In The Supreme Court of Bermuda

CIVIL JURISDICTION
2019 No: 222

BETWEEN:

BARBARA BLADES LINES
(Beneficiary of Barbara Blades Lines Nonexempt Trust)

1st Plaintiff

ROBERT BLADES
(Trustee of Barbara Blades Lines Nonexempt Trust)

2nd Plaintiff

And

PRICEWATERHOUSECOOPERS
d/b/a PWC & ABACUS TRUST LIMITED

1st Defendant

CLARIEN BANK LIMITED

2nd Defendant

RULING

Dates of Hearing: Friday 29 January 2021
Date of Ruling: Wednesday 26 May 2021

1st Plaintiff: In Person
2nd Plaintiff: In Person

1st Defendant: Mr. Rhys Williams (Conyers Dill & Pearman Limited)
2nd Defendant: Mr. Jairaj Pachai (Wakefield Quin Limited)

Application to strike out Writ (RSC Order 18/9) and Court's Inherent Jurisdiction / Requirement for Allegations of Fraud to be clearly pleaded and particularised / Difference between Primary Facts and Conclusory Facts on Pleadings/ Whether Pleadings are an embarrassment for an omission of material facts/ Whether action is time-barred under the Limitation Act 1984 / Application for the Disqualification of Counsel on grounds of conflict of interest / Application for a Stay of Proceedings pending DPP's consideration of criminal charges

RULING of Shade Subair Williams J

Introduction

1. There are three applications presently before the Court:

   (i) The Plaintiffs' application for the Court to direct the disqualification of Conyers Dill & Pearman ("CDP") so to prevent any attorney of that law firm from representing the 1st Defendant on the grounds of a conflict of interest;

   (ii) The Defendants' application to strike out these proceedings; and

   (iii) An application by the Plaintiffs for the stay of these proceedings

2. Having received oral and written arguments in respect of all three applications, I reserved judgment and informed the parties that a written decision of the Court would likely be forthcoming within the usual 6 week time-frame. Regrettably the production of this Ruling has been unavoidably delayed by my assignment to other priority Court matters in addition to a recent COVID-19 country-wide 4-week "Shelter in Place". I thank the parties for their kind patience in awaiting this Ruling which I now provide with the below reasons.

Background Facts

3. The relevant factual background is outlined in the affidavit evidence of the 2nd Plaintiff, Mr. Robert Blades and Mr. Keir Savage, a director of Abacus Trust Ltd ("Abacus"). I would note from the outset that issue was taken by the 1st Defendant that Abacus and PricewaterhouseCoopers ("PwC") are separate corporate entities and that PwC, notwithstanding the Plaintiffs' pleadings or the resulting Court heading, has never done business in the name of Abacus. I accepted this point made out on the evidence before me [see paragraphs 39-41 below]. Accordingly, where the Plaintiffs refer to PwC in their pleadings or submissions, I have treated those pleadings as if the reference was made to Abacus alone.

   The Barbara Blades Lines GST Non-Exempt Trust

4. Ms. Blades Lines is said to be the beneficiary of the Barbara Blades Lines GST Non-Exempt Trust ("the BBL Trust"). Mr. Blades is one of the two appointed trustees of the BBL Trust. The second trustee is Mr. Blades' brother, Mr. Richard Mills Blades.

The Lone Star Trust

5. On 16 May 1996, Mr. Grenville Lines and Ms. Blades Lines were married. Mr. Lines settled the Lone Star Trust ("the LS Trust") as a family discretionary trust. However, neither Ms. Blades Lines nor the BBL Trust are beneficiaries of the LS Trust. Colica Trust Company Limited ("Colica") was named as the trustee of LS Trust and was appointed an unfettered discretionary power in respect of the sale, distribution and handling of the assets of the LS Trust.

Acquisition of "Little Rock" by the Lone Star Trust (The First and Second Mortgages)

6. Ten days after Mr. Lines and Ms. Blades Lines were married, the LS Trust acquired property known as "Little Rock" located at 22 Rockville Lane Pembroke for the purchase price of $750,000.00. I shall refer to this sole trust asset as "the property" or as "Little Rock".

The First Mortgage

7. The purchase of the property was partly facilitated by a $400,000.00 loan from Butterfield Mortgage & Finance Limited ("Butterfield") in the form of a mortgage on the property which has been termed "the First Mortgage". Under the First Mortgage, dated 27 May 1996, Colica, as the trustee of the LS Trust, was the mortgagor and Butterfield was the mortgagee. Mr. Lines and Ms. Blades Lines in addition to the BBL Trust were the guarantors.

The Second Mortgage

8. The LS Trust borrowed a further sum of $300,000.00 to make good the purchase of the property. That second loan was advanced by Ms. Blades Lines' mother, Ms. Eloise Blades, and was secured by "the Second Mortgage". The Second Mortgage, dated 1 July 1996, was made between Colica as the mortgagor, Ms. Eloise Blades as the mortgagee and Mr. Lines and Ms. Blades Lines as guarantors. Butterfield was also party to the Second Mortgage as a show of its concurrence with the terms agreed.

The Leasing of Little Rock and the Appointment of a New Trustee of the LS Trust

9. On 13 August 1996 Colica, as the trustee of the LS Trust, entered into a lease agreement ("the Lease") with Mr. Lines who became the tenant of Little Rock where he cohabited with Ms. Blade Lines throughout their marriage.

10. The following year, by a 'Deed of Retirement and Appointment of New Trustee' dated 10 March 1997, Abacus replaced Colica as the trustee of the LS Trust.

Assignment of Second Mortgage from Ms. Eloise Blades to the BBL Trust

11. On 8 September 2008, following the death of Ms. Eloise Blades, the Second Mortgage was assigned to the trustees of the BBL Trust, namely Mr. Bob Blades and his brother Mr. Richard Mills Blades. The parties to the Assignment of Second Mortgage were Mr. Bob Blades and Mr. Richard Mills Blades as both the assignors on behalf of the estate of Ms. Eloise Blades and the assignees as trustees on behalf of the BBL Trust. Butterfield was also party to the Assignment of Second Mortgage to signify its consent.

Arrears and Refinancing of the First Mortgage with the First Bermuda Group Limited

12. Mr. Savage stated in his evidence that on 11 August 2009, a year after the making of the Assignment of Second Mortgage, Mr. Lines applied to First Bermuda Group ("FBG") (now known as Clarien, the 2nd Defendant) for a loan in the sum of $960,000.00 to refinance the First Mortgage as the original $400,000.00 loan sum from BNTB had fallen into arrears. Additionally, Mr. Lines was looking to renovate the property.

13. On 13 January 2010 Abacus (the mortgagor), Mr. Lines and Ms. Blades Lines (the guarantors) and FBG (the mortgagee) executed "the New First Mortgage". This moved the First Mortgage from Butterfield to FBG who became the holder of the New First Mortgage.

14. Relevant to the facts pleaded by the Plaintiffs, the New First Mortgage contained a provision empowering FBG to sell the property without the need for consent or notice to any person in the event of default on any of the provisions of the New First Mortgage [4(a)]:

"*Power of Sale*
That it shall be lawful for the Mortgagee at any time or times after the date of this deed and without any further consent on the part of or notice to the Mortgagor or any person or persons whomsoever to sell the Property if and when the Mortgagor shall fail to comply with any provision hereof."

The Deed of Postponement- Subordinating Repayment under Second Mortgage

15. On the face of a Deed of Postponement made on the same date as the New First Mortgage ("the Deed of Postponement"), Mr. Bob Blades and Mr. Richard Mills Blades as trustees of the BBL Trust (having been assigned the Second Mortgage) agreed that the Second Mortgage with the BBL Trust would be subordinate to the New First Mortgage with FBG:

"*1. That in pursuance of the said agreement and in consideration of these presents the parties hereto HEREBY AGREE AND DECLARE that notwithstanding anything contained in the Second Mortgage and the Assignment thereof and notwithstanding any provisions of law or equity to the contrary and notwithstanding the provisions of The Mortgage Registration Act 1786 the New First Mortgage and the New First Mortgage Principal Sum thereby secured and interest thereby secured and all the powers covenants and provisions therein contained shall stand in preference and in priority before the Second Mortgage and the Assignment thereof*

and the remaining principal balance of the Second Mortgage Principal Sum thereby secured for all purposes whatsoever and that the New First Mortgage shall have (as against the Second Mortgage) all and singular rights and priority of a First Mortgage.

2. THE PARTIES hereto agree that nothing herein contained shall as between the Mortgagor and the Second Mortgagee affect or prejudice any of the rights or remedies of the Second Mortgage under the Second Mortgage which shall remain in full force subject only to the New First Mortgage and the postponement of the security of the Second Mortgage shall be deemed to relate only to the monies advanced by the New First Mortgagee be deemed to confer on it any like right of priority over the Second Mortgagee."

Default on payment of Land Tax obligations for Little Rock

16. At paragraph 3(p) of the Lease, Mr. Lines covenanted to "*pay all rates taxes and assessments, including Land Tax now or at any time due or levied upon the Property*." However, by 2010 Mr. Lines had defaulted on his lease obligations and on the land tax payments for which he was contractually responsible under the Lease. On 28 June 2010 the Minister of Finance issued writ proceedings against the former trustee, Colica, for $52,696.15 worth of unpaid land taxes on Little Rock. Subsequently, these proceedings were brought to an end and the outstanding sum owed was paid in full.

The Divorce Proceedings between Mr. Lines and Ms. Blades Lines

17. In 2011 Ms. Blades Lines commenced divorce proceedings against Mr. Lines (Case No. 24 of 2011) and joined Abacus to those proceedings in aid of discovery applications before the Court. In November 2012 Mr. Lines vacated Little Rock as directed by Wade-Miller J's Order of 26 September 2012.

18. On Mr. Savage's evidence it is said that the assets of the LS Trust were insufficient to meet the obligations of the New First Mortgage which fell into arrears and on 26 September 2012 the Court directed Abacus to sell the property. On 23 May 2013 Kawaley CJ ordered that Little Rock could be marketed below $1,400,000.00 and sold for the offer price of $1,250,000.00 ("the 23 May Order"). Mr. Savage's evidence is that Ms. Blades Lines' attorneys from Marshall Diel & Meyers were present at that Court hearing and made no objections to any of the terms of the 23 May Order. However, through party correspondence with Abacus, Mr. Bob Blades (as the Second Mortgagee in his capacity as trustee for the BBL Trust), was expressly clear in communicating the BBL Trust's objections to the sale of the property for the sum approved by Kawaley CJ. This was significant as the trustees of the BBL Trust were not party to any of these Court proceedings and so were not bound by the 23 May Order.

The Civil Proceedings brought by FBG for Possession of Little Rock and Power of Sale

19. So to bottom-line what then followed, the BBL Trustees maintained their opposition to the sale of the property on the terms directed under the 23 May Order. FBG then commenced civil proceedings for a possession order and for an order granting it a power of sale as the mortgagee under the New First Mortgage. By this point, FBG had a contractual power to sell the property upon any default of the terms of the New First Mortgage pursuant to the Deed of Postponement which provided for FBG to proceed to a sale without any notice obligations. Additionally, the terms of the Deed of Postponement positioned FBG with top priority for full repayment from any proceeds of the sale.

20. Mr. Savage's evidence is that Abacus put Mr. Blades on notice that it would consent to FBG's Court applications for the orders for possession and sale, as Abacus had no basis to oppose those applications. By Consent Order made by Kawaley CJ on 18 December 2013 FBG was granted possession of Little Rock and given a power of sale for the property to be sold at the highest value that could be achieved in the then current market. FBG's sale of Little Rock was thereafter completed on 29 July 2014 for a total sale price of $1,248,000.00 as explained by Mr. Savage's evidence. Mr. Savage deposed that the remainder sum available for payment into the BBL Trust (after full payment on the New First Mortgage) was $27,946.00. This sum fell woefully short of what the Plaintiffs considered acceptable. Aggrieved by the shortfall, the Plaintiffs accused Abacus and FBG (now Clarien) of fraudulent and negligent conduct and eventually issued these proceedings with which I am now concerned.

The Plaintiffs' Pleadings

21. The Plaintiffs' jointly pleaded case is made out in a 52-page document entitled "First Amended Writ" ("the Amended Writ") which contains a Statement of Claim and Particulars in addition to four separate appendices, each labeled "Exhibit…". In the Statement of Claim against the 1st Defendant, the Plaintiffs state:

   "*The Plaintiffs claim that Defendants breached their fiduciary duty to exercise reasonable care, skill and caution, breached their fiduciary duty to act honestly and in good-faith, breached their fiduciary duty to obey the terms of the Trust, breached their fiduciary duty to keep accounts and communicate those accounts to the beneficiaries, committed fraud against the Plaintiffs, breached the terms of a mortgage agreement with Plaintiffs, intentionally inflicted emotional distress on Barbara Blades Lines and her family, and were negligent and grossly negligent in their position as trustees causing Plaintiffs lost profits, lost property, pain and suffering, mental anguish, and emotional distress.*"

22. In their Particulars against the 1st Defendant, the Plaintiffs say:

"*The Plaintiff, Barbara Blades Lines, is a Bermudian and a United States citizen and beneficiary of the Barbara B. Lines Nonexempt Trust ("BBL Trust"). Barbara Blades Lines is the mother of an autistic son, who is a contingent beneficiary of the BBL Trust. The Plaintiff, Robert Blades, is a United States citizen who serves as a Trustee for the BBL Trust. The BBL Trust holds a second mortgage on property owned by the Lone Start Trust ("LST"). LST owned the property located at 22 Rockville Lane, Pembroke Bermuda (the "Little Rock home"). The Little Rock home was fraudulently foreclosed on in 2014, and the Plaintiffs bring this action as holders of the related claims and rights to that property.*

Defendant, PricewaterhouseCoopers (PwC), owns and/or controls Defendant Abacus Trust Ltd. ("Abacus, "formerly Colica Trust Co, Ltd.), the current trustee of LST. As the trustee, Abacus and PwC had a responsibility to pay real estate taxes from 2000 to 2010 on the only asset in the trust which was the Little Rock home. Defendants never disclosed the fact that these taxes had not been paid despite their fiduciary duty to do so. Additionally, Defendants failed to disclose these unpaid taxes as required by the mortgage agreements that subordinated the mortgage held by the BBL Trust.

In 2014, PwC was informed by the BBL Trust that a foreclosure would only be allowed in the event of a full payment. Despite repeated written notices, PwC allowed the property to be fraudulently disclosed on without providing a fully detailed accounting of the sale as required by law. This fraudulent transaction caused the BBL Trust to realize a loss in 2014 and was the source of great mental anguish and emotional distress for Plaintiffs."

23. The Plaintiffs' particulars of the "fraudulent mortgage" and the "fraudulent foreclosure" are pleaded against the 1st Defendant as follows:

"Fraudulent Mortgage

PwC submitted to Clarion Bank [Clarien] *a fraudulent loan application for a First Mortgage on the Little Rock home which misrepresented revenue, expenses, and debt. The loan closing lacked the requisite supporting documents as required by their agreement with* [Clarien] *and the Second Mortgage held by the BBL Trust. Furthermore, this transaction was supported by false letters of support and included the forged signature of Barbara Blades Lines on certain related documents. When the true transaction details and problems surfaced, Defendants tried to resign and cover up their involvement. At no point in this process did Defendants disclose the fact that taxes, which were required to be paid under the Mortgage Agreement with the BBL Trust, had not been paid since 2001. This was true even after the Ministry of Finance pursued approximately $50,000 in unpaid taxes months after this transaction.*

Plaintiffs sent multiple legal notices to the Bermuda Monetary ("BMA") concerning such conduct. (See Exhibit C to Exhibit 1). The BMA began an investigation into Defendants potential criminal activity, which is currently ongoing.

After an officer of [Clarien] *informed Plaintiffs and Defendants were to blame for the falsified documents used in the transaction, Plaintiffs were advised by* [Clarien] *to remain patient and wait until foreclosure.*

Fraudulent Foreclosure

The Second Mortgage held by the BBL Trust required the Plaintiffs' approval of any conveyance of any interest in the Little Rock home. [The] *Defendants, through their lawyer, expressly acknowledged this fact in writing in 2103.* [The] *Plaintiffs informed Defendants that a foreclosure sale would only be allowed in the event of a full payment.*

On November 17, 2014, [the] *Plaintiffs received correspondence from PwC with notice of the foreclosure and a token payment which was placed on reserve.*

In December 2014, as a result of the foreclosure, the BBL Trust realized a loss, and the LST fraud files were submitted to the Bermuda Police Department under the Bermuda Criminal Code Act 1907.

[The] *Defendants denied any wrongdoing stating they were not liable for mistakes or omissions made in good faith, but only "loss arising by their willful default or fraud," all of which is denied by* [the] *Plaintiffs. The Defendants did not act in good faith, and it was their willful default and fraud that caused the losses*.

Once [the] *Defendants realized the extent of the fraud and problems, they tried to resign as Trustee without explaining the circumstances as required to the Plaintiffs as holders of the second mortgage on the Little Rock home. To this day, Defendants have continued these wrongful acts and cover up*."

24. The pleaded case against the 2nd Defendant, Clarien, is as follows:

"*The Plaintiffs claim that [the] and its Officers and Directors breached their fiduciary duty to exercise reasonable care, skill and caution, breached their fiduciary duty to act honestly and in good-faith, breached their fiduciary duty to their client Barbara Blades and her family, breached their duty to close on a valid and properly disclosed New First Mortgage, failed to disclose the true terms and conditions of the New First Mortgage, conspired starting with Richard Gibson's meeting on or about February 11, 2009 where it was decided to place*

Barbara Blades as an Obligor on the New First Mortgage debt to enable a payoff of the Bad and Secret $433,000 Debt and Grenville Lines, and they did so by deception and accepting forged documents, failed to advise the Second Lien Mortgagee of the true terms and conditions, intentionally inflicted emotional distress on Barbara Blades and her family since 2009 to this day, and fraudulently foreclosed on the 22 Rockville Lane property in 2014 despite numerous warnings of fraud and deception, were negligent and grossly negligent in their position as Lenders to the LST Trust causing lost capital, lost profits, lost property, pain and suffering mental anguish, and emotional distress.

Particulars

…

Clarien Bank schemed in 2009, beginning with a meeting with David Lines, Sr., Grenville Lines, and Richard Gibson, on or about February 11, 2009. In that meeting, they addressed the problem past due loan of Grenville Lines, the Secret Bad $433,000 Debt, and they decided that they would do a New First Mortgage as proposed by Richard Gibson. They would require Barbara Blades to be a Guarantor, and work to have her obtain Bermudian citizenship, so she could be obligated on the New First Mortgage. They never disclosed the True Terms and Conditions of the loan including using money to pay off Grenville's bad debt, that his business was bogus, the loan application was a fraud, and they had cut a Secret Side Deal with David Lines, Sr. to limit his Guarantee to only about 3 months of mortgage payments.

Despite Clarien Bank executive, Richard Gibson, who originated the scheme, apparently passing away the day after that fateful meeting, Clarien Bank was still determined to close the New First Mortgage to pay off their own Secret Bad $433,000 Loan to Grenville Lines.

Clarien Bank placed the responsibility on Abacus/PwC to properly support the Loan Application and be certain that real estate taxes and insurance were paid and that the Loan was appropriate. Clarien Bank failed to disclose they closed the loan with unpaid taxes as required by the mortgage agreement. In 2013/2014, Clarien Bank and PwC were informed by the BBL Trust that a foreclosure would only be allowed in the event of a full payments of the Second Mortgage. Despite repeated written legal notices, Clarien Bank foreclosed on the property without providing a detail of the accounting of the sale. Clarien Bank, through their lawyers, Chris Swan & Co., requested and obtained, on a fraudulent basis, a Subordination from Robert Blades and Richard Blades, Trustees of the BBL Trust, that held a Second Mortgage. The Plaintiffs were repeatedly lied to by Grenville Lines as to the Loan terms and were assured that all was approved by Clarien Bank. The truth is Clarien Bank overlooked fraud, payment of real estate taxes, payment of insurance, and that proper notices were sent to their client Barbara Blades, and the Second Mortgagee, as they were determined to close the New First Mortgage to pay off the Secret Bad $433,000 debt.

This fraudulent transaction caused the BBL Trust to realize a loss in 2014 and was the source of great mental anguish and emotional distress for [the] *Plaintiffs.*

Factual Background

Clarien Bank has engaged in a pattern of negligent, grossly negligent, and fraudulent behavior that include breaches of multiple fiduciary duties, and the intentional covering up of all such actions.

<u>*Fraudulent Mortgage*</u>

Abacus/PwC and Grenville Lines, as Settlor, submitted to Clarien Bank, a fraudulent loan application for a First Mortgage on the Little Rock home which misrepresented revenue, expenses, and debt. The loan closing lacked the requisite supporting documents as required by their agreement with Clarien and the Second Mortgage held by the BBL Trust. Furthermore, this transaction was supported by false letters of support (David Lines, Sr.) and included the forged signature of Barbara Blades on certain related documents. When the true transaction details and problems surfaced, Clarien Bank blamed the fraud on Abacus/PwC. At no point in this Loan Closing process did Clarien Bank disclose the fact taxes, which were required to be paid under the New First Mortgage Agreement, had not been paid since 2001. This was true even after the Ministry of Finance pursued approximately $50,000 in unpaid taxes, months after this transaction. It was more than 8 months after the Bogus Loan Closing that Barbara Blades learned of the Tax Fraud. Clarien Bank never pursued claims against the Settlor of the LST Trust or Abacus/PwC.

Plaintiffs sent multiple legal notices to Clarien Bank and the Bermuda Monetary Authority ("BMA") starting in 2012 concerning such conduct. The BMA began an investigation into Clarien Bank's activity, which is currently ongoing. After a Trust Manager, John Faiella of Abacus/PwC, informed Plaintiffs that Clarien Bank was to blame for the bogus New First Mortgage transaction, Plaintiffs were advised by Clarien Bank's Doug Selley to remain patient and wait until foreclosure and see how it works out.

<u>*Fraudulent Foreclosure*</u>

The Second Mortgage held by the BBL Trust required the Plaintiffs' approval of any conveyance of any interest in the Little Rock home. Abacus/PwC, through their lawyer, expressly acknowledged this fact in writing in 2013. [The] *Plaintiffs informed Defendants that a foreclosure sale would only be allowed in the event of a full payment.*

On November 17, 2014, [the] *Plaintiffs received correspondence from Abacus/PwC with notice of the foreclosure and a token payment which was placed on reserve.*

In December 2014, as a result of the foreclosure, the BBL Trust realized a loss, and the LST fraud files were submitted to the Bermuda Police Department under the Bermuda Criminal Code Act of 1907.

Clarien Bank's banker, Doug Selley, gave testimony in a 2012 Court Hearing, Jai Pachai of Wakefield Quinn [sic] represented the Bank (See Exhibit 3). The Transcript fo the 3 day hearing has been in the possession of the Bermuda Police for years and supports the hundreds of details about the LST fraud and deception. Clarien Bank did not act in good faith, and it was their willful default and fraud that caused the losses. As a Bank, they had Barbara Blades and her family as clients, and they blatantly broke Lender Liability laws and damaged their clients including an autistic child. Clarien Bank was complicit in duping Barbara Blades into thinking the New First Mortgage was to enable Grenville Lines to make a good investment in his business. However, the incentive for the New First Mortgage was always to obtain proceeds to pay off the Bad Secret $433,000 Loan to Grenville Lines.

Once Clarien Bank realized the extent of the fraud and problems, and after the 2012 Court Hearing, they stopped all communication, and have avoided any contact despite a number of Legal Notices being sent to Clarien Bank and their attorney Jai Pachai."

25. The Plaintiffs also claim damages in the sum of $1,027,000.00 for "*economic injuries including lost profits and the loss of property as well as pain and suffering, including mental anguish and emotional distress for the Plaintiff and beneficiary of the BBL Trust- a recently divorced mother of an autistic child with special needs who is a contingent beneficiary of the BBL Trust and the LST*."

The Plaintiffs' Disqualification Application

26. The disqualification application is primarily triggered by the fact that CDP previously represented Saltus Grammar School ("Saltus"). Mr Blades eagerly pointed out that Mr. Lines was indebted to Saltus in the approximate sum of $90,000.00. Mr. Blades argued that CDP should be barred from representing both Saltus and Abacus because Abacus submitted a fraudulent loan application on behalf of Mr. Lines (the application to Clarien for the First New Mortgage) in order to unjustly enrich Clarien. Mr. Blades described Saltus as an innocent victim of the fraudulent collusion between Abacus and Clarien. These points were stated by Mr. Blades in his second affidavit [2]:

"*Disqualification of CDP/Rhys Williams & Christian Luthi*

2. The Court should be aware in light of the Evidence recently presented by Clarien Bank/Pachai, that the Evidence, and a recent legal review shows David Lines, Sr. is/was associated with PWC/Abacus by virtue of his employment benefits, PWC retirement status, as well as his former PWC partnership position, mentorship to Peter Mitchell and others, and former PWC retirement status, as well as his former PWC partnership position, mentorship to Peter Mitchell and others, and former PWC/Abacus Landlord status. Accordingly, he is significantly related to PWC/Abacus and this causes a greater conflict to further support the disqualification of CDP representing PWC/Abacus.

2a) The CDP/PWC/Abacus conflict is exacerbated due to the Lines, Sr. correspondence in the attached Ex 1e having already been proven to be bogus and fraudulent. (See Ex 1e, 2a, 2b). Accordingly, CDP is seen to be covering up this specific set of proven fraudulent documentation as it relates to a PWC retiree, former executive, mentor, and former significant vendor to PWC/Abacus and trying to cover up the ramifications of what PWC/Abacus did in the LST Fraud. The Lines Sr. letters were key to the Abacus LST mortgage application process.

2b) Furthermore, the recent Evidence provided by Clarien Bank highlights the Bank put the onus on Abacus, and the PWC partners, for an appropriate loan transaction. There is an email to PWC partner, Peter Mitchell, who was a Protégé of David Lines, Sr. It is outlined in the evidence that Lines Sr. needed to "come off" that bad $433,000 loan "Guarantee". While the Plaintiffs were told Lines Sr. would fully guarantee the First Mortgage, PWC partners "Deceptively" arranged for Lines Sr. to only put up an $18,000 guarantee, or only 3 months, of payments to lessen his guarantee liability during a time of financial crisis. (See Ex 2a, 2b)

2c) Another separate issue is the PWC/Abacus partners tried to have Barbara put up a $960,000 guarantee when it was against Bermuda Law for a Non-Bermudian to guarantee such a mortgage debt. They tried to foist a bad deal on Barbara, which was against Bermuda law, and the Evidence shows they were anxious for her to get formal Bermudian citizenship. (Coverup, see Ex 2c)

2d) Luthi, previously stated we had reason to be upset with the Lines family, but his deception has backfired. It is clear that PWC/Abacus had Grenville Lines as their Agent, as a Settlor/Protector on the LST Trust, and David Lines, Sr. as their Retiree, and Landlord, putting up fraudulent documents and getting secret side deals on the LST Trust Bogus Loan. (Pay off a Secret Bad Loan and Reduce a Guarantee with a Deceptive Carve Out). More than a conflict, Luthi/CDP has for years attempted to Cover Up the attached fraudulent documents, and the LST Frauds, in an international context.

2e) Instead of the PWC/Abacus Partners doing the right thing, and confronting the frauds of Lines, Sr, and Grenville, and wrongdoing in 2010, and Protecting Assets as required contractually, and going to the Police on the fraud, they went into a Coverup mode. The recently provided Evidence from Pachai and Clarien Bank outlines the: A) preclose motives and intentions, to close regardless and do secret deals, B) the Bogus Closing, and C) the Post Closing Coverup which goes on to this day. The Evidence also highlights that a Banker (Doug Selley) accused PWC/Abacus of the crimes. (See Ex 2b, 2c,3c)

2f) The Evidence further shows that Saltus School was cheated and defrauded. Therefore, this Pachai presented Evidence further supports the Court should take into account the interests of Saltus School as the Bank and PWC/Abacus arranged a Fraudulent Preference Payment, for the secret bad $433,000 loan, when Grenville and the LST Trust were constructive bankrupts, and made a fraudulent conveyance to the Bank, at the expense of Saltus School for Children and other Unsecured Creditors. (See Ex 2c, 2d, 2e, 2f and 2g)

2g) CDP still has a Saltus relationship and at one time had the Grenville lines Past Due Debt as an active "Matter". Abacus/PWC was the applicant on the Bogus LST Fraud Loan which gave a preference to Clarien Bank and Lines Sr. at the expense of Saltus. (See Ex 2d, 2e, 2f, 2g). It is a travesty the debt is still outstanding to this day and CDP is on two sides of the Conflict.

2h) PWC Partner, Savage implicates himself, and the PWC partnership, in trying to coverup for Luthi & CDP. This is an insidious twist for the client to have a coverup effort put on them by their attorney and is malpractice and one of the most serious matters. Savage writes that Luthi wanted Abacus/PWC to resign because Grenville failed to respond, trying to make it sounds that simple. The facts go much deeper and show PWC/Abacus, and presumably their lawyer, knew the fraud was coming to light and they wanted to distance themselves from the problem with a Release and an Indemnity. Abacus/PWC "Never did" as the Appleby prepared Second Mortgage required and notified the Texas Trustees of the problems, or acted to protect the assets. In fact, the Texas Trustees only learned about the frauds 10 months after the Bogus Close and learned from the Bank. Luthi/PWC started a Coverup attempt in 2010 and they have never been honest about the LST Frauds, intentionally covered up frauds and failed to live up to th contractual agreements documented by the Appleby prepared second mortgage. (See Ex 2c)

2j) Further to prove the Coverup referenced above, please see Ex 2h) herein, a letter from John Faiella of Abacus Trust dated December 21, 2011. (Note: John's Card, Email and Abacus Letterhead all use the PWC Logo) He is responding to a subpoena and states: in 7) "We can, however, confirm that the terms of the offer letter were carried out essentially as described. We have no record of the submission of personal financial statements in connection with

Grenville Lines and we confirm that we did not provide any information regarding his ability to service the debt." This was a blatantly fraudulent statement as: 1) there was no proof of real estate taxes paid, 2) no proof of insurance paid, 3) no new Lease agreement, 4) a secret carve out deal on the guarantee, and 5) it covered up that the true reason for the bogus loan was to pay off the Secret $433,000 Bad loan and have Lines, Sr. come off his Guarantee. (See Ex 2h)…"

27. In answer to the Plaintiffs' disqualification application, Mr. Williams pointed out that Saltus is neither a creditor of Abacus nor a party to these proceedings. Mr. Williams contended that CDP, in any event, is not in possession of any information that would prohibit it from acting for Abacus in these proceedings. In Mr. Williams' written submissions, he addressed the Plaintiffs' criticism of Mr. Luthi [7-10] as follows:

"*7. That Mr. Luthi may have offered to speak with the Plaintiffs on a 'without prejudice' basis is an ordinary occurrence in litigation. It is inconceivable that this could be a ground upon which Conyers are prohibited from acting.*

8. The allegation that Mr. Luthi tried to 'trick' the plaintiffs into consenting to the forfeiture is factually baseless, which likely explains why no facts are given to support the assertion. In any event, the Plaintiffs state that a complaint was made to the Bermuda Bar Council in 2016. It is respectfully submitted that any purported misconduct by Mr. Luthi is properly a matter for the Bar Council, and does not provide a valid basis for prohibiting Conyers from acting.

9. The Barristers' Code of Professional Conduct ("Code") prohibits a barrister from acting in a matter in which he is "likely to be a necessary witness", subject to limited exceptions (see Rule 29(1)). However, a barrister may properly appear as Counsel in a matter in which a partner is likely to be called as a witness, unless his so appearing would involve a breach of some other provision of the Code (see Rule 29(2)). As such, the mere fact that the Plaintiffs intend to call Mr. Luthi as a witness would not be a bar to Conyers acting for the First Defendant, provided Mr. Luthi was not appearing as counsel.

10. In any event, the Plaintiffs have failed to set out the basis upon which it is said that Mr. Luthi is "likely to be a necessary witness". A witness summons will be set aside where it is in the nature of a fishing expedition. [Footnote 1: R v Coventry Magistrates' Court ex.p. Perks [1984] 7 WLUK]. The Plaintiffs' claims are against the First Defendant, not against Mr. Luthi. Any evidence in Mr. Luthi's possession in relation to the conduct of the First Defendant would be subject to legal advice/litigation privilege belonging to the First Defendant, and inadmissible [Footnote 2: not quoted] A witness cannot be compelled to appear unless he is able to give material evidence that is admissible in the proceedings. It is therefore highly

unlikely that Mr. Luthi will be a witness in these proceedings, or that Rule 29 of the Code will be invoked."

28. As I see it, Saltus is a creditor of Mr. Lines, not Abacus. Neither Mr. Lines nor Saltus are party to these proceedings. This Court therefore has no cause to opine on whether Saltus has reason to be aggrieved by CDP's representation of Abacus, simply because Abacus may owe a fiduciary duty to Mr. Lines as a beneficiary of the LS Trust. The same would be so whether Mr. Lines is a settlor and/or protector of the LS Trust.

29. The Plaintiffs' have been understood to say that they will likely call Mr. Luthi to give evidence in these proceedings. However, it is difficult to envisage how any evidence of CDP's representation of Saltus would be relevant to these proceedings. More so, any material or information arising out of client communications, even if relevant by subject-matter, would likely be protected from disclosure under the rule of legal professional privilege.

30. As for the criticism made of Mr. Luthi acting on behalf of Abacus, I see no reason for this Court to be concerned by the fact of any 'without prejudice' communications that Mr. Luthi might have had with the Plaintiffs. After all, such communications are indeed not only standard but expected in the ordinary course of litigation. The usual purpose for 'without prejudice' discussions are to obtain some form of common-ground or compromise between the opposing sides, thereby saving wasted or unnecessary litigation costs and time. Indeed, it is the general duty of the parties in civil litigation proceedings to assist the Court in furthering the overriding objective. The overriding objective is aimed at ensuring that cases are managed expeditiously, proportionately and fairly.

31. On the subject of Mr. Luthi, I would only add that where it is suggested that he acted improperly in his participation and/or obtaining of a Release & Indemnity, it is certainly standard practice for incoming trustees to settle with any outgoing trustees the question of indemnities. This is recognized by legal and equitable principles applicable to indemnities arising out of a change of trusteeship (See *Brockman v Medlands (PTC) Limited et al* [2021] SC (Bda) (12 May 2021), per Subair Williams J).

32. For all of these reasons, I am bound to refuse the Plaintiffs' disqualification application.

The Strike-Out Application

33. By summons dated 10 March 2020, the 1st Defendant's strike-out application was brought on the following grounds:

    (i) It discloses no reasonable cause of action;

(ii) It is scandalous, frivolous and vexatious;
(iii) It is an abuse of process

34. These same grounds were relied on by the 2nd Defendant in its 12 March 2020 amended summons.

35. Both Defendants also argue on their summons applications that the case for the 1st Plaintiff amounts to an abuse of process as Ms. Blades Lines lacks the necessary standing to bring these proceedings. Further, the Defendants say that the Plaintiffs are barred under the Limitation Act 1984 from prosecuting this action.

Whether the 1st Plaintiff's Claim is an Abuse of Process for lack of standing

36. Ms. Lines' standing in these proceedings is a question of both fact and law. The crux of the Plaintiffs' case is that the BBL Trust, having been assigned the Second Mortgage from the estate of Mrs. Eloise Blades, suffered loss from the non-payment of the Second Mortgage. However, Ms. Blades Lines' status as a beneficiary of the BBL Trust does not afford her the same standing as the trustees of the BBL Trust. So, while Ms. Blades Lines would likely having standing in trust litigation where the subject of the litigation is the BBL Trust, the same is not so for adverse litigation against third parties on behalf of the trust.

37. This does not bring an end to the issue of standing. I must also consider what standing Ms. Blades Lines' might have to prosecute these claims in her capacity as a personal guarantor under both the First and Second Mortgages. Arguably, Ms. Blades Lines may be liable as a guarantor under the Second Mortgage to the BBL Trust. Whether there is any logic or realistic prospect of the BBL Trust enforcing the guarantee against Ms. Blades Lines may, of course, be quite another matter. In any case, I see no reason why the BBL Trust (through its trustees) would have any more standing to claim loss arising out of an alleged fraudulent non-payment of the Second Mortgage than Ms. Blades Lines as a personal guarantor under the same Second Mortgage.

38. For these reasons, I find that Ms. Blades Lines does have standing to appear as a party to these proceedings and the Defendants' application to strike out her claims on this ground fails.

The Application to strike out the Plaintiffs' Case against PwC as an Abuse of Process

39. Mr. Savage highlighted in his affidavit evidence that PwC and Abacus are two separate legal entities, albeit that some of the directors of Abacus are also directors and/or shareholders of PwC. He explained that PwC does not do business as Abacus and that Abacus is a licensed trust company which is incorporated in Bermuda as a distinct legal entity.

40. Hitting the key points, Mr. Savage observed that PwC has never had a relationship with the Plaintiffs as PwC was neither party to any of the Little Rock mortgage agreements nor was PwC ever party to any contractual agreement with the LS Trust or the BBL Trust.

41. As I see it, this factual evidence is conclusive and draws the case against PwC to an immediate end. In my judgment, it would be an abuse of process to allow the case against PwC to continue. For that reason, I would strike out the entire of the claims as against PwC and treat the Plaintiffs' pleadings as if each reference to PwC is instead a reference to Abacus.

Whether the Plaintiffs' Amended Writ Pleadings should be Struck Out

42. Unlike the Defendants who have the benefit of experienced and well-respected legal Counsel, the Plaintiffs are not represented by Counsel before this Court. In such situations, it is the duty of the Court to ensure that the parties are nevertheless put on equal footing. In so doing, this Court is duty-bound to carefully examine the Plaintiffs' pleadings and submissions in order to discern the Plaintiffs' true case.

A Summary of the Plaintiffs' Pleaded Case

43. At the heart of the Plaintiffs' pleaded case against the 1st Defendant, they say that Abacus:

(i) breached its fiduciary duty in either failing to pay or failing to ensure the payment of the land taxes for Little Rock between 2000 and 2010;

(ii) breached its fiduciary and/or contractual duty under the mortgage agreements in failing or refusing to disclose the fact that the said land tax payments were not made;

(iii) breached its fiduciary and/or contractual duty in allowing Little Rock to be fraudulently foreclosed without providing a fully detailed accounting of the sale; and

(iv) breached its fiduciary and/or contractual duty in submitting a fraudulent loan application for the First Mortgage. (This application is said to have been supported by forged documents purporting to bear Ms. Blades Lines' signature(s).)

44. Turning to the knots and bolts of the pleaded case against the 2nd Defendant, the Plaintiffs essentially say that Clarien:

(i) breached its fiduciary duty in accepting a fraudulent loan application consisting of forged documents;

(ii) breached its fiduciary duty to Ms. Blades Lines and her family members in failing to disclose the fact of the unpaid land taxes and the true terms and conditions of the New First Mortgage;

(iii) conspired to make Ms. Blades Lines liable to pay the $433,000 debt under New First Mortgage;

(iv) breached its fiduciary duty in failing to advise the Plaintiffs of the true terms and conditions of the New First Mortgage and the Second Mortgage;

(v) breached its fiduciary duty in fraudulently obtaining the Deed of Postponement;

(vi) fraudulently foreclosed on Little Rock without providing a detail of the accounting of the sale;

(vii) breached its fiduciary duty in failing to pursue claims against Abacus or Mr. Lines;

(viii) negligently and/or intentionally inflicted emotional distress on Barbara Blades and her family from 2009 onwards

Relevant Legal Principles on the Requirements of Pleadings of Fraud

45. The Defendants submitted the Plaintiffs' pleadings were inflated with conclusory facts and lacked the material primary facts required by RSC O.18/7 which provides:

"*18/7 Facts, not evidence, to be pleaded*

7 (1) Subject to the provisions of this rule, and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading."

46. Both Mr. Williams and Mr. Pachai characterized the Plaintiffs' pleadings as vague and incoherent in the sense referred to in *Towler v Wills* [2010] EWHC 1209 where Mr. Justice Teare, sitting in the Queen's Bench Division of the English High Court, made the following remarks [18]:

"*18. The purpose of a pleading or statement of case is to inform the other party what the case is that is being brought against him. It is necessary that the other party understands the case which is being brought against him so that he may plead to it in response, disclose those of his documents which are relevant to that case and prepare witness statements which support his defence. If the case which is brought against him is vague or incoherent he will not, or may not, be able to do any of those things. Time and costs will, or may, be wasted if the defendant seeks to respond to a vague and incoherent case. It is also necessary for the Court to understand the case which is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense. For these reasons it is necessary that a party's pleaded case is a concise and clear statement of the facts on which he relies; see Spencer v Barclay's Bank 30 October 200 per Mr. Bompas QC at paragraph 35. The Amended Particulars of Claim are, perhaps, concise but they are not clear or coherent. The transactions which the Defendant is alleged to have conducted in the name of the company without disclosing his conflict of interest and which have caused loss have not been clearly identified. The Further Information could perhaps have cured these defects but it has not done so. The particular transactions cannot be identified with ease. Moreover, additional claims, not foreshadowed or pleaded in the Amended Particulars of Claim, appear to have been added. They have no place in the Further Information since they had not pleaded in the Amended Particulars of Claim, appear to have been added. They have no place in the Further Information since they had not been pleaded in the Amended Particulars of Claim. Further, evidential material has been added in such a way as to make comprehension of the Further Information difficult*."

47. So to establish that the writ pleadings were incurable by further amending or filing further and better particulars, Mr. Williams pointed to the judgment in *Intercontinental Natural Resources Ltd v Conyers Dill & Pearman* [1982] Bda L.R. 1 where the Court of Appeal upheld the decision of the trial judge in the striking out of a writ. In the leading judgment of the Court, Blair-Kerr, P agreed with the trial judge's view that the pleadings were incapable of being cured by the filing of further and better particulars. Blair-Kerr, P said [87-88]:

"*87. Mr Lightman's approach in the court below was: I can cure all the defects in my statement of claim by submitting further and better particulars. The learned judge said:*

> *"This is not a case in which material facts have been stated so that further and better particulars could fill out the case being put forward. It is just completely devoid of the necessary material particulars to the extent that it becomes a wholly embarrassing pleading."*

88. I agree. Not only is it an embarrassing pleading. As it stand[s]*, I do not see how the plaintiff could possibly succeed if the case went to trial*."

48. Blair-Kerr, P considered the meaning of 'material' in the context of RSC O.18/4 as it was in 1982. Broadly comparable to what is now RSC O.18/7(1), Rule 4 in 1982 provided:

"*…Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved…*"

49. In construing the word "material" Blair-Kerr, P cited [39] the below passage from *Bruce v Odhams Press Ltd* [1936] 1 KB 697, at p. 712, per Scott LJ:

"*The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any 'material' fact is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be struck out under O. 25, r. 4: see Phillips v Phillips 4 QBD 127; or 'a further and better statement of claim' may be ordered under O. 19, r. 7*".

50. In a concurring judgment, DaCosta, JA spoke about the requirement to clearly plead an allegation of fraud [116-118]:

"*116. Thus if a party relies on any fraud, then by virtue of the provisions of r 6(1) the facts alleged to be fraudulent must be set out, and then it must be stated that these acts were done fraudulently. One need only allege the fraudulent intention as the note to O.19, r 22 by the learned editors of the Annual Practice make clear.*

"'Fraudulent intention' – Fraud must be distinctly alleged and proved. The acts alleged to be fraudulent must be stated, otherwise no evidence in support of them will be received (Re Rica Gold Washing Co 11 Ch D 36; Redgrave v Hurd 20 CHD 1; Smith v Chadwick 9 App Cas 187; Riding v Hawkins 14 PD 56; Lawrence v Norreys 15 App Cas 221. But from these acts

fraudulent intent may be inferred (Johnson v Barnes [1883] WN 32; Herring v Bischoffsheim [1876] WN 77; and it is sufficient to aver generally that they were done fraudulently. …

117. So, here where wilful default is relied on full particulars of the facts constituting wilful default must be given, while it will be sufficient to plead the mental element as a fact without setting out the circumstances from which it is to be inferred.

118. This is still the law of Bermuda, though admittedly the rule has now been altered in England. See RSC 1965 O 18, r 12 and notes thereto (as contained in the Supreme Court Practice 1982.)"

51. The governing procedural rule which was being referred to by the Court of Appeal in *Intercontinental Natural Resources Ltd v Conyers Dill & Pearman* was Order 19/6(1) of the Supreme Court Rules 1952. This Rule was quoted by the Court of Appeal as follows:

"*In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleadings…*"

52. While this procedural rule has since which developed, the position remains that an allegation of fraud must be particularised in the relevant pleadings. RSC Order 18/12(1) provides:

"*18/12 Particulars of pleading*
12 (1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

(b) *where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.*"

53. DaCosta, JA referred to commentary from Bullen and Leake and Jacob's Precedents of Pleadings (12th Edition, p. 110) in making the following points on particulars of pleadings which remain relevant in modern day practice [111-112]:

"*Particulars of Pleading*

111. Bullen and Leake and Jacob's after stating that no hard-and-fast lines can be laid down as to the degree of particularity which is required of the pleader and which an opponent may demand of him when formulating his claim or defence goes on to observe:-

"*It is, however, essential that each party should give to his opponent a fair outline of the case which will be raised against him at the hearing, and for this purpose he must set out in the body of his pleading all particulars, which are necessary to enable his opponent properly to prepare his case for trial.*

"Every pleading must contain the necessary particulars of any claim, defence or other matter pleaded… where the details of any claim, defence or other matter pleaded are necessary, they must be contained in every pleading, which otherwise will fail to comply with the overriding requirement that all material facts relied on must be pleaded. The precise degree of particularity required cannot of course be predicated, but as much certainty and particularity must be insisted on as is reasonable having regard to the circumstances and the nature of the acts alleged."

Bullen and Leake and Jacob's Precedents of Pleadings (12th ed, p 110) and see Ratcliffe v Evans [1892] 2 QB 524, per Bowen, LJ at page 532.

112. Further in some instances, because of the seriousness, gravity or importance of the allegation relied on, there is an express requirement that the necessary particulars relied on to support such allegation must be contained in the pleading…"

54. Having addressed the general legal requirement to particularise the pleaded facts underlying an allegation of fraud, the Court of Appeal in *Intercontinental Natural Resources Ltd v Conyers Dill & Pearman* endorsed the distinction between primary facts and conclusory facts [141]:

"*A Fundamental Fallacy*

141. Mr. Lightman rightly states that the Court on a striking out summons must assume that the facts pleaded are true. This is no doubt correct; but facts may be of two sorts. There may be primary facts and there may be conclusory facts; the latter are really no more than conclusions which it may or may not be right to deduce from primary facts…It seems manifestly clear that a statement of claim founded largely on a series of conclusory facts does not inform the defendant of the case he has to meet and is in clear breach of O19, r 4 which requires the party pleading to state in summary form the material facts on which he relies; and in this context material facts mean primary facts; i.e., those facts which the party needs to be informed

of in order to know what case he has to meet. Unless the primary facts are pleaded the statement of claim must necessarily be deficient. This is a case in which serious allegations are made against reputable professional men and they are entitled to know what it is that each respondent is charged with wilfully doing or wilfully omitting in the knowledge that he was doing wrong. If they are charged with mismanagement of the company's affairs then facts must be pleaded from which the actual mismanagement complained of can be understood. If a statement of claim is so deficient in particulars that a defendant cannot tell what is the case he has to meet then it becomes a vexatious pleading and should not be allowed to stand."

55. Mr. Williams cited the case of *Robert Sofer v Swissindependent Trustees SA* [2020] EWCA Civ 699 to illustrate that the rules requiring an allegation of fraud to be particularised on the pleadings equally apply to allegations of fraud against a company. In that case the English Court of Appeal were concerned with an appeal against an order made by Matthews J, sitting as a Judge of the High Court, whereby he struck out a claim for breach of trust on the ground that it did not sufficiently plead a case of dishonesty. Delivering the unanimously agreed judgment of the Court, Lord Justice Arnold observed [23-25]:

"*23. More important for the purposes of this appeal are the principles governing the pleading of dishonesty. There was little dispute as to these before either the Judge or us. They were summarized, in my judgment, accurately, by counsel for the Claimant as follows:*

i) Fraud or dishonesty must be specifically alleged and sufficiently particularized, and will not be sufficiently particularized if the facts alleged are consistent with innocence: Three Rivers District Council v Governor and Company of the Bank of England (No.3) [2003] 2 AC 1.

ii) Dishonesty can be inferred from primary facts, provided that those primary facts are themselves pleaded. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be pleaded: Three Rivers at [186] (Lord Millet).

iii) The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an interference of dishonesty is more likely than one of innocence or negligence: JSC Bank of Moscow v Kekhman [2015] EWHC 3073 (Comm) at [20]-[23] (Flaux J, as he then was)

iv) Particulars of dishonesty must be read as a whole and in context: Walker v Stones [2001] QB 902 at 944B (Sir Christopher Slade).

24. To these principles there should be added the following general points about particulars:

(i) The purpose of giving particulars is to allow the defendant to know the case he has to meet: Three Rivers at [185]-[186]; McPhilemy v Times Newspaper Ltd [1999] 3 ALL ER 775 at 793B (Lord Woolf MR).

(ii) When giving particulars, no more than a concise statement of the facts relied upon is required: McPhilemy at 793B.

(iii) Unless there is some obvious purpose to be served by fighting over the precise terms of a pleading, contests over their terms are to be discouraged: McPhilemy at 793D.

25. As is common ground, on an application under CPR rule 3.4(2)(a) to strike out particulars of claim as disclosing no reasonable grounds for bringing the claim, the facts pleaded must be assumed to be true. That does not mean, however, that the court will not scrutinize particulars of dishonesty with care to see if they disclose a sustainable case."

56. Leaving no stone unturned, Mr. Williams submitted that the obligation on the pleading party to link factual particularity to an accusation of fraud extends even to litigants in person and produced the judgment of the United Kingdom Supreme Court in *Barton v Wright Hassall LLP* [2018] UKSC 12. Mr. Williams pointed to the following passage from Lord Sumption's judgment with whom Lord Wilson and Lord Carnwrath agreed [18]:

"*18.Turning to the reasons for Mr Barton's failure to serve in accordance with the rules, I start with Mr Barton's status as a litigant in person. In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR rule1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions, it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him: R (Hysaj) v Secretary of State for the Home Department[2015] 1 WLR2472, para 44 (Moore-Bick LJ); Nata Lee Ltd v Abid [2015] 2 P&CR 3.At best, it may affect the issue "at the margin", as Briggs LJ observed(para 53)in the latter case, which I take to mean that it may increase the weight to be given to some other, more directly relevant factor. It is fair to say that in applications for relief from*

sanctions, this is mainly because of what I have called the disciplinary factor, which is less significant in the case of applications to validate defective service of a claim form. There are, however, good reasons for applying the same policy to applications under CPR rule6.15(2) simply as a matter of basic fairness. The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

57. Notably Lord Sumption's judgment was not unanimously agreed. In a dissenting judgment (with whom Lady Hale agreed) Lord Briggs opined that the Appellant's service of a claim form should have been validated by the trial judge. Unlike the circumstances of the present case, the question before the UK Supreme Court was centered on whether electronic service of a Court document constituted non-compliance under the civil procedure rules. It is important to note, however, that Lord Briggs did not consider that Mr. Barton's service should have been validated merely because he was unrepresented by Counsel; he concluded that it should have been recognized because the email service had substantially achieved the purposes intended behind service of the particular Court document concerned. On the more general question of litigants in person, Lord Briggs and Lady Hale appeared to be in agreement with Lord Sumption's remarks on procedural rules being equally applicable to litigants in person. In this regard Lord Briggs made the following remarks [42-43]:

"*42. Although a number of the mitigating factors listed above are in a sense characteristics of Mr Barton being a litigant in person, that comes nowhere near saying that being a litigant in person constitutes a free-standing good reason why his botched attempt at service should be validated. In that respect I adhere to what I said in Nata Lee Ltd v Abid [2015] 2 P&CR3, at para 53, to which Lord Sumption refers. Save to the very limited extent to which the CPR now provides otherwise, there cannot fairly be one attitude to compliance with rules for represented parties and another for litigants in person, still less a general dispensation for the latter from the need to observe them. If, as many believe, because they have been designed by lawyers for use by lawyers, the CPR do present an impediment to access to justice for unrepresented parties, the answer is to make very different new rules (as is now being planned) rather than to treat litigants in person as immune from their consequences. The good reason in the present case is not that he is a litigant in person, but rather the fact that Mr Barton's attempted service by email achieved all the underlying purposes of the relevant rules. His being a litigant in person, with the particular consequences described above merely mitigates, at the margin, the gravity of non-compliant*

conduct which, had it been done by a legal representative, would have been more serious as an impediment to validation.

43.Taking all the relevant considerations into account, I consider that Mr Barton's attempt at service by email should be validated. He may fairly be criticised for having failed to read the relevant part of the rules, and making an incorrect assumption instead, but this does not on balance detract from the good reason constituted by his having, albeit in a modestly non-compliant way, achieved all that which the rules as to service by email are designed to achieve."

58. Adopting the written submissions of Mr. Williams, Mr. Pachai highlighted [19-21]:

"*19. Allegations must be relevant to the pleaded case. Including irrelevant or immaterial allegations is likely to obstruct the just disposal of the proceedings, by calling for an investigation which will have no bearing on the decision as to liability, and should be struck out [foot note 11: Sussex v Associated Newspapers Ltd [2020]]:*

"The overriding objective of deciding cases justly and at proportionate cost requires the Court to monitor and control the scale of the resources it devotes to each individual claim. Irrelevant matters should, as a rule, have no place in Particulars of Claim. There may be cases where the court would allow the inclusion of some minor matters that are, on a strict view, immaterial. But where the irrelevant pleading makes serious allegations of wrongdoing which are partly implicit, unclear, lacking in the essential particulars, and likely to cause a significant increase in cost and complexity the case for striking out is all the clearer." …

20. "Material" facts are those facts necessary to formulate a complete cause of action. If any one material statement is omitted, the statement of claim is bad (Intercontinental Natural Resources Ltd v Conyers Dill & Pearman…).

21. On a strike out summons, the court may assume that the facts pleaded are true (Intercontinental Natural Resources Ltd v Conyers Dill & Pearman…). However, facts may be of two sorts: (i) primary facts and (ii) conclusory facts, the latter being no more than conclusions deduced from the former…"

Decision whether to Strike Out Pleadings of Fraud against the 1st Defendant

59. Starting with the fraud claims against the 1st Defendant, the Plaintiffs allege in their pleadings that Abacus "*breached their fiduciary duty to act honestly and in good-faith*", "*committed fraud against the Plaintiffs*" and "*intentionally inflicted emotional distress on Barbara Blades Lines and her family*".

60. It is suggested on the Plaintiffs' pleadings that Abacus submitted a fraudulent loan application to Butterfield in order to obtain the New First Mortgage. The loan application is stated to be fraudulent for its misrepresentation on the revenue, expenses, and debt in addition to its lacking of the requisite supporting documents. The Plaintiffs' case of fraudulent misrepresentation is grounded on their averment that the Defendants did not disclose the fact of the unpaid land taxes in the submission of their loan application to Clarien. However, no primary facts of the misrepresentation of revenue are provided. Further, no primary facts are stated to support the broad allegation that documents were fraudulently omitted from the application.

61. The Plaintiffs also say in their pleadings that the loan application was supported by 'false letters' and documents bearing the forged signature of Ms. Blades Lines. No particulars, however, are provided to identify the documents which they describe as 'false letters' or the documents which are purportedly nullified by forgery. The Plaintiffs further alleged in their pleadings that Abacus tried to resign and cover up its fraudulent conduct once the true details of the loan transaction had been revealed; yet, no factual basis is provided to explain the Plaintiffs' conclusions that the Defendants attempted to conceal the alleged fraud.

62. I now come to consider whether these allegations of fraudulent conduct against the 1st Defendant are curable by the provision of further and better particulars. In doing so, I must be mindful that this Court is bound by the reasoning of the Court of Appeal in *Intercontinental Natural Resources Ltd v Conyers Dill & Pearman.* So, where the necessary material facts have been omitted to the extent that the pleading has become an embarrassment, it ought to be struck out by the Court. In considering whether the pleading is in fact an embarrassment, I need only ask myself whether the Plaintiffs have any possibility of succeeding if the matter proceeded to trial on the state of the current pleadings. The particulars of the acts alleged to be fraudulent are scarce, at best. Because the Plaintiffs would not be permitted at trial to call evidence in support of un-pleaded primary and material facts, the irresistible conclusion of this Court is that the Plaintiffs would have no chance of success at trial on the current pleadings.

63. Admittedly, I am sympathetic to the Plaintiffs who have appeared before this Court without any formal representation of Counsel and in respect of delicate family matters which have clearly resulted in real emotional distress to them both. That being said, it would be wrong for this Court to show favour to unrepresented litigants in person where the effect of such favour would prejudice the Defendants to the point of having to defend embarrassing pleadings of fraud. The importance of avoiding the lure of rescuing litigants in person in this way was made clear by the United Kingdom Supreme Court in *Barton v Wright Hassall LLP*, a decision by which this Court is very much persuaded. For these reasons, this Court has no choice but to strike out the Plaintiffs' pleadings of fraud against the 1st Defendant.

Decision Whether to Strike Out the remainder of the Pleadings against the 1st Defendant

64. The Plaintiffs aver, insofar as I understand their pleaded case, that the submission of the fraudulent loan application amounted to, *inter alia*, a breach of the agreement under the Second Mortgage between Abacus and the 2nd Plaintiff. They also say that Abacus breached its fiduciary duty owed to them.

65. I shall start with the claim of contractual breach that Abacus did not disclose the fact of the unpaid land taxes. The party to whom the disclosure ought to have been made is not expressly stated on the Plaintiffs' pleadings against the 1st Defendant. As the Plaintiffs would have no standing to complain of non-disclosure to Clarien, I shall proceed on the basis that the Plaintiffs' case is that the disclosure ought to have been made to them in their respective capacities of standing before this Court. That being the case, one would expect to see from the pleadings whether this non-disclosure amounted to a breach of an express or implied term of the relevant mortgage agreement. If, on the other hand, the real complaint is that the non-disclosure amounted to a contractual misrepresentation, then the material and primary facts of any such misrepresentation would also need to be pleaded. It is not open to this Court to speculate in this regard. For these reasons, I find that the pleadings for breach of contract against the 1st Defendant are overly vague and incoherent and must therefore be struck out as frivolous and vexatious and on the grounds that no reasonable cause of action has been disclosed.

66. As for the claims of breach of fiduciary duty, it is plainly the case that Abacus, as trustee of the LS Trust, could not have owed Mr. Blades or Ms. Blades Lines a fiduciary duty. Any fiduciary duty owed by Abacus would be to the beneficiaries of the LS Trust. Mr. Blades' standing in these proceedings is in his capacity as a trustee of the BBL Trust and Ms. Blades Lines' standing is as a guarantor of the mortgage agreements obtained by Abacus for the LS Trust. The only fathomable legal relationship between Abacus and the BBL Trust is contractual and in accordance with the terms of the Second Mortgage and the Deed of Postponement. As for Ms. Blades Lines, her status as a guarantor of the mortgages did not create a fiduciary relationship between her and Abacus. On that basis, the pleadings of breach of fiduciary duty against the 1st Defendant are destined for failure. For that reason the breach of fiduciary claims must be struck out on the grounds that they are frivolous and vexatious.

Decision whether to Strike Out Pleadings of Fraud against the 2st Defendant

67. It is alleged under the fraud claims against the 2st Defendant that Clarien "*breached their fiduciary duty to act honestly and in good-faith*" and "*…conspired starting with Richard Gibson's meeting on or about February 11, 2009 where it was decided to place Barbara Blades as an Obligor on the New First Mortgage debt to enable a payoff of the Bad and Secret $433,000 Debt and Grenville Lines, and they did so by deception and accepting forged documents, failed to advise the Second Lien Mortgagee of the true terms and conditions,*

intentionally inflicted emotional distress on Barbara Blades and her family since 2009 to this day, and fraudulently foreclosed on the 22 Rockville Lane property in 2014 despite numerous warnings of fraud and deception…"

68. The Plaintiffs' pleaded case against Clarien is not only vague in material parts but regrettably incoherent. In the writ pleadings there are abstract references to a meeting which occurred on 11 February 2009 between Clarien and a Mr. Richard Gibson and Mr. Lines. The Plaintiffs appear to say that this meeting kick-started a fraudulent scheme which was ultimately carried out by Clarien through to its final purpose. The Plaintiffs say that the execution of the New First Mortgage was decided during that February 2009 meeting and that preparatory steps (e.g. obtaining citizenship in Bermuda) were outlined to enable Ms. Blades Lines to guarantee the New First Mortgage. Maintaining that the loan application was fraudulently submitted, the Plaintiffs accuse Clarien of engaging in a '*secret side deal*' to limit a Mr. David Lines Sr.'s terms of guarantee. In approving the First New Mortgage, the Plaintiffs say in their pleadings that Clarien "*overlooked fraud, payment of real estate taxes, payment of insurance, and that proper notices were sent to their client Barbara Blades, and the Second Mortgagee, as they were determined to close the New First Mortgage to pay off the Secret Bad $433,000 debt".* The Plaintiffs also state that Clarien fraudulently obtained the Deed of Postponement with the trustees of the BBL Trust and fraudulently foreclosed on the property.

69. In my judgment, the conclusory allegations pleaded against the 2nd Defendant do not compensate for the lack of particularity for the alleged acts of fraud. One cannot reasonably discern from the Plaintiffs' pleadings precisely what the fraudulent acts committed by Clarien are said to be. For example, it is far from clear what primary and material facts the Plaintiffs rely on to support their conclusions that the Deed of Postponement was fraudulently obtained and that the property was fraudulently foreclosed, notwithstanding that a Court of this jurisdiction ordered the possession and sale of the property in favour of Clarien and that such Order was consistent with Clarien's contractual rights under the New First Mortgage.

70. Applying the same reasoning and principles settled by the Court of Appeal in *Intercontinental Natural Resources Ltd v Conyers Dill & Pearman,* I find that the non-particularisation of the fraud claims against Clarien are beyond cure. The claims of fraudulent conduct are unsustainable and incapable of trial success in its current state. For these reasons, I am left with no alternative but to also strike out these claims as a abuse of process and as frivolous and vexatious.

Decision Whether to Strike Out the remainder of the Pleadings against the 2st Defendant

71. Similar to the position of the 1st Defendant, Clarien cannot be said, as a matter of legal principle, to owe a fiduciary duty to any trustee of the BBL Trust nor to Ms. Blades Lines as a

guarantor of the mortgage agreements. I would therefore dismiss the claims for breach of fiduciary duty as frivolous and vexatious.

72. This brings me to the Plaintiffs' claims that the fact of the unpaid land taxes ought to have been disclosed by Clarien before executing the New First Mortgage. It is not stated on the pleadings whether this constituted a breach of an implied or express contractual term. However, an immediate observation to be made is that the trustees to the BBL Trust were not party to the New First Mortgage. As for Ms. Blades Lines, no contractual obligations owed to her by Clarien are pleaded. This ambiguity spills into the Plaintiffs' pleaded complaint that Clarien never pursued claims against Mr. Lines or Abacus. Again, the cause of action arising out of this complaint is not discernable. For that reason, I find that these remaining portions of the writ pleadings against Clarien are also destined to be struck out as frivolous and vexatious and on the grounds that no reasonable cause of action is disclosed.

Whether the Plaintiffs' Claims are Time-barred under the Limitation Act 1984

73. Moving on from the subject of pleadings, Mr. Williams and Mr. Pachai relied on a 6-year limitation period under the Limitation Act 1984 in asserting that the Plaintiffs are time-barred from prosecuting these proceedings in any event. Sections 4 (tort actions) and 7 (simple contract actions) provide:

Time limit; actions founded on tort
4. An action founded on tort shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

Time limit; actions founded on simple contract
7. An action founded on simple contract shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

74. Part II of the 1984 Act contains the exceptions which may apply to the ordinary time limits prescribed under Part I. The only exception applicable to the facts of this case is contained under Section 33 under Part II which provides:

"*Fraud; concealment; mistake*
33 (1) Subject to subsection (3), where in the case of any action for which a period of limitation is prescribed by this Act, either—

(a) *the action is based upon the fraud of the defendant; or*
(b) *any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or*
(c) *the action is for relief from the consequences of a mistake,*

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

Reference in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.

(2) For the purposes of subsection (1), deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.

(3) Nothing in this section shall enable any action—

(a) to recover, or recover the value of, any property; or
(b) to enforce any charge against, or set aside any transaction affecting, any property,

to be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud or concealment or (as the case may be) the transaction in which the mistake was made took place.

(4) A purchaser is an innocent third party for the purposes of this section—

(a) in the case of fraud or concealment of any fact relevant to the plaintiff's right of action, if he was not a party to the fraud or (as the case may be) to the concealment of that fact and did not at the time of the purchase know or have reason to believe that the fraud or concealment had taken place; and

(b) *in the case of mistake, if he did not at the time of the purchase know or have reason to believe that the mistake had been made."*

75. Conservatively supposing that the Plaintiffs' Letter Before Action ("LBA") dated 29 March 2012 signifies the earliest point at which the Plaintiffs discovered their causes for action, the Defendants point to the fact that these proceedings were not commenced until 2019. On this analysis, the 6 year limitation period would come to an end on or near to 29 March 2018.

76. Mr. Williams cited the decision of the English Court of Appeal in Riches v DPP [1973] 1 WLR 1019 where Lawton LJ in his concurring judgment made the following remarks underscoring the value and importance of making a strike-out application at an early stage in litigation proceedings where a Plaintiff is said to be statutorily time-barred [1027]:

"*I would like to add a few words about the problem which arises under Dismore v Milton [1938] 3 ALL E.R. 762. That case has led, in my judgment, to much waste of time over the years which have gone by since it was decided. The object of R.S.C., Ord 18, r. 19, is to ensure that defendants shall not be troubled by claims against them which are bound to fail, having regard to the uncontested facts. One of the uncontested sets of facts which arises from time to time is when on the statement of claim it is clear that the cause of action is statute barred and the defendant tells the court that he proposes to plead the statute and, on the uncontested facts, there is no reason to think that the plaintiff can bring himself within the exceptions set out in the Limitation Act 1939. In those circumstances it is pointless for the case to go on so that the defendant can deliver a defence. The delivery of the defence occupies time and wastes money; and even more useless and time consuming from the point of view of the proper administration of justice is that there should then have to be a summons for directions, and an order for an issue to be tried, and for that issue to be tried before the inevitable result is attained. It seems to me that when that situation arises the comments of Lord Blackburn in Metropolitan Bank v. Pooley (1885) 10 App.Cas. 210, 221 are applicable. He said that a stay or even a dismissal of proceedings may "often be required by the very essence of justice to be done." The Supreme Court Practice (1973), p. 301, para. 18/19/3A. having called attention to that statement by Lord Blackburn, goes on to say that the object is "to prevent parties being harassed and put to expense by frivolous, vexatious or hopeless litigation." It would be contrary to public interest that justice should be shackled by rules of procedure when the shackles will fall to the ground the moment the uncontested facts appear; and that is just this case*."

77. I agree with the points made by Lawton LJ. It would be an injustice to both the Plaintiffs and the Defendants for this Court to direct the continuance of this litigation through to trial where it is clear that the claims will dissolve under the Limitation Act 1984. In my judgment, the Plaintiffs are plainly time-barred under the statute. For that reason, I am left with no alternative but to also strike out the entirety of these proceedings on the limitation grounds.

Application to Stay Proceedings

78. For the reasons outlined herein, I have struck out the entirety of the Plaintiffs' case against the Defendant on various grounds which would not be remedied by any decision from the DPP on whether to bring a criminal prosecution against either of the Defendants or their officers and associates.

Conclusion

79. The Plaintiffs' disqualification application is refused.

80. The Plaintiffs' application for a stay of proceedings is refused.

81. The Defendants' application to strike out the Plaintiffs' Amended Writ is granted. For the avoidance of doubt, the entire of these proceedings against the 1st and 2nd Defendants are struck out.

82. Either party may be heard on the issue of costs of this application upon filing a Form 31TC within 14 days of the date of this Ruling. Otherwise, costs shall follow the event in favour of the Defendants.

Dated this 26th day of May 2021

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THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT