confirm your email of today, that I give you authority to undertake as stated and I understand that cannot revoke my authority."

28. The transactions were completed on 23 December 2016 and the requisite undertaking was given to Mr Hardick. The key transaction documents, which Mr Williams had signed a few days previously, were:

    i) contract for sale of land and buildings at Trelan;

    ii) TR1 deed of transfer in respect of the Trelan land;

    iii) tenancy at will relating to the barns at Trelan Farm;

    iv) contract for sale of land at Penryn;

    v) TR1 deed of transfer in respect of the land at Penryn; and

    vi) tenancy at will relating to Britannia Yard/Penryn.

29. Mr Williams issued on 23 December 2016 a VAT invoice addressed to Mr Hardick's company reflecting the sale of the properties and splitting the sale price between principal and VAT.

30. Thereafter, on 3 January 2017 the Defendants confirmed in their letter to Mr Williams the amounts that were going to be paid from the sale proceeds to settle his various debts to third parties, in accordance with the undertaking given on 22 December 2016. Mr Williams telephoned the Defendants' offices, apparently to seek to instruct them "*not to send out any monies until he has seen [Mr Merrick]*". However, because the undertaking had been given, Merricks proceeded to discharge the identified debts.

31. The first indication of a potential claim came about three years later, with a Preliminary Notice dated 23 February 2020 from Mr Wareing, acting as Mr Williams' direct access barrister. Merricks responded on 11 March 2020 rejecting the intimated claim.

32. Without sending a letter of claim, but having received extensive documentation electronically in July 2020, Mr Williams issued his Claim Form on 24 November 2020.

33. Agreement was reached on 22 December 2020 to a direction for the listing of the Defendants' present application. Also on 22 December 2020, the Defendants' solicitors emailed a file sharing link to Mr Williams and his counsel. Ms Cummings explains in her witness statement:

> "… I have provided the Claimant with access to an electronic copy of the Defendants' files by way of Mimecast large file send email … This includes a reconfigured, chronological version of the file previously sent to the Claimant's direct access barrister on 16 July 2020 in respect of the properties referred to in the Particulars of Claim. … I have also sent to the Claimant by way of the same email described above an electronic version of the Defendants' file in respect of the Claimant's Receiver and complaint to the Financial Ombudsman Services about Natwest … These files are intended to include all correspondence (both electronic and hard copy), documents, file notes and attendance notes from the Defendants' retainers for the Claimant from 2016 onwards (save for a small file opened to deal with a Statutory Demand by HMRC which was set aside by an Order dated 29 July 2017 …, which Order I have also sent to the Claimant and his direct access barrister. I am informed by Mr Merrick that, to the best of his knowledge, these files provided to the Claimant are complete and he is not aware of any other correspondence, documents, file notes or attendance notes from the Defendants' retainers for the Claimant from 2016 onwards."

34. Mr Merrick has also served a witness statement, in which he explains as follows:

> "16. My practice is and was at the time to make handwritten notes in blue counsel's notebooks. Usually, one of three things would happen to those notes. They may form the basis of a typed attendance note. They may be torn out and put onto the appropriate, physical file. Or, if they did not in my view at the time warrant either of those actions, then the notes would stay where they are in my notebook. I retain my notebooks in a storage area at the firm's offices. Although it is technically possible for me to retrieve a note from within the notebooks, it would be very difficult indeed for a specific note to be located.
>
> 17. I confirm that every attendance note from the files relating to the matters set out in the Particulars of Claim has been disclosed. That is not to say that there may not be notes within the notebooks that relate to the Claimant's matters, but if there are I will not have regarded them as sufficiently significant to warrant being added to the files. All handwritten attendance notes were prepared contemporaneously. The only contemporaneous typed attendance note is that dated 24 November 2016, recording an attendance on Tozers (for Mr Hardick).
>
> 18. A total of 3 filed handwritten attendance notes, spanning the period from November 2016 to December 2016 were provided to the Claimant. One contemporaneous typed attendance note was provided.
>
> 19. All other typed attendance notes in the disclosed files are summaries of telephone calls created from the audio recordings

> of those calls. Those summaries were created from the audio recordings in July 2020. 61 typed summaries of recorded telephone conversations were provided, spanning the period from July 2016 to December 2016.
>
> 20. I believe that every non-contemporaneous summary of the telephone recordings that we created has been provided to the Claimant (in July/December 2020). In terms of the creation of those summaries, Foster Merrick has informed me that he listened to every call recording that was linked to the Claimant's phone numbers for the relevant period (i.e., March to December 2016), of which there were very many. Foster then dictated summaries of those recordings that appeared to him to include any substantive exchanges (i.e. he only chose not to dictate summaries for those calls that appeared inconsequential)
>
> 21. The Defendants disclosed the files to the Claimant and his direct access barrister in July 2020. Following this, the Claimant and his barrister queried two typed attendance notes (or what I would describe more accurately as summaries of telephone calls) dated 14 and 17 November 2016. At "RM1/A215 - A218" I exhibit my fellow director (and son) - Foster Merrick's - emails dated 29 July 2020 and 31 July 2020 in reply to these queries. Foster's emails were accurate and true.
>
> 22. I therefore believe that copies of all 4 contemporaneous attendance notes on the file (all of which were created in November and December 2016) have been provided to the Claimant (in July/December 2020) and that there are no other contemporaneous attendance notes on the files for the period between March and December 2016. Given my practice, I do not believe that there are likely to be any significant records within my blue books themselves."

35. The present application was filed and served on 23 December 2020. It was emailed to Mr Williams and to his barrister on the day it was filed. The parties agreed directions for the listing of the application, including the date for service of Mr Williams's evidence in response, which was embodied in an order drawn on 30 December 2020. Mr Williams nonetheless attempted to obtain judgment in default of Defence, by request and by application. The latter application, by notice dated 15 February 2021 also included an application to extend time for service of evidence in response to the summary judgment application. That, too, was disposed of by a consent order made on 24 March 2021 (albeit the costs have been reserved to the present hearing).

(D) PRINCIPLES: SUMMARY JUDGMENT

36. The Court of Appeal in *The LCD Appeals* [2018] EWCA Civ 220 §§ 38-39 set out the principles to be applied to applications for summary judgment under CPR 24.2 and strike-out under CPR 3.4(2)(a):

> "The court may strike out a statement of case if, amongst other things, it appears that it discloses no reasonable grounds for bringing the claim: CPR 3.4(2)(a). It may grant reverse summary judgment where it considers that there is no real prospect of the claimant succeeding on the claim or issue and there is no other compelling reason why the case should be disposed of at trial: CPR 24.2(a)(i) and (b). In order to defeat an application for summary judgment it is only necessary to show that there is a real as opposed to a fanciful prospect of success. Although it is necessary to have a case which is better than merely arguable, a party is not required to show that they will probably succeed at trial. A case may have a real prospect of success even if it is improbable. Furthermore, an application for summary judgment is not appropriate to resolve a complex question of law and fact."

37. The Court of Appeal quoted with approval the following considerations applicable to summary judgment applications, taken from passages in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) and *Swain v Hillman* [2001] 1 All ER 91 at 94:

    i) the court must consider whether the claimant has a "*realistic*" as opposed to a "*fanciful*" prospect of success: *Swain v Hillman* [2001] 1 All ER 91;

    ii) a "*realistic*" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 § 8;

    iii) in reaching its conclusion the court must not conduct a "*mini-trial*": *Swain v Hillman*;

    iv) this does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* § 10;

    v) however, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

    vi) although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 3;

vii) on the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725"; and

viii) a judge in appropriate cases should make use of the powers contained in Part 24. In doing so he or she gives effect to the overriding objective as contained in Part 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose; and it is in the interests of justice. If the claimant has a case which is bound to fail, then it is in the claimant's interest to know as soon as possible that that is the position: *Swain v Hillman* [2001] 1 All ER 91 § 94.

38. Mr Williams particularly highlights:

i) Potter LJ's statement in *ED & F Man* that *"where there are significant differences between the parties so far as factual issues are concerned, the court is in no position to conduct a mini-trial"* (§ 10); and

ii) Lord Woolf MR's statement in *Swain*, relating the factual disputes which arose there, that:

> "Those are matters which will have to be considered carefully by the judge at the trial. I am not seeking to indicate what his view should be on those facts. It is a matter to be dealt with by the judge at a trial and not at a summary hearing. Useful though the power is under Part 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial. As Mr Bidder put it in his submissions, the proper disposal of an issue under Part 24 does not involve the judge conducting a mini trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily." (§ 20)

39. Mr Williams in his witness statement also cited Ward LJ's judgment in *Balamoody v. United Kingdom Central Council for Nursing, Midwifery and Health Visiting* [2002] ICR 646, for the suggestion that the question is whether or not Mr Williams's case is "*reasonable*". However, that was an appeal arising out of a strike-out under the Employment Tribunal Rules of Procedure 1993 on the ground that the claim was "*scandalous, frivolous or vexatious*". The Court of Appeal held that the tribunal chair had correctly asked herself whether the claim had no substance whatsoever and was

bound to fail, which fell within the meaning of the words of the rule, rather than whether it had no reasonable prospect of success, which was a lower standard (see §§ 37-46). In my view all one can draw from this authority in the context of summary judgment is the Court of Appeal's indication that a case may be the subject of summary judgment under the CPR, on the ground that it has no reasonable prospect of success, even without the applicant having to show that the case is "*utterly hopeless and bound to fail*" (§ 46).

(E) PRINCIPLES: STRIKE OUT APPLICATION

40. Pursuant to CPR 3.4(2), a claim may be struck out if it discloses no reasonable grounds for bringing the claim, or is likely to obstruct the just disposal of the proceedings, or if there has been a failure to comply with a rule or practice direction.

41. CPR 16.4(1)(a) provides that particulars of claim must include "*a concise statement of the facts on which the claimant relies*". The Defendants cited two authorities indicating the application of this requirement in the context of a professional negligence claim.

42. In *Pantelli v. Corporate City Developments* [2010] EWHC 3189 (TCC), [2011] PNLR 12 Coulson J said:

> "CPR r.16.4(1)(a) requires that a particulars of claim must include "a concise statement of the facts on which the claimant relies". Thus, where the particulars of claim contain an allegation of breach of contract and/or negligence, it must be pleaded in such a way as to allow the defendant to know the case that it has to meet. The pleading needs to set out clearly what it is that the defendant failed to do that it should have done, and/or what the defendant did that it should not have done, what would have happened but for those acts or omissions, and the loss that eventuated. Those are "the facts" relied on in support of the allegation, and are required in order that proper witness statements (and if necessary an expert's report) can be obtained by both sides which address the specific allegations made." (§ 11)

43. Similarly, in *Andrews v. Messer Beg* [2019] EWHC 911 (Ch), [2019] PNLR 23, Stephen Jourdain QC (sitting as a High Court Judge) said:

> "The function of a pleading which asserts a claim, including an additional claim, is to set out a concise statement of the facts on which the claimant relies as giving the claimant a cause of action against the defendant: see CPR r.16.4 . The claimant should state all the facts necessary for the purpose of formulating a complete cause of action against the defendant. Such a pleading needs to give the defendant such reasonable and proportionate information about the facts alleged as is required to enable the defendant to understand the case he has to meet and to prepare his defence." (§ 20)

44. An adequately particularised statement of case meeting these requirements is necessary to that the defendant can understand the case he has to meet, and so that the court can

identify the issues and, hence, the disclosure and evidence it is likely to require. The lack of such a statement of case is thus not only a breach of the CPR but also likely to obstruct the just disposal of the proceedings.

(F) ANALYSIS: BASE RATE SWAP

45. It is evident from the summary in section (B) above that the process of applying for compensation, agreeing terms and receiving redress had been completed by 20 October 2014, which is more than 6 years before the claim form was issued on 12 November 2020.

46. It follows that any claim, whether made in contract or in tort, for negligent advice by the Defendants as to the claim for compensation or the terms on which Mr Williams agreed to receive redress, is time barred. No basis for postponing the limitation period was advanced or is apparent. Counsel for Mr Williams did not advance any contention to the contrary in the hearing before me. Accordingly, the base rate swap claim can have no real prospect of success, and the Defendants are entitled to summary judgment on it.

(G) ANALYSIS: HARDICK TRANSACTIONS

(1) Summary judgment

47. In my judgment it is clear from the contemporary documents summarised in section (C) above that none of the elements of Mr Williams' claim has any realistic prospect of success, and that there is no compelling reason why the case should be disposed of in a trial.

48. The first element, chronologically, of Mr Williams's claim is that the Defendants negligently failed to carry out his instructions by drafting or presenting any form of partnership agreement or deed for Mr Williams' signature. However, the documents make clear that:

    i) there was at the relevant time no commercial deal, still less one of any clarity, between Mr Williams and Mr Hardick about any partnership or joint venture, so there was nothing that could be reduced to writing in the form of a partnership agreement/deed or even heads of terms;

    ii) Mr Merrick had expressly declined to accept instructions to deal with the proposed partnership/joint venture with Mr Hardick (see both of the 22 December 2016 letters);

    iii) following the demise of Mr Williams' Homeshed and Onyx ventures, and Mr Williams' own financial difficulties, the mooted joint venture with Mr Hardick had become impossible to pursue, and all that was now on offer from Mr Hardick, despite the efforts made at the meeting on 9 December 2016, was the purchase of the two properties; Mr Hardick had made clear he was not in an position to enter a binding agreement with Mr Williams other than one for the simple purchase of the properties: see, e.g., the 15 December 2006 letter and the first 22 December 2016 letter;

iv) Mr Merrick explicitly warned Mr Williams that no binding agreement was in place and that the only transaction being undertaken was the sale of the properties: see, e.g., the 22 November 2016 letter ("*Some form of Heads of Terms would be better than nothing*") and the second 22 December 2016 letter;

v) Mr Merrick made clear to Mr Williams that it was his own decision how to proceed, albeit in Mr Merrick's view the terms on offer from Mr Hardick were probably Mr Williams' only sensible prudent choice (see the 15 December 2016 letter); and

vi) Mr Williams's financial problems were in any event so pressing that time would have not permitted the negotiation and finalisation of a binding written agreement (see e.g. the 22 November 2016 letter).

49. In these circumstances, any contention that the Defendants had breached a duty of care by failing to carry out instructions which they had expressly not accepted, and which in any event were (as matters stood between Mr Williams and Mr Hardick) incapable of bringing about a binding partnership or joint venture agreement, can have no real prospect of success.

50. Secondly, the allegation that Mr Williams never gave instructions to sell the properties *"otherwise than in accordance with the partnership intention"* (Particulars of Claim § 12) is hopeless. The correspondence I have referred to made it perfectly clear that the only transactions ultimately proposed were the sale of the properties, together with tenancies at will in favour of Mr Williams, and that no binding partnership existed. Nonetheless, Mr Williams proceeded to sign the transaction documents, and (after receiving, and in response to, the 22 December 2016 letters) gave written instructions to the Defendants to give the required undertakings as to the proceeds of sale. He also issued a VAT invoice to reflect the sale transactions. There can be no doubt that Mr Williams authorised the Defendants to proceed with the sales as freestanding transactions.

51. Thirdly, the allegation that the Defendants gave undertakings to Mr Hardick and his company without Mr Williams's instructions is flatly contradicted by the written instructions Mr Williams provided on 22 December 2016 after receipt of the Defendants' two letters.

52. Fourthly, the allegation that the Defendants used sale proceeds to settle debts or (Mr Williams now says) alleged debts without any form of express or implied instruction from Mr Williams is also plainly contradicted by Mr Williams's written instructions to Merricks to undertake to pay those debts.

53. It is also striking, in relation to all four of these matters, that no complaint or intimation of a claim appears to have been made until some three years later.

54. Mr Williams' evidence in response to this application comprises a three-page witness statement which makes certain assertions regarding procedural matters and an alleged lack of contemporaneous attendance notes, but puts forward no substantive version of events, nor any documentary support for the case set out in his Particulars of Claim.

55. As to attendance notes, Mr Williams' witness statement claims that the Defendants have produced *"a palpably incomplete file (the attendance notes)",* and his counsel's skeleton argument submits that the court cannot resolve this case without seeing *"the contemporaneous attendance notes of Mr. Merrick concerning the matters in issue which would relate to matters discussed with the Claimant, any advice given and instructions the Defendants say they received"*. The skeleton argument makes the point that whilst the Defendants have provided typed up attendance notes, they have not provided the metadata for those notes, nor the underlying handwritten notes.

56. However, as explained in Mr Merrick's witness statement quoted above, every contemporaneous attendance note from the firm's files for these matters has been disclosed, comprising three filed handwritten attendance notes and one typewritten attendance note, spanning the period from November to December 2016. All the other typed attendance notes disclosed to Mr Williams were summaries of telephone calls created from the audio recordings of those calls, comprising 61 typed summaries of recorded telephone conversations spanning the period July to December 2016: and there is no reason to believe the metadata of those transcriptions could be of any relevance. I have already quoted Ms Cummings' evidence to the effect that, based on her instructions, the entire files have been disclosed. In these circumstances, I see no real basis for any suggestion that relevant documents remain to be disclosed, or that the case should for that reason be allowed to proceed to trial.

57. More generally, Mr Williams suggests that the Defendants' evidence would need to be tested in cross-examination and then be the subject of rebuttal evidence from Mr Williams. However, the contemporary documents are completely inconsistent with Mr Williams's case, and in his evidence he advances no plausible basis on which his case could be correct notwithstanding those documents, nor to the effect that the documents are inaccurate or in any relevant way incomplete.

58. In all these circumstances, I conclude that Mr Williams' case in relation to the Hardick transactions has no real prospect of success and there is no compelling reason for the claim to proceed to trial.

(2) Striking out

59. In the light of my conclusion in section (F)(1) above, it is not necessary to consider the Defendants' alternative application that the claim relating to the Hardick transactions should be struck out on the basis that it fails to comply with the need for proper particularisation under the principles summarised in section (E) above. I therefore consider it here only briefly.

60. The essence of the Defendants' application is that, although the claim makes serious allegations and seeks a substantial sum by way of damages, Mr Williams' Particulars of Claim do not identify (i) what duty the Defendants are alleged to have owed to him, (ii) specifically when and in what way the duty was breached, (iii) what Mr Williams alleged would have happened but for the breach, (iv) what loss is said to have been caused, or (v) (with as much precision as possible) the quantum of that loss.

61. For convenience, I use again the four-fold classification of Mr Williams' claim used in §§ 48-52 above.

62. As to the first element (failure to draft or present a partnership agreement/deed), I would have concluded that this claim should be struck out. The Particulars of Claim fail to identify (i) when and how the Defendants were allegedly instructed to draft such a document, (ii) when and how the Defendants allegedly accepted such instructions, (iii) what the terms of any such draft document would have been, (iv) whether, when, and if so on what terms, Mr Hardick or his company would have executed any such document, or (v) what the alleged outcome would have been had such a document been drafted, presented and executed by both parties. This part of the claim in my view accordingly fundamentally fails to comply with the requirements considered in section (E) above and would have been struck out.

63. The second to fourth elements of the Particulars of Claim are more focussed. Although the second element is in part connected with the partnership allegation, I would have been inclined to the view that it could have stood as a freestanding allegation that, in the absence of a concluded partnership agreement, the Defendants had no instructions to complete the sale transactions. The third and fourth elements, whilst briefly pleaded, would also in my view have survived a strike-out application. Since, however, I have found none of them to have any real prospect of success, the point is moot.

(H) THE CLAIM AGAINST MR MERRICK PERSONALLY

64. Mr Williams has sued both Mr Merrick personally and his firm. Mr Merrick contends that he could in any event have no personal liability in relation to the claim made in relation to the Hardick transactions.

65. Although the Second Defendant is sued as "*Merricks Solicitors*", that is (as its correspondence makes clear) the trading name of Merricks Solicitors Limited. The disclosed correspondence indicates that as at 6 April 2016 the practice was a partnership between Mr Merrick and another partner, but that by 16 May 2016 it had been incorporated into Goldblack Limited, which on 13 June 2016 was renamed as Merricks Solicitors Limited. Mr Merrick and three other persons were its directors.

66. Mr Williams' claim in relation to the interest rate hedging product concerns matters occurring before the partnership incorporated, but the Hardick transaction allegations all related to alleged acts or omissions after the practice began to operate as a limited company.

67. The Defendants submit that a director does not assume personal liability for the work that he or she does in the course of employment or rendering services except in special and limited circumstances: see, e.g., *Williams v. Natural Life Health Foods* [1998] 1 WLR 890:

> "What matters is not that the liability of the shareholders of a company is limited but that a company is a separate entity, distinct from its directors, servants or other agents.
>
> …
>
> Whether the principal is a company or a natural person, someone acting on his behalf may incur personal liability in tort as well as imposing vicarious or attributed liability upon his principal. But

> in order to establish personal liability under the principle of *Hedley Byrne*, which requires the existence of a special relationship between plaintiff and tortfeasor, it is not sufficient that there should have been a special relationship with the principal. There must have been an assumption of responsibility such as to create a special relationship with the director or employee himself." (p835 A-C per Lord Steyn)
>
> "The inquiry must be whether the director, or anybody on his behalf, conveyed directly or indirectly to the prospective franchisees that the director assumed personal responsibility towards the prospective franchisees." (p835H)
>
> "Returning to the particular question before the House it is important to make clear that a director of a contracting company may only be held liable where it is established by evidence that he assumed personal liability and that there was the necessary reliance. There is nothing fictional about this species of liability in tort." (p837G)

68. Thus, the Defendants submit, there is no presumption that a duty of care is owed to third parties by a director or an employee when acting in that capacity. It is not sufficient for a claimant may plead, baldly, that a duty was owed to him, without explaining how and why a duty of care is said to have arisen.

69. In my view Mr Merrick is correct on this point. Mr Williams has not pleaded any basis for an allegation that Mr Merrick, as opposed to Merricks Solicitors Limited, assumed any personal liability to Mr Williams in respect of acts or omissions occurring after the practice reconstituted itself as a company. I would therefore in any event have struck out as against Mr Merrick the claims relating to the Hardick transactions.

(I) CONCLUSIONS

70. For the reasons set out above, the Defendants are entitled to summary judgment in relation to the whole of the claims made in this action. Had I not granted summary judgment, I would in any event have struck out (a) as against Mr Merrick, all the claims relating to the Hardick transactions, on the basis that the claim contains no or insufficient allegations as to the basis on which Mr Merrick could be personally liable in respect of those matters; and (b) as against both Defendants, the element of the Hardick transaction claim concerning alleged failure to draft or present a partnership agreement, on the basis that that element of the claim is wholly inadequately particularised.