Neutral Citation Number: [2024] EWHC 448 (Ch)

Case No: BL-2023-000283

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

Royal Courts of Justice
The Rolls Building
Fetter Lane
LONDON
EC4A 1NL

Friday, 1 March 2024

Before :

MR JUSTICE FANCOURT

- -

Between :

MOHAMED HASSAN EL HADDAD

Claimant

- and -

(1) KHULOOD ABDULLA HASSAN AL ROSTAMANI
(2) HASSAN ABDULLA AL ROSTAMANI
(3) MARWAN ABDULLA AL ROSTAMANI
(4) WAFA ABDULLA AL ROSTAMANI
(5) BADREYA ABDULLA RAHMAN AL ROSTAMANI
(6) HASNA ABDULLA AL ROSTAMANI
(7) NAJLA ABDULLA AL ROSTAMANI
(8) HABIB MOHAMED ABDULLAH AL MULLA
(9) ALLEN & OVERY LLP
(10) INDIA JORDAN
(11) RICHARD FARNHILL
(12) STEPHEN MORIARTY KC
(13) GILES ROBERTSON
(14) ALEXANDRA WHELAN
(15) CLYDE & CO LLP
(16) RICHARD JAMES HARRISON
(17) JUSTIN FENWICK KC
(18) THOMAS OGDEN

Defendants

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- -

Patrick Lawrence KC (instructed by **RPC**) for the Ninth to Fourteenth Defendant
Ian Croxford KC and Jack Watson (instructed by **Clyde & Co**) for the **Fifteenth to Eighteenth Defendant**
Dr Mohamed Hassan El Haddad, Claimant, in person

Pre-reading days: 12, 15 January 2024
Hearing dates: 16, 17, 18 January 2024
Draft judgment circulated: 23 February 2024

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APPROVED JUDGMENT

This judgment was handed down via remotely at 10.00 am on 1 March 2024 by circulation to the parties or their representatives and by release to the National Archives.

Mr Justice Fancourt:

Introduction

1. The Claimant, Dr Mohamed El Haddad ("Dr Haddad"), issued a claim form on 23 February 2023 seeking to set aside the judgment given against him in this court on 7 July 2021 ([2021] EWHC 1892 (Ch)) ("the 2021 Judgment") on the ground that it was procured by the fraud of all eighteen defendants to this claim. By the order subsequently made on 8 November 2021, leave to serve that claim on the First to Eighth Defendants (who were defendants to that claim) out of the jurisdiction was set aside and the Court declared that it had no jurisdiction to try it.

2. I will refer to that previous claim as "the Partnership Claim". It was a claim to dissolve an alleged 50/50 partnership between Dr Haddad and the First Defendant ("Ms Khulood") and administer its assets, some of which were allegedly vested in the Second to Seventh Defendants. The Eighth Defendant was Ms Khulood's Dubai lawyer.

3. The Ninth to Fourteenth Defendants to this claim are the lawyers who were acting for the First to Seventh Defendants in the Partnership Claim; the Fifteenth to Eighteenth Defendants are the lawyers who were acting for the Eighth Defendant. I refer to them collectively as "the Lawyer Defendants".

4. The claim form in this action was served on the Lawyer Defendants within the jurisdiction. Dr Haddad's application for leave to serve it out of the jurisdiction on the First to Eighth Defendants has been adjourned to await the outcome of the applications that are before me, namely applications issued on 8 September 2023 by:

    i) the Ninth to Fourteenth Defendants to strike out the claim form and particulars of claim, pursuant to CPR rule 3.4(2), and

    ii) the Fifteenth to Eighteenth Defendants to strike out the claim form and particulars of claim pursuant to rule 3.4(2) and/or for reverse summary judgment, pursuant to CPR rule 24.2

    ("the Applications").

5. I will return to the current claim form and particulars of claim later, but first it is necessary to explain in more detail the circumstances in which the claim has been issued.

Background to the claim

6. Leave to serve the Partnership Claim in the United Arab Emirates ("UAE") on the First to Eighth Defendants was set aside by Zacaroli J on two distinct grounds, namely that Dr Haddad:

    i) could establish no serious issue to be tried about the existence of the alleged partnership with the First Defendant because (and only because) of an issue estoppel arising from decisions of the UAE courts in Dubai, which had decided that Dr Haddad failed to prove the existence of such an agreement;

ii) had deliberately not disclosed to the court, when seeking leave to serve out, the fact that the Ninth Defendants, acting on behalf of the First to Seventh Defendants, had written a response to his letter before claim explaining why he was precluded by *res judicata* and issue estoppel from bringing his claim in England.

7. As a result of ground (i) above, this court declined to hear his claim. The Judge indicated that, had he not refused jurisdiction on ground (i), he would have set aside service out on ground (ii) and left Dr Haddad to re-apply for leave to serve out.

8. To say that Dr Haddad was aggrieved by the judgment would be a considerable understatement. He first applied to Zacaroli J to recuse himself from hearing his application for permission to appeal, and when this was inevitably refused he advanced 66 grounds of appeal, which included that the judgment was obtained by fraud of the defendants' expert witness of UAE law, Mr Aidarous, and that the Judge was apparently biased. Permission to appeal was refused.

9. Dr Haddad then applied to the Court of Appeal for permission to prepare a skeleton argument estimated to require 139 pages to address 111 alleged errors of fact or law in the judgment (62 of which related to the issue estoppel issue), one allegation that the judgment was obtained by fraud and six allegations of misleading the court, and allegations of breach of natural justice and fairness and lack of independence on the part of the tribunal. (Dr Haddad was represented before Zacaroli J by Andrew Ayres QC but prepared the intended appeal himself and then persuaded junior counsel, Mr Baki, to lend his name to the skeleton argument.) At the same time, Dr Haddad applied to the Court of Appeal for permission to adduce a bundle of about 1350 pages instead of the permitted 350 pages in support of his application for permission to appeal.

10. The Court of Appeal refused permission for a longer skeleton argument and larger appeal bundle, but Dr Haddad took no notice. He filed a skeleton argument running to 81 pages, his extensive appeal bundle, and an application to rely on new evidence, including a new, further expert report from his UAE law expert, Dr Khrais. The skeleton argument addressed (in the event) 57 grounds of appeal that were pursued, which focused mainly on the issue estoppel argument, contending (essentially, but in multifarious different formulations) that the Judge had erred in concluding that the existence of an English partnership with Ms Khulood had been the subject of consideration or decision in the UAE cases. The skeleton also contained grounds:

i) that, on the basis of the new evidence of Dr Khrais, that the expert evidence of Mr Aidarous had deceived the Court;

ii) that the solicitors acting for the defendants to the Partnership Claim and their leading and junior counsel had dishonestly misled the court, and so the judgment was obtained by fraud; and

iii) further, that the judgment was in breach of the rules of natural justice and of Article 6 of the ECHR.

The bias allegation was dropped at that stage.

11. It is notable, therefore, that the application for permission to appeal the 2021 Judgment included allegations of fraud by the Lawyer Defendants at that stage.

12. Males LJ refused permission to appeal, principally on the basis of the serious failure by Dr Haddad to give full and frank disclosure, and so dismissed the application for permission to rely on new evidence. In his reasons, he explained that it would be wrong to leave the matter there, and commented that the skeleton argument was incoherent and that it was hard to see that there was any proper basis for allegations of dishonesty on the part of Mr Aidarous, solicitors or counsel. His Lordship therefore directed a hearing to explore with Mr Baki of Counsel whether there was any proper basis for the allegations of dishonesty that he had pleaded.

13. At that hearing, Mr Baki disavowed the allegations of dishonesty and apologised for lending his name to allegations that he was not able to justify, though he made clear that Dr Haddad would continue to pursue the matter of dishonesty elsewhere. Males LJ dismissed the applications for permission to appeal, and for permission to appeal his order for costs, as being totally without merit. This obviously included the attempt to appeal on the basis that the Court had been deceived by the Lawyer Defendants and wrong about the issue estoppel.

14. Undeterred by that setback, Dr Haddad personally wrote a letter before claim on 20 January 2023 to all eighteen Defendants. The letter was characteristically long and repetitive, running to 163 closely-typed pages and 903 paragraphs.

15. Equally characteristically, Dr Haddad pulled no punches in what he said. He accused:

    i) the solicitors representing the First to Eighth Defendants of intentionally misleading the court with 14 dishonest strategies in preparing the evidence on which they relied;

    ii) Mr Aidarous of 5 dishonest strategies relating to his expert evidence;

    iii) Counsel instructed on behalf of the First to Eighth Defendants of knowingly misleading the court with nine dishonest strategies relating to the hearing before Zacaroli J;

    iv) Counsel instructed by the First to Seventh Defendants of 2 dishonest strategies in their skeleton argument, which was adopted by counsel for the Eighth Defendant;

    v) All Counsel of knowingly misleading the court by the list of issues that they agreed, and 19 dishonest strategies at the hearing, as well as a further 9 dishonest strategies to mislead the court in responding to the application for permission to appeal.

    A further 14 dishonest strategies were also alleged, though it is difficult to say whether these were distinct from those previously alleged.

16. All of the solicitors and barristers concerned were alleged to have been complicit in others' dishonesty: in other words, they conspired together, to some extent (though at the hearing before me, Dr Haddad disavowed any allegation of conspiracy, on the basis that he did not have any evidence to establish that).

17. These are clearly exceptionally serious allegations, made as they are against respected and long-established City firms (though what the firms are alleged to have done distinctly from the individual lawyers involved is nowhere adequately particularised) and well-regarded and experienced solicitors and counsel. Involving, as the allegations do, so many serious allegations against two firms, three senior solicitors, two leading counsel and three junior counsel, there is a degree of inherent improbability about them. That does not mean that the court does not consider the allegations carefully, without fear or favour and with a mind open to being persuaded that some or all of what is alleged is properly arguable. But it does mean that there is a heavy burden on the person bringing a claim based on such allegations to set out with utmost clarity exactly what is alleged as having been dishonest, in particular the facts as to knowledge of falsity on the part of the Lawyer Defendants that are relied upon as giving rise to an inference of fraud.

18. Dr Haddad proceeded to issue his claim form but did not immediately serve it. The Ninth Defendant wrote to Dr Haddad in detail explaining that if the claim was issued an application would be made to strike it out, on the ground (among others) that the subject matter of the claim had already been disposed of in the Partnership Claim.

19. On 27 April 2023, before serving his claim form, Dr Haddad applied to the Court of Appeal for his application for permission to appeal to be re-considered under CPR rule 52.30, and for Males LJ to recuse himself from considering it on the basis of apparent bias.

20. That application was dismissed by Popplewell LJ on 9 June 2023. Still undeterred, Dr Haddad applied to Popplewell LJ for him to reconsider his decision, on the basis of a further witness statement. That application was dismissed as being totally without merit on 19 July 2023, bringing the appellate process to a final end. A footnote is that, on the same day, Popplewell LJ made an Extended Civil Restraint Order against Dr Haddad in terms making serious criticism of the approach of Dr Haddad in making spurious or unsupported allegations of dishonesty and refusing to "take no for an answer" from the courts.

21. Dr Haddad then served this claim on the Lawyer Defendants.

The claim form and particulars of claim

22. The claim form states brief details of Dr Haddad's claim as follows:

> "The Claimant seeks to set aside the judgment [2021] EWHC 1892 (Ch) obtained on 7 July 2021 against him in an earlier action in this Court (in case number BL-2019-001262) and to set aside all the Orders in this case and the Court of Appeal's respective Orders related to the case on the grounds that these were procured by deliberately misleading the Court and/or obtained by fraud and/or tainted by deceit and/or tainted and affected by fraudulent conduct which makes the judgment fatally flawed and must be set aside."

23. The particulars of claim were served with the claim form and extend to 204 pages (877 paragraphs, many of which include numerous sub-paragraphs). This statement of case was in serious breach of the rules of the court as regards pleading of cases, namely that they must be pleaded concisely and in not more than 40 pages, without good reason.

24. In one respect at least Dr Haddad complied with the requirements of the Chancery Guide, by providing a brief summary of his lengthy particulars of claim as a separate document entitled "Summary of the Particulars of Claim". It is convenient to start with this. It identifies the role of the parties to the claim and states that new evidence, either alone or in combination with the evidence previously known, is capable of showing that the 2021 judgment had been obtained by fraud. As such, it is clear that Dr Haddad is invoking the equitable jurisdiction recently explained by the Supreme Court in Takhar v Gracefield Developments Ltd [2019] UKSC 13; [2020] AC 450 ("*Takhar*"), though, as I shall explain, a combination of some new evidence and the previous evidence is unlikely to establish a valid fraud claim. The Summary then states that:

> "The new evidence shows that the Ninth to Eighteenth Defendants with conscious and deliberate dishonesty coordinated at least 66 fraudulent strategies to inter alia manipulate the application of "foreign judgments issue estoppel" which led to successfully obtaining favourable outcomes in their applications to challenge the jurisdiction of the English court",

and that it shows that (*inter alia*):

a) both Zacaroli J and Males LJ were deliberately misled;

b) the First to Eighth Defendants relied on the conscious and deliberate dishonesty of the Ninth to Eighteenth Defendants and Mr Aidarous;

c) misleading witness statements and submissions, both written and oral, were advanced by both legal teams;

d) all of the Ninth to Eighteenth Defendants made a decision to win their applications, which decision involved serious dishonest breaches of their professional duties to the Court.

25. Paragraph 8 of the Summary states:

> "The Defendants created and relied on a melting pot of dishonest evidence, actions taken, false and or misleading Arabic to English translations, false facts, full statements, misleading UAE law experts' evidence, false oral and written submissions, abusing Dr Haddad then legal team and the court's trust in the Ninth to Eighteenth Defendants, stating deliberate misleading half-truths (i.e., lies) and fraudulent collusion between the defendants (the 'Melting Pot')".

This was said to be an operative cause of the 2021 judgment.

26. Here again, therefore, in the Summary, Dr Haddad is in substance alleging a dishonest conspiracy between the lawyer defendants to deceive the court, even if he was

unwilling to say so in court. If, as Dr Haddad told me, he has no evidence of a conspiracy, it is harder to see how his Melting Pot and the dishonest strategies alleged can have been created, and inherently less probable that the Lawyer Defendants each independently decided deliberately to deceive the court.

27. The Summary nevertheless performs a useful function in identifying the alleged deception which is at the heart of Dr Haddad's case. It states that the Defendants misrepresented issues in two UAE cases, which both went as far as the Dubai Court of Cassation on appeal (548/2017 and 508/2019), which led Zacaroli J to believe that Dr Haddad's 50/50 English partnership with Ms Khulood (as alleged in the Partnership Claim) was a UAE partnership and/or was the subject of the UAE judgments, and that those judgments were about a "partnership", such as to give rise to an issue estoppel bar to the Partnership Claim.

28. Dr Haddad contends that he did not have "full and complete knowledge" of the fraud at the time of the hearings in the Partnership Claim, owing to the complex strategies applied by the fraudulent lawyers, but now he does.

29. It is impossible to summarise all the allegations made in the hugely over-long Particulars of Claim, but its essential structure is as follows (highlighting matters of particular relevance to the Applications):

    i) Part A describes the parties and asserts that Dr Haddad is a 50/50 partner with the First Defendant in a continuing English partnership called KM Holding;

    ii) Part B identifies the new, material evidence on which Dr Haddad relies, in four appendices ("the Appendices"):

        a) Appendix 1 – intended expert translation evidence of a Mr Alhafiz Shayeb, dated June 2023, answering a list of questions posed by Dr Haddad about the content of the Arabic versions of the UAE judgments and the English translations of them that were used by Dr Haddad before Zacaroli J – as an example of a question: "Is it true or false to state that the Arabic judgment 548/2017 or its English translation contains any mention or reference to 'where there is a 50% owner of an interest in KM Properties Dubai as a specific company?'". This therefore appears to be only factual answers to questions about the content of the Arabic judgments and the English translations used by Dr Haddad before Zacaroli J. Mr Shayeb states the conclusions, on which Dr Haddad relies to support his submission about what the UAE cases were about. The original judgments and translations on which Mr Shayeb answers questions are not, however, themselves new documents: only Mr Shayeb's answers are new.

        b) Appendix 2 – further UAE law expert evidence dated March 2023 from Dr Khrais, who made two expert reports that were considered by Zacaroli J, a further report that was placed before the Court of Appeal, and this new, report that is similar in content to the further report and answers various (often tendentious or inappropriate) questions from Dr Haddad: as two examples only: "As per UAE law did judgment 120/2009 consider or determine the issue of: the existence of the English partnership?" and "Considering Mr Aidarous' extensive experience in law, will you consider

the statements and/or opinions of Mr Aidarous were made with knowledge of being false?" So in this respect, too, the new evidence on which Dr Haddad relies is the answers given by Dr Khrais to questions, many of which are designed to elicit conclusory statements of opinion that directly support Dr Haddad's argument, and often are the conclusions that he wants the court to reach.

c) Appendix 3 – sundry "new material evidence", which comprises mostly extracts of documents filed in the UAE cases, some of which Dr Haddad referred to in his oral argument.

d) Appendix 4 – this is a list of samples of documents, in tabular form with a brief description of the document, dating from 1996 to 2020, obtained (so Dr Haddad explained in submissions) from a hard drive of a partnership-owned computer. From the descriptions attached, these appear to be documents that Dr Haddad considers support a case that Ms Khulood and he were partners in an English partnership, as pleaded by him as the foundation of the Partnership Claim. Some of the documents (as described) appear to be capable of supporting a case that the Dubai companies were partnership assets – but these do not appear to be new evidence of a fraud perpetrated on the court. Indeed, before Zacaroli J, the defendants did not dispute that, subject to arguments based on illegality and issue estoppel, there was a serious issue to be tried as to whether there was in fact an English partnership.

iii) Part C is entitled "The Melting Pot" and is Dr Haddad's metaphor for the extensive and collusive fraud to which all Defendants contributed. What they did is stated in terms identical to paragraph 8 of the Summary (see [25] above) and it is alleged that the Defendants relied on this to "misrepresent the issues in two foreign judgments which are the UAE judgments 120 (appeal by 1010 and cassation by 508/2019) and 548/2017 … and raised issue estoppel in the 2019 Proceedings, which is relevant to the Judgment now sought to be impugned". This therefore identifies the crux of Dr Haddad's case, namely that the content and effect of the judgments in the two UAE cases were misrepresented to the English Court as having decided an issue that gives rise to an issue estoppel binding him in England.

iv) Part D provides more detail about the way in which Dr Haddad alleges that the Lawyer Defendants are said to have misled Zacaroli J, in particular that they knew that the UAE judgments were about "shareholdings" in companies and that arguments about English partnerships were not advanced or decided, and they knew that the issues about the English partnership that were live in the Partnership Claim were not addressed or considered or determined in the UAE judgments. It alleges that Dr Haddad did not have full and complete knowledge of the full complex fraud at the time of the Partnership Claim, which was difficult to discover because of the "complex uncontradicted strategies applied by the well-experienced [Lawyer Defendants]", but that more points of the massive fraud were noticed after Zacaroli J's judgment. At this stage, Dr Haddad introduces what he clearly regards as a key component of the fraud, namely that in compiling a list of the issues to be decided at the jurisdiction hearing ("the List of Issues"), the Ninth Defendant omitted an issue about the existence of the

English Partnership, on the basis that the existence of the partnership was not in dispute, and then told the Court that the non-existence of the English partnership was an issue that had been decided in the UAE on the basis that it was a UAE partnership.

v) Part E provides background to the formation of the English partnership, which gave rise to various documents: the 2003 KMI Partnership Contract, signed in 2004, and declarations of trust by which it was stated that assets (or shares) of certain companies, including KM Properties LLC ("KMP Dubai"), were held on behalf of the partnership. These various declarations of trust are dated 12 August 2004, 25 June 2006, 25 March 2007 and 31 March 2007. It further states that in 2008 Ms Khulood and her family members (the Second to Seventh Defendants) fraudulently concealed these documents from Dr Haddad and forged other documents. Dr Haddad only retrieved them in 2017 and 2018, but by then in Dubai legal proceedings Dr Haddad had been unable to prove with other evidence that the assets and shares in dispute were held on trust for him and the First Defendant equally. Documents much later recovered from a partnership computer hard drive in 2018 (referred to in Appendix 4, above) enable Dr Haddad to prove the partnership.

vi) Part F introduces the 2019 Partnership Claim.

vii) Part G pleads the application made by the defendants to that claim to challenge this Court's jurisdiction and reverts to the List of Issues, which excluded the existence of the English partnership. It includes reference to the evidence of Mrs Jordan of Allen & Overy LLP, the Tenth and Ninth Defendants respectively, in response to Dr Haddad's evidence in response to the jurisdiction challenge, which explained the basis on which the Lawyer Defendants did not challenge the English partnership at the hearing of the application to set aside service out. It then pleads the 2021 Judgment and the attempts made by Dr Haddad to obtain permission to appeal it.

viii) Part H sets out at great length, and in three separate sections, Dr Haddad's allegations of fraud in relation to the hearing of the jurisdiction challenge: first in an introductory section, which summarises the fraud alleged; then in tabular form in which 53 allegations of fraud are identified against various Lawyer Defendants in relation to the first instance hearing itself, 6 allegations of fraud in relation to the application to Zacaroli J for permission to appeal, and 5 more allegations of fraud in relation to the proceedings in the Court of Appeal; and then, in a third section, each of the allegations is presented at length with cross-references to the documents, including the New Evidence. This third section itself comprises 131 pages. Examples of the pleading of 5 of the 53 allegations, which Dr Haddad eventually selected as his best examples of operative fraud, are annexed to this judgment, so that the reader can appreciate the style as well as the content of the pleaded case on these allegations (the style, and to a significant degree the content, being repeated in the other allegations).

ix) Parts I and J set out, in similar form, Dr Haddad's allegations of fraud in relation to the applications for permission to appeal, extending to another 20 pages of the pleaded case.

x) Part K might be called a kind of coda, except that it is followed by Parts L, M, N and O. It summarises the case alleged and adds some further description, such as that the Lawyer Defendants engaged consciously, deliberately and dishonestly in a decision to deceive the court in order to secure a victory, and did so by uniting the misleading facts, statements and submissions previously identified with dishonest and deliberate breaches of their professional duties to the court, to the knowledge and with the approval of the First to Eighth Defendants. (So here again is an allegation in substance of a conspiracy.) Dr Haddad adds that, to the knowledge of the Eighth Defendant, who is a UAE lawyer, the decisions of the Court of Cassation in cases 508/2019 and 548/2017 were null and void on account of a procedural irregularity.

xi) Part L pleads special circumstances relating to the concealment of evidence by the First to Eighth Defendants in the UAE litigation.

xii) Part M makes allegations of fraud against the First to Eighth Defendants in Dubai that are not directly material to the matters in issue on these applications.

xiii) Part N is a brief peroration that asserts that "fraud unravels all" and Part O describes the relief claimed, which includes setting aside the 2021 Judgment and all subsequent orders in this Court and the Court of Appeal, costs against the First to Eight Defendants and further or other relief.

Judgment in the Partnership Claim

30. Before turning to the grounds on which the Lawyer Defendants seek to strike out Dr Haddad's claim, it is necessary to refer to the central parts of the 2021 Judgment, to see the reasons that the Judge gave for his decision on issue estoppel. In the course of submissions, Dr Haddad produced a marked up version of the judgment, containing whole paragraphs highlighted in red, which he submits are the paragraphs where the Judge reached the wrong conclusion because he was misled.

31. The following paragraphs of the judgment are material

> "36. … The question of dissolution is only relevant, however, if Dr Haddad can establish the existence of the Partnership in the first place, and it is *that* issue – i.e. whether there was a Partnership at all – which the defendants contend was determined in Dubai. In the end, I understood Mr Ayres to accept this, as he acknowledged that if the Dubai court had ever decided that Dr Haddad and Ms Khulood did not have a 50/50 overarching partnership, in proceedings to which Dr Haddad and Ms Khulood where parties in their capacity of partners, that would give rise to an issue estoppel (leaving out of account his other arguments).
>
> 37. … Mr Ayres' second contention was that the Dubai courts have not in fact determined that there was no such overarching partnership. He contended that the Court of Cassation in Decisions 508 and 548 merely determined a narrower issue, namely that Dr Haddad could not establish a 50% legal interest in the shares in KMP Dubai.

38. I accept that it is essential to show that the issue determined in Decision 508 is the same as that which arises in these proceedings but, for the reasons which follow, I consider that it is indeed the same.

39. First, Dr Haddad's case indecision 508 was not merely that he had a 50% legal ownership in the shares of KMP Dubai. Rather, he claimed to have a 50% interest in all of the companies in the KM Group in Dubai. Similarly, although the only defendant in Decision 548 was KMP Dubai, it was Dr Haddad's case in those proceedings that he and Ms Khulood were joint owners in all of the relevant companies and sole proprietorships in Dubai.

40. Second, the foundation of Dr Haddad's case in Dubai that he was a 50% shareholder in the relevant entities, was an overarching agreement for partnership between him and Ms Khulood under which he was entitled to a half interest in all the companies and sole proprietorships in Dubai. This is evident, for example, from his contention that the constitutional documents of the companies were sham documents in that they did not represent the true agreement between him and Ms Khulood, and from the following passage in Decision 548 (itself quoted in full in Decision 508):

> '… on 22-1-2009 he [Dr Haddad] filed a complaint against [Ms Khulood] – the director of [KMP Dubai] – stating that he has been a shareholder with her since 2000 three in a group of companies and sole proprietorships with a percentage of 50%, including [KMP Dubai], and that she prevented him from entering the company and misappropriated the partnership contract signed by both of them…'

41. Third, the suggestion that the issue at stake in Decision 508 was a narrow company law one as to his legal status as shareholder is inconsistent with Dr Haddad's claim in that case that he should be declared a 50% owner of all of the entities and that they should all be liquidated….

….

46. Although it is true, as Mr Ayres pointed out, that Dr Haddad's claim in Dubai was to a 50% interest in each of the companies, whereas his claim in these proceedings is to a 50% interest in all the assets of the partnership, which includes the shares in the same companies *and* the beneficial interest in the assets of the companies, that does not detract from the facts that (1) in both jurisdictions the essential question is whether the partnership agreement – upon which the alleged entitlement depends – exists at all, and (2) the question was answered against Dr Haddad in Dubai.

….

59. For the above reasons, I am satisfied that the defendants have the better of the argument on whether Dr Haddad's claim is barred by issue estoppel. For that reason Dr Haddad has failed to establish a claim falling

> within the contract gateway in paragraph 3.1(6)(a) or (c) of Practice Direction 6B. Indeed, I would go further and conclude that the reasons set out above lead also to the conclusion that there is no serious issue to be tried as to whether Dr Haddad can refute the contention that his claim based on the alleged partnership is barred by issue estoppel."

All of these except paras 37 and 41 are indicted with Dr Haddad's red ink.

32. It is clear from them that Zacaroli J dealt specifically with the argument of Mr Ayres that the issue decided in the Dubai courts was not the same because only corporate shareholdings were in issue, not partnerships, and with the argument that there was no decision on an overarching partnership agreement but only with "reality" share ownership. The essence of his decision is that it is clear in both of the cases that went up to the Court of Cassation on appeal that Dr Haddad's claim to "reality" ownership of 50% of the shares in the corporations was based on his allegation that he had a 50/50 share under a partnership agreement with Ms Khulood. He was asserting that he had a 50% interest in all the entities and that was the only basis on which he did so: see para 41 of the 2021 Judgment, with which Dr Haddad apparently does not disagree.

The basis of the applications to strike out the fraud claim

33. While there is no doubt as to the nature of the *Takhar* jurisdiction invoked by Dr Haddad, or that the 2021 Judgment could be set aside if there were credible, material, new evidence that the Court and Dr Haddad were deceived in 2021 about the facts supporting a conclusion of issue estoppel *and* that with the benefit of that evidence the Court would have reached a different conclusion, the Lawyer Defendants take issue with the claim against them in a number of respects, which are connected to a substantial degree.

34. They seek to strike out the claim against them on the following grounds (and, in the case of the Fifteenth to Eighteenth Defendants, reverse summary judgment in the alternative):

    a) Ground 1: *Immunity*: the firms and lawyers sued by Dr Haddad enjoy immunity from suit by an opposing party to the litigation in relation to the provision of evidence and the making of submissions at the jurisdiction hearing in the Partnership Claim;

    b) Ground 2: *No liability*: there is no substantive relief claimed against the Lawyer Defendants (who do not have the benefit of the 2021 Judgment) and their joinder is inappropriate and an abuse of process;

    c) Ground 3: *Inadequate pleading*: the claim alleging fraud and dishonesty against the Lawyer Defendants is not pleaded in accordance with the Civil Procedure Rules, with no proper particulars of the facts on the basis of which inferences of dishonesty are to be drawn, and so should be struck out;

d) Ground 4: *Hopeless allegations*: the allegations of fraud are incoherent, absurd and often pleaded on a false understanding of the basis on which lawyers in England and Wales represent parties to litigation, and therefore present no properly arguable case of fraud against any of them;

e) Ground 5: *Concealed appeal*: the allegations of fraud against senior and respectable lawyers are an abuse of process because they are no more than a front for a further attempt to appeal the conclusions in the 2021 Judgment and seek a re-trial of those issues, which appeal was conclusively determined against Dr Haddad in the Court of Appeal as being totally without merit.

35. Mr Patrick Lawrence KC, who appeared for the Ninth to Fourteenth Defendants, addressed me in detail on the Immunity Ground and the No Liability Ground, and on the reasons why, as a matter of law, his clients contend that the criteria for the *Takhar* jurisdiction to apply are not met in this case. Mr Ian Croxford KC, who appeared for the Fifteenth to Eighteenth Defendants was content largely to adopt Mr Lawrence's submissions on the above points, though he added some arguments of his own on joinder; but otherwise he addressed in detail the factual basis of the 2021 Judgment and the facts alleged by Dr Haddad in this claim, with particular reference to the categories of New Evidence.

36. The principles upon which a court may strike out a statement of case or grant summary judgment are well known.

i) A court will strike out a statement of case if it discloses no reasonable grounds for bringing or defending the claim, or if it is an abuse of the court's process, or otherwise likely to obstruct the just disposal of the case.

ii) It may also strike out if there has been a failure to comply with a rule or practice direction, or a court order.

iii) As para 1.2 of Practice Direction 3A explains, there are different circumstances in which a claim may disclose no reasonable grounds for making it: an absence of facts to establish the claim; facts that are too incoherent to establish a claim in law; and facts that, even if true, do not in law add up to a cause of action.

iv) Abuse of process is a very broad concept: Hunter v Chief Constable of the West Midlands Police [1982] AC 529 at 536B-D, per Lord Diplock. It includes vexatious or scurrilous allegations, or ones that are obviously ill-founded, and in particular claims that seek to re-litigate issues that have already been decided or should have been raised in previous litigation, to avoid unjust harassment of the defendant.

v) Summary judgment will be granted if a party has no realistic prospect of success on their claim or defence as pleaded. A realistic claim is one that is more than merely arguable and carries some degree of conviction: Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339, per Lewison J, who set out other principles for exercising the jurisdiction to grant or refuse summary judgment. These are now so well known that it is unnecessary to repeat them here.

37. I allowed Dr Haddad a full day and a half of the 3-day hearing to present his arguments largely as he saw fit, in response to the Lawyer Defendants' Grounds. But having heard Mr Lawrence and Mr Croxford on day 1, I told Dr Haddad at the end of the day – so that he had adequate time to consider and prepare – that it would assist me if at some stage of his submissions, whenever suited him best and whether on day 2 or day 3, he would take me in detail through five of the 64 separate allegations of fraud in sections H to J of his Particulars of Claim, whichever he considered to be the best and clearest examples of the court and him being deceived at the hearing of the jurisdiction challenge. I asked him when doing so to explain to me in relation to each example the following:

    i) the fraud by which the Judge was deceived;

    ii) where is to be found new evidence that justifies an inference of fraud in that respect;

    iii) what it is alleged that the relevant Lawyer Defendant knew, contrary to what they told the Judge, and how they knew it; and

    iv) where the allegation of that knowledge is pleaded in the Particulars of Claim.

38. Dr Haddad told me on day 2 of the hearing that he would address my request on day 3. By the time that only an hour and a half of Dr Haddad's allotted time remained on day 3, I reminded him that I was anxious for him to take me through his five best examples of fraud. Regrettably, Dr Haddad still did not really embark on that process, despite some further judicial prompting, until about 30 minutes of his time remained. As a result, I allowed him some extra time in which to finish that exercise. I will return to what that exercise demonstrated below (starting at [144] below), but from Dr Haddad's arguments as a whole, and from a considered reading of his skeleton argument, there are some general matters that should be addressed first.

The role of English litigation lawyers

39. Deeply embedded in Dr Haddad's arguments about the alleged concerted fraud is a misunderstanding of the basis on which lawyers in this jurisdiction act on behalf of their lay client. That misunderstanding was overlaid with further misunderstandings about the course that the hearing in the Partnership Claim took, resulting in the Court declining jurisdiction. I believe that his sense of grievance stems in significant part from these misunderstandings, though also from the problem that he had in evidencing his claims in Dubai.

40. However, neither his misunderstandings nor a genuine disagreement with the 2021 Judgment entitle Dr Haddad to allege fraud in the way that he has done. The argument that the decision of Zacaroli J was wrong was taken as far as Dr Haddad could properly take it in the Court of Appeal, and he can take it no further in the courts of this country. In particular, Dr Haddad cannot use this fraud claim as a vehicle for challenging the correctness of the decision of Zacaroli J. I will consider at the end of this judgment whether that in substance is what he is doing.

41. Lawyers in this country do not (generally) give first hand evidence of facts that are relevant to issues in dispute in their client's case. Nor do they create facts or tell the

court "their truth", as Dr Haddad referred to it, or advance arguments that have no basis in reality in order to advance their lay clients' cases. Solicitors and barristers owe an overriding duty to the court not to mislead it by presenting a case or asserting facts that they know to be false or which are manifestly false, or to make serious allegations against another person which are unsupported by evidence or instructions from their client. A lawyer may not make an allegation of fraud or of comparably serious misconduct, such as conspiring to cause harm by acting unlawfully, unless they have distinct instructions from their client to make that allegation *and* there is evidence capable of supporting a finding of fraud or impropriety.

42. There is no comparable duty on a lawyer not to make an inadvertent error in presenting the client's case. Even skilled advocates mistake a fact or a legal argument from time to time: the adversarial process provides ample opportunity to the other side to correct any such mistake.

43. Subject to the overriding duty to the court, the lawyer's duty is to present the facts as their client alleges them to be and advance arguments based on those facts. Importantly for present purposes, a lawyer does not owe the court or another party to the case any duty to investigate the facts, or to ascertain the truth, before advancing the factual case on behalf of their client. That is so even if they have doubts about the likelihood that what their client tells them is true. What the lawyer advises their client confidentially about the strength or weakness of the evidence is of course privileged, and not something into which the court or another party can inquire.

44. The English lawyer's duty to their client is to seek by all proper professional means to advance the client's case, fearlessly, in accordance with the client's instructions, as long as there is a proper argument capable of being advanced. If the client's case is a weak one, the Court will so decide. Although the lawyers are paid by the client and often work closely with the client in preparing for a hearing or trial, they do not become associates of the client or otherwise identified with the client's interests. They remain functionally independent, and their overriding duties to the court are a cornerstone of that independence.

45. Dr Haddad alleged in the Partnership Claim that the Eighth Defendant, Dr Al Mulla, a UAE lawyer who acted for the First to Seventh Defendants in Dubai, conspired with them to defraud him of his share of the partnership assets and was dishonest. Perhaps because of that, he seems to consider that the Lawyer Defendants were aligned with the First to Seventh Defendants' interests and shared their alleged motive to defraud him. That is self-evidently wrong. A lawyer can entirely properly represent a party against whom fraud and conspiracy is alleged without becoming a party to the fraud or conspiracy. Indeed, it is in the wider public interest that they do so.

46. Dr Haddad's apparently different understanding of these matters may explain why, to him, making very serious allegations of collusive fraud against the Lawyer Defendants is nothing remarkable.

Mrs Jordan's witness statement in support of the jurisdiction challenge

47. Prior to issue of the Partnership Claim, Allen & Overy, on behalf of the First to Seventh Defendants, responded to Dr Haddad's letter before action, explaining why the allegations were false and also why the principles of *res judicata* and issue estoppel

prevented him from bringing a claim in England making those allegations. Allen & Overy continued to act for the First to Seventh Defendants in seeking to challenge the jurisdiction of this court to hear the Partnership Claim.

48. Acting in that role, Mrs India Jordan, a senior associate at Allen & Overy, who had conduct of the First to Seventh Defendants' case with Mr Richard Farnhill, a partner in the firm, made a witness statement on 28 July 2020 explaining the basis on which they applied for a determination that the court had no jurisdiction to try the Partnership Claim.

49. It says, at para 2:

> "I am authorised by the Al Rostamani Defendants to make this Witness Statement on their behalf. Unless otherwise stated, the facts and matters in this Witness Statement are derived from documents to which I refer and to the people to whom I have spoken. Where the documents are originally in Arabic, I rely upon translations. To the best of my knowledge, I believe them to be true."

Mrs Jordan also indicated that she referred to the content of an expert report prepared by a Mr Ali Al Aidarous on issues of UAE law.

50. Thus, as one would expect, Mrs Jordan was making it clear that she had no personal knowledge of the matters that she explained in her statement, and was relying on the content of certain documents (and translations) and what she was told by other people. Nor had she expertise in UAE law.

51. It is common (though not necessary) for an interlocutory witness statement in support of applications of the kind that the First to Seventh Defendants made (and other interim applications) to be made by a solicitor rather than the client, with the solicitor making the statement on the basis of information given to her and in the belief that what she was told is true. In other words, she is advancing her client's case on the basis of what she was told and/or the evidence of others, and what documents provided to her appear to show.

52. The account of the background facts in paras 10-12, and of the UAE litigation at paras 13-79, of Mrs Jordan's witness statement is accordingly a summary based on facts that were not known to Mrs Jordan personally, but which are based on what her clients told her and what documents (including translations of Dubai judgments) show. Materially, it was her second-hand evidence to the court and any evidence in response to it on the basis of which the court would decide the application before it. She was a witness, albeit not one who gave oral evidence at the hearing.

53. Unless Mrs Jordan knew that what she was told was false, or that documents were false or the translations wrong, or that Mr Aidarous's evidence about UAE law and proceedings was incorrect, it was her duty to her client to put forward that evidence, as she did. She did not thereby become implicated in a deception of the court, if in fact there was something untrue in what her clients had told her. Nor did Mr Farnhill, as her supervising partner, or their firm, Allen & Overy.

Dr Haddad's ability to respond

54. The conventional way in which an untruth in a witness statement is dealt with is for the opponent or their lawyer to make a witness statement in response, saying what is untrue and setting out what they contend to be the true position. The court might then either decide the point, if the truth is obvious, or decide which side appears to have the better of the argument on the matter, in the light of all the evidence, or (in other circumstances) defer a decision about the truth to a trial. In response to Mrs Jordan's witness statement, Dr Haddad filed a fifth witness statement dated 16 December 2020, running to 272 pages, which included a section responding to the *res judicata* and issue estoppel allegations (alleging, among other things, that the Dubai judgments were obtained by fraud and collusion and in breach of his right to a fair hearing). In addition, he addressed head on the allegation that the issue of an overarching partnership had been determined in Dubai, and explained why the Court of Cassation decisions on which the First to Eighth Defendants relied were not relevant and why three other Dubai decisions favourable to him were relevant.

55. Dr Haddad was represented by solicitors and by leading counsel, Mr Ayres, for the preparation and at the hearing of the challenge to jurisdiction in the Partnership Claim. They similarly were acting on the basis of what Dr Haddad told them about the background facts and about any untruths in the evidence of Mrs Jordan. They were in a position to respond, or object, to anything incorrect that was said by counsel on behalf of the First to Eighth Defendants at the hearing. Only if Dr Haddad discovered after the hearing that something said was untrue would that opportunity to correct an error not be there at the time.

56. The essence of the allegations of fraud made by Dr Haddad, however, is that the Lawyer Defendants wrongly informed the Court that the existence of a partnership agreement between Dr Haddad and Ms Khulood, which entitled Dr Haddad to a 50% share of the partnership assets including its Dubai corporate vehicles, was an issue that had been decided by the courts of Dubai. However, that contention was advanced by the Lawyer Defendants almost entirely on the basis of the translations of the Dubai judgments and other court documents (and Dr Haddad's translations were the ones used by the Judge).

57. It is difficult to see how any material misstatement by the Lawyer Defendants would not have been identified by Dr Haddad. What there was, in reality, was a legal disagreement between the Lawyer Defendants and Dr Haddad and his legal team about the basis for the decisions by the Court of Cassation in Dubai. This was a matter for submissions, based on the evidence of the expert witnesses and the translations of the Dubai judgments that were used by the Court.

58. Absent a case that what purported to be a judgment (and was translated) was a forgery to the Lawyer Defendants' knowledge, or that they knew that what Mr Aidarous said about UAE law was deliberately untrue, it is not easy to see how a claim that the 2021 Judgment was the product of fraud by the Lawyer Defendants can be established. If the Lawyer Defendants wrongly characterised the effect of the Dubai judgments, Mr Ayres would have explained why, and the Judge would have been left to evaluate the rival

submissions, by reference to his reading of Dr Haddad's translations, and decide who was right.

Further misunderstandings

59. As for Dr Haddad's misunderstanding of the course of the Partnership Claim, there were several points that he made repeatedly, in writing and orally, that indicated that his sense of being cheated by the outcome is fuelled by misunderstanding the nature of the hearing and the reasons for the decision.

60. One principal complaint of fraudulent deception is that it was first agreed with Allen & Overy that there was no dispute about the existence of a partnership agreement between him and Ms Khulood, so the partnership's existence was not on the List of Issues; but the Lawyer Defendants then argued that Dr Haddad could not advance a case that there was a partnership. It is easy to see how that might be confusing but the reason for it was that, prior to the jurisdiction hearing, Zacaroli J had directed the parties to prepare a list of issues that would be in dispute at the hearing, identifying the evidence relied upon. Allen & Overy wrote to Dr Haddad's solicitors on 17 March 2021 stating:

> "…since it is a list of issues which are in dispute, it follows that, where an issue is not disputed *for the purposes of the jurisdiction challenge*, that issue, and the evidence relating to it, does not need to be included in the list. For example, since (*subject to our clients points about the partnership contract being void for illegality, and that there is an issue estoppel preventing your client asserting the existence of a partnership*) our clients do not dispute *in this application* that there is a good arguable case for the existence of a partnership between the claimant and the first defendant, the list does not include that issue, and the evidence relating to it." (*emphasis added*)

61. Thus, Allen & Overy were indicating a decision not to argue at the jurisdiction hearing that there was no serious issue to be tried about whether there was a partnership agreement between Dr Haddad and Ms Khulood, but that they were going to assert that Dr Haddad was precluded from running that case at a trial because of an issue estoppel (and alternatively because the agreement was void for illegality). The existence of the partnership was therefore not on the list of disputed issues, which might have led Dr Haddad to think that there was no dispute generally about the existence of the partnership. The decision to concede that issue for the purposes of the jurisdiction hearing was probably a clever tactical move on the part of the Lawyer Defendants, so that the focus was more on what the Dubai courts decided and UAE law; but there is no question that Mr Ayres and his instructing solicitors would have understood perfectly well the distinction that Allen & Overy's letter was making.

62. In any event, this misunderstanding by Dr Haddad at the time did not have any effect on the hearing, as the critical issue was whether the courts in Dubai had reached a final decision on whether Ms Khulood and Dr Haddad had made an agreement to share the Dubai business assets (including the Dubai LLCs and the sole proprietorships), regardless of what that agreement was called or what its legal effect was in different

jurisdictions. Further, there is no credible evidence that the court was misled about the nature of Dr Haddad's pleaded case, or the fact that there would at a trial be a live issue about whether there was a partnership agreement at all.

63. Second, Dr Haddad alleged that the court was misled on the question of whether two court files in the Dubai courts were joined, with the consequence that documents in one case were available to the judges who dealt with the other case. Mr Lawrence's skeleton argument in these proceedings on behalf of the Ninth to Fourteenth Defendants at paragraph 69 said that:

> "There was (and is) a dispute of fact about whether the case file was joined, but there is no dispute that at one point Dr Haddad sought for the case files to be joined, expressly for the purpose of adducing in Case 1010/2013 'documents and contracts submitted in the dispute that is requested to be joined, which prove that the first agreement on the partnership between the Appellant [Dr Haddad] and the second Appellee [Ms Khulood] was in Britain before it moved to Dubai'".

Dr Haddad says that Zacaroli J was wrongly told that the cases had been joined, so that the Dubai court had access to documents that supported his case about a 50/50 share of the assets of KMP Dubai.

64. In argument before me, Dr Haddad said that the document in question was not the 2004 KMI partnership contract but a March 2007 electronic document, which was said to be a declaration in the form of an undertaking as to the beneficial ownership of shares of and/or assets held by a Dubai LLC. He accepted that he had made an application to join the files so that the 2007 document could be available to the Dubai court as evidence but then he reversed his application, and that the reason why he did so was that he had obtained a hard copy of the document by other means.

65. In fact, Dr Haddad's petition to the Dubai courts dated 3 September 2018 to join the case files refers to a copy of documents and contracts dated March 2007 and documents and contracts that prove that the first partnership agreement was made between Ms Khulood and Dr Haddad in England and that he was a partner with a 50% share. Mrs Jordan's evidence, based on court documents, was that the petition was granted on 3 October 2018, so that the files were joined, but that then on 28 January 2019 Dr Haddad waived his application for joinder. However, that was after the Court of Cassation in Dubai gave judgment on the case 548/2017, the appeal in the Two Villas case, in which it held that there was no sufficient evidence to support Dr Haddad's case that he was a partner and entitled to a 50% share of KMP Dubai's profits.

66. It is true that Zacaroli J was told, through the evidence of Mrs Jordan, that the files in question were joined on 3 October 2018 and that the *Issa* file contained the KMI Partnership Contract. The Judge was not told that there was a dispute of fact about that but was told what the First to Eighth Defendants' case was.

67. Ultimately, none of this really matters, except to Dr Haddad, who feels that the Court was misled. But it is evident from his own application to the Dubai court for joinder that he was asserting an agreement with Ms Khulood in the nature of a partnership, regardless of what documents the Court of Appeal or the Court of Cassation had before

them when they decided cases 1010 and 548/2017. Dr Haddad had tried to put before the court in Dubai the necessary evidence to support his case that the assets of the corporation were shared by him and Ms Khulood, and as he now explains, he managed to do that by other means and recovered during the Dubai proceedings the contracts signed by him and Ms Khulood (as stated in para 154 of the Particulars of Claim), so he withdrew the joinder application. All that mattered to Zacaroli J was whether it was clear from the judgment in that case that the court had decided an argument based on an overarching partnership agreement between Ms Khulood and Dr Haddad (whether or not it referred to it in those terms or in other terms).

68. Third, Dr Haddad alleges that the word "partnership" was not used at all in the Dubai proceedings – UAE law having no legal concept of partnership in the English law sense – and that the Lawyer Defendants were therefore being misleading in using the word "partnership" to describe the issue that they contended that the Dubai courts decided.

69. However, Mr Ayres on behalf of Dr Haddad accepted that the Arabic word "sharaka" was sometimes translated as "partner" but submitted that it ought in this context to be translated as "shareholder". The issue of whether the translations were correctly using the word "partnership" or whether they should be read as "shareholder" was therefore drawn to the Judge's attention, out in the open, and contested.

70. Regardless of the word used by the translator, the Judge understood very well that Dr Haddad's case in Dubai was that he was a 50/50 shareholder based on an underlying (partnership) agreement between him and Ms Khulood; that the Dubai judgments were directly concerned with ownership of shares in Dubai corporations; and that Dr Haddad's argument was that he was entitled to a half share because of an underlying (or "overarching") agreement with Ms Khulood.

71. Where the Lawyer Defendants referred to the Dubai courts' decision on the "partnership" issue, that was a reference not to the subject matter of the Dubai cases (which was ownership of shares and corporate assets) or even to the language used in the judgments but to the argument advanced by Dr Haddad as to why he was in reality a 50/50 shareholder in the companies.

72. Mrs Jordan said, at para 94 of her witness statement, that "In the main dispute Dr Haddad raised (and lost) the general issue of whether there was an overarching partnership or group that would allow him to claim a 50% stake in the underlying entities", and she identified passages in the translations that the Lawyer Defendants had obtained, which refer in terms to Dr Haddad asserting a "partnership" and therefore ownership of half of the shares in all the companies. There is therefore no confusion here about the argument that was being advanced by the Lawyer Defendants: it is very clear that the Judge understood that the Lawyer Defendants were not suggesting that the Dubai cases were about a UAE partnership. Since the Judge only read Dr Haddad's translations, he would not have been misled by the use of the words "partners" and "partnership" in the Lawyer Defendants' translations.

73. Had Mr Ayres QC understood that Zacaroli J was being told that the Dubai courts had made a decision about a UAE partnership, he would have explained to the court that that could not be right, first because there was no UAE concept of partnership, and second because it was obvious from Dr Haddad's transcripts that the subject matter of the cases was ownership of shares in Dubai corporations and the corporate assets. In

fact, in his own skeleton argument, Mr Ayres QC said, in relation to the 31 March 2007 "declaration of a legal undertaking", that it is a document that "is consistent with Dr Haddad's case that there was an overarching equal partnership between him and [Ms Khulood]".

74. A fourth matter that Dr Haddad misunderstands is the significance of the fact that the Eighth and Fifteenth to Eighteenth Defendants adopted and relied on evidence and arguments of the First to Seventh and Ninth to Fourteenth Defendants. This, to Dr Haddad, is evidence of collusion; but in reality, it is wholly unsurprising that parties who have the same interest in a hearing do not repeat the same evidence and arguments advanced by others but, so far as they consider it appropriate to do so, adopt the evidence and arguments already made as part of their case. There is nothing remotely sinister in this, which is a sensible way of saving time and money and is often done.

75. The Eighth Defendant had issued his application challenging service out much later than the First to Seventh Defendants had done, and he was only permitted to have his challenge heard at the same time as the First to Seventh Defendants applications to the extent that the basis of the challenge overlapped. The relatively late involvement, and the terms on which the Eighth Defendant's application was listed, explain further why it was natural for him, so far as appropriate, to adopt the evidence and arguments of the First to Seventh Defendants.

Ground 1: Immunity

76. It is appropriate to deal first among the strike out Grounds with the question of law that arises on this application, namely the Immunity Ground. The specific question is whether a pleaded allegation of fraud and/or culpable breach of a professional duty owed by the opposing lawyer to the court means that the threshold immunity otherwise enjoyed by a witness or advocate is lost.

77. As far as Counsel were aware, this precise question has not been decided as *ratio* in any other case, though it was recently the subject of an *obiter* decision of Cockerill J in King v Stiefel [2021] EWHC 1045 (Comm); [2022] 1 All ER (Comm) 990 ("*King*"). The context in that case was an alleged unlawful means conspiracy to mislead the claimant and the court with fraudulently inflated costs figures.

78. The allegations in *King* included solicitors signing statements of truth on costs budgets that they knew to be false, i.e. fraudulently inflated to the knowledge of all the defendants. The claims were struck out on the basis that no proper case on causation or knowledge was or could be pleaded in relation to the principal allegation and that no separate loss was or could be pleaded in relation to subsidiary aspects of the claim. As the judge said, the remaining issues were then academic but she dealt with them anyway.

79. The starting point, as it was for Cockerill J, can be the decision of Salmon J on the immunity of witnesses, in a conspiracy case called Marrinan v Vibart [1963] QB 234, which makes clear that witness immunity from suit arises in any form of proceedings. Salmon J said at p.238:

> "The immunity that witnesses enjoy in respect of evidence given in a Court of Justice extends to statements made in preparing a proof for trial and, in my view, also to statements made in a report to the Director of Public Prosecutions... and to evidence given in any judicial proceedings recognised by the law... It is true that in nearly all the reported cases in which the principles to which I have alluded were laid down, the form of action was for damages for libel or slander, but in my judgment these principles in no way depends upon the form of action.... The immunity to which I have referred is not only an immunity to be sued for damages in libel or slander. The immunity, in my judgment, is an immunity from any form of civil action."

80. On appeal, Sellers LJ said at p.535:

> "Whatever form of action is sought to be derived from what was said or done in the course of judicial proceedings must suffer the same fate of being barred by the rule which protects witnesses in their evidence before the court and in the preparation of the evidence which is to be so given."

The decision was that the immunity rule could not be circumvented by alleging a conspiracy between witnesses to make false statements.

81. As noted by Waller LJ in Surzur Overseas Ltd v Koros [1999] 2 Lloyd's Rep 611 at 619 col.1 ("*Surzur*"), older authority establishes that the immunity rule applies to affidavit evidence as much as it applies to oral evidence, and also to the preparation of (including the supply of information for) oral or affidavit evidence. The witness immunity rule is therefore not limited to evidence given in a court but covers the whole process of preparing and giving written or oral evidence.

82. However, the rule will not apply where the substantive allegation in the claim is malicious arrest or prosecution (or other cognate abuse of process) merely because one of the matters relied upon as a step in the course of the abuse of process involves the giving of evidence: Roy v Prior [1971] AC 470 at 477, per Lord Morris. Nor in those circumstances is it appropriate to dissect from the otherwise valid claim the giving of false evidence allegation: *Surzur* at p.619, cols.1, 2. If the conspiracy claim is properly arguable without regard to the giving of false evidence, the rule does not apply, but:

> "Clearly a conspiracy simply to give false evidence falls within the witness immunity rule …" (per Waller LJ in *Surzur* at p.619, col.2)

83. The purpose of the immunity rule was considered in Darker v Chief Constable of the West Midlands [2001] 1 AC 435 ("*Darker*"), another conspiracy case involving allegations of fraud and fabrication of evidence. Lord Hope of Craighead said at p. 445H to 446D:

> "When a police officer comes to court to give evidence he has the benefit of an absolute immunity. This immunity, which is regarded as necessary in the interests of the administration of justice and is granted to him as a matter of public policy, is shared by all witnesses in regard to the evidence which they give when they are in the witness box. It extends to anything said or done by them in the ordinary course of any proceeding in a Court of Justice.

> The same immunity is given to the parties, their advocates, jurors and the judge. They are all immune from any action that may be brought against them on the ground that things said or done by them in the ordinary course of the proceedings were said or done falsely and maliciously and without reasonable and probable cause."

84. The House of Lords considered in that case the potential conflict between the policy underlying the immunity rule and the countervailing policy that a wrong ought not to be without a remedy. Lord Hope explained that there were two grounds of public policy that justified the immunity rule: to protect a party against the vexation of defending actions, and to avoid a multiplicity of actions in which the truth of evidence would be tried over again. His Lordship indicated that the first of these reasons related to things done outside the courtroom, citing Fry LJ in Munster v Lamb (1883) 11 QBD 588:

> "It is not a desire to prevent actions from being brought in cases where they ought to be maintained that has led to the adoption of the present rule of law; but it is the fear that if the rule were otherwise, numerous actions would be brought against persons who were merely discharging their duty. It must always be borne in mind that it is not intended to protect malicious and untruthful persons, but that it is intended to protect persons acting bona fide, who under a different rule would be liable, not perhaps to verdicts and judgments against them, but to the vexation of defending actions."

and he quoted Auld LJ in the Court of Appeal in *Darker* to similar effect:

> "the whole point of the first public policy reason for the immunity is to encourage honest and well-meaning persons to assist justice *even if dishonest and malicious persons may on occasion benefit from the immunity*".
>
> (*emphasis added*)

85. Lord Cooke of Thorndon expressly stated at p.453H that in order to prevent the erosion of the immunity, it was necessary to rule out also allegations of conspiracy to give false evidence.

86. This case therefore establishes at the highest level of authority, consistently with the decision in *Surzur,* that immunity applies to a claim that defendants conspired to give false evidence to a court. It also confirms two further matters. First, that the immunity avails advocates who advance the false evidence as well as the witnesses who fabricate it. The immunity applies even though it results in there being no *civil* remedy against dishonest and malicious persons. (There may of course be criminal and regulatory consequences for the conspiracy and perjury.) Second, that the immunity operates not as a defence to an action brought but as a threshold immunity, which operates to prevent a protected person, including a legal representative, from having to deal with a claim at all.

87. The reasons for and extent of the immunity rule were also considered in Taylor v Director of the Serious Fraud Office [1999] 2 AC 177, where the particular issue was whether it protected someone seeking to investigate and collect evidence for a possible prosecution. One observation from Lord Hoffmann's speech in that case is germane to an argument advanced by Dr Haddad, so I cite it here:

> "The immunity from suit, on the other hand is designed to encourage freedom of speech and communication in judicial proceedings by relieving persons who take part in the judicial process from the fear of being sued for something they say. It is generated by the circumstances in which the statement was made and *it is not concerned with its use for any purpose other than as a cause of action*. In this respect, however, the immunity is absolute and cannot be removed by the court or affected by subsequent publication of the statement." (*emphasis added)*

88. It is clear therefore that it is not an answer to the immunity rule that, if it applied without exception, it would do so for the benefit of conspirators, liars and fraudsters, whether they be witnesses, parties or legal representatives involved in a judicial process.

89. In this case, Dr Haddad alleges (in reality) a conspiracy to defraud by knowingly preparing and deploying untrue evidence to place before the court and then knowingly presenting arguments based on the evidence and other false assertions in the course of legal argument. It is material therefore to track the development of the immunity rule so far as it applies to legal representatives who conduct argument on behalf of their clients in (or in preparation for) a court hearing.

90. In Arthur J.S. Hall & Co v Simons [2002] 1 AC 615, the House of Lords notoriously removed the immunity of counsel from suit at the hands of their clients. This was, however, a limited exception to a broader rule, on the basis that the advocate owes their client a duty of care:

> "Nor is there in my opinion any analogy with the position of the judge. The judge owes no duty of care to either of the parties. He has only a public duty to administer justice in accordance with his oath. The fact that the advocate is the only person involved in the trial process who is liable to be sued for negligence is because he is the only person who has undertaken a duty of care to his client." (per Lord Hoffmann at p 698E)

It is clear, therefore, that this exception to the immunity rule does not detract from the immunity that the same advocate has to a claim by his client's opponents, to whom he owes no duty of care.

91. Given Dr Haddad's approach to this case, it is fair to him to quote another paragraph of the speech of Lord Hoffmann, where he deals with the advocate's duty to the court:

> "Lawyers conducting litigation owe a divided loyalty. They have a duty to their clients, but they may not win by whatever means. They also owe a duty to the court and the administration of justice. They may not mislead the court or allow the judge to take what they know to be a bad point in their favour. They must cite all relevant law, whether for or against their case. They may not make imputations of dishonesty unless they have been given the information to support them."

92. A further exception to the immunity rule was created by the Supreme Court in Jones v Kaney [2011] 2 AC 398, in which it was held that the need for a wrong to have a remedy, unless the public interest justified none, meant that an expert witness's

evidence should no longer enjoy full immunity from suit. The ambit of the exception was made explicit by Lord Collins of Mapesbury JSC:

> "This appeal is concerned only with the liability of the so-called 'friendly expert' to be sued by the client on whose behalf the expert was retained. The facts raise directly only liability to be sued for out of court statements, but any immunity in relation to such statements is a necessary concomitant of the immunity for things said in court, and the same principles must apply equally to each."

93. These decisions therefore establish no relevant exception from the general immunity from suit that will avail Dr Haddad in seeking to sue the lawyer witnesses and the lawyers with conduct of his opponents' case in the Partnership Claim.

94. There have been two recent decisions in which High Court judges have refused to recognise any further exception to the immunity rule. In A, B v Chief Constable of Hampshire Constabulary [2012] EWHC 1517 (QB), Spencer J rejected the argument that Hall v Simons or Jones v Kaney had done more than create limited exceptions to the rule where a common law duty of care was owed to a client.

95. The case that is closest to the facts of this case is *King*, the facts of which I summarised briefly in [77] and [78] above. It was an allegation of an alleged fraudulent conspiracy to mislead the court. Cockerill J referred to the authorities cited above and another first instance decision and held that the immunity rule stood firm, as summarised in [334] of her judgment:

> "The reliance placed by [Counsel for the Kings] on *Clerk & Lindsell* (23rd ed) at 9-137, *Charlesworth & Percy* at 2-308 and *Jackson & Powell* at 12-009 was misplaced. The passages cited all dealt with immunity in relation to negligence, and therefore not with this point. But when one looks further on in *Jackson & Powell* at 12-112 the point is dealt with in terms which clearly supports the case advanced by Mr Downes: "*Advocates should continue to enjoy the same immunity as others from any action brought against them on the ground that things said or done in proceedings were done or said maliciously or falsely: Taylor v DPP*."

96. Accordingly, Cockerill J concluded that she would have struck out all the allegations against Counsel, Mr Downes, in any event, even if there had been an otherwise coherent case pleaded against him.

97. Dr Haddad's case is that the immunity must necessarily give way in a case where what is alleged is that the lawyers in question have each acted knowingly to defraud him and the Court and acted (therefore) in breach of their professional duties. He relies on the fact that no claim is made (i.e. no remedy is sought) against the Lawyer Defendants and that they are joined as important witnesses, because they were at the heart of the fraud that he alleges. It is important, he said, that they are brought before the court because they will be able to assist the court – in other words, they are necessary and proper parties – and the immunity from civil action does not apply to a witness who is joined in that way, under CPR rule 19.2, to assist the court. Further, he says, the Court's jurisdiction to strike out a statement of case under CPR rule 3.4(2) does not apply to a case where no claim (in the sense in which Dr Haddad uses that expression) is brought.

98. Further, he argues that a lawyer's immunity exists only if and to the extent that the lawyer complies with their duties to the court. He relies on three authorities.

99. First, the *dicta* of Lord Denning MR in Kelly v London Transport Executive [1982] 1 WLR 1055, which concerned the recoverability of costs under the Legal Aid Act 1974 and, in connection with that, touched on the duties of counsel owed to the Area Committees and the Court in a legally-aided case. The Master of the Rolls considered that the lawyers acting for a legally-aided client could be brought before the Court, in case of serious default, and charged with making good any loss or expense caused to the other party. He said at p.1065:

> "They owe a duty to the court which has to try the case. They owe a duty to the other side who have to fight it and pay all the costs of doing so. If they fail in their duty, I have no doubt that the court can call them to account and make them pay the costs of the other side. They will not be able to escape on the ground but it was work done by them in the course of litigation. They cannot claim the immunity given to them by *Rondel v Worsley [1969] 1 AC 191*. That only avails them in regard to their own client. They have no immunity if they fail to have regard to their duty to the court and to the other side."

100. Unfortunately for Dr Haddad, these apparently helpful *obiter dicta* were roundly disapproved by the Court of Appeal in a case called Orchard v South Eastern Electricity Board [1987] 1 QB 565, where the question of liability of solicitors to the other side's client was directly in issue. Sir John Donaldson MR said that Lord Denning's remarks were *obiter* and not the subject of argument by counsel, and that while, in exercise of its jurisdiction over solicitors, the court could order a solicitor to make payment to compensate the other side, if they were in breach of their duty to the court, there was no duty owed by solicitors or counsel to the opposing party; and that:

> "I can find no basis in logic or authority for holding that the essential public interest immunity affirmed in *Rondel v Worsley* protects the bar only in relation to claims by their own lay clients, leaving them unprotected in respect of the far greater risk of claims by disgruntled litigants on the other side."

Dillon LJ specifically agreed with the Master of the Rolls' comments on Lord Denning's observation.

101. The *dicta* of Lord Denning are also plainly inconsistent with later House of Lords and Supreme Court authority on the effect of the immunity rule and the limited exceptions to it. Kelly v LTE therefore gives Dr Haddad no assistance.

102. The next case he relied on was Saif Ali v Sydney Mitchell & Co (a firm) [1980] AC 198, a decision of the House of Lords on the extent of barristers' immunity from claims in negligence by their lay clients. Dr Haddad relies on the following paragraph from the speech of Lord Diplock at 219-220:

> "To say of a barrister that he owes a duty to the court, or to justice as an abstraction, to act in a particular way in particular circumstances may seem to be no more than a pretentious way of saying that when a barrister is

> taking part in litigation he must observe the rules; and this is true of all who practise any profession. The rules which may appear to conflict with the interests of the client are simple to state, although their application in borderline cases may call for a degree of sophistry not readily appreciated by the lay client, particularly one who is defendant in a criminal trial. A barrister must not wilfully mislead the court as to the law nor may he actively mislead the court as to the facts; although, consistently with the rule that the prosecution must prove its case, he may passively stand by and watch the court being misled by reason of its failure to ascertain facts that are within the barrister's knowledge. Again, although he must not abuse the privilege which the law accords to him as counsel in rendering him immune from liability for aspersions which he makes against anyone in the course of litigation, however unfounded, irrelevant or malicious they may be, questions of considerable nicety may arise as to what constitutes sufficient foundation or relevance to justify the particular aspersion which his client wants him to make."

103. I apprehend that Dr Haddad relied on this as establishing that there are limits to what a barrister may do in court with impunity, and therefore limits to their immunity from liability for what they say in court. I do not read Lord Diplock as saying anything that acknowledges that a barrister may be sued (be liable) for what he says in court. His Lordship is recognising the full immunity rule and stating that a barrister must not abuse it: he does not say that if the privilege is abused the barrister is civilly liable, as distinct from having acted in breach of the Bar's Code of Conduct and therefore liable to prosecution by his regulatory authority.

104. The final authority is an article written by D.A. Ipp in the Law Quarterly Review for 1998 at pages 63-107, entitled "Lawyers' Duties to the Court". It is concerned principally with the duties that lawyers owe the court, not duties that they owe parties to proceedings before the court, but there is a section of the article that is headed "Counsel's Immunity and Breach of Duties to the Court". The author, having referred to *Kelly v LTE*, *Orchard v SEEB* and the *Saif Ali* cases, states:

> "On this basis, the immunity provided by *Rondel v Worsley* and *Saif Ali v Sydney Mitchell & Co. Ltd* is not available in respect of conduct which involves a breach of counsel's duty to the court. As a matter of principle, counsel's immunity is founded significantly on the duties owed by counsel to the court. It is difficult to see how that immunity can be retained if the counsel acts in breach of the duties.

No other authority is cited in support of the statement in the first sentence of this paragraph and Orchard is not discussed.

105. While accepting that the immunity rule is a rule of public policy that is based to some extent on an advocate's duty to their client and to the court, there is no support for the proposition that immunity is conditional on compliance with those duties. If the focus were solely on whether a particular advocate should be entitled to rely on the rule, one can see a certain attraction to the proposition that someone who has flouted their duties by knowingly misleading the court ought not to have the benefit of immunity. However, the many passages in the authorities that explain the foundation of the rule are focused instead on the interests of justice as a whole. The rule is calculated to

encourage well-meaning and honest persons to give truthful evidence and advocate fearlessly, in both these cases without fear of the possible consequences. As Auld LJ explained, the price of such a rule is the possibility that it may benefit dishonest and malicious persons.

106. So far as the immunity of advocates is concerned, the rule is unlikely to encourage dishonesty and malice for the very reason that, as Dr Haddad emphasises, they owe duties to the court that the court can enforce (as Mr Justice Ipp explains in his article) and they are subject to quite onerous regulatory standards that, if breached in such a way, are likely to lead to prosecution and disbarment, or striking off the Roll of Solicitors, as the case may be.

107. If, on the other hand, advocates' immunity is conditional, as Dr Haddad contends, there would be an open door to any disgruntled litigant who failed to establish the truth of their cause against their opponent to bring a claim against the opponent's lawyers, alleging that they had misled the court by knowingly advancing a false case. That, as Fry LJ indicated in Munster v Lamb, is the very mischief that the rule serves to prevent. The two public interest grounds for the rule identified by Lord Hope in *Darker* (protection against vexatious claims and the prevention of re-litigation) would be undermined if the immunity rule were conditional.

108. Even if an exception to the rule were limited to allegations of fraud, on the basis that "fraud unravels all", there could be no comfort in a belief that allegations of fraud would only exceptionally be made. It is the regular experience of judges at first instance that the decision of the Supreme Court in *Takhar* is regularly invoked in circumstances where it has no proper application – as a kind of "open sesame", as Lord Leggatt JSC recently described it in Finzi v Jamaican Redevelopment Foundation Inc [2024] 1 WLR 541 ("*Finzi*") at [70] that "enable[s] a party to engage in a new round of litigation of disputes that have been compromised or decided". Although unfounded claims of that kind can be and often are struck out at an early stage, that does not prevent the vexation of being sued and having to engage in the proceedings.

109. Accordingly, I find myself in respectful agreement with Cockerill J that there is no exception to the immunity rule, even in a case where what is alleged is that a witness or advocate was party to a dishonest conspiracy to mislead, and did mislead, the court.

110. Dr Haddad's alternative argument that there is no claim brought against the Lawyer Defendants and so no immunity to being joined is mere sophistry. It was in this regard that he relied on the words of Lord Hoffmann in Taylor v SFO ("*[the rule] is not concerned with [use of the matter said] for any purpose other than as a cause of action*"). Dr Haddad has issued a claim form naming each of the Lawyer Defendants as a defendant to the claim and has served that claim form on them. The purpose was so that there would be a binding finding of fraud against them.

111. The issue of the claim makes the Lawyer Defendants parties to his claim, with responsibilities to conduct the litigation in accordance with the overriding objective. If they remained parties to the claim, they would be obliged to plead to the particulars of claim and comply with directions leading to a trial, including giving disclosure. The fact that no separate relief is claimed against the Lawyer Defendants makes no difference to the fact that they have been sued. Dr Haddad's argument that they have been joined as witnesses is a misconception of the different roles of a party and a

witness, and as advanced serves only to undermine his assertion that the Lawyer Defendants were necessary and proper parties.

112. My decision on immunity is sufficient to dispose of the applications before me, as each of the Lawyer Defendants was either a witness in the Partnership Claim or the partner who had primary responsibility for the preparation of the evidence that was filed, or the firms of solicitors who in their names filed the evidence and the written submissions on behalf of the First to Eighth Defendants, or were Counsel who presented arguments to the Court on paper and orally at the hearing of the jurisdiction challenge. Each of those persons and firms is entitled to the benefit of the immunity rule in the face of Dr Haddad's allegation that they all knowingly misled Zacaroli J and him. The claim against the Lawyer Defendants was an abuse of process because the Lawyer Defendants are immune to any proceedings against them in relation to their roles in the Partnership Claim.

113. My conclusion makes it unnecessary to decide the other grounds on which the Lawyer Defendants argue that the claim should be struck out. They are in my view correct to say that the immunity that they enjoy operates as a threshold bar to a claim against them, and it is therefore right that this issue should be determined on that basis, without considering first the merits of the particular allegations against them or the criticisms that have been levelled against the style in which they are pleaded.

114. In case the issue that I have decided is considered by the Court of Appeal to merit more authoritative consideration, I will however explain the conclusions that I have reached on the other grounds for striking out Dr Haddad's claim against the Lawyer Defendants.

Ground 2: No Liability

115. This ground can only sensibly be considered on the assumption that I had decided that the Lawyer Defendants could not rely on the immunity rule in view of the nature of the allegations made against them (viz collusion, knowingly misleading the court, and fraud) and that these allegations were coherent and sufficiently plausible to resist being struck out as disclosing no reasonable cause of action.

116. The Lawyer Defendants contend that, since no specific relief was claimed against them, it was an abuse of process to join them to the claim at all. Dr Haddad variously explained that they were joined because they were central to the allegations that were made, because they needed to be before the court hearing the fraud claim in order to assist it to decide the matters in issue, and because they were witnesses to what was alleged to have happened. He relied on CPR rule 19.2 and contended that it was desirable to add them as defendants so that the court could resolve all the matters in dispute in the proceedings: rule 19.2(2)(a).

117. If the Lawyer Defendants could be sued and the allegations of knowing falsity were at all credible, I would not have struck out the claim against the Lawyer Defendants on the ground that no substantive relief was sought against them. The principal relief sought against the First to Eighth Defendants is setting aside the Order of Zacaroli J. Indeed, that is the only relief specifically claimed, other than costs. In such circumstances, where no financial relief other than costs is sought against the First to

Eighth Defendants, it is less surprising that nothing specific is sought against the Lawyer Defendants.

118. Assuming for this purpose only that there is some degree of credibility about the allegations of Dr Haddad, the Lawyer Defendants would indeed be central to the issues that would be tried by the court and the court would be likely to be assisted by having their case on those issues presented to it. I do not for a moment consider that joinder is defensible on the alternative basis that the Lawyer Defendants would be important witnesses.

119. Mr Croxford, and to some degree Mr Lawrence, argued that it was wrong in principle to seek to join the Lawyer Defendants as necessary and proper parties, as it would potentially give rise to case management difficulties, in particular with disclosure and matters of legal professional privilege. Mr Croxford sought to persuade me that joinder would either result in the Lawyer Defendants having to fight the case with one arm tied behind their backs, if the First to Eighth Defendants did not waive privilege, or alternatively, if they did, might result in an unnecessary Part 20 claim being brought by the First to Eighth Defendants against the Lawyer Defendants, out of an abundance of caution, which would considerably complicate the proceedings.

120. I do see some force in these arguments. There are, however, likely to be countervailing arguments that to prevent a claimant from bringing their claim against all the persons said to have acted together to defraud them, if all are amenable to the court's jurisdiction, was capable of operating unfairly to the claimant, particularly if privilege prevented the claimant from investigating the full picture as between the alleged conspirators.

121. Ultimately, to succeed on this ground, the Lawyer Defendants have to establish that, assuming the allegations in the Particulars of Claim to be true and that there is no operative immunity, it is an abuse of process to join the Lawyer Defendants. I would not have reached that conclusion in the assumed circumstances. If there was a credible claim of fraud that involved the Lawyer Defendants as well as the First to Eighth Defendants, Dr Haddad would in my view have been entitled to join them to seek to establish against them that his allegations were true, even if that presented some case management challenges for the court and even if he were seeking no more than to set aside the previous judgment. I suspect that the dislike with which the Lawyer Defendants view the matter of joinder is merely a reflection of the other grounds on which they seek to strike out the claim, in particular Ground 4, namely that the allegations are merely absurd and incredible and should not be permitted to be advanced at all.

122. I shall address Ground 4 next, although it is closely connected to and leads into a consideration of Ground 3.

Ground 4: No reasonable grounds for the allegations

123. As I have already described, it is evident that Dr Haddad misunderstands the roles and responsibilities of lawyers in this jurisdiction.

124. Second-hand evidence advanced by a solicitor on an interlocutory application on the basis of their clients' instructions and what (translations of) documents (which are exhibited) appear to show, reliance on the content of expert reports of apparently qualified and competent expert witnesses, and submissions to the court setting out a party's arguments based on that evidence, do not constitute wrongdoing by any of the lawyers involved, in the event that some of the underlying evidence turns out to be incorrect, much less a conspiracy to defraud the opposing party and deceive the court.

125. The transparent process of adversarial litigation, where each party is robustly represented and has a full opportunity to correct any error in evidence or submissions advanced by the other side, is not an environment in which it is likely that the court will have been deceived in the way that Dr Haddad alleges. The risks are obviously higher if an application is heard without notice to the other side, or where there is an imbalance in representation between the two sides in a heavy case, or where one side is acting in person. It is to be recalled that, at the hearing of the jurisdiction challenge over four court days, Dr Haddad was represented by experienced, specialist leading and junior counsel and a well-known firm of solicitors.

126. It is nevertheless Dr Haddad's case that in 66 different respects the Court was knowingly deceived by the Lawyer Defendants, without him or his representatives or the Judge realising it at the time, and with the systemic fraud only coming to light at a later time. In some instances, this was very shortly after the hearing, because 12 instances of fraud were relied upon by Dr Haddad in the application for permission to appeal that he made to the Court of Appeal, relatively shortly after judgment had been handed down.

127. To have reasonable grounds for bringing this fraud claim, Dr Haddad has to be able to plead material, new evidence, which he did not have at the jurisdiction hearing, that shows that the court was deceived by the Lawyer Defendants into (and not just in error in) reaching the decision that it did; and that the court would – if that evidence was before it at the time – have reached a different decision. In other words, that the fraud was causative of the judgment that was given.

128. The relevant principles of such a claim can be taken from the judgments in *Takhar* itself. The issue for decision in that case was whether a claimant seeking to set aside a judgment for fraud has to prove that they could not, with reasonable diligence, have obtained the new evidence and deployed it at the trial. The Supreme Court held that a claimant does not have to surmount that additional hurdle, though the requirement that the claimant did not in fact have the new evidence at the time of the trial remains.

129. The majority of a 7-judge court held that Aikens LJ accurately summarised the requirements in Royal Bank of Scotland plc v Highland Financial Partners LP [2013] EWCA CIv 328; [2013] 1 CLC 596 at [106], where he said:

> "The principles are, briefly: first, there has to be a 'conscious and deliberate dishonesty' in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgement now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be 'material'. 'Material' means that the fresh evidence that is adduced after the first judgement has been given is such that it

> demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision. Thus the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence."

130. Lord Kerr explained in *Takhar* at [34] that it is insufficient that, after judgment, a party obtains further evidence that "goes in the same direction" as the case previously advanced at trial. That would infringe the public policy against re-litigation.

> "Importantly, Earl Cairns LC said, at p.814 [of *Phosphate Sewage Co Ltd v Molleson* (1879) 4 App Cas 801] that it would be "intolerable" if a party who had been unsuccessful in litigation could re-open it merely because,
>
> > '…since the former litigation there is another fact going in exactly the same direction with the facts stated before, leading up to the same relief [as had been] asked for before, but it being in addition to the facts [in the previous litigation], it ought now to be allowed to be the foundation of a new litigation, and [he] should be allowed to commence a new litigation merely upon the allegation of that additional fact.'
>
> The contrast with the present case is immediately obvious. This is not an instance of the appellant seeking to adduce evidence of facts 'going in the same direction' as facts previously stated, because Mrs Takhar had not asserted that the Krishans had been guilty of fraud, merely that she had no recollection of having signed the profit share agreement."

131. What is required is therefore evidence of something new that confounds the basis on which a judgment was obtained; not merely evidence that strengthens the claimant's losing argument. It is not sufficient for Dr Haddad now to assert that he has better evidence (however compelling) that the judges in the key Dubai cases did not consider the English partnership agreement or deal with assertions of an underlying partnership. That is merely evidence that would "go in the same direction" that he was travelling before Zacaroli J, namely that the Dubai cases were only concerned with the ownership of shares in Dubai corporations and did not consider whether there was an overarching agreement between Dr Haddad and Ms Khulood.

132. What Dr Haddad needs is new evidence (in this sense) that the Lawyer Defendants *knew* that the case that they were advancing, based on Mrs Jordan's witness statement and Mr Aidarous's expert report, was false *and* that the true position was that the Dubai decisions did not consider the overarching agreement issue. Only in those circumstances could Dr Haddad hope to satisfy the requirement of materiality of the new evidence, i.e. that, but for the fraud, Zacaroli J would have reached the opposite conclusion, namely that there was no issue estoppel.

133. There are therefore three formidable obstacles facing him. First, he needs to be able to show that the evidence on behalf of the First to Eighth Defendants was untrue. Second

and most significantly, he needs to have a credible case based on evidence that the Lawyer Defendants were fraudulent in knowingly putting forward an untrue case. Without a credible case of fraud, there is no valid claim. Third, he needs to establish that, if the untruthful evidence had been excluded, Zacaroli J would have reached the opposite conclusion. That in itself is a very serious hurdle to surmount because the translations of the Dubai judgments that were deployed at the hearing and which Zacaroli J himself read were Dr Haddad's own translations, not the Defendants' translations. It therefore assists Dr Haddad not one bit to say now that he has different or better translations that make the position clear or clearer.

134. What credible case therefore is there that the Lawyer Defendants knew that the evidence of Mrs Jordan, Mr Harrison and Mr Aidarous was wrong but nevertheless deliberately decided between them to go ahead and deceive the Judge with it?

135. The starting point is that what was in issue was the scope and content of the Dubai cases and the meaning and effect of the judgments. None of the Lawyer Defendants reads Arabic or practises UAE law. They were dependent on translations and expert evidence. They would not have known whether the translations were correct or misleading. They certainly had no reason to suppose that they might be wrong. Translations of court documents and judgments were the basis for Mrs Jordan's brief rehearsal of the highly complex history of the Dubai (and other) litigation in her witness statement. The translations used would have been the translations that Allen & Overy had obtained, not Dr Haddad's translations, but nevertheless Dr Haddad's translations were used in court and read by the Judge.

136. Mr Aidarous provided an expert report containing his evidence about relevant UAE law and what the Dubai cases decided. The Lawyer Defendants were in no position to second guess his opinions, or to *know* that, where Dr Khrais disagreed with any of Mr Aidarous's opinions, Mr Aidarous was wrong, unless their clients told them so. No such information from the First to Eighth Defendants or anyone else is specifically pleaded by Dr Haddad, although his case in general is that all the Defendants were complicit in creating the Melting Pot of confusion and disinformation to deceive the court.

137. It is also material that it is not alleged that any of the Lawyer Defendants had a prior association with any of the First to Eighth Defendants. They were instructed to represent and advise the First to Eighth Defendants on the threatened Partnership Claim. As such, the Lawyer Defendants were only acting in the way that English lawyers act for any client who comes to them seeking advice and representation. There is no reason identified by Dr Haddad why these Lawyer Defendants, who doubtless have other work and clients apart from the First to Eight Defendants, should cast off the role of respectable litigation lawyers and instead become co-conspirators and create a Melting Pot of deception to try to cheat Dr Haddad and mislead the court.

138. Although Dr Haddad has pleaded in considerable detail what he says was the scope, content and effect of the Dubai cases and what case was advanced on behalf of the First to Eighth Defendants on the jurisdiction challenge, there is relatively little that addresses why the Lawyer Defendants are said knowingly to have misrepresented the Dubai judgments. In most cases, the fact relied upon by Dr Haddad is merely that the Lawyer Defendants had the judgments, in Arabic and in translation, available to them and therefore knew what they decided.

139. It did not appear to me, reading the Particulars of Claim as a whole, that anywhere in them is adequately explained on what basis the Lawyer Defendants knew that what they advanced as the First to Eighth Defendants' case was false; much less are facts pleaded that are capable of supporting an inference of deliberate coordination of dishonest strategies to manipulate the presentation of the facts and mislead the court. Nor is it clear how the court was misled, given that the question of what was decided by the Dubai courts was the subject of rival arguments from both sides, and the Judge read Dr Haddad's translations of the relevant judgments. Nor is it clear how the fact of fraudulent deception of the court is shown by new evidence obtained by Dr Haddad, which evidence is no more than better evidence going in the same direction as the case that Mr Ayres had presented on his behalf.

140. It was for this reason that I invited Dr Haddad to take me in detail through the fraud allegations, choosing his strongest five examples of fraud practised on the court and on him. The purpose of that was to see whether the allegations, as pleaded, are, as the Lawyer Defendants say, incoherent, absurd and merely mistaken about the role of English lawyers, or to any extent have a degree of credibility about them, so that it can be said that there are reasonable grounds for bringing the claim, within the meaning of CPR rule 3.4(2)(a). If there are reasonable grounds for bringing any part of the claim, the question would then be whether the claim, as pleaded in the way that it has been pleaded, is an abuse of process or likely to obstruct the just disposal of the proceedings, such that the particulars of claim as pleaded should be struck out (rule 3.4(2)(b)).

141. As a preliminary to explaining his five best examples, Dr Haddad pointed to examples of what he said was dishonesty on the part of Mr Moriarty and his juniors in the language used in their skeleton argument. He says that the skeleton refers in a number of places to the expert evidence of Dr Khrais and what he says about "the partnership issue", or refers to Dr Haddad seeking to establish his "partnership" in the Dubai companies, or to the issue in the Dubai cases being whether Dr Haddad had a "partnership" in Dubai under UAE law, when Dr Khrais and the UAE cases used no such word. However, there is nothing of significance in this, given that it was the First to Eighth Defendants' case that it was decided in Dubai that there was no sufficient evidence of a partnership agreement between Dr Haddad and Ms Khulood. Mr Moriarty was not saying that Dr Khrais used the word "partnership" in his report.

142. The fact that Mr Moriarty used the label "partnership" to describe a contract between Dr Haddad and Ms Khulood to share (which Dr Haddad alleges to be a partnership under English law), and argued that the Dubai courts decided whether there was any such underlying or "overarching" partnership, is not misleading, regardless of how the Arabic word "sharaka" is properly to be translated in context.

143. In this regard, it is notable that Mr Ayres on behalf of Dr Haddad accepted at the hearing that the word "sharaka" sometimes means shareholding and sometimes means partnership, so there is no clear linguistic line that Mr Moriarty had transgressed. This is further illustrated by the fact that Allen & Overy's translation of the decision of the Court of Appeal in case 1010/2013 (which went on cassation to become case 508/2019) uses the word "partnership" to describe a shareholder agreement. But the 2021 Judgment did not in any way turn on whether the Dubai courts referred to the alleged agreement between Dr Haddad and Ms Khulood as a "partnership": it decided whether the Dubai courts had decided that there was no underlying agreement made between

them to share property that included the Dubai corporate assets, regardless of how that agreement was characterised or described in UAE or English law.

Example 1

144. The first of Dr Haddad's chosen five examples was para H.1 in his Particulars of Claim. This is an allegation against Mrs Jordan and Mr Farnhill, summarised in the table in the second section of Part H ("the Table") as being multiple occasions in the witness statements when these defendants falsely stated that an issue of overall or overarching partnership was decided in the UAE judgments, and that this was an operative cause of Zacaroli J's decision.

145. As to this, Dr Haddad says, simply, that the Dubai judgments do not refer to "overarching partnership" and that a new expert report of Dr Khrais and a new report by a translation expert is new evidence that supports the argument that those words are not used. Dr Haddad alleges that the relevant defendants knew that the Dubai judgments did not refer to "overarching partnership" because they had access to the judgments and an English translation, which referred to "shareholdings". They knew that a partnership is something different from a shareholding in a company, and that in UAE law there is no concept of partnership in the English sense and so there could not have been a Dubai partnership.

146. This allegation is hopeless and based on a misconception of the basis of the argument that was advanced on behalf of the First to Eighth Defendants. Mrs Jordan does not say in her witness statement that a Dubai judgment used the words "overall partnership" or "overarching partnership". She contends that the Dubai courts considered and decided the question of whether there was an overall partnership agreed between Dr Haddad and Ms Khulood, as this was the basis on which Dr Haddad alleged that he was in reality a 50/50 shareholder of the Dubai companies, in particular KMP Dubai, even though the shares in that company were held by others, namely the First to Seventh Defendants. It matters not a bit what label is attached to the underlying agreement between the two partners: what matters is whether there was a decision on a question of fact, namely whether Dr Haddad and Ms Khulood had agreed, sometime between 2002 and 2007, that they would share equally assets that included the Dubai assets. It is that issue that Ms Jordan referred to as the "overall or overarching partnership issue" because that was its nature.

147. Of course, the subject-matter of the litigation in Dubai was ownership of the companies that owned the properties or chattels, and the question whether Dr Haddad was "in reality" the owner of half the shares. But the basis on which Dr Haddad claimed to be the owner (in reality though not formally) of half the shares in the companies was an agreement between him and Ms Khulood to share those assets 50/50. It is that question that the courts in Dubai had to decide in order to accept or reject Dr Haddad's case. The fact that the translations of the Dubai judgments sometimes refer to "partnership" and sometimes to "shares" and "shareholdings" is neither here nor there. Nor is it remotely unfair or misleading for the Lawyer Defendants to characterise that as an issue about whether there was an overall or overarching partnership agreement.

148. It is impossible to conclude that this alleged falsity was an operative cause of anything that Zacaroli J decided. It is obvious from his judgment that he fully understood that the issue was not whether the Dubai courts used an Arabic word for partnership or

shareholding, or whether there was a Dubai partnership. The question he addressed was whether *in substance* (regardless of the language used) there was a final decision on the question whether there was an underlying (or overarching) agreement made between Dr Haddad and Ms Khulood that they would share 50/50 business assets that they created in the UAE, including the shares in KMP Dubai.

Example 2

149. The second example chosen by Dr Haddad is para H.5 of the Particulars of Claim, which is an allegation against Mrs Jordan and Mr Farnhill, described in the Table as a repeated false statement that the UAE judgments were about "partners" and "partnership", and that this falsity was an operative cause of the decision. Dr Haddad claims to have new evidence, in the form of Dr Khrais's further thoughts and a new translator's opinion, that these judgments were not about partners or partnerships.

150. This is closely related to the issue in the previous example, and is not merely a matter of language. What the Dubai judgments were about is a matter of opinion and analysis. In one sense, they were about shareholdings in companies, because the dispute was whether Dr Haddad was in reality an equal shareholder of the corporate vehicles; but in another sense they were about whether Dr Haddad and Ms Khulood had an agreement that they shared equally the corporate assets, whether as a partnership under English law or on a different juridical basis.

151. One of the paragraphs of the witness statement of Mrs Jordan that Dr Haddad complains about in this regard is actually a paragraph in which Mrs Jordan quotes from a (translation of a) judgment of the Court of First Instance in Dubai, summarising the dispute before it as being one in which the plaintiff (Dr Haddad) argued that he and Ms Khalood are equal partners in all the corporate defendants to the claim. Another quotes from a statement that Ms Khalood had given to the Dubai Police, in which she had said that she and Dr Haddad, the complainant, were actually equal partners in several companies.

152. Considered in this light, Dr Haddad's allegation of knowing falsity seems to rely on Mrs Jordan extracting from translations of the Dubai judgments references to his assertion that he and Ms Khulood were partners, or alternatively understanding from those translations that there was an issue about whether they had a partnership that included the Dubai companies. Whether the translator was correct in using the word "partner" in that context is not something that anyone other than a fluent Arabic speaker would know, and even then, according to Dr Haddad's own evidence (first witness statement, para 40 and fifth witness statement para 890) there is a degree of fluidity of meaning of the Arabic word, which can mean "partner" or can mean "shareholder". This much was accepted in Mr Ayres' skeleton argument:

> "In the same way that the word 'partner' is used in English legal proceedings in two senses, i.e. as in 'joint venturer' and also in the technical sense pursuant to the 1890 Act, Ds are seeking to elide two different concepts in an analogous situation in the UAE courts and fixing on the use of the Arabic word 'sharaka', often translated as 'partner', to erroneously suggest that the English law partnership has already been adjudicated upon …. This is wrong … For example, the word 'sharaka' can be seen to be applied and used interchangeably with shareholder."

153. Mrs Jordan and Mr Farnhill are alleged in H.5 by Dr Haddad to have been dishonest in referring to the use of the word "partner" in the Dubai judgments on the basis that, as lawyers, they knew that a partnership was not the same thing as a company and that the members of a company are not partners, and on the basis that they knew that the Dubai judgments did not relate to an English partnership and that there is no partnership concept in UAE law, and so the judgments concerned shareholdings.

154. This entirely misses the real point, which is that the basis on which Dr Haddad argued that he was in reality an equal shareholder in the companies (which he was not on the face of the companies' registers of members) was that he had agreed with Ms Khulood to share various corporate assets and that these assets were shared 50/50 regardless of the identity of the shareholders. As previously explained, there is no question that the Court was deceived in any way by this, as it is clear that the point was fully argued on both sides. The relevant question for the Judge was whether the Dubai courts reached a conclusion of fact on the question of whether Dr Haddad and Ms Khulood made an agreement to share the Dubai corporate assets, regardless of whether it was called a partnership or something else.

155. Confusingly, Dr Haddad also claims that Mrs Jordan and Mr Farnhill tried falsely to show the court that the English partnership, KM Holding, is not an English partnership but a UAE partnership. That is not what they were doing at all. It is impossible to understand what Dr Haddad means by this, given that there is, as he otherwise asserts, no law of partnership (in the English law sense) in the UAE. What the Lawyer Defendants were trying to show this Court was that the Dubai courts had had to consider and decide whether there was an underlying agreement between Dr Haddad and Ms Khulood pursuant to which the Dubai corporate assets were shared equally between them. Since Dr Haddad has never suggested that there was any sharing agreement with Ms Khulood other than the various English partnership agreements that are pleaded in this claim, any such decision must have been a decision about the existence or non-existence of the English partnership agreement, whether or not it was referred to as such.

156. The Lawyer Defendants are in my judgment correct to assert that this allegation is incoherent. They were simply advancing their understanding (based on translations) of what the Dubai courts had had to decide in the cases that were heard, and presenting an argument to that effect. The argument appears to be correct and the Judge and the Court of Appeal considered that it was correct, so it is impossible for Dr Haddad to contend that Mrs Jordan and Mr Farnhill knew that it was incorrect but nevertheless deliberately misled the court. The "new evidence" on which Dr Haddad seeks to rely as evidence of fraud is in reality just further argument to the contrary, i.e. new evidence going in the same direction as the evidence that was before Zacaroli J.

Example 3

157. The next allegation chosen by Dr Haddad is paragraph H.7, which is that Mrs Jordan and Mr Farnhill knowingly deceived the court when stating that the same documents that Dr Haddad sought to rely on in the Partnership Claim had been before the Court in Dubai; and, in particular, that a declaration dated 12 August 2004 and a declaration dated 25 March 2007 relating to assets held by the partnership could be seen to have been before the Dubai courts. That is said to be proved now by the New Evidence to

have been false, in that (it is alleged) a summary statement of an expert report in case 548/2017 does not refer to the document in question and neither do the judgments.

158. In fact, all that Mrs Jordan did in her statement was to assert that the decisions on overarching partnership in Dubai cases had considered the same documents that Dr Haddad relied on in the Partnership Claim, and then attach to her statement a schedule that identified 85 different documents that were referred to in the Partnership Claim and also appeared to be documents that were before the Dubai courts. The schedule identified the date that the document was referred to or submitted in the UAE and the document reference number. The two documents out of the 85 that are alleged to have been misrepresented are ones that the schedule identifies, in one case, as having been referred to in a filed summary statement in Dubai proceedings, and in the other case, where it was accepted that there was no actual evidence of filing, as being likely to have been filed because there was a certified translation of it into Arabic.

159. Even supposing that, in these two cases, Mrs Jordan's deductions were erroneous, it is wholly unclear on what basis Dr Haddad contends that she and Mr Farnhill knew that it was untrue that they had been filed. There is nothing more than assertion that they knew that the summary and judgment did not refer to those documents and that the explanation for the Arabic translation was that the procedure for service out of the jurisdiction itself required translation of documents. This is no proper basis at all for suggesting knowledge of falsity and fraudulent misrepresentation of the position in the schedule to the witness statement. It is really only, at best, the basis of an argument that Ms Jordan and Mr Farnhill ought to have known the true position or could have found it out. An innocent, or even careless, mistake (if there was indeed an error) is a far more likely inference than an inference of a collusive attempt fraudulently to deceive the court.

Example 4

160. The fourth example is an allegation against Mr Moriarty KC and his two juniors, namely that they stated in their skeleton argument that a document on which Dr Haddad sought to rely in his fifth witness statement contained expenditure relating to KMP Dubai. This was a spreadsheet relating to an investment budget with a heading "UKQC Dubai", which is contained in Appendix 3 of Dr Haddad's new evidence. Dr Haddad submitted that the metadata of the spreadsheet shows that it was created before KM Properties LLP was incorporated, and that "UKQC" is a reference to the first name of the English partnership. He submitted that counsel owed a duty to the court to get the facts right and that therefore there was an inference of dishonesty.

161. What in fact Counsel argued was that the document did not contain a reference to salaries of Dr Haddad and Ks Khulood as owners but to salaries of "owners and managers", and that it was accepted that Dr Haddad was originally a manager of KMP Dubai. They said that therefore the document did not evidence the alleged share of ownership for which Dr Haddad had contended. They added that it was a small point in the scale of things.

162. If the document did indeed pre-date the incorporation of KMP Dubai then the reference to managers could not have been to a manager of that company, and Mr Moriarty may have been mistaken in linking it with that company. But the only point being made was

that the document did not on its face necessarily identify Dr Haddad and Ms Khulood as owners, which was true.

163. The point made by Dr Haddad in his Particulars of Claim is inconsequential and goes nowhere, and it is rather revealing that Dr Haddad has selected this as one of his 5 best examples. There is no basis whatsoever for inferring dishonesty in relation to this. What it is, is another example of Dr Haddad seizing on anything said in the skeleton argument with which he disagrees and assuming and asserting (without the necessary supporting evidence) that it is indicative of dishonesty. He also alleges again, in relation to this complaint, on the same mistaken basis as previously, that this was an attempt to portray the partnership as being a UAE partnership that was therefore the subject of a decision in the UAE courts.

Example 5

164. The fifth and final example on which Dr Haddad particularly relies is an allegation against Mr Moriarty KC that he made a submission that in the Dubai proceedings that Dr Haddad had adduced the declaration of 12 August 2004 and relied upon it in case 548/2017 to establish the overarching agreement. Mr Moriarty said, in answer to a question from the Judge, that there was a document that showed that it was referred to in a report in another case.

165. Mrs Jordan's evidence of the chronology indicates that there was actual joinder before the withdrawal request was made and actioned, and that the decision was made in case 548/2017 before the withdrawal of the request. Dr Haddad contends, principally on the basis of his withdrawal request and the fact that the other case is not referred to in the judgment, that joinder did not take place. The truth of that matter is disputed and has not been determined.

166. Dr Haddad simply alleges on this point that Mr Moriarty had a duty to get his facts right and so, the fact alleged being wrong (according to him), there is evidence of fraud. In oral argument, Dr Haddad said that Mr Moriarty "…just made it up… He had no reference except in India Jordan made a reference, and this reference is wrong".

167. It is alleged in the Particulars of Claim that Mr Moriarty knew of the falsity of his statement because he knew that the expert report summary statement in case 548/2017 and the judgment in that case and case 1010 did not refer to the August 2004 declaration. In any event, Dr Haddad's explanation to me of what was going on here was that he sought joinder in order that documents, including the 12 August 2004 declaration were before the court, but then withdrew it because he obtained the documents he needed by other means. As I have already said, that explanation is not wholly consistent with the terms in which the request for joinder was made, which referred to other documents as well as the 2004 declaration.

168. Given the lack of total clarity about the file joinder (the evidence before Zacaroli J appeared to show then that the files were joined for at least 3 months before the revocation of the application but the New Evidence now available contains documents that appear to controvert that), it is impossible to see on what basis it can be inferred that Mr Moriarty's argument, based on what the evidence of Mrs Jordan described, was dishonest and an attempt to deceive the court. It is not alleged that he had the New Evidence available at the jurisdiction hearing. At the very least, it is clear from what he

now says that Dr Haddad and his legal team could not have been deceived at the time, since he knew exactly what the position was in the Dubai proceedings, even if he did not have all the evidence at the time to prove it.

Conclusions

169. The conclusion to be drawn from a close examination of these five chosen examples is that the case that Dr Haddad has put together is wholly artificial and is based on no more than statements made by the Lawyer Defendants with which Dr Haddad disagrees. The fact that evidence or argument is advanced on a basis that Dr Haddad contends is incorrect is no evidence of fraud. However, Dr Haddad's approach is that any assertion with which he disagrees is wrong, and the relevant Lawyer Defendant was therefore in breach of duty, which breach he said was sufficient evidence of knowledge of the falsity of the statement and therefore of fraud on the court. This is self-evidently an incoherent and deeply flawed approach.

170. Even in an instance – and there may be some – where further evidence can establish a credible case that what the Lawyer Defendants said was inaccurate, there is nothing beyond the mere error and concomitant allegation of breach of duty that is relied upon as the basis for alleged knowledge of falsity. No such disputed matter has been shown to have had any causative effect on the decision. Any important contested matter was addressed in Dr Haddad's evidence and by Mr Ayres in submissions, who doubtless allowed to pass minor points of disagreement that were of no consequence for the issues that the Judge had to decide. The Judge listened to Mr Ayres and read the translations of the Dubai judgments himself before giving his reserved judgment.

171. In each of the 5 examples, there is no new evidence of fraud, or on the basis of which properly to infer fraud, on the part of the Lawyer Defendants. At best, there is further evidence (some of which was deployed in the Court of Appeal) in support of Dr Haddad's case, including the self-serving further expert evidence that he has prepared about the legal effect of the judgments in Dubai and the correct English translation of the Dubai judgments. The new evidence relied upon is evidence that "goes in the same direction" as Dr Haddad's case in the Partnership Claim and seeks to establish that Dr Haddad's case was right and that the statements made on behalf of the First to Eighth Defendants were wrong. This type of evidence is hopelessly insufficient to establish a case on *Takhar* principles.

172. It was not possible and it would not have been proportionate to work through all 66 allegations of fraud during the hearing. Although I have not dealt in detail here with all the allegations of fraud made by Dr Haddad, I have been able to see that they are all constructed in the same flawed way as Dr Haddad's chosen five examples. All involve similar assertions of things said by the Lawyer Defendants with which Dr Haddad disagrees. The new evidence on which he purports to rely to support the allegations of fraud is not evidence of facts that support an inference of collusion and fraud but at best evidence that supports (and may in some respects strengthen) the case that Dr Haddad was running at the jurisdiction challenge hearing. However, the law does not allow Dr Haddad to rely on that evidence and re-run the arguments that were heard and determined by Zacaroli J.

173. Without any reasonable basis for the allegation that these Lawyer Defendants knew that what their clients or Dubai law expert witness told them was false (rather than merely at

variance with Dr Haddad's case), the allegation of deliberately and dishonestly coordinating at least 66 fraudulent strategies to manipulate the proceedings and deceive the Court is wholly improper. The bringing of a such a claim in the form of 204 pages of allegations is abusive and vexatious. There are no reasonable grounds established for bringing this claim against the Lawyer Defendants.

174. In *Finzi*, Lord Leggatt JSC said:

> "It is by no means unknown for disappointed litigants, looking back at proceedings which resulted in an adverse judgment or a settlement that with hindsight seems to them disadvantageous, to come to believe that, to achieve such an outcome, their opponent must have engaged in deceit. Conduct and intentions not originally seen as fraudulent may now be perceived in a malign light. Such a change of perception cannot, in the Board's opinion, provide an adequate basis for allowing a party to bring fresh proceedings relying on material it already had when the earlier proceedings were taking place but which is now rebranded as evidence of fraud."

175. It strongly appears to me that this is such a case. The considerable majority of the New Evidence is old material re-presented, with a few documents that say nothing about fraud but give some support to Dr Haddad's losing argument before Zacaroli J.

176. I would therefore, had I not ruled in favour of the Lawyer Defendants on the immunity ground, have struck out the claim form against them on the basis that the claim discloses no reasonable ground for bringing it against them.

Ground 3: Inadequate Pleading

177. The third ground is that the claim is improperly pleaded, in breach of the Civil Procedure Rules and the guidance in the Chancery Guide, specifically by failing to give proper particulars of the facts on the basis of which it is alleged that knowledge of falsity should be inferred; and that the cumbersome style of Dr Haddad's statement of case is likely to obstruct the just disposal of the proceedings.

178. Rule 16.4(1) of the CPR requires a claimant to include in their particulars of claim a concise statement of the facts on which the claimant relies. In this regard, the Chancery Guide states that the particulars of claim must be "as concise as possible" (para 4.2(a)), and that in rare cases, where it is necessary to give lengthy particulars of an allegation, these should be set out in schedules or appendices (para 4.2(k). It also imposes a page limit as follows:

> "A statement of case should be no longer than is necessary, should generally not exceed 25 pages and, save in exceptional circumstances, should not exceed 40 pages. The court will expect a party to be able to justify the need for any statement of greater length."

179. The Practice Direction to Part 16 of the CPR provides that:

> "8.2 The claimant must specifically set out the following matters in the particulars of claim where they wish to rely on them in support of the claim-
> (1) any allegation of fraud;
> (2) the fact of any illegality;
> (3) details of any misrepresentation; …."

It is well-established in the case law that the requirement to set out an allegation of fraud means that particular facts relied upon as demonstrating the fraud must be pleaded.

180. The Chancery Guide explains what is required at para 4.8:

> "Paragraph 8.2 of PD 16 requires the claimant specifically to set out any allegation of fraud relied on. Parties must ensure that they state:
> (a) full particulars of any allegation of fraud, dishonesty, malice or illegality; and
> (b) where any inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged."

181. The last sub-paragraph is of particular significance. In a claim where there are no available facts that directly prove dishonesty or fraud, a claimant relies on inferences to be drawn from other facts. These facts must be stated, including those on the basis of which it is to be inferred that a defendant knew that what they or someone else said was false. As para 4.9 of the Guide says, a party must not make allegations of fraud or dishonesty unless there is credible evidence to support the allegation.

182. The more serious is the allegation of wrongdoing, the greater the need for particulars to be given that explain the basis for it: Three Rivers District Council v Governor and Company of the Bank of England (No.3) [2003] 2 AC 1, per Lord Hope at [51]. The inference of dishonesty from the primary facts pleaded must be more likely than one of innocence or negligence: JSC Bank of Moscow v Kekhman [2015] EWHC 3073 (Comm), approved by the Court of Appeal in Sofer v Swissindependent Trustees SA [2020] EWCA Civ 699; [2020] WTLR 1075, per Arnold LJ at [23].

183. There being, as I have held, no facts capable of supporting an inference of knowledge of falsity and dishonesty, as opposed to simple error or negligence, it is unsurprising that Dr Haddad was unable to plead adequate particulars of knowledge.

184. To be fair to him, although his statement of case is far too long and unjustifiably so, too argumentative and very repetitive, Dr Haddad does, in relation to each of the 66 allegations of fraud, generally attempt to: plead the allegation in summary; state the relevant finding of Zacaroli J to which the false statement is said to lead; identify the new evidence that he relies upon; explain the basis on which he contends that the Lawyer Defendants had knowledge of the falsity and that they were dishonest; and finally state the materiality of the dishonesty to the judgment. What is conspicuously lacking is facts on the basis of which an inference of fraud is more likely than one of innocence or negligence.

185. Had there been a credible factual basis for any of the allegations in the 66 cases, I would not have struck out the whole of the Particulars of Claim against the Lawyer Defendants on the basis of the pleading style or the breaches of the rules and guidance,

albeit they are serious breaches. That in my judgment is something that, making some allowance for a litigant in person, could have been addressed – to the extent that there were reasonable grounds for any allegations of fraud – by case management directions. These would have covered the recasting of the pleading of those allegations, the striking out of others and any unnecessary or inappropriate content, and directed the extent to which the Lawyer Defendants needed to plead in response. A costs sanction would no doubt also have been imposed.

Ground 5: Concealed Appeal

186. The final ground is that the claim against the Lawyer Defendants is an abuse of process because it is, in reality, no more than a further attempt by Dr Haddad to appeal the conclusions of Zacaroli J, which was comprehensively rejected by the Court of Appeal on three separate occasions, and thereby reopen the jurisdiction challenge.

187. For reasons that I have already given, the reality of Dr Haddad's case is not that, on the basis of new evidence of fraud, Zacaroli J and he were deceived, but that, on a proper analysis of the facts and law, he was wrong to decide that the Dubai courts decided an issue about the existence of the English partnership now alleged in the Partnership Claim.

188. There is no question of Dr Haddad having been deceived about the reality of the Dubai decisions, or discovering the reality on the basis of the new evidence. He knew exactly what was argued, done and decided in all the Dubai cases. I consider that he knew full well that the Dubai courts had considered the question of whether he and Ms Khulood had an overarching agreement because his argument in Dubai was that, although he did not have the documents available to prove it conclusively, there was some evidence of such an agreement, not just an agreement relating to specific Dubai companies. The Dubai courts held that the evidence was insufficient.

189. By this new claim, Dr Haddad seeks again to advance his interpretation of what the Dubai courts decided, but in the guise of contending that the Lawyer Defendants presented a deliberately misleading account of the facts. In other words, Dr Haddad is bringing a most serious and unfounded fraud claim against them in order to have another go at reopening the decision about issue estoppel.

190. That is a clear abuse of process.

Disposal

191. For the reasons that I have given, I grant the applications of the Ninth to Fourteenth Defendants and the Fifteenth to Eighteenth Defendants and strike out Dr Haddad's claim against them.

ANNEXURE

Extracts from Particulars of Claim

Sections H.1, H.5, H.7, H.26, H.36