



Neutral Citation Number: [2021] EWHC 1963 (Comm)

Case No: CL-2020-000541

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

16 July 2021

CHARLES HOLLANDER QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Between :

(1) ANDORO TRADING CORP
(2) UROCO LIMITED

Claimants

- and -

(1) DOLFIN FINANCIAL (UK) LTD
(2) DOLFIN ASSET SERVICES LIMITED
(3) ANKOR PRIVATE OFFICE LTD.
(FORMERLY DOLFIN PRIVATE OFFICE LTD)
(4) ROMAN JOUKOVSKI

Defendants

Richard Power (instructed by **Dentons**) for the **Claimants**
Christopher Parker QC (instructed by **Ingram Winter Green LLP**) for the **Defendants**

Written Submissions received: 18 June 2021

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
CHARLES HOLLANDER QC

“Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties’ representatives by email and release to Bailii. The date and time for hand-down is deemed to be 16 July 2021 at 10:00 am.”

CHARLES HOLLANDER QC :

Judgment On Consequential Matters

1. Further to my judgment dated 10 June 2021, the parties agreed that matters consequential on my judgment should be addressed to me in writing. This judgment deals with those issues.

Costs

2. The Claimants ask for their costs. The Defendants submit costs should be in the cause. They submit that the case argued differed from the pleaded case. I have addressed the arguments made before me in my judgment. The application made by the Defendants failed. Making an application for reverse summary judgment and applying to strike out the pleading in what amounts to a fraud case where the party alleging fraud has little information as to what occurred and is seeking to gather information as to exactly what occurred as the case (and disclosure) proceeds is unlikely to be a promising case for summary judgment and a strike out if, as here, an arguable case of serious wrongdoing can be shown. Costs should follow the event and the Defendants should pay the Claimants' costs.

Assessment of costs

3. The Claimants seek an interim payment on account of costs. Their total costs are EUR 261,762.10. I consider an interim payment on account of EUR 140,000 is appropriate.

Costs of the application to re-amend and of and occasioned by the re-amendments

4. I see no reason why these costs should not be payable by the Claimants to the Defendants in any event. The Claimants say the Defendants should have consented to the applications but I am not prepared to make an order other than the usual in relation to this small item of costs.

Stay of costs order

5. An outstanding application for permission to appeal is not generally a reason to stay a costs order, there are no special circumstances relied on here, and I refuse a stay.

Service of a Defence

6. There is no reason to delay the service of a Defence merely because the Defendants may wish to seek leave to appeal. The Defendants must serve their Defence.

Order that “Claimants should further be ordered to make such re-re-amendments as are required to ensure that their pleaded case accords with the claim presented orally at the hearing of the applications”

7. The Defendants seek this order. I do not consider there is a basis for it. I have given judgment on the applications before the court.

Permission to appeal

8. I refuse permission to appeal. I do not consider this was ever a case suitable for summary judgment or a strike out application and do not think an appeal has a real prospect of success.

Reasons on the strike out application

9. I do not consider the Defendants are correct that I have not given reasons for refusing the application to strike out. I refer to [41]- [56] of the judgment. However, given the submission made I propose to expand my reasons in relation to the strike out application.
10. I note that the Defendants' skeleton argument does not draw a clear distinction between those matters that are the subject of the strike out application and the summary judgment application. On a strike out, given that this is not a case where it can be said the claims are vexatious or an abuse of process, the issue is whether the pleading discloses a cause of action.
11. Taking the Reamended Particulars of Claim, the scheme of the pleading is that (i) four representations were made by Mr Joukovski or his associates which are defined (ii) it was intended they be relied on by GEM or any GEM vehicle which would include Andoro and Uroco (iii) Andoro and Uroco relied on the representations (iv) Mr Joukovski and his associates acted for himself and/or others of the Defendants, and to the extent necessary he acted for them (v) alternatively in the light of the above matters and the central role of Mr Joukovski and the Dolfin Defendants in the arrangements a collateral contract came into effect (vi) alternatively in the circumstances Mr Joukovski and/or the Dolfin Defendants owed a duty of care (vii) in similar circumstances to that relating to Andoro, a collateral contract came into effect involving Uroco and the Defendants and a duty of care was owed to Uroco (viii) the circumstances of payment of the purchase monies in the light of the representations and circumstances gave rise to a Quistclose trust over the monies paid by Andoro and Uroco (ix) those monies were dissipated dishonestly given the knowledge of Mr Joukovski and the other Defendants, thus constituting dishonest assistance, knowing receipt and liability as accessories or inducing breach of contract and are liable for tortious interference with the Claimants' contractual rights (x) the misrepresentations were made fraudulently (xi) the unlawful means already pleaded are relied upon for unlawful means conspiracy between Mr Joukovski and the other Defendants.
12. I do not consider any of these matters can be said to give rise to a valid contention of no reasonable cause of action. Taking the cause of action points relied upon from the Defendants' skeleton argument:
 - a. *Protected Funds Representation Claims (53)*. These are not strike out points (as opposed to summary judgment) save that (i) I reject the contention that the claim for dishonest assistance is not supportable as a pleading (ii) the case of attribution to DASL is pleaded as a party whom Mr Joukovski acted for and on behalf of.
 - b. *Offer subject to contract (54)*. There are a number of points made here, most of them evidential. The authority points are not strike out matters, but issues for trial. I do not think there is any strike out point in the issue whether the misrepresentation claims are correctly deceit or under the Misrepresentation Act

(61), if they were dishonest or negligent and relied upon, the matter is sufficiently pleaded. Collateral contract claims are pleaded as an adjunct and not capable of being struck out.

- c. *Legally binding promises allegation not credible (64)*. These are evidential points.
- d. *The PONAs (69)*. The points here relate to the effectiveness of the PONAs. However, the claim is based on the involvement of the Defendants in a scheme intended to misappropriate monies paid by the Claimants, not on the PONAs. Further it is the Claimants' case that the PONAs never became effective because they were held in escrow. These are not strike out points.
- e. *WT claim not supported by evidence (73.)* These are evidential points.
- f. *No good claim in dishonest assistance (78)*. The Defendants say there is no breach of trust, but a Quistclose trust claim is pleaded in relation to funds advanced. They say no dishonest conduct is pleaded, which is wrong: see PoC 33 and 41, and they say there is no proper basis for the allegation of knowledge which is in my view equally wrong (see also Poc 33 and 41).
- g. *Vostok funding representations (85)*. The allegation is that a false representation was made with knowledge of its falsity or negligently in circumstances where a duty of care was owed which was relied upon and relied upon by a person whom it was intended by the maker would rely on it. I do not consider this can be struck out.
- h. *The Faller representations (91)*. These representations are pleaded as relied upon and false and as constituting unlawful means for the purposes of conspiracy. There does not appear to be a fraud allegation in relation to them, it is not clear whether that was deliberate on the part of the pleader. However, there is a plea of breach of a duty of care, and a claim for negligent misrepresentation generally requires the Defendants to prove reasonable grounds, so I do not consider there is a basis for a strike out. In any event the allegation goes beyond section 6 of the 1828 Act.

13. Counsel are asked to agree a draft order.