Neutral Citation Number: [2018] EWHC 3575 (Ch)

Case No: BL-2018-000670

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

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 20/12/2018

Before:

MR JUSTICE MORGAN

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Between:

(1) DAVID HUGH CARR
(2) ANDREW ALEXANDER COLE
(3) JOHN CHARLES KEYWORTH CURTIS
(4) SEAN DAVIS
(5) ROBERT JAMES ELLIOTT
(6) NEIL SHAKA HISLOP
(7) JOHN STEPHEN HUGHES
(8) DENIS JOSEPH IRWIN
(9) THOMAS JOHNSON
(10) ZATYIAH KNIGHT
(11) DANIEL BEN MURPHY
(12) IAN ANTHONY PEARCE
(13) ROBERT WILLIAM SAVAGE
(14) JONATHAN CRAIG SHORT
(15) JAMES ANTHONY SMITH
(16) GARY TEALE
(17) ANTONY VIDMAR **Claimants**

- and –

(1) FORMATION GROUP PLC
(2) IAN BATTERSBY
(3) FORMATION ASSET MANAGEMENT LIMITED (in Liquidation)
(4) DAVID MCKEE
(5) KEVIN PATRICK MCMENAMIN
~~**(6) PAUL STRETFORD**~~
(7) GEORGE STUART URQUHART **Defendants**

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Mark Vinall (instructed by **Peters & Peters Solicitors LLP**) for the **Claimants**
James Hall (instructed by **Moore Blatch LLP)** for the **First Defendant**

Hearing date: 17th December 2018

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Judgment Approved

MR JUSTICE MORGAN:

1. By an application notice dated 14 November 2018, the First Defendant, Formation Group plc, applied for orders striking out parts of the claim against it, alternatively seeking summary judgment in its favour in relation to those parts of the claim. The application notice also sought an order that the Claimants respond to a Request for Further Information served on them by the First Defendant.

2. At a hearing on 17 December 2018, I determined a number of matters which had been raised by the First Defendant's application. I heard argument on one other matter where I did not give my decision at the hearing itself. This judgment deals with that matter. At the end of this judgment, I will also deal with the costs of the Claimants and the First Defendant in relation to the application as a whole.

3. The outstanding matter (apart from costs) with which this judgment deals is the First Defendant's application to strike out (or obtain summary judgment in respect of) the claim by the Fourteenth Claimant, Mr Short, against the First Defendant on the ground that the claim is statute barred.

4. In brief summary, the claim which Mr Short makes in these proceedings arises out of events which took place before 2010, in the course of which events, Mr Short's agent, known as ProActive Sports Management Ltd ("ProActive"), received from Mr Short's financial advisers, known as Kingsbridge and Formation Asset Management Ltd ("Formation AM"), a commission in return for ProActive introducing Mr Short to Kingsbridge/Formation AM, where that commission was not disclosed to Mr Short. The First Defendant was at the material times, the parent company of ProActive and of Formation AM and received dividends from ProActive. Mr Short alleges that the dividends paid to the First Defendant were increased in amount because of the receipt by ProActive of the undisclosed commissions referred to above.

5. In these proceedings, Mr Short claims relief against the First Defendant on a number of bases. Although Mr Short's claim against the First Defendant is, even now, somewhat concisely pleaded, I will proceed on the basis that his claim is that:

   (1) the First Defendant is liable for unconscionable receipt by it (by way of dividends from ProActive) of monies which had been paid by Kingsbridge and Formation AM in breach of fiduciary duty and received by ProActive in breach of fiduciary duty;

   (2) the First Defendant dishonestly assisted Kingsbridge, Formation AM and ProActive to commit a breach of their respective fiduciary duties;

   (3) the First Defendant is jointly liable with Kingsbridge and Formation AM for the tort involved in paying an undisclosed commission to Mr Short's agent;

   (4) the First Defendant is jointly liable with ProActive for the tort involved in its receiving an undisclosed commission;

(5) the First Defendant is liable for conspiracy to injure Mr Short by unlawful means causing damage to Mr Short equal to the amount of the undisclosed commission.

6. As stated above, all of the wrongdoing alleged by Mr Short occurred before 2010. In order to claim the benefit of a limitation period which ran for more than six years from the dates on which the various causes of action accrued, Mr Short has relied upon the postponement of the relevant limitation period pursuant to section 32 of the Limitation Act 1980. Mr Short relies on both section 32(1)(a), dealing with an action based upon fraud, and on section 32(1)(b), together with section 32(2), which deals with a case of deliberate concealment or deliberate commission of a breach of duty. However, any prolongation of the limitation period under section 32 only runs until the expiry of six years from the date of the discovery of the relevant wrongdoing. Mr Short accepts that he became aware of the relevant wrongdoing at an unspecified date in 2010.

7. As I will explain, there are two claim forms in this case. The first was issued on 6 November 2015 and the second was issued on 22 March 2018. The second claim form expressly incorporated the brief details of claim set out in the first claim form. Then, on 28 March 2018, the claimants served particulars of claim dated 26 March 2018 pursuant to the second claim form. If the first claim form is the relevant claim form, then it was issued within 6 years of the date in 2010, which is when Mr Short says he discovered the wrongdoing. Conversely, if the second claim form and the particulars of claim in relation to it are the relevant claim, then the effective date of those steps was March 2018 which was more than 6 years after the relevant date of discovery. The First Defendant was prepared to accept that the relevant date in March 2018 should be the date of issue of the claim form on 22 March 2018 rather than the date of service of the particulars of claim on 28 March 2018.

8. Although the First Defendant's application notice sought the dismissal of the entirety of Mr Short's claim on the basis of a limitation defence, Mr Hall (who appeared for the First Defendant) at the hearing accepted that I should not be asked to strike out Mr Short's claim based on the alleged unconscionable receipt by the First Defendant of trust monies. As regards the other causes of action asserted by Mr Short against the First Defendant, the short point made by the First Defendant is that those causes of action were not the subject of the first claim form and only appeared in the particulars of claim served pursuant to the second claim form. The First Defendant therefore contends that the result is that those causes of action are statute barred and ought now to be dismissed on that ground.

9. The 2015 claim form was issued on 6 November 2015 with action number CH-2015-004561. The claim form was amended on 10 and 27 November 2015 and 18 February 2016. At the hearing of the First Defendants' application, the parties agreed that nothing turned on these different dates for present purposes although one of the amendments to the original claim was said to be potentially significant. I will refer to that amendment below.

10. The 2015 claim form had multiple claimants as identified in schedule 1 to the claim form. On issue, there were some 70 claimants are thereabouts. Mr Short was listed in schedule 1. The claim was brought against multiple defendants as identified in schedules 2 to 6 of the 2015 claim form. Schedule 2 was a list of several defendants described as "agents". The First Defendant was listed in schedule 2. Schedule 3 was a

list of several defendants described as "IFAs". The First Defendant was also listed in schedule 3. Schedules 4, 5 and 6 were lists of defendants described as "accountants", "banks" and "partnerships and promoters". Schedule 7 to the claim form contained "Brief Details of Claim". Schedule 7 began by referring to schedules 1 to 6. It was said that the "agents" in schedule 2 "acted for and advised certain of the Claimants". It was further said that the "IFAs" in schedule 3 "acted for and advised certain of the Claimants".

11. Paragraph 10 of schedule 7 pleaded that:

> "Typically, the Agents introduced the Claimants to the IFAs. The IFAs and, where applicable the Agents and/or the Accountants, in breach of their contractual duty and/or duty of case and/or fiduciary duty and/or regulatory or statutory duties owed to each of the Claimants that they each advised, mis-sold inappropriate, unsuitable and/or unviable products to certain of the Claimants and/or caused or allowed the Claimants to invest in and/or enter inappropriate, unsuitable and/or unviable investment schemes and products without sufficiently exploring the details or advising on the risks. **Some or all of the IFAs then paid undisclosed commissions to the Agents upon the making of investments. The Agents failed to disclose these commissions to the Claimants.**" [My emphasis]

12. Paragraph 14 of schedule 7 to the 2015 claim form originally pleaded:

> "Each and all of the Defendants thereby combined or agreed to harm the Claimants' economic interests through unlawful means."

13. The allegation in paragraph 14 was deleted by an amendment made in February 2016.

14. Paragraph 19 of schedule 7 to the 2015 claim form pleaded that the claimants had suffered loss as a result of, amongst other things, the undisclosed commissions.

15. Paragraph 20 of schedule 7 to the 2015 claim form stated that the claim against the agents and against the IFAs was for specified wrongdoing, which was separately listed for each group of defendants, but in both cases the specified wrongdoing included "breach of fiduciary duty" and "breach of trust and restitution of all secret commission paid". This paragraph originally included "unlawful means conspiracy" but those words were deleted when paragraph 14 of the claim form was deleted.

16. Paragraph 21 of schedule 7 to the 2015 claim form was a prayer for relief which claimed damages and an account of profits and restitution of all secret commissions paid in breach of trust including all proprietary remedies ancillary and/or necessary to such claim.

17. Schedule 7 to the 2015 claim form contained altogether some 21 paragraphs and extended to 9 pages. It can be see that the parts of those 9 pages which are now said to be relevant to the present issue are very limited in extent.

18. By March 2018, the various parties to the 2015 claim form agreed that it would be better from a procedural point of view if the claims in relation to the payment and receipt of undisclosed commissions were removed (it was called "deconsolidated") from the other claims in those proceedings so that the claims in relation to undisclosed commissions would proceed by way of separate proceedings. On 7 March 2018, I ordered that the claims should proceed in that way and that a new claim form should be served in relation to those claims. The order provided that the issue of the new claim form should not affect the position of the parties with regard to limitation. A new claim form was duly issued on 22 March 2018 in action number CH-2018-000670 and that is the action in which the First Defendant's application is made.

19. The claims now made by Mr Short against the First Defendant are pleaded, concisely, at paragraphs 28 and 29 of the Particulars of Claim served in action number CH-2018-000670 in these terms:

> "28. Formation Group received the dividends from ProActive SM set out at paragraph 13 above knowing (through Mr Stretford, McKee and /or Mr Battersby) that they represented, in part, the proceeds of secret commissions paid by Kingsbridge/Formation AM. Formation Group is thus liable in equity for knowing receipt.
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> 29. Further or alternatively, by assisting or encouraging the payment and receipt of secret commissions pursuant to a common design that they should be paid, Formation Group is liable as a joint tortfeasor; and/or for unlawful means conspiracy; and/or for dishonest assistance in a breach of fiduciary duty."

20. The claim now made also claims, as remedies, a constructive trust of the monies received, an account in equity and damages, in the amount of the commissions.

21. The 2015 claim form was a Part 7 claim form. In such a case, CPR 16.2(1) provides that:

> "[t]he claim form must –
>
> (a) contain a concise statement of the nature of the claim;
>
> (b) specify the remedy which the claimant seeks;
>
> … "

22. CPR 7.4 provides that particulars of claim may be contained in or served with the claim form or later than the claim form: see CPR 7.4. CPR 16.4(1)(a) provides that the particulars of claim must include "a concise statement of the facts on which the claimant relies".

23. Thus, it can be seen that the claim form in this case should have contained "a concise statement of the nature of the claim" but did not need to go so far as to include "a concise statement of the facts on which the claimant relies" because the latter could

appear in the particulars of claim rather than in the claim form. The parties did not agree as to the test to be applied when considering what will suffice as "a concise statement of the nature of the claim" for the purposes of CPR 16.2.

24. As will be seen, some of the decided cases which consider CPR 16.2 refer to the position under the Rules of the Supreme Court, in particular RSC 1965, Ord 6 r 2, which dealt with the indorsement of a claim upon a generally indorsed writ and provided that such an indorsement should be:

> " … a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby".

25. The requirements of the CPR in relation to a claim form were considered in Nomura International plc v Granada Group Ltd [2008] Bus LR 1. The ultimate issue in that case was whether it was proper for the claimant to issue a claim form in the circumstances of that case. However, the judge (Cooke J) considered the requirement that the claim form contain a concise statement of the nature of the claim. He said at [38]-[41]:

> " 38. The concept, as exemplified by this line of authority, is further reinforced by the terms of CPR r 16.2(1) which provides that "the claim form must—(a) contain a concise statement of the nature of the claim". CPR r 22.1(4) provides that the claim form must be verified by a statement of truth being "a statement that—(a) the party putting forward the document … believes the facts stated in the document are true".
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> 39. Because of the similarity of the terms of the rule and because the policy underlying it must be the same as for the equivalent rule in the CPR, there is room for reference to authority relating to RSC Ord 6, r 2 . This rule required a writ to be endorsed either with a statement of claim or with "a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby". Court of Appeal authority (Lord Denning MR in *Sterman v E W & W J Moore [1970] 1 QB 596*, 603) held that the word "or" in that rule was conjunctive so that it was necessary to state both the nature of the claim and the relief or remedy required. The relevant commentary in the RSC, which was the result of an earlier Court of Appeal decision in *Marshall v London Passenger Transport Board [1936] 3 All ER 83*, provided **"a concise statement of the nature of the claim" meant that, where the claim arose out of a contract, the endorsement should give details of the relevant contract and where the claim arose out of a tort it should give the date and place of the occurrence and the nature of the tort alleged. It is necessary to at least give some idea or indication of the duty which it is alleged the defendant has failed to perform.**
>
> 40. …

> 41. In my judgment, therefore, if Nomura, at the time of issuing its claim form, was not in a position to do the minimum necessary to set out the nature of the claim it was making, it would be seeking an illegitimate benefit, namely the prevention of further time running under the Limitation Acts for a claim which it could not properly identify or plead. That would be an abuse of the process of the court. **In so far as it sought to make any claim in contract, it would be necessary for it to be able to identify the particular contract and the alleged breach. In the case of any breach of tortious duty, it would be necessary for it to be in a position to identify the essential acts or omissions which constituted the breach of duty, negligence or negligent misstatement. For the purposes of negligent misstatement, Nomura would have to be able to identify what advice or information was inaccurate and what was given negligently, at least in essence.** If Nomura was not in a position to do this, it was not in a position properly to issue a claim, since it could not have proceeded properly to plead particulars of claim without the off-chance occurring that something would turn up. In such circumstances it could have no present intention to pursue a claim since it had no sufficient idea of the claim it wished to pursue." [My emphasis]

26. Following the lead of the judge in Nomura, I have considered some of the cases on the rules which preceded the CPR to see what was required as "a concise statement of the nature of the claim" under the earlier rules.

27. In Marshall v L.P.T.B. [1936] 3 All ER 83, Romer LJ said at 90:

> "Reading these rules, and reading the forms set out in the appendix, it is apparent to my mind, although it is not requisite to state the precise nature of the claim made by the plaintiff, that the plaintiff must by the indorsement of his writ of summons give to the defendants some general idea of the nature of his claim. It is not sufficient for the plaintiff to indorse his writ merely with a claim for damages. Plainly, that would be insufficient. Nor, in my opinion, is it sufficient for a plaintiff to indorse his writ with a claim for damages for breach of contract or damages for negligence **without giving the defendants some indication of the contract which he, the plaintiff, alleges has been broken, or some idea of the duty which he says the defendants have failed to perform.**" [My emphasis]

28. In Graff Brothers Estates Ltd v Rimrose Brook Joint Sewerage Board [1953] 2 QB 318, the headnote reads:

> "The plaintiffs, owners and occupiers of land and houses, issued a writ against the defendants, a sewerage board assumed to be acting under statutory authority, and a firm of contractors who carried out work on the board's instructions. The writ bore

> a general indorsement in regular form claiming damages for wrongfully taking away the support of the plaintiffs' land and houses. Later the statement of claim was delivered, but more than one year after the cause of action had accrued. By it the plaintiffs claimed damages for trespass, and alternatively, by paragraph 5, damages for negligence in failing to take proper precautions to prevent support being, withdrawn from the land and buildings. The defendants issued a summons asking that the paragraph alleging negligence be struck out on the ground that it set up a new cause of action not indorsed on the writ, and that such new cause of action was barred, at the time when the statement of claim was delivered, by section 21 of the Limitation Act, 1939 :-
>
> *Held,* **that the general indorsement properly stated the nature of the plaintiffs' claim and was wide enough to cover not only the alternative claim in negligence but also trespass, nuisance, or withdrawal of support simpliciter**; that, accordingly, the claim in negligence did not constitute a new cause of action, and that the pleadings as delivered could stand." [My emphasis]

29. The decision in Graffs Brothers Estates shows that if the indorsement on the writ or the claim form sets out the essential elements of the claim, it is not necessary to go further and identify the legal basis for the claim by, for example, naming the cause of action.

30. Mr Vinall cited Travis Perkins Trading Co Ltd v Caerphilly County Borough Council [2014] EWHC 1498 (TCC) which set out lengthy passages from the judgments in the Court of Appeal in Evans v Cig Mon Cymru Ltd [2008] 1 WLR 2675. The latter case is authority for the proposition that when the court is asked to construe a claim form, it applies the usual rule applicable to the construction of a document, which is that the court construes the document objectively and has regard to the background facts which were available to the relevant parties. In the Evans case, the court construed the claim form in the light of particulars of claim which were served at the same time as the claim form.

31. In Travis Perkins, the judge (Akenhead J) held, at [22](d), following the decision in Evans, that the court could, when construing a claim form, consider the relevant background to the claim form and could have regard to the particulars of claim, particularly if served promptly at or about the time of the issue and/or service of the claim. He further said that it was legitimate to have regard to correspondence sent or served at or about the same time as the claim. The judge held that, on the true construction of the claim form in that case, the claims set out in the later particulars of claim were stated in the claim form. He added at [27] that his conclusion was supported by the fact that although the particulars of claim were not served at the same time as the claim form, the parties had agreed a stay of the claim and an extension of time for the service of the particulars of claim and, in the light of that agreement, he was prepared to consider the particulars of claim as an aid to the interpretation of the claim form just as he could have done if they had been served at or around the same time as the claim form.

32. Mr Hall stated at the hearing that he was prepared to accept that the claim by Mr Short that the First Defendant unconscionably received monies held on trust for him, so that it was liable to pay to him the monies it had received in that way, was a claim the nature of which had been stated in the 2015 claim form. Accordingly, I was not asked to form my own view of that matter and therefore I will not do so. I will proceed on the basis that there is no application before me whereby the First Defendant seeks the dismissal of Mr Short's claim based on alleged unconscionable receipt.

33. Mr Hall submits that the nature of the claims against the First Defendant in dishonest assistance, for liability as a joint tortfeasor and in conspiracy were not stated in the 2015 claim form.

34. I have set out what is pleaded in the particulars of claim as the claim in dishonest assistance. The elements of such a claim are that the defendant has assisted a breach of trust or fiduciary duty and has done so dishonestly. In such a case, the defendant is not himself a trustee or a fiduciary and does not himself commit a breach of trust or fiduciary duty. However, someone else commits a breach of trust or fiduciary duty and the defendant assists the commission of the breach. The defendant is liable because he has acted dishonestly. From the current particulars of claim, it is possible to see that the claim which is made against the First Defendant in this respect is that the First Defendant assisted the paying party to pay an undisclosed commission to Mr Short's agent and/or assisted Mr Short's agent to receive an undisclosed commission. The question therefore is: was the nature of that claim stated in the 2015 claim form, even if only concisely stated?

35. In Nomura, when describing what was required as a concise statement of the nature of a claim in tort, the judge said that it was necessary for the claimant to identify the essential acts or omissions which constituted the breach of duty, negligence or negligent misstatement. I consider that I should adopt a similar approach to the claim for dishonest assistance of a breach of fiduciary duty. I will apply that test to the 2015 claim form on the basis that it contained paragraph 14 and then in the alternative on the basis that it did not contain paragraph 14.

36. On the assumption that the 2015 claim form contained paragraph 14, it can be said that it identified that the breaches of fiduciary duty were the payment and the receipt of undisclosed commissions. Although the claim form appeared to be alleging that the First Defendant paid the commissions and also received the commissions, it might be said that paragraph 14 tended to suggest that the First Defendant might have combined with others to harm the Claimants through unlawful means which might have included the payment and the receipt of undisclosed commissions. If that is what paragraph 14 suggested, then it might be said that the claim form might have extended to a case where the First Defendant assisted others to commit breaches of fiduciary duty. However, what is missing from the claim form is an allegation that the First Defendant acted dishonestly. Thus, the claim form did not include an essential matter which must be established in order for the First Defendant to be liable for dishonest assistance of a breach of fiduciary duty. I consider that the 2015 claim form did not do enough to state the nature of a claim of this kind.

37. The position was made worse by the amendment to delete paragraph 14 of the 2015 claim form. With its removal, the claim against the First Defendant in relation to

undisclosed commissions was that it had paid them and received them. The essential element that it assisted others to do so was not stated. Mr Vinall, who appeared on behalf of Mr Short, submitted that the 2015 claim form should be construed against the background facts which would be taken to be known to the parties. The relevant background fact on which he relied was that the First Defendant was the parent of ProActive and Formation AM. Further, he said that the First Defendant would know that it had not itself acted as a sports agent or as an IFA but yet it was being sued on some basis or other. Mr Vinall suggested that if one took into account those background matters and then construed the 2015 claim form in the light of them, it would be adequately clear that the First Defendant was being sued not so much as a principal wrongdoer but as an accessory to the wrongdoing of others. I am not persuaded by that submission. I will assume in Mr Vinall's favour that I should not give any weight to the point that paragraph 14 had at one time appeared in the claim form and was then removed. What the claim form did allege was that the First Defendant was itself an agent and an IFA who had acted for and advised certain of the Claimants. I do not think that the First Defendant could be expected to interpret the 2015 claim form as stating that it was instead describing the liability of the First Defendant as an accessory to someone else's wrongdoing.

38. Based on the above reasoning, I conclude that the claim in dishonest assistance is properly to be considered as having been made for the first time in March 2018 rather than in November 2015. Because Mr Short accepts that he had discovered the relevant wrongdoing in 2010, that claim is out of time and should now be dismissed.

39. My conclusion in relation to the claim in dishonest assistance is the same irrespective of whether the claim form is treated as including paragraph 14 or not and accordingly I need not consider at this point what is the correct position in that respect. However, I will deal with that question later in this judgment.

40. I will next consider the claim that the First Defendant is a joint tortfeasor with the party paying the undisclosed commission and the party receiving the undisclosed commission. I have set out above the pleading (from paragraph 29 of the particulars of claim) as to liability as a joint tortfeasor. Again, the question is: was the nature of that claim stated in the 2015 claim form, even if only concisely stated?

41. I consider that, before the removal of paragraph 14 by amendment, I would probably have taken the view that the nature of the claim against the First Defendant as a joint tortfeasor was stated in the claim form. I can see, however, that it was well arguable that the allegation in paragraph 14 was too general and was part of a lengthy pleading which alleged a large number of unlawful acts and so did not adequately state that the First Defendant was being sued pursuant to a common design that undisclosed commissions would be paid and received by others. However, even if the 2015 claim form, including paragraph 14, would have been sufficient to state the nature of a claim against a joint tortfeasor, after the removal of paragraph 14, I do not consider that the nature of this claim was stated, even concisely. The 2015 claim form pleaded that the First Defendant had itself paid and received undisclosed commissions and there was no statement that, by reason of a common design, it was liable for the wrongdoing of others.

42. In these circumstances, I need to ask for the purposes of the limitation issue which has now arisen, whether I should disregard the fact that paragraph 14 was removed from

the claim form by an amendment in February 2016. I consider that the answer to that question emerges from considering the following example. Suppose that a claim form contains a concise statement as to the nature of two different claims, claim A and claim B. Both claim A and claim B are in time as regards limitation. Some time after the claim form is issued, it is amended to remove claim B. Some time later, the claimant wishes to amend the claim form again to reintroduce claim B, which is now out of time. Should the court hold that claim B is not a new claim because it was in the original claim form before amendment or should it consider that claim B is a new claim because it is not already in the claim form when the claimant applies to reintroduce it? I consider that the answer is clearly the second of these alternatives. It follows from this reasoning that when I consider the claim against the First Defendant as a joint tortfeasor which appeared in the particulars of claim served pursuant to the 2018 claim form, I should compare the claims in the particulars of claim with whatever remained in the 2015 claim form in 2018.

43. It follows that I will treat the claim against the First Defendant as a joint tortfeasor as having been made in 2018 and not in 2015 and accordingly that claim is out of time and will be dismissed.

44. I will next consider the claim that the First Defendant is liable for an unlawful means conspiracy to injure Mr Short. I consider that before the removal of paragraph 14 by amendment, I would probably have taken the view that the nature of the claim against the First Defendant in conspiracy to injure by unlawful means was stated in the claim form. Conversely, after the removal of paragraph 14, I do not consider that the nature of this claim was stated, even concisely. It follows that I will treat the claim against the First Defendant in conspiracy as having been made in 2018 and not in 2015 and accordingly that claim is out of time and will be dismissed.

45. Mr Vinall had a further argument which I now need to consider. So far, I have construed the 2015 claim form against the background facts up to the date of issue of that claim form. Mr Vinall argued that I should take account of later events and then consider the matter again in the light of those events.

46. The 2015 claim form was served on the First Defendant in February 2016. In March 2016, the solicitors for the Claimants and the First Defendant agreed a stay of the proceedings and Particulars of Claim were not then served in relation to the 2015 claim form. On 7 October 2016, the solicitors for the Claimants wrote to the solicitors for the First Defendant a 13-page "letter before action". That letter went into matters in great detail and on page 12 of the letter, the Claimants' solicitors formulated claims against the First Defendant in broadly similar terms to those now appearing in paragraphs 28 and 29 of the particulars of claim. Mr Vinall submits that if there had not been a stay of the proceedings, the Claimants would have had to serve particulars of claim shortly after February 2016 and if the particulars of claim which had then been served had said the same things as were in the letter of 7 October 2016, then those particulars of claim would be read together with the 2015 claim form and the result of reading them that way would be that the court should hold that the claims for dishonest assistance and for joint liability in tort and for conspiracy would be treated as being within the claim form. Mr Vinall relies on what was said in Travis Perkins which was a case where there was an agreed stay which meant that the particulars of claim in that case were served later than the time when the claim form was served.

47. I am not persuaded that I can extend the decision in Travis Perkins as far as the facts of this case. That case, and the earlier decision in Evans, considered an approach whereby one could read the claim form with particulars of claim served at or around the same time as the claim form. It seems to have been considered that in such a case the defendant should proceed on the basis that it was intended that the claim form would contain a concise statement of the nature of the claim and the particulars of claim would set out the facts relied upon in relation to the same claim. This is not necessarily because the particulars of claim are being used to construe the words in the claim form (although that might sometimes be possible) but because the court is prepared to make a very favourable assumption in favour of the claimant that both documents are dealing with the same claim. In Travis Perkins, the judge was prepared to extend this favourable assumption a good deal further so as to apply to particulars of claim served much later than the claim form, where the delay in the particulars of claim was explained by an agreement for a stay. However, it would be a yet further extension of a favourable assumption to hold that a claim form should be assumed to be making a claim, which could not be found in the claim form itself, but which was put forward in a letter from the Claimants' solicitors many months later. To extend the assumption that far would be to confer too great an advantage on a claimant who could then rely on the date of issue of the claim form to stop time running for limitation purposes in relation to a claim which did not appear in the claim form itself but which was put forward months later.

48. I consider that the terms of the letter of 7 October 2016 only serve to show that in the period from November 2015 to October 2016, the Claimants and their advisers considered the nature of the claims they could put forward and came up with new claims the nature of which was not stated in the claim form.

49. It follows that I will not assume in favour of the Claimants that the 2015 claim form made the same claims as those identified in the letter of 7 October 2016.

50. For the avoidance of doubt, I comment that Mr Vinall did not submit that I should hold that Mr Short should be given permission to introduce a new claim pursuant to section 35 of the Limitation Act 1980 and CPR 17.4 on the ground that the claims in dishonest assistance of a breach of fiduciary duty and/or for liability as a joint tortfeasor and/or in conspiracy arose out of the same facts or substantially the same facts as the claims made in the 2015 claim form, following the amendment to remove paragraph 14 of schedule 7.

51. I will now consider the position in relation to the costs of the application made by the First Defendant. The application sought three things. The first was the summary disposal of the claim by all of the Claimants that the First Defendant was liable for unconscionable receipt of trust monies. That application failed. In that respect, the Claimants are the winners and the First Defendant is the loser. Accordingly, the Claimants should receive their costs in so far as they related to that part of the application.

52. The second part of the First Defendant's application sought the summary disposal of the entirety of Mr Short's claim. In view of my ruling at the hearing on the claim for unconscionable receipt of trust monies and in view of Mr Hall's acceptance that such a claim was within the 2015 claim form, Mr Hall has not achieved a summary disposal of the whole of Mr Short's claim but he has achieved a summary disposal of

all of the other ways in which Mr Short's claim has been put forward. As between Mr Short and the First Defendant, the First Defendant should receive from Mr Short (unless the claimants as a whole accept that they are liable for Mr Short's costs) 80% of the costs incurred by the First Defendant on that issue.

53. The third part of the First Defendant's application related to the request for further information. In that respect, the Claimants substantially won and the First Defendant substantially failed. I consider that the First Defendant should pay to the Claimants two-thirds of their costs in relation to that part of the application.

54. At the hearing, the parties' submissions proceeded on the basis that the parties' costs of the application as a whole should be divided evenly between the three parts of the application. On that basis, the result is:

    i) The First Defendant should pay 1/3 of the Claimants' costs plus 2/3 of 1/3 of the Claimants' costs; and

    ii) Mr Short should pay to the First Defendant 80% of 1/3 of the First Defendant's costs.