Neutral Citation Number: [2019] EWHC 2330 (QB)

Case No: HQ18X03310

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 September 2019

Before :

THE HONOURABLE MR JUSTICE MURRAY

- -

Between :

CJ MOTORSPORT CONSULTING LIMITED	**Claimant**
- and -	
(1) SAM BIRD	**Defendants**
(2) SAM BIRD ENTERPRISES LIMITED	

- -
- -

Mr Nick De Marco QC (instructed by **Onside Law Limited**) for the **Claimant**
Mr Ian Mill QC (instructed by **Solesbury Gay Limited**) for the **First Defendant**
The Second Defendant did not appear and was not represented.

Hearing date: 26 June 2019

- -

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.

.....

THE HONOURABLE MR JUSTICE MURRAY

Mr Justice Murray :

1. This is an application by the first defendant, Mr Sam Bird, asking the court to strike out under CPR 3.4(2)(a) or to enter summary judgment in his favour on a claim brought against him by CJ Motorsport Consulting Limited ("CJ Motorsport") on 18 September 2018.

The claim

2. By its claim, CJ Motorsport seeks damages of €5,280,000 from Mr Bird for his repudiation of a management contract dated 1 January 2016 between them ("the 2016 Management Contract"). Mr Bird says that the 2016 Management Contract is an unenforceable contract in restraint of trade. In the event that the court agrees with Mr Bird's defence to the repudiation claim, CJ Motorsport seeks restitution (quantum meruit) for services provided to Mr Bird under the 2016 Management Contract and predecessor contracts between the parties and for its financial investment in his career. CJ Motorsport also seeks a declaration that a financial agreement dated 10 April 2015 ("the 2015 Financial Agreement") between CJ Motorsport and the second defendant, Sam Bird Enterprises Limited ("SBEL") remains binding and effective as between CJ Motorsport and SBEL.

Background

3. Mr Bird, who is 32 years old, is a professional motor racing driver, currently driving for the Envision Virgin Racing team in the FIA Formula E Championship series and for Ferrari in the FIA World Endurance Championship series.

4. SBEL is a company established by Mr Bird, of which he is the sole shareholder and through which, for a period of time, he received his racing income. SBEL did not attend and was not represented at the hearing of this application.

5. CJ Motorsport is a limited company formed in January 2005 in order to provide management services to and to invest in young up-and-coming motor racing drivers. Its co-founder (with French professional motor racing driver, Mr Bruce Jouanny), majority shareholder and former director is Mr Serge Celebidachi, a Romanian writer and filmmaker. Its sole director is Mr James Olivier, who is also a shareholder, and who joined the company shortly after it was founded. CJ Motorsport has formally represented six professional motorsport drivers over the years and has had informal working relationships with a number of other drivers. It currently has working arrangements with three drivers, excluding Mr Bird.

6. On 19 February 2006, just after Mr Bird had turned 19 years old, CJ Motorsport and Mr Bird entered into a management contract under which, in return for certain commission payments, CJ Motorsport would manage Mr Bird's motor racing career for a period of ten years. This contract was superseded by further agreements between the same parties dated 1 August 2007, 4 December 2009, 1 March 2011, 20 February 2012, 10 April 2015 and then, most recently, the 2016 Management Contract. Each agreement superseded the prior one.

7. Under clauses II and III of the 2016 Management Contract, it is stated, in summary, that Mr Bird agreed to pay to CJ Motorsport 32 per cent of his earnings from his

professional motorsport activities in consideration for CJ Motorsport's management services and for the financial investment made by CJ Motorsport in his career. The term is expressed to continue until 31 December 2034 and in certain circumstances is automatically extended for a further three-year period and, at the end of that period, for a further three-year period and so on. CJ Motorsport has a contractual right to terminate the 2016 Management Contract on one month's notice. Mr Bird does not have a corresponding right to do so. I will deal with other aspects of the contract when I consider the submissions made by the parties.

8. As already noted, on 10 April 2015, CJ Motorsport and SBEL entered into the 2015 Financial Agreement. Under that agreement, SBEL is liable for the sum of €3,000,000, to be repaid by SBEL out of SBEL's income from racing and racing-related activities, according to an agreed percentage of different tranches of Mr Bird's gross earnings per calendar year by reference to a table set out in the agreement. In a recital to the 2015 Financial Agreement, SBEL acknowledges "the personal investment of €3,250,000 made by CJ Motorsport to enable participation" of Mr Bird as a driver in various race series specified in the agreement. The next recital acknowledges reimbursements by SBEL to CJ Motorsport in 2012, 2013 and 2014, and the agreement includes a further reduction "as a gesture of good will, so that the total outstanding debt at the date of this Agreement stands at €3,000,000".

9. The 2015 Financial Agreement provides that, while reimbursements are taking place under that agreement, no commissions are due under the management contract dated 10 April 2015 between CJ Motorsport and Mr Bird. Such commissions are reinstated upon "full reimbursement of the above debt". No interest accrues on the debt under the 2015 Financial Agreement, "irrespective of the amount of time required for reimbursement". The 2015 Financial Agreement supersedes a similar agreement between CJ Motorsport and SBEL that was entered into on 18 March 2014.

10. It is common ground that a particular feature of the career of an aspiring professional motorsport driver, as opposed to the careers of aspiring professionals in other sports, is the need for significant financial investment, typically by third-party investment, sponsorship or some combination of those, once parental resources have been exhausted. The need for investment and/or sponsorship persists even for professional drivers who have reached the highest level, namely, the FIA Formula 1 World Championship. Although Mr Bird has not reached that level, it appears to be common ground that he has reached a high level in professional motorsport, just below the highest level, and that he is currently enjoying the most successful period of his career.

11. By letter dated 26 June 2018, Solesbury Gay, Mr Bird's solicitors, wrote to CJ Motorsport alleging that the 2016 Management Contract was "an unfair and unreasonable restraint of trade" and that Mr Bird "no longer regards the [2016 Management Contract] as being valid and binding upon him".

12. In a letter dated 16 July 2018, Onside Law, CJ Motorsport's solicitors, wrote to Solesbury Gay to the effect that, unless Mr Bird confirmed in writing within 14 days that he withdrew his repudiation of the 2016 Management Contract, CJ Motorsport would elect to treat the contract as repudiated and therefore discharged.

13. After further correspondence, CJ Motorsport filed its claim, including its Particulars of Claim, on 18 September 2018. Mr Bird filed his Defence and Counterclaim on 16 November 2018. By his Counterclaim, Mr Bird seeks a declaration that the 2016 Management Contract is unenforceable as an unreasonable restraint of trade. CJ Motorsport filed its Reply and Defence to Counterclaim on 30 November 2018.

14. On 16 November 2018 Mr Bird made a Request for Further Information on the Particulars of Claim from CJ Motorsport, seeking details concerning the services alleged to be provided by CJ Motorsport under the 2016 Management Contract and its predecessor contracts and details of the investments said to have been made by CJ Motorsport in Mr Bird's career. CJ Motorsport's response was filed and served by CJ Motorsport on 14 December 2018.

15. Mr Bird filed and served the application before me on 1 May 2019.

Relevant law

16. On the principles that govern the determination of an application to strike out or grant summary judgment on a claim, there was no dispute between the parties. It is not necessary for me to set out the law in detail. I simply note briefly that in relation to the application to strike out the claim under CPR 3.4(2)(a), for the application to succeed, I need to be satisfied that the Particulars of Claim "disclose no reasonable grounds for bringing … the claim". Examples of claims that would fall within these words are set out in CPR PD3A at para 1.4, for example, a claim setting out a coherent set of facts, but disclosing no "legally recognisable" claim against the defendant.

17. Although para 1.7 of CPR PD3A indicates that where a party believes his or her opponent's case has no real prospect of success on the facts or as a matter of law, the party may make an application either under CPR 3.4 (striking out) or under CPR Part 24 (summary judgment). Mr Nick De Marco QC, counsel for CJ Motorsport, referred me to Mostyn J's decision in *Dellal v Dellal* [2015] EWHC 907 (Fam) at [18-20] for the proposition that where the test to be applied is whether the case has a real prospect of success, the appropriate route is CPR Part 24.

18. In relation to the application by Mr Bird for summary judgment in his favour on the claim against him, I have noted the guidance given by Lewison J (as he then was) in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15], where he summarised and consolidated the principles that apply to the determination of an application for summary judgment. I note, in particular, that in order for a claim to be "realistic", it needs to carry some degree of conviction, that is, be more than merely arguable.

19. On an application for summary judgment, I must not conduct a "mini-trial". I should hesitate to make a final decision without a trial if I have reasonable grounds to believe that a fuller investigation into the facts of the case would add to or alter the evidence available to the trial judge and so affect the outcome of the case. I must determine the application on the basis of the respondent's (that is, CJ Motorsport's) factual case, unless it is clear that it has no real substance and/or is contradicted by contemporaneous documents.

20. Mr Ian Mill QC, counsel for Mr Bird, highlighted this passage from Lewison J's judgment in *Easyair Ltd* (at [15(vii)]), which he submitted applied in this case:

> "[I]t is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it."

21. Mr De Marco set out the same principle at para 12(g) of his skeleton argument. At para 6 of CJ Motorsport's Reply and Defence to Counterclaim, CJ Motorsport notes that "[w]hether the 2016 Contract is an unreasonable restraint of trade is a matter of law and submission".

22. The "short point of law or construction" in this case concerns whether the 2016 Management Contract is a contract in restraint of trade and, if so, whether it is unenforceable on the basis that the restraint is unreasonable.

23. In relation to the law governing contracts said to be in restraint of trade, I was referred by both counsel principally to the leading case of *Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd* [1968] AC 269 (HL) and to the cases *Nordenfelt v Maxim Nordenfelt Guns* [1894] AC 535 (HL), *Schroeder Music Publishing Co Ltd v Macaulay* [1974] WLR 1308 (HL) and *Proactive Sports Management Ltd v Rooney* [2011] EWCA Civ 1444, [2012] FSR 16. Mr Mill also made reference to *Watson v Prager* [1991] WLR 726 and *Panayiotou v Sony Music Entertainment* [1994] EMLR 229 in his summary of the general principles, and each counsel made reference to other cases on individual points during submissions.

24. In *Proactive Sports Management* at [144-150], Gross LJ helpfully summarised the principles applicable when the court is required to consider whether a contract attracts the doctrine of restraint of trade. I will not set out those passages in full, but I bear them in mind. I highlight the following points:

    i) In *Proactive Sports Management* at [149], Gross LJ, citing Lord Reid in *Schroeder* at p1309H, noted that the question of whether a contract attracts the doctrine of restraint of trade must be determined by reference to the contract at the time it was made. He added the following comment:

    > "As it seems to me, how the contract has subsequently turned out is only relevant for these purposes insofar as it furnishes evidence of the nature of the contract in question when made."

    ii) As part of his summary of the relevant principles, in *Proactive Sports Management* at [147], Gross LJ summarised the doctrine as involving two separate questions (described as a "two-stage approach" by Jonathan Parker J (as he then was) in *Panayiotou* at p321), namely:

    > "i) Whether the contract in question is in restraint of trade (or, which amounts to the same thing,

> whether the contract attracts the doctrine of restraint of trade)?
>
> ii) Whether, if so, it is reasonable?"

iii) In *Proactive Sports Management* at [147], Gross LJ also notes that if the first question is answered in the negative, the second question is not reached. Nonetheless:

> "… these questions, though analytically separate, cannot be viewed as existing in wholly watertight compartments."

iv) Arden LJ makes a similar point at [59] of *Proactive Sports Management*, where she notes that:

> "… the line between the two stages … is not clear cut, and … the analysis has to be an iterative one between them. In particular, the matters that might be raised under the second stage might also be relevant to the question whether the doctrine of restraint of trade is engaged at all."

25. In relation to the approach that the court should take to the first stage of the test, Gross LJ in *Proactive Sports Management* says the following at [148]:

> "… the question of which contracts attract the doctrine of restraint of trade cannot be answered in a mechanistic or formalistic way: *Panayiotou* [1994] E.M.L.R. 229 at p.327. There is no single, exhaustive or precise test: Lord Wilberforce, in *Esso* [1968] A.C. 269 at p.332. A practical and flexible approach is instead to be adopted. In *Esso*, Lord Reid said this (at p.298 A-B):
>
> > 'As the whole doctrine of restraint of trade is based on public policy its application ought to depend less on legal niceties or theoretical possibilities than on the practical effect of a restraint in hampering that freedom which it is the policy of the law to protect.'
>
> In his speech in *Esso* (at p.331), Lord Wilberforce observed that the doctrine has been expressed 'with considerable generality, if not ambiguity'; this was not a reason for regret, Lord Wilberforce continued (at p.331 F-G):
>
> > 'The common law has often (if sometimes unconsciously) thrived on ambiguity and it would be mistaken, even if it were possible to try to crystallise the rules of this, or any, aspect of public policy into neat propositions.'

> The doctrine of restraint of trade was to be applied to factual situations with a 'broad and flexible rule of reason' (p.331 F-G). Thus it is important to distinguish between contracts which promote or absorb economic activity and those which restrain or sterilise it …"

26. Finally, Lord Pearce in *Esso* at pp 327F-329A provides important guidance as to how a contract in restraint of trade is identified:

> "Somewhere there must be a line between those contracts which are in restraint of trade and whose reasonableness can, therefore, be considered by the courts and those contracts which merely regulate the normal commercial relations between the parties and are, therefore, free from doctrine. …
>
> …
>
> When Lord Macnaghten said in the *Nordenfelt* case that: 'In the age of Queen Elizabeth all restraints of trade, whatever they were, general or partial, were thought to be contrary to public policy, and therefore void' he was clearly not intending the words 'restraints of trade' to cover any contract whose terms, by absorbing a man's services or custom or output, in fact prevented him from trading with others; so, too, the wide remarks of Lord Parker of Waddington in the *Adelaide* case [[1913] AC 781, 794]. It was the sterilising of a man's capacity for work and of its absorption that underlay the objection to restraint of trade. This is the rationale of *Young v. Timmins* [1 Cr & J 331], where a brass foundry was during the contract sterilised so that it could only work for a party who might choose not to absorb its output at all but to go to other foundries, with the result that the foundry was completely at the mercy of the other party and might remain idle and unsupported.
>
> The doctrine does not apply to ordinary commercial contracts for the regulation and promotion of trade during the existence of the contract, provided that any prevention of work outside the contract, viewed as a whole, is directed towards the absorption of the parties' services and not their sterilisation. Sole agencies are a normal and necessary incident of commerce and those who desire the benefits of a sole agency must deny themselves the opportunities of other agencies. So, too, in the case of a film-star who may tie herself to a company in order to obtain from them the benefits of stardom (*Gaumont-British Picture Corporation Ltd. v. Alexander* [[1936] 2 All ER 1686]. See, too, *Warner Brothers Pictures Incorporated v. Nelson* [[1937] 1 KB 209, 53 TLR 14, [1936] 3 All ER 160] and partners habitually fetter themselves to one another.

> When a contract only ties the parties during the continuance of the contract, and the negative ties are only those which are incidental and normal to the positive commercial arrangements at which the contract aims, even though those ties exclude all dealings with others, there is no restraint of trade within the meaning of the doctrine and no question of reasonableness arises. If, however, the contract ties the trading activities of either party after its determination, it is a restraint of trade, and the question of reasonableness arises. So, too, if during the contract one of the parties is too unilaterally fettered so that the contract loses its character of a contract for the regulation and promotion of trade and acquires the predominant character of a contract in restraint of trade. In that case the rationale of *Young v. Timmins* comes into play and the question whether it is reasonable arises."

27. In *Proactive Sports Management*, for reasons explained by Gross LJ at [142], the court was only concerned with the first stage. Where it is necessary to consider the second stage, then, in addition to the principles summarised by Gross LJ in *Proactive Sports Management* to which I have referred, I also need to bear in mind the principles that apply at the second stage, namely, whether or not the restraint is reasonable and therefore justified.

28. Where a restraint of trade has been identified in a contract to which the doctrine applies, the onus is on the party in whose favour the restraint operates to show that it is reasonable: *Esso Petroleum* at p323G (Lord Pearce). How a party does that was considered in *Schroeder*, a case concerning a contract between a songwriter (Tony Macaulay, then unknown and only 21 when he entered into the contract) and a music publishing company, under which the company engaged the songwriter's exclusive services for a period of years on the basis of the company's standard form contract. In *Schroeder*, each of Lord Reid and Lord Diplock formulated the justification test in slightly different terms. Lord Reid said at p1310A-B:

> "I think that in a case like the present case two questions must be considered. Are the terms of the agreement so restrictive that either they cannot be justified at all or they must be justified by the party seeking to enforcement the agreement? Then, if there is room for justification, has that party proved justification – normally by showing that the restrictions were no more than what was reasonably required to protect his legitimate interests."

29. Lord Reid also noted at p1314G-H:

> "[I]f contractual restrictions appear to be unnecessary or to be reasonably capable of enforcement in an oppressive manner, then they must be justified before they can be enforced."

30. Lord Diplock said the following about the justification test at p1315H:

> "So I would hold that the question to be answered as respects a contract in restraint of trade of the kind with which this appeal is concerned is: 'Was the bargain fair?' The test of fairness is, no doubt, whether the restrictions are both reasonably necessary for the protection of the legitimate interests of the promisee and commensurate with the benefits secured to the promisor under the contract. For the purpose of this test all the provisions of the contract must be taken into consideration."

31. Lord Reid, in considering the contract at issue in *Schroeder*, noted that under that contract the songwriter was bound to assign the copyright in all his compositions to the company, but the company was not bound to publish any of them. The contract could not be terminated by the songwriter for at least five years (whereas the company could terminate on one month's notice), and if royalties earned exceeded £5,000 over that period, then the contract was automatically extended for a further five years. The contract obliged the company to pay a non-refundable sum of £50 by way of advance on royalties, but beyond that, if there were no royalties, no further amount would be due to the songwriter. Accordingly, if the company chose not to publish any of the songwriter's work for the term of the contract, his work would be "sterilised". He would be able to earn nothing from his work. It was relevant that the songwriter could not terminate the contract in such an event and that he could not recover the copyright in his compositions. The evidence in the case fell far short of justifying such a one-sided agreement, and therefore Lord Reid considered the contract to be unenforceable, affirming the Court of Appeal decision to that effect. Viscount Dilhorne and Lords Diplock, Simon and Kilbrandon agreed.

32. The starting point of the assessment of reasonableness of a contract is, of course, the terms of that contract. In relation to a commercial agreement, the parties are usually the best judge of what is reasonable: *Esso Petroleum* at p320B (Lord Hodson). The court should "give full weight to commercial practices and to the generality of contracts made freely by parties bargaining on equal terms": *Esso Petroleum* at p323B (Lord Pearce). Whether the party subject to the restraint in a contract had the benefit of legal advice is also likely to be a material factor in assessing whether there was an inequality of bargaining position: *Proactive Sports Management* at [100] (Arden LJ).

33. Of course, whether parties are bargaining on equal terms is a question of fact that may require investigation. It does not necessarily follow from a simple comparison of the nature and/or economic condition of each party, that there is a material inequality of bargaining power, although those aspects will potentially be relevant. An established and successful author dealing with a small, recently founded publisher will be in quite a different position from an unpublished author dealing with a well-known publisher.

34. In relation to Mr Bird's application for strike-out of the claim or summary judgment in favour of Mr Bird, in applying the justification stage of the two-stage test, I remind myself that I am doing so on the basis of CJ Motorsport's factual case.

Documents reviewed and factual basis

35. For the purposes of this application, I have reviewed the skeleton arguments provided by the parties, the 2016 Management Contract, the 2015 Financial Agreement, the pleadings, the witness statements of Mr Bird and Mr Mark Gay, Mr Bird's solicitor,

and the witness statements of Messrs Olivier and Celebidachi. I was also taken to other documents, for example, the predecessor contracts to the 2016 Management Contract, during the course of submissions.

36. Given that this is an application by Mr Bird for strike-out of the claim and/or summary judgment in his favour, I proceed on the basis that the facts are as stated by CJ Motorsport.

The 2016 Management Contract

37. The 2016 Management Contract begins with a section headed "BACKGROUND" followed by five unnumbered recitals in single sentence paragraphs. First, it is stated that CJ Motorsport has been managing Mr Bird's career since 19 February 2006 and that CJ Motorsport has successfully assisted Mr Bird in becoming a paid professional racing driver through ongoing management and successive investments totalling €4,700,000 since 2006. Then it is stated that the 2016 Management Contract was made in response to a request by Mr Bird for improved financial terms, replacing the management contract dated 10 April 2015, which was itself made as a result of Mr Bird's request for improved financial terms relative to the immediately preceding management contract dated 20 February 2012. Finally, it is stated that "[t]he parties wish to affirm their relationship by adopting this new contract *and to extend the lifespan of their relationship*" (emphasis added).

38. Next, after the word "WHEREBY", which usually denotes that what follows are recitals, there are seven clauses numbered with roman numerals I to VII. They are operative terms. As they are brief and important to the submissions made by the parties, I set them out in full:

> "I. CJ Motorsport will continue to manage the Client's career in Motorsport and all related areas.
>
> II. CJ Motorsport will, in turn, receive a 32% (thirty two percent) permission on all gross revenues generated by or in name of the Client, from racing activities (salaries and bonuses), endorsements, media and exploitation of the Client's image rights worldwide, cash gifts of any value and non-cash gifts above the value of €5,000. These commission arrangements supersede any arrangements the Client may have with third parties.
>
> III. The aforementioned commission is combined consideration for CJ Motorsport's management of the Client's career and for CJ Motorsport's personal investment, (as per amount stated in BACKGROUND) in the Client's career.
>
> IV. The aforementioned investment by CJ Motorsport (as per amount stated in BACKGROUND) in the Client's career is not a debt and the Client's financial obligations towards CJ Motorsport are strictly limited

> to the commissions outlined within the present Contract.
>
> V. Invoices rendered by CJ Motorsport shall specify the commission calculation in reasonable detail and show the VAT, which shall be charged additionally.
>
> VI. All clauses are to be complied with irrespective of any other prior or ongoing commitments or commission arrangements the Client may have with one or several third parties up to this date.
>
> VII. The present Contract, upon execution, supersedes all previous contracts and financial agreements between the parties. The parties hereby agree that the present Contract will not be renegotiated henceforth.

39. The remainder of the 2016 Management Contract, following the words "IT IS FURTHER AGREED THAT", sets out nine clauses, following by two Appendices. In summary, these are as follows:

    i) Clause 1 (Communication) says that Mr Bird will, at all times, be able to reach "a CJ Motorsport Representative" for support and advice (clause 1.1), that "all major decisions pertaining to the Client's career will be made by mutual agreement between CJ Motorsport and the Client" (clause 1.2) and that Mr Bird agrees to forward on to CJ Motorsport "all requests and approaches relating to his Racing career and endorsements (existing or potential)" (clause 1.3).

    ii) Clause 2 (Image Rights) provides that Mr Bird will sign an image rights agreement in the form set out in Appendix 2 to the 2016 Management Contract (clause 2.1), Mr Bird will be available for any media events and projects relevant to his career, subject to reasonable notice being given and to his racing schedule, which will be given absolute priority (clause 2.2), all space not needed on his car, race suit and helmet may be used by CJ Motorsport (clause 2.3) and the right to use audio-visual and other materials regarding Mr Bird generated during the term of the contract for an unlimited period afterwards in CJ Motorsport's literature and promotional material.

    iii) Clause 3 (Sponsor Related Activities) provides that Mr Bird will be available to attend activities and events relating to promotion of CJ Motorsport sponsors, subject to cover for Mr Bird's travel and accommodation costs and to his racing schedule, which will be given absolute priority (clause 3.1) and Mr Bird may be required to coach emerging talent in the UK or abroad (clause 3.2).

    iv) Clause 4 (Client responsibilities) sets out nine clauses, as follows:

        a) Mr Bird will ensure he has all necessary licences (clause 4.1);

        b) Mr Bird will not engage in illegal or immoral conduct (clause 4.2);

c) Mr Bird will comply with reasonable instructions from CJ Motorsport, reasonably related to services and duties to be performed by Mr Bird under the 2016 Management Contract (clause 4.3);

d) Mr Bird will not take part in extreme sports or other dangerous activities (clause 4.4);

e) Mr Bird will make no adverse statements to any third party, including the media, about CJ Motorsport, its management, any sponsor or the products of any sponsor (clause 4.5);

f) CJ Motorsport will likewise make no adverse comment to any third party, including the media, about Mr Bird (clause 4.6);

g) Mr Bird must insure himself against accidental death, accidental permanent total disablement and accidental medical expense (clause 4.7);

h) Mr Bird agrees that he is not an agent or employee of CJ Motorsport, but instead an independent contractor (clause 4.8); and

i) Mr Bird warrants that he has informed CJ Motorsport about all existing "sponsoring contracts, management contracts, service contracts and any other contracts with third parties in connection with his racing activity" and that he warrants in relation to these and any future contracts that none interferes or will interfere with any provision of the 2016 Management Contract (clause 4.9).

v) Clause 5 (Confidentiality) provides that the parties shall respect the confidentiality of CJ Motorsport's business and at no time shall "the confidential affairs of either party included in this contract be disclosed to any third party unless required by the court or HMRC".

vi) Clause 6 (Lifespan) provides that the contract is valid until 31 December 2034, a total contractual term of 19 years. It also provides that if it is not terminated one month before its term by registered mail by either Mr Bird or CJ Motorsport, it will automatically be extended for another 3 years, and likewise every 3 years thereafter.

vii) Clause 7 (Assignment) provides that neither party may assign its rights and/or obligations under the 2016 Management Contract without the other party's consent, which shall not be unreasonably withheld in the case of an assignment by Mr Bird to a company owned by him.

viii) Clause 8 (Termination) provides that CJ Motorsport may terminate the 2016 Management Contract at the end of any given season, on one month's written notice. If it does so, it renounces its right to any further commission, other than in respect of any "multi-year endorsement" that was signed before such termination. Commission continues to be payable in respect of any such endorsement contract at 32 per cent for the lifetime of the endorsement contract.

ix) Clause 9 (Governing Law and Competence of Courts) provides that the 2016 Agreement may only be amended in writing signed by both parties (clause 9.1), that it is governed by English law and that each party submits to the jurisdiction of the English courts (clause 9.2). They also agree to try to resolve any dispute on the basis of "mutual trust and respect" before "serving notice of termination or instituting litigation" (clause 9.3), and the parties certify that they "understand this binding agreement, have sought relevant advice and enter into it freely and under no duress".

x) Appendix 1 sets out a letter of indemnity by Mr Bird in favour of CJ Motorsport, in which he acknowledges that he drives any racing car entirely at his own risk and he agrees to indemnify CJ Motorsport and its officers, employees, contractors and agents, in respect of death or any injury to himself or damage to property resulting from his driving a racing car during the term of the 2016 Management Contract.

xi) Appendix 2 sets out the text of the agreement ("the Image Rights Agreement") entered into between Mr Bird and CJ Motorsport dated 1 January 2016 under clause 2.1 of the 2016 Management Contract, under which, until 31 December 2034, Mr Bird grants to CJ Motorsport the exclusive right to use throughout the world the intellectual property rights and other rights then existing or to arise in the "Client's Image" (as defined in clause 1 of the Image Rights Agreement) in relation to merchandising activities. As consideration for the grant of image rights to CJ Motorsport, it agrees to pay a fee of £10 on signing the Image Rights Agreement and then to pay any amounts received for the exploitation of image rights through merchandising activities, less any commission due under clause II of the 2016 Management Contract.

The issues

40. Against that background, the first question for me to resolve is whether CJ Motorsport has a real prospect of succeeding on its claim for damages against Mr Bird for his repudiation of the 2016 Management Contract. That question, in turn depends on whether the 2016 Management Contract engages the restraint of trade doctrine and, if so, whether any restraints on Mr Bird imposed by that contract are justified. If Mr Bird succeeds in establishing that, as a matter of law, having regard only to the terms of the 2016 Management Contract and CJ Motorsport's factual case, the 2016 Management Contract is unenforceable as being in unreasonable restraint of trade, then CJ Motorsport's claim for damages for repudiation of that contract has, of course, no real prospect of succeeding.

41. The second question to resolve is whether CJ Motorsport has a real prospect of succeeding on its alternative claim for restitution (quantum meruit) for services rendered to Mr Bird under the management contracts and for its investment in Mr Bird over a period of many years, over what it has been paid by way of commission for management services over that period.

42. Before turning to the submissions on these issues, I note that Mr De Marco began his submissions by complaining that Mr Bird's case as presented in Mr Mill's skeleton argument, which he received the day before the hearing, is entirely different from the application, Mr Bird's pleaded case and the evidence. For example, at para 4(v) of the

Defence Mr Bird pleads that he was not offered or advised to take any independent legal advice in relation to the 2016 Management Contract, at para 7(iii) of the Defence he pleads that the investments are not debts owed by Mr Bird but gifts by Mr Celebidachi, at para 7(iv) of the Defence he pleads that he was not offered or advised to take independent legal advice in relation to the first management contract he signed with CJ Motorsport in 2006 when he was 19 years old and at para 7(v) he pleads that the terms of the 2016 Management Contract and, in particular, the 18-year term and 32 per cent commission, do not represent any custom or practice in motor racing or in sport more generally. These are all factual disputes that will require a trial to resolve.

43. Mr De Marco noted that the evidence supporting the application dealt with these issues. But now the factual issues have been abandoned, and Mr Mill argues that it is simply a matter of legal submissions. That is not permissible. Mr Bird is now putting forward a new and different case, for which there has not been the necessary 14 days' notice under CPR 24.4(3). Although the court has the power to abridge time in certain circumstances, that would not be fair. On that basis alone, this application should be dismissed.

44. In his reply, Mr Mill rejected the submission that CJ Motorsport was facing a new application. By reference to the Defence, he noted that for purposes of the application he was relying on paras 7(i)(a), (b) and (c), 7(ii), 7(iii) (apart from the second sentence) and 7(vi). The application is supported by the pleaded case and the application can be resolved on legal submissions, by reference to CJ Motorsport's factual case.

45. I agree with Mr Mill there is no unfairness in the application as argued by Mr Bird. It falls within the scope of Mr Bird's pleaded case. There are factual matters raised in the Defence that could not be resolved on this application, but Mr Bird does not rely on them. Mr De Marco has dealt thoroughly with the legal submissions made in his skeleton argument, and we are proceeding on the basis of his client's factual case. Accordingly, I reject the submission by Mr De Marco that he is facing a new application for which he has not had proper notice and for that reason it should be dismissed.

46. I turn now to the submissions on the restraint of trade issues.

Submissions on restraint of trade issues

47. Mr Mill, for Mr Bird, submitted that it was clear that the 2016 Management Contract engages the restraint of trade doctrine. CJ Motorsport had substantial controls over Mr Bird's racing career, earning ability, time and movements over an inordinately long term, while CJ Motorsport had virtually no corresponding obligations.

48. Mr Mill highlighted a number of provisions of the 2016 Management Contract to illustrate this, including the following:

    i) Clause 1.2 of the 2016 Management Contract requires that all "major decisions" relating to Mr Bird's career must be made by mutual agreement between Mr Bird and CJ Motorsport.

ii) Clause 1.3 requires that Mr Bird must forward to CJ Motorsport "all requests and approaches relating to his Racing career and endorsements (existing or potential)".

iii) By clause 4.3 Mr Bird is required to act and perform in accordance with reasonable instructions given to him by CJ Motorsport that are reasonably related to any services or duties to be performed by Mr Bird under the 2016 Management Contract.

iv) By clause 4.9 Mr Bird warrants that no existing or future contract between him and any third party does or will interfere with his obligations under the 2016 Management Contract.

49. The effect of these provisions, according to Mr Mill, is that the 2016 Management Contract is an exclusive management contract, in substance, even though there is no express provision to that effect.

50. Furthermore, Mr Mill submitted, Mr Bird was locked into the 2016 Management Contract until the end of 2034, a period of 18 years, with no express contractual means of terminating early. Mr Mill submitted that it was important also to bear in mind that this minimum 18-year term followed a continuous period of 10 years of management of Mr Bird by CJ Motorsport. By contrast, under clause 8, CJ Motorsport is able to terminate the 2016 Management Contract on one month's written notice (not necessarily by registered mail) "at the end of any given [racing] season".

51. Mr Mill further submitted that CJ Motorsport has no specific obligations in relation to the management of Mr Bird under the 2016 Management Contract nor any obligation to make any further investment in Mr Bird's career. Under clause I, CJ Motorsport "will continue to manage the Client's career in Motorsport and all related areas", however there are no further terms articulating what that means in practice. Mr Mill took me to some of the predecessor contracts to the 2016 Management Contract, where some positive obligations were imposed on CJ Motorsport, including to provide further investment. The deletion of any positive obligations in the 2016 Management Contract needs to be construed against that background, in his submission, and further underlines the complete imbalance in the 2016 Management Contract.

52. Mr Mill submitted that in the absence of any positive obligations on the part of CJ Motorsport to provide management under the 2016 Management Contract, it has a "sterilising" rather than "absorbing" effect and is unreasonable on that basis: *Esso* at 328B-D (Lord Pearce).

53. Mr Mill submitted that the fact that CJ Motorsport has historically invested in Mr Bird is no justification for the one-sided nature of the 2016 Management Contract. Accepting for the purposes of this application CJ Motorsport's case that it invested a total of €3,222,660 plus £579,656.64 in Mr Bird's career during the period 2006 to 2012. CJ Motorsport has no real prospect of showing that the restraints imposed by the 2016 Management Contract are justified by reference to these historic investments, because, while seeking a reasonable return on investment is capable of amounting to a legitimate interest, there is no real prospect of showing that these

restraints are "reasonably necessary" to protect that interest (in the words of Lord Reid) or "no more than what was reasonably required" to protect that interest (in the words of Lord Diplock) under the test in *Schroeder*.

54. Mr Mill submitted that CJ Motorsport's historical investment could have been protected without the restraints imposed by the 2016 Management Contract by providing for post-termination commission or, equally, by separating out CJ Motorsport's future management services from its historical investments and making the latter the subject of its own agreement. CJ Motorsport cannot justify the financial provisions of the 2016 Management Contract as no more than reasonable because it has already made separate provision under the 2015 Financial Agreement with SBEL for the recovery of its investment. Although its validity is not formally before the court on this application, that agreement remains valid and in place on CJ Motorsport's own pleaded case. (I have summarised its terms at [8] to [9] above.)

55. Mr Mill submitted that what CJ Motorsport has attempted to do through the 2016 Management Contract, after its investment in him has not achieved the returns CJ Motorsport was expecting, is to lock Mr Bird into an exclusive period of further management for long enough and at a high enough rate to ensure that CJ Motorsport ultimately makes a substantial profit. While this might be permissible by other means, there is no arguable justification for doing this through the 2016 Management Contract. Accordingly, the 2016 Management Contract is unenforceable as a contract in restraint of trade for which there is no arguable justification. There is no need for a trial. The nettle should be grasped, and the claim should be struck out or summary judgment should be given in Mr Bird's favour at this stage on Mr Bird's application.

56. Mr De Marco, for CJ Motorsport, denied that the 2016 Management Contract is an exclusive management agreement. There is no negative covenant in the agreement to that effect. Mr Bird remains free to enter into "co-management" arrangements, under which he would engage another manager, but where any decisions reached between Mr Bird and the co-manager would need to be presented to CJ Motorsport for approval. Mr De Marco noted that the 68 per cent of Mr Bird's earnings that remain after payment of CJ Motorsport's commission provide him with ample opportunity to procure further management and financial support. In support of this, he referred to an agreement entered into between Mr Bird and Mr Richard Meins under which Mr Meins invested £1,800,000 to support Mr Bird's racing career in exchange for 18 per cent of his future earnings.

57. As to Mr Mill's point that the 2016 Management Contract imposes no positive obligations on CJ Motorsport Mr De Marco submitted that it must be interpreted against the background of a long-standing management relationship between CJ Motorsport and Mr Bird. In other words, the parties understand what CJ Motorsport's management of Mr Bird entails, without its having to be spelled out in detail in the 2016 Management Contract.

58. Mr De Marco submitted that, to the extent that the 2016 Management Contract had any restraining effect (which is disputed), it was no more than was a necessary incident of the positive transaction evidenced by the 2016 Management Contract, as discussed by Lord Pearce in *Esso* at p 328F-G. Accordingly, it is not a contract in restraint of trade, and the question of reasonableness does not arise.

59. Mr De Marco submitted that the 2016 Management Contract was designed to provide CJ Motorsport with the possibility of recouping its financial investment in Mr Bird's motor racing career (depending on his performance) and to provide some reward for management services provided by CJ Motorsport, as evidenced under the heading "Background" in the 2016 Management Contract and in clause III. With a current best estimate of Mr Bird's likely career earnings over the next 18 years of €16,500,000, CJ Motorsport's commissions would amount to €5,280,000 during that period, equivalent to an annualised return of 5.8 per cent, which Mr De Marco submitted was a fair commercial rate of return given the risks associated with the financial investment and the fact that CJ Motorsport was also providing management services. CJ Motorsport would not have made the level of financial investment that it made in Mr Bird's career, had it not been possible to enter into an enforceable contract under which it had a reasonable chance of recouping that investment.

60. If I were to find that the 2016 Management Contract was a contract in restraint of trade, then Mr De Marco submitted that any restraint reflected in the contract was reasonable. He reminded me that the starting point in the assessment of reasonableness was the parties' own bargain. Unless there is an inequality of bargaining power (or, in an extreme case, duress), then the parties' own bargain is likely fairly to reflect what was reasonable in the circumstances. Mr De Marco noted that Mr Bird, in his pleaded case, has made a number of factual allegations relevant to the relative bargaining power of the parties, for example, that he did not receive legal advice on the 2016 Management Contract or any of the predecessor agreements, that the terms of the 2016 Management Contract and predecessor agreements were imposed upon him with minimal or no negotiation and that Mr Olivier and Mr Celebidachi misrepresented to Mr Bird the nature of his legal obligations to CJ Motorsport. Mr De Marco submitted that these factual matters need to be resolved at trial, and it is not appropriate to attempt to resolve them on an application for strike-out or summary judgment.

61. Mr De Marco submitted that if CJ Motorsport is right as to its factual case regarding market norms, then it is plainly consistent with public policy that the 2016 Management Contract should be upheld as enforceable.

62. Mr De Marco submitted that Mr Bird has failed to establish that CJ Motorsport has no real prospect of succeeding on the issue of whether the 2016 Management Contract was in restraint of trade, and therefore there is no basis for the court to grant summary judgment in his favour. Mr Bird has also failed to establish that the Particulars of the Claim are strikable for failing to disclose a coherent set of facts and a legally recognisable basis for the relief claimed.

Conclusions on restraint of trade issues

63. In my view, it is appropriate for me to grasp the nettle and grant summary judgment in favour of Mr Bird in relation to CJ Motorsport's claim for damages for repudiation of the 2016 Management Contract. CJ Motorsport has no real prospect of succeeding on that claim for the reason that the 2016 Management Contract engages the restraint of trade doctrine and CJ Motorsport has no real prospect of showing that the restraints imposed by the contract are justified. The 2016 Management Contract imposes no material obligations on CJ Motorsport in relation to the management of Mr Bird's motor racing career, but imposes on Mr Bird a rate of commission of 32 per cent per

annum, requires Mr Bird to submit all major decisions concerning his career to CJ Motorsport for its approval, requires Mr Bird to forward to CJ Motorsport all requests and approaches relating to his racing career and any existing or potential endorsements to CJ Motorsport and requires Mr Bird to act and perform in accordance with any reasonable instructions given to him by CJ Motorsport. These obligations apply for a period of 18 years until the end of 2034, without Mr Bird having any right to terminate, while CJ Motorsport has a right to terminate on one month's written notice at the end of any given racing season.

64. While I note that there is no clause in the 2016 Management Contract that states that it is an exclusive management agreement and there is no covenant preventing Mr Bird from engaging another manager, that does not address the principal point that the management of Mr Bird's career is firmly in the hands and under the control of CJ Motorsport. Any "co-manager" is, at best, an adviser, able to present ideas and opportunities to Mr Bird, which he was, in any event, already free to seek out, with or without the assistance of a "co-manager". Ultimately, however, Mr Bird is not able to make any major decision without the approval of CJ Motorsport and is under a number of positive obligations to CJ Motorsport under clauses 1 to 4 of the 2016 Management Contract that restrict, in substance, Mr Bird's ability to engage another manager. The specific example given by Mr De Marco of Mr Bird's agreement with Mr Meins only concerns investment by Mr Meins and not management of Mr Bird's career.

65. Mr De Marco submitted that it was not necessary for the 2016 Management Contract to set out specific management obligations beyond the words in clause I (which I have set out at [38] above) given the ten-year history of CJ Motorsport's management of Mr Bird that preceded entry into the 2016 Management Contract. In my view, however, that is not enough to rebut the point that CJ Motorsport has no substantial positive obligations to manage Mr Bird. The fact that it is in CJ Motorsport's interest actively to manage Mr Bird's career in order to maximise the commissions it earns under the 2016 Management Contract is not sufficient to overcome this lack of substantial positive obligations. The imbalance on the face of the 2016 Management Contract is sufficient for me to conclude that Mr Bird is, in the words of Lord Pearce in *Esso* at p 329A:

> "too unilaterally fettered so that the 2016 Management Contract loses its character as a contract for the regulation and promotion of trade and acquires the predominant character of a contract in restraint of trade."

66. Mr De Marco submitted that there is nothing in the 2016 Management Contract that prevents Mr Bird from racing and, indeed, it is in CJ Motorsport's interest that he do so in order to maximise his income from racing activities, endorsements, media and exploitation of Mr Bird's image rights. Accordingly, the 2016 Management Contract cannot be said to have a "sterilising" effect on Mr Bird's. I bear in mind that I need to approach the question of whether the 2016 Management Contract, on the one hand, promotes or absorbs economic activity or, on the other hand, restrains or sterilises it, not in a mechanistic or formalistic way, but taking a practical and flexible approach, applying a "broad and flexible rule of reason": *Proactive Sports Management* at [148] (Gross LJ). Considering that the purported purpose of the 2016 Management Contract is to govern the management of Mr Bird's career, in my judgment it has a sterilising

rather than absorbing effect by virtue of its one-sided nature and disproportionately long term.

67. Mr De Marco has made it clear that the real purpose of the 2016 Management Contract is to enable CJ Motorsport to recover its investment in Mr Bird's career and to earn a reasonable return on that investment. Those are not illegitimate aims as a matter of principle, but it is neither necessary nor appropriate for those aims to be achieved via a management contract that imposes substantive restraints on Mr Bird over an 18-year term while imposing no substantive obligations on CJ Motorsport. In other words, there is no real prospect, in my view, of CJ Motorsport succeeding in showing that the restraints in the 2016 Management Contract are "reasonably necessary" to protect that interest. CJ Motorsport still has the benefit of the 2015 Financial Agreement and, as Mr Mill submitted, it could have entered into other contractual arrangements with Mr Bird that would have allowed it to recover its investment, without the restraints on Mr Bird imposed by the 2016 Management Contract.

68. As to the factual issue as to whether the terms of the 2016 Management Contract reflect the "market norm" for arrangements in motor racing relating to the recovery of historic investment in a motor racing driver's career, Mr Mill submitted that an unlawful contract cannot be rescued by the fact that others in the industry have entered into unlawful contracts. Accordingly, resolution of that factual issue would not assist CJ Motorsport. I agree.

69. It follows that Mr Bird succeeds on this part of his application.

Submissions on quantum meruit issue

70. As to CJ Motorsport's quantum meruit claim, Mr Mill submitted that it has three elements, as set out at para 12 of the Particulars of Claim, namely:

    i) a quantum meruit for services provided by CJ Motorsport under the 2016 Management Contract;

    ii) a quantum meruit for services provided under previous management agreements that were superseded by the 2016 Management Contract; and

    iii) a quantum meruit for CJ Motorsport's financial investment in Mr Bird's career.

71. In relation to (i) at [70] above, Mr Mill submitted that CJ Motorsport has not claimed that Mr Bird has failed to pay any commission owing under the 2016 Management Contract up to the point that CJ Motorsport says it ceased providing services, namely, 30 July 2018. CJ Motorsport has received the promised price for those services, and therefore that element of the claim fails.

72. As to (ii) at [70] above, Mr Mill submitted that the same principle applies. CJ Motorsport has not claimed that Mr Bird has failed to pay agreed commission under any management contract that preceded the 2016 Management Contract. That element of the claim therefore fails, he submitted.

73. As to (iii) at [70] above, Mr Mill submitted that this element fails for three reasons:

    i) In relation to monies paid under an unenforceable contract, a total failure of basis must be proved before restitution can be claimed: *Chitty on Contracts* (33rd edn) at para 29-085. There has been no total failure of basis in this case as it is undisputed that CJ Motorsport has received £466,326.42 to date.

    ii) None of the sums invested historically were paid under the 2016 Management Contract, the last such sum having been invested in 2012. The 2016 Management Contract makes clear at clause IV that the sums historically invested are not a debt owed by Mr Bird. CJ Motorsport was to recover its investment under the 2015 Financial Agreement, the validity of which is not before the court on this application.

    iii) On CJ Motorsport's case, all investments were made during or before the 2012 racing season on CJ Motorsport's factual case, and therefore any claim in relation to them is time-barred, as time would run from the date of the original payment: *Aspect Contracts (Asbestos) Ltd v Higgins Construction plc* [2015] UKSC 38 at [25]; *Diamandis v Wills* [2015] EWHC 312 (Ch) at [101].

74. For these reasons, Mr Mill submitted that the quantum meruit claim fails as well. Mr Mill noted that, by virtue of the 2015 Financial Agreement, CJ Motorsport is not without recourse to recover its investment in Mr Bird's career.

75. Mr De Marco submitted that the quantum meruit claim inevitably involves questions of fact that are not capable of disposal on a summary judgment or strike-out application. He submitted that the amount of commission earned by CJ Motorsport on an annual basis under the various management contracts was not sufficient to compensate CJ Motorsport for its management services, much less the level of investment made by CJ Motorsport in Mr Bird's motor racing career, without which he would not have reached the level of motor racing and associated earnings that he has reached. Mr De Marco further submitted that the consideration provided under the 2016 Management Contract includes CJ Motorsport's historic investment in Mr Bird's motor racing career and CJ Motorsport's agreement not to pursue recovery of that historic investment by way of debt. All this gives rise to triable issues of fact, and therefore the quantum meruit claim cannot be disposed of on this application.

Conclusion on quantum meruit issue

76. It is clear that Mr Bird has substantially benefited from considerable investment by CJ Motorsport over a period of many years, and it does not appear to be denied by Mr Bird that he would not have reached his current level without that investment. At para 9 of his witness statement dated 1 May 2019 he acknowledges the importance of investment for those who aspire to reach the top level in motor sport.

77. Para 12 of CJ Motorsport's Particulars of Claim, however, sheds relatively little light on how the quantum meruit claim arises. It reads in its entirety as follows:

> "12. Alternatively, if (which is denied) the 2016 Contract is unenforceable as a restraint of trade, the Claimant claims a quantum meruit for the services provided by

> the Claimant under the 2016 Contract and those contracts dealing with the same subject matter which were superseded by the 2016 Contract and for the Claimant's financial investment in the First Defendant's career."

78. Mr Bird sent CJ Motorsport a Request for Further Information on Particulars of Claim in relation to para 12 seeking further detail in relation to each of the three elements of para 12 as to the services provided, at whose request, their alleged value and how that value is calculated. CJ Motorsport provided its Response on 14 December 2018. That includes at para 17 its itemisation of the investments made in Mr Bird's career between 2006 and 2012, amounting to €3,222,660 and £579,656.64, as well as expenses incurred in managing Mr Bird's career from 2013 to 14 December 2018 of £15,041.16.

79. As regards the first and second elements of the quantum meruit claim, concerning services provided, respectively, under the 2016 Management Contract and the management contracts that preceded it, I do not find in the submissions of Mr De Marco a convincing answer to Mr Mill's submission that CJ Motorsport has failed to plead that Mr Bird did not pay all the commission due under those management contracts. The commission was the price agreed in each of those contracts for the services rendered. Accordingly, I do not see how a quantum meruit claim can arise in the circumstances of this case where no failure to pay the agreed commission has been pleaded.

80. As regards the third element of the quantum meruit claim, concerning specific historic investments between 2006 and 2012, this fails for the reasons given by Mr Mill. First, there has not been a total failure of basis as is required when seeking restitution in relation to monies paid under an unenforceable contract. In addition to the passage in *Chitty* cited by Mr Mill, this principle is supported by *Goff & Jones The Law of Unjust Enrichment* (9th edn) at para 12-16.

81. Secondly, CJ Motorsport has not invested any sums in Mr Bird under the 2016 Management Contract and none since 2012. As acknowledged by clause IV of the 2016 Management Contract, the sums historically invested in Mr Bird do not represent a debt owed by Mr Bird to CJ Motorsport. CJ Motorsport has made a separate agreement, the 2015 Financial Agreement, with SBEL by which it seeks to recover its historic investment.

82. Thirdly, and perhaps most importantly, given that all sums invested by CJ Motorsport were invested in or before the 2012 racing season, those claims are time-barred, as the claim was issued on 18 September 2018 and time would run from the date of the original payment in relation to each of the sums that are set out in para 17 of CJ Motorsport's response dated 14 December 2018 to the RFI. For that principle, I rely on the passages cited by Mr Mill from the *Aspect Contracts (Asbestos) Ltd* and *Diamandis* cases, to which I have referred above.

83. For the reasons above, Mr Bird's application also succeeds in relation to the quantum meruit claim.

Conclusion

84. Mr Bird will be granted summary judgment in his favour in relation to CJ Motorsport's claim as to damages for repudiation of the 2016 Management Contract and, in the alternative, for restitution (quantum meruit) for services provided to Mr Bird by CJ Motorsport under the 2016 Management Contract and the predecessor contracts between the parties and for its financial investment in his career.