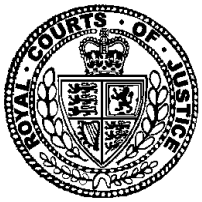

Neutral Citation Number: [2020] EWHC 2027 (Comm)

Case No: CL-2020-000023

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2020

Before :
SIR WILLIAM BLAIR
(Sitting as a Judge of the High Court)

- -

Between :

(1) BLOCKCHAIN OPTIMIZATION S.A. **Claimants**
(2) PETROCHEMICAL LOGISTICS LTD
- and –
(1) LFE MARKET LTD **Defendants**
(2) LFE GROUP HOLDINGS LIMITED
(3) JAMES (AKA JIM) AYLWARD
(4) BENJAMIN LEIGH HUNT
(5) WHITE TIGER GLOBAL OPPORTUNITIES FUND
(6) WHITE TIGER ASSET MANAGEMENT LTD

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Orlando Gledhill QC and James Fox (instructed by **Enyo Law LLP**) for the **Claimants**
Thomas Roe QC (instructed by **Pinder Reaux**) for the **Defendants**

Hearing dates: 15, 16 July

- -

Approved Judgment

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

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SIR WILLIAM BLAIR SITTING AS A JUDGE OF THE HIGH COURT

Sir William Blair:

1. These are applications arising out of a claim by claimants ("Cs") (1) Blockchain Optimization S.A. and Petrochemical Logistics Ltd, which are Swiss and Gibraltar companies respectively, against defendants ("Ds") (1) LFE Market Ltd, incorporated in Wales, (2) LFE Group Holdings Ltd, an English company, (3) James Aylward, (4) Benjamin Leigh Hunt, (5) White Tiger Global Opportunities Fund SP, and (6) White Tiger Asset Management Limited.

2. There are five applications before the Court:

   (1) Ds' application to discharge a worldwide freezing injunction granted by Butcher J on 14 January 2020 on grounds of material non-disclosure (except for D3 who was not subject to the injunction);

   (2) Cs' application to continue the injunction against D1, D2 and D4;

   (3) Ds' application to strike out parts of the claim (except for D3);

   (4) Ds' alternative application for summary judgment on parts of the claim (except for D3);

   (5) Cs' application to amend the Particulars of Claim – it has been agreed that this can likely be agreed by the parties in the light of the judgment, and I need not rule on it now.

3. Cs are no longer proceeding against D5 (which is a segregated portfolio of a Cayman company) and D6 (a Cayman company). This has been dealt with by way of consent order.

4. The proceedings concern a start-up project to set up a cryptocurrency platform called the "London Football Exchange" or "LFE". The evidence is that the project was incepted in about 2016, its stated aim being to enable fans, traders and investors to buy and sell tokens giving them the chance to acquire indirectly ownership interests in football clubs via LFE tokens – token holders would also have access to special membership services and offers, such as priority access to fan events. According to a White Paper published by the project at the beginning of 2018, the LFE Token would be the "underlying cryptocurrency powering the LFE Group". Blockchain technology is to be used, it is said, to set up an LFE Exchange, the stated aim being to apply for authorisation by the UK Financial Conduct Authority in due course.

5. Mr Aylward (who lives in Wales) and Mr Hunt have been involved in the project from the start, but Mr Hunt resigned as a director of D1 and D2 in October 2019. Both D1 and D2 are ultimately owned by Mr Hunt. The current sole director of D2 is Mr Aylward. He took over from Mr Konstantinos Ghertsos and Mr Hunt on 31 October 2018. According to the defence, Mr Hunt is not resident in the United Kingdom. Although he was involved in the project for much of the relevant period, the evidence suggests that Mr Ghertsos no longer has any active connection with it.

6. The brief history is as follows. In late 2017, Mr Ghertsos introduced Mr Murat Seitnepesov to the project as a potential investor. The ownership of the claimant

companies is not in evidence, but they are connected to Integral Petroleum S.A. based in Geneva, of which the Managing Director is Mr Seitnepesov. Through the claimant companies, three loan agreements were entered into by one or other of the companies with Alpha Three Invest GmbH, a Swiss company which is now in liquidation. According to the claimants, the latter company was held out as the holding company for the LFE group. It is not in dispute that about US$2.2m was advanced under the loan agreements in late 2017 and the first part of 2018. Cs' case (denied by Ds) is that the loans were provided in reliance on a series of representations made by Mr Ghertsos and/or Mr Hunt, on behalf of themselves, D1 and D2, which are said to have been fraudulent in various respects.

7. Cs' case is that through Mr Seitnepesov, they also provided marketing services and assistance to the LFE project pursuant to an oral contract entered into in January 2018 in exchange for US$3m promised to be paid by Mr Hunt and Mr Ghertsos.

8. According to his evidence, in summer 2018 Mr Seitnepesov wished to exit from the project. Cs' case is that at meetings in July 2018, it was orally agreed that Mr Hunt and Mr Ghertsos would transfer 4.4 million LFE tokens to C2 to cover the loan sums of US$2.2m that had been disbursed by Cs, with the value of the tokens to be guaranteed by Alpha, Mr Hunt and Mr Ghertsos at a minimum of US$0.5 per token. Alpha would pay US$3 million to C1 as consideration for the marketing services that had been provided, to be guaranteed by Mr Ghertsos and Mr Hunt. Cs' case is that tokens were provided, but that C1 has never been paid. Ds do not accept this case, or do not accept it in full.

9. Cs' case is that on 24 November 2019, LFE announced that the LFE tokens were being replaced with a new type of token called "LFE Cash". On 16 December 2019, Integral's Chief Digital Officer saw this announcement and found that C2's 4.4 million tokens had not been replaced. He contacted Mr Aylward, who (it is said) refused to replace the tokens unless proof of payment could be provided. That could not be done because the tokens had not been purchased, but had been provided in accordance with the oral agreements made in July 2018. The failure to replace C2's tokens has rendered them worthless. Cs have therefore, they say, provided US$2.2m of loan finance to the LFE project and received nothing of value in repayment.

10. Ds say that what happened was that Mr Aylward was told that the tokens had been provided in return for investments (which was inaccurate), and he reasonably asked for evidence of payment because the token swap was designed to eliminate certain fraudulently obtained tokens. He was not refusing to exchange the tokens, and the matter could easily have been cleared up, but instead Cs chose to apply for a without notice freezing injunction.

The freezing injunction applications

11. An application for an urgent worldwide freezing injunction was made without notice to Teare J on 20 December 2019. The application was supported by an affidavit from Cs' then solicitor, Mr Vitaliy Kozachenko of Fortior Law S.A., a Geneva law firm. He said in his affidavit in support that:

> "At the heart of this case is one of the latest cryptocurrency shams worth millions of pounds. The sooner this Court and the

> Serious Fraud Office investigate it, the fewer victims the sham will make.
>
> The Defendants are behind this sham. The sham is operational and seeks to defraud cryptocurrency investors in this country and elsewhere by making fraudulent misrepresentations about the nature and intentions of the Defendants' business. The Defendants have harvested some US$2.2 million from the Claimants alone, excluding the value of the services provided to the Defendants, whose value the parties estimated at US$3 million. The Defendants have likely defrauded many other investors and, as this document is being prepared, seek to defraud even more."

12. Similarly in the supporting skeleton argument, it was said on behalf of Cs that:

> 'The kernel of the Claimants' case is that the Defendant's entire scheme was designed to extract moneys from investors, and that the Defendants never had any intention to perform any of the expected or intended activities identified in their White Paper (an equivalent of a Prospectus) […]." [underlining added]

13. This way of putting the case has given rise to much of the dispute at this hearing. Ds' case is that the LFE project was not illusory – they contend that it was a real business project which they fully intended to perform, and the fact that no football club shares came to be bought and that no trading platform came to established "was not the result of the elaborate heist hypothesised by the claimants but of the more mundane fact that the take-up of the tokens was insufficient".

14. At the hearing, Cs emphasised the alternative way that they put their case, which is that even if the Court were to find at trial that the LFE project was not a sham in the sense that Ds intended the project to succeed, it would still be possible for most of the pleaded representations to be false. However, the difference between these ways of putting the case comes into focus when considering Ds' contention that in making the injunction application, Cs were guilty of material non-disclosure.

15. At the hearing on 20 December 2019, Teare J refused to grant the injunction on the basis that further particularisation was required in the form of evidence from Mr Seitnepesov, and Particulars of Claim, at least in draft.

16. With these additions, the application was brought back before the Court on 14 January 2020. Granting the injunction, Butcher J was satisfied (albeit as he made clear necessarily on an *ex parte* basis and without having heard from any of the defendants) that Cs had a good arguable case of fraudulent misrepresentation against Ds 1, 2 and 4, of breach of contract against D4, and of unlawful means conspiracy against Ds 1, 2 and 4, and that there was a real risk of dissipation of assets arising from a good arguable case of dishonesty.

The application to discharge the injunction

17. Ds seek to discharge the injunction on the ground of material non-disclosure, and, this point being linked to their strike out application, on the basis that there is no good arguable case of fraud.

18. This arises as follows. As noted above, Cs' application was supported by an affidavit from their solicitor, Mr Vitaliy Kozachenko who made an additional affidavit in support of the application on 14 January 2020. Again as noted, he put the case in trenchant terms, describing the LFE project as being the "latest cryptocurrency sham worth millions of pounds" and saying that, "The sooner this Court and the Serious Fraud Office investigate it, the fewer victims the sham will make".

19. Mr Kozachenko did not however disclose to the Court that his firm including himself personally had acted in connection with the project – the client companies in the LFE group included D1. Ds also rely on the fact that in an email sent on 4 May 2018 by Mr Kozachenko to D4 (Mr Hunt), Mr Kozachenko asked for permission to use text taken from the LFE website to publicise Fortior Law's role as the project's legal advisers. Permission does not seem to have been forthcoming, and the text was not in the event used.

20. Mr Kozachenko says that he did not mention his retainer on behalf of the project for three reasons: (1) he did not consider that the performance of limited work for a limited time some 18 months before the application for a freezing order was inconsistent with Cs' case that, as at the date at which the application was made, there was a good arguable case that the LFE Project was and always has been a sham; (2) the work was subject to privilege; and (3) Fortior Law's invoice remains unpaid and Mr Kozachenko did not want to appear to be putting undue pressure on the Ds to pay the invoice, or be seen as trying to further traduce the Ds. Cs say that these reasons are understandable; Ds say they are baseless.

21. Ds say that given Cs' repeated allegation that the LFE project was a "sham" and "illusory", and that Mr Hunt was a fraudster with "no genuine intention" of (among other things) setting up a trading platform, Cs had an inescapable duty to tell Butcher J that their solicitor had himself personally worked on the LFE project, and indeed had been involved in negotiations with the intended provider of the supposedly illusory platform. These were material facts that the judge would have wished to know about before deciding whether the Cs had a good arguable case that the whole thing was a fraud and solid grounds to fear, mainly for that reason, the dissipation of assets; and before deciding whether it was appropriate to fire the "nuclear weapon" of a freezing injunction at Ds without hearing their side of the story first.

22. The rules relating to non-disclosure in the context of freezing injunctions were recently considered by the Court of Appeal in *PJSC Commercial Bank v Kolomoisky & Others* [2020] 2 WLR 993 at [250]-[253]. However, though it was not conceded, it was not seriously contested at the hearing that disclosure should have been made. In any event, I am satisfied that the fact that Mr Kozachenko and his firm had previously acted for the project should have been disclosed.

23. This is not because of any conflict of interest, which is a matter for the firm and its previous clients. It is because in a case in which the deponent for the claimants was characterising the LFE project as a sham and a fraud, it was material for the judge to

know that he had previously acted in relation to the project. The relevance of this fact may have been limited, if for example the solicitor's position was that he realised subsequently that the project was a sham, but the materiality of the previous retainer, and what the solicitor did pursuant to it, was for the judge to decide, not the solicitor – *Brink's Mat Ltd v Elcombe* [1988] 1 WLR 1350 (at 1356-1357).

24. Cs have characterised the work done as fairly minimal, but it was clearly not insubstantial. The retainer letter of 3 April 2018 refers to the provision of general contractual, regulatory and other legal advice. The work included reviewing the terms of the Master Services Agreement with Securrency Inc, a US company which was engaged to provide technical assistance, including with the setting up of the online platform. It also included reviewing a contract with a well-known footballer who was to have an ambassadorial role for the project. The work concluded on 15 May 2018 and the firm's charges were CHF28,840, the majority being attributable to work done by Mr Kozachenko himself. It was certainly material for the judge also to know that his fees had not been paid. None of the reasons put forward for non-disclosure has any validity.

25. As was held in *Brink's Mat* (see above), whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to the issues which were to be decided by the judge on the application. The innocence or otherwise of the non-disclosure is also an important though not decisive consideration.

26. As Males J (as he then was) said in *National Bank Trust v Yurov* [2016] EWHC 1913 (Comm) (at [18]):

> "b. Failure to disclose a material fact will sometimes require immediate discharge of the order. This is likely to be the court's starting point, at least when the failure is substantial or deliberate.
>
> c. Nevertheless the court has a discretion to continue the injunction (or to impose a fresh injunction) despite a failure of disclosure; although it has been said that this discretion should be exercised sparingly, the overriding consideration will always be the interests of justice.
>
> d. In considering where the interests of justice lie, it is necessary to take account of all the circumstances of the case including (without attempting an exhaustive list) (i) the importance of the fact not disclosed to the issues which the judge making the freezing order had to decide; (ii) the need to encourage proper compliance with the need for full and frank disclosure and to deter non-compliance; (iii) whether or to what extent the failure to disclose was culpable; and (iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on the merits will never be a good excuse for a failure to disclose material facts.

> e. The interests of justice may sometimes require that a freezing order be continued, but that a failure of disclosure be marked in some other way, for example by a suitable order as to costs."

27. Because the failure to disclose in this case was (in my view) a substantial one, the starting point is therefore the immediate discharge of the order. However, the following further points also seem to me to be relevant.

28. Firstly, there is the question whether the non-disclosure was innocent or culpable. Cs submit that there was clearly no intention to suppress this information, since Mr Kozachenko plainly knew that Ds knew that he had performed work in relation to the LFE project and that they would be able to refer to this at the return date hearing. I appreciate that in some cases there may be much force in Ds' response that this is to ignore the tactical advantage that the obtaining of a freezing order gives to a claimant. The question is whether that is the case here.

29. Mr Kozachenko says in his 4th affidavit, "If … my evidence was not full and frank, I apologise without reservation. … my decision not to mention the fact that work had been done for LFE was not informed by any intention to mislead the Court, and I offer my apologies if that was the result". He does not actually accept that he should have disclosed it – it was not accepted at the hearing either on behalf of Cs that disclosure should have been made. That to some extent detracts from Cs' position. Nevertheless, I see no reason to doubt that Mr Kozachenko's stated reasons are genuine, albeit they were mistaken. In that sense, this is a case of innocent non-disclosure.

30. Second, as Cs point out, Mr Kozachenko did disclose (albeit only in his second affidavit) that another law firm, CMS (now Cameron McKenna Nabarro Olswang LLP), had completed over £350,000 of work relating to acquisitions for the LFE project. This is also mentioned in the Particulars of Claim. There is no transcript of the hearing (or explanation of Cs' departure from usual practice in this respect) and the note of the hearing does not show that the CMS work was specifically drawn to the judge's attention. But in my view it is (as Cs submit) reasonable to believe that the judge will have been well aware of this fact from his reading of the papers before the hearing. So far as the instruction of lawyers negatives the case as to sham – and I accept Ds' submission that it does tend to negative that case – the judge already had the point. Had he been told, as he should have been told, that Mr Kozachenko's firm had also been instructed, it is difficult to see how this would have made any difference to his decision.

31. Taking these two points together, and without in any way minimising the breach of the duty of disclosure that has taken place, I do not consider that it would be right to discharge the injunction on this ground. As was said in *National Bank Trust v Yurov* (see above) a failure of disclosure may be marked in some other way, for example by a suitable order as to costs.

32. Ds also submit that the injunction should be discharged on the basis that there is not, and never was, a good arguable case of fraud on the facts. In this regard, it is of some note that the evidence put forward on Ds behalf does not tell the full story of the LFE project in a way that describes the development of the project from its inception to the

present day. That would, perhaps, have assisted in assessing the case as to fraud. Reference was made to the factual material in the defence in that regard, as verified by the Statement of Truth signed by C4 (Mr Hunt), and it is correct that this does partially fill gaps in the evidence. Cs submitted that Ds evidence was crafted with care for a reason, namely to avoid difficult questions to which there were are no satisfactory answers. In any event, Ds' case as to good arguable case was largely developed by reference to the pleaded case, on the basis that it should be struck out because the allegations of fraud have not been properly pleaded. I shall deal with it the same way.

33. I should however set out the legal test which is not in dispute. A good arguable case is one that is "more than barely capable of serious argument, and yet not necessarily one which the Judge considers would have a better than 50 per cent chance of success": *Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft GmbH (The Niedersachsen)* [1983] 2 Lloyd's Rep 600, 605. The central concept at the heart of it is that the claim requires a plausible evidential basis: *Lakatamia Shipping Co Ltd v Toshiko Morimoto* [2019] EWCA Civ 2203 at [38].

34. For reasons set out below, I consider that the claim satisfies this threshold requirement. As Cs point out, there is not a separate issue as to risk of dissipation aside from Ds' case on dishonesty, and no submissions were made on the discretionary exercise, or as to any particular harm that the freezing order is causing. I find that Ds' application to discharge the injunction does not succeed.

Ds' application to strike out parts of the claim/summary judgment

35. The allegations of fraud in the Particulars of Claim are relevant in the context primarily of alleged fraudulent misrepresentation, and also unlawful means conspiracy.

36. As to the first, "The tort of deceit requires the claimant to show that: (i) the defendants made false representations to the claimants; (ii) the defendants knew the representations to be false, or had no belief in their truth, or were reckless as to whether they were true or false; (iii) the defendants intended the claimants to rely on the representations; (iv) the claimants did rely on the representations; and (v) as a result the claimants have suffered loss and damage" (*Vald Nielsen Holding A/S v Baldorino* [2019] EWHC 1926 (Comm) at [131] summarising earlier authority).

37. Ds rely on the principle that allegations of fraud must always be clear and properly particularised. In particular, as stated in a well-known passage, "It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved" (*Three Rivers District Council v Governor and Company of the Bank of England* (No.3) [2003] 2 AC 1 at [186], Lord Millett).

38. Ds submit that on analysis Cs' claim in deceit, when stripped back to its primary facts, amounts in essence to no more than the allegation that an entrepreneurial venture was said to be being planned in a particular way at various stages of its development but things did not turn out according to plan and it failed. To this, Ds

contend, Cs add several bare assertions of Ds' dishonesty. Ds' case is that none of the allegations of deceit is properly pleaded, and consequently should be struck out.

39. The strike out/summary judgment application was not made until 30 June 2020, so nearly six months after the proceedings began in January, and shortly before the hearing in July. Cs produced draft amended Particulars of Claim on 7 July. Ds consent to the deletions and the amendments that do not bear on the claims based on fraud, but the other amendments are in issue and Cs seek permission to include them. The parties' arguments have been made by reference to the amended version.

40. The principles are not in dispute. Fraud or dishonesty must be specifically alleged and sufficiently particularised, and will not be sufficiently particularised if the facts alleged are consistent with innocence (*Sofer v Swissindependent Trustees SA* [2020] EWCA Civ 699 at [23]; *Portland Stone Firms Ltd v Barclays Bank plc* [2018] EWHC 2341 (QB); *Bank St Petersburg PJSC v Arkhangelsky* [2020] 4 WLR 55 elucidating the *Three Rivers* principle at [42]). The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence (*JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [20]-[23]).

41. Ds' basic submission is that, whatever the shortcomings of their behaviour, the LFE project was not a sham, but a good idea which did not get off the ground. Its lack of success is attributable to commercial reasons, and has nothing to do with any supposed dishonesty which is strongly denied. This, they say, vitiates pleadings which rely on non-performance to support their case that LFE was a sham.

42. As to the facts, it is right to say that Mr Seitnepesov is an experienced business person, and he clearly thought that the project had potential, though in the end he decided to disinvest. It is also right to say that though cryptocurrencies and similar offerings have attracted their fair share of fraud, many honest start-ups are small operations with unsophisticated operators who struggle to attract investment – those who put money into these ventures do so as risk capital, with potentially high rewards should the start-up hit the jackpot. I fully accept that when allegations of fraud are made by disappointed investors in start-ups, considerations like these have to be taken into account.

43. But sham is only part of the present case. Cs contend that fraudulent representations were in fact made. Even if the project was genuine, they contend that they have a good arguable case that specific representations were made which were in fact fraudulent. As the note of his judgment shows, that was how Butcher J approached the matter at the hearing.

44. A common thread running through Ds contention that this part of the pleading should be struck out is that the allegations made are consistent with a business failure. So, it is contended, on the basis of the primary facts pleaded, it cannot be shown that an inference of dishonesty is more likely than one of innocence or negligence (see *Kekhman* above). Since fraud and dishonesty are inherently improbable, cogent evidence is required for their proof.

45. This contention as to the inherent improbability of dishonesty was disputed by Cs. They rely on what was said in *Bank St Petersburg PJSC v Arkhangelsky* (above)

recently at [117] that improbability of dishonesty is a fair starting point: "But this is because, other things being equal, people do not usually act dishonestly, and it can be no more than a starting point". As was the position in that case, Cs contends that this is not a fair starting point in the present case because of proven dishonesty concerning the founders of the LFE project even if not directly connected to the representations relied on to found the claim (see at [42]).

46. In support, Cs rely on the following. On 6 December 2019, LFE placed a "paid-for submitted press release" on CNN announcing that an institutional investor (Fortune Star Digital Asset Fund) had purchased 85% of LFE tokens. It quoted Mr Aylward saying that this was a "huge moment" and shows that the tokens have "true scarcity value". However, according to his asset disclosure, Fortune Star is owned by Mr Hunt indirectly. It is "managed by White Tiger Asset Management Ltd (Cayman)". This is D6, and an entity also owned by Mr Hunt. This was not a sale to an institutional investor reflecting the scarcity value of the tokens, but simply, Cs say, a transfer of tokens from one Hunt-associated company to another.

47. In my view, this allegation is a serious one and clearly capable of being categorised as dishonest, and it has not been answered in Ds' evidence. I do not agree with the submission made on behalf of Ds that it was "in a sense accurate" – the press release clearly suggests an arms-length purchase. At the least, it is an example of an untrue statement made in relation to the project (albeit not directly relevant to the misrepresentation claims, since it came the year following Mr Seitnepesov's investment).

48. Then on 12 February 2020, LFE published an announcement on Twitter which asserted that, "The company raised $70m in a digital token offering in 2018…". A day later, the Guardian reported that, "In a statement the company said it raised US$70 million via a digital token offering in 2018…". In fact, Ds' case is that only US$2 million has been raised from token sales. This allegation is answered in the evidence by Mr Hunt, who says that he has not been involved in the management of either D1 or D2 since the summer of 2018, and that the statements were not accurate and should not have been made. He says that the figure may refer to pledges to take tokens as opposed to actual purchases. Cs submit however that this appears to be a further instance of those associated with the LFE project making exaggerated claims about its success and ongoing progress.

49. Finally on this theme, Cs rely on the fact that it has come to light that Mr Aylward has a conviction for VAT fraud in 2010 in relation to property deals under his previous name James Abbas Biniaz. The evidence seems to be that he has changed his name to his mother's maiden name, which is Aylward. He was sentenced to 22 months' imprisonment. Cs submit that this is a case, therefore, in which a founder of the project is admittedly a fraudster, and issues of improbability of fraud do not arise. To be clear, it is not suggested that Mr Hunt has any convictions of any description.

50. Ds' response is that there is no pleaded case that Mr Aylward had any involvement in any of the pleaded representations, which is correct. I agree that the conviction should not be given too much weight, and that it does not displace the established standards required when pleading fraud. However, it is relevant in my view to the general

question as to the extent to which an inference of dishonesty is more likely than one of innocence or negligence.

51. The challenged paragraphs of the Amended Particulars of Claim are the particulars of false misrepresentations pleaded in paragraph 50. As did the parties, I will take these one by one.

52. Sub-paragraph 50 a pleads that there was no genuine intention on the part of D4 (Mr Hunt) and/or Ds 1 and 2 to purchase football club shares by the sale of cryptocurrency, to establish a stock exchange for tokens or to organise social events: " … as evidenced by the fact that no such activities were ever undertaken by either the First or the Second Defendants. Alternatively, if such an intention ever existed, it only remained in existence for a fleeting period of time and was rapidly abandoned". Ds' challenge is that this paragraph is objectionable as a plea of fraud since the fact that the activities were not undertaken is as consistent with the failure of the business as it is with any dishonest intention. Looked at in isolation, I agree with Ds that the absence of activities does not of itself evidence the absence of genuine intention. But looked at in the context of the whole pleading, I do not think that the sub-paragraph should be struck out, because in context the absence of activities takes on a more serious complexion. Paragraph 50 aa pleads a lack of intention to promote the project without supporting facts pleaded, and I consider that the same applies.

53. Sub-paragraph 50 b (now subdivided into three) pleads false representations as to a purported investment by a Japanese investor, the fact that agreements with football clubs for share purchase were not in place, and an allegation that when Cs advanced funds in March 2018 it was represented that about US$3m would be sufficient to launch the stock exchange/trading platform such that it would start generating income. Again, I agree with Ds that it is not enough merely to plead a representation and to assert that it was made fraudulently - the primary facts from which the court is invited to infer that the statement was made fraudulently must be pleaded. But the pleading as a whole has to be taken into account, and statements which are asserted to be factually untrue, when taken cumulatively, can go to support an allegation that they were all made fraudulently, even if individually they would be equally consistent with innocence.

54. Sub-paragraphs 50 c to f relate to the position of Alpha Three Invest GmbH which as stated above is now defunct. Much the same considerations apply as above. As a matter of fact, it was not the case that the monies flowed through D2 and D1 to Alpha. Cs do not submit that the fact that it did not happen is conclusive evidence of the absence of genuine intention but say that in the circumstances and in context the plea is adequate – I agree with this submission.

55. In sub-paragraph 50 g, Cs plead a false representation to the effect that the genuinely estimated proceeds of token sales "stood at US $350m", and that this estimate had a reasonable factual basis. I agree with Ds that as originally pleaded, this allegation was potentially misleading, suggesting that it had been claimed that this sum had already been raised – the document itself refers to "current projections". Further, it came after the third loan agreement. However, once accepts that it was a projection, and of necessity an estimate, then, as Cs point out, nowhere in their defence or their evidence do Ds explain how they reached that number. I appreciate that the pleading has to be

capable of standing on its own, but taken as part of the overall allegations, I do not think the pleading should be struck out.

56. Sub-paragraph 50 h is to the effect that there was no genuine intention to use the funds raised by token sales for the purposes represented, evidenced by the fact that such funds as were raised were not employed for the purposes identified. Cs said in argument that the purpose was working capital or football club purchases. They say that the lack of genuine intention is to be inferred because the funds raised were not used for football club purchases. As Ds point out, in the original version of the pleading it was asserted that these funds were diverted to D5 and D6. That allegation has been withdrawn in the proposed amended version – the claim against D5 and D6 is not being pursued. I think Ds are right to say that this "leaves the allegation of the misuse of money raised by token sales hanging, entirely unsupported by any specific allegation at all". Further, even Cs' case leaves open the possibility that the funds were used for working capital, which is far from unlikely. In my view, this plea cannot stand in its present form. What distinguishes it from the other representations is that it does not seem factually correct even in its own terms. If it can be credibly amended further in the current draft, Cs should have that opportunity.

57. In sub-paragraph 50 i, Cs' case is that an email and attached spreadsheet represented that binding commitments had been entered into to pay sums of money that were due in respect of the acquisition of shares in football clubs, which was false because no purchases had been made. Ds say that the spreadsheet cannot reasonably be read this way. There may be force in this, but it goes to the strength of the allegation, not the integrity of the pleading.

58. Sub-paragraph 50 j pleads an untrue representation made or about 20 April 2018 that D4 had "secured" an investment from the Chinese technology giant Alibaba. This would indeed have been significant if it had happened (it did not). Again, the allegation that such a representation was made may be wrong, but at the pleading stage that does not ground a strike out application.

59. Ds further submit that except in relation to the allegation that the LFE project was a sham from the start (where inducement is self-evident), Cs have not sufficiently pleaded that they were induced to advance money by the specific representations they allege. I do not accept that. Reliance is adequately pleaded at paragraph 52 of the draft Amended Particulars of Claim.

60. For these reasons, except as to that part of the pleading identified in paragraph 56 above, Ds' strike out application fails (and as already indicated, I find that Cs satisfy the good arguable case threshold in relation to the freezing injunction).

61. Although Ds have an alternative case that they should have summary judgment in relation to the fraud allegations, this was rightly not pressed in argument. Summary judgment is not appropriate in this case because of the factual disputes (and I agree with Cs that Ds' evidence is not adequate to support such an application in any event).

62. Ds also seek to strike out Cs' conspiracy claim on the basis that it is parasitic on the fraud claim. That strike out application falls along with the application in relation to fraudulent misrepresentation. There is an additional reason in that the claim is based

in the alternative on deliberate breach of the contractual obligations relating to the 4.4 million tokens that were provided to C2 – i.e., it is not dependent on proof of fraud.

Conclusion

63. In summary, Cs are entitled to an order continuing the injunction. Ds' application to strike out part of the claim or for summary judgment in that respect are dismissed save to the extent indicated in paragraph 56 above. The parties should now seek to agree the issue as to amendments of the Particulars of Claim in the light of this judgment. I am grateful to them for their assistance, and will hear them as to any consequential matters.