Neutral Citation Number: [2021] EWHC 453 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/03/2021

Before :

THE HONOURABLE MR JUSTICE JULIAN KNOWLES

- -

Between :

QB-2020-001516

RAJ PAL SENNA **Claimant**

- and –

(1) CONNOR WILLIAM HENDERSON
(2) CCHG LTD T/A VPZ
(3) MARIANGELES ARIADNA NOWACKI **Defendants**

QB-2020-001776

Claimant

RAJ PAL SENNA

-and-

(1) CONNOR WILLIAM HENDERSON
(2) CCHG LTD T/A VPZ
(3) MARIANGELES ARIADNA NOWACKI
(4) BRODIES LLP
(5) CALLUM ROBERT HENDERSON **Defendants**

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The Claimant lodged written submissions but otherwise did not appear and was not represented

Rajesh Pillai QC and Ian Higgins (instructed by **Brodies LLP**) for the **First and Second Defendants** in QB-2020-001516 and for the
First, Second, Fourth and Fifth Defendants in QB-2020-001776

Douglas Cochran, appearing *pro bono* (instructed by **Advocate**)
appeared for the **Third Defendant** in both actions

Hearing date: 10 December 2020

- -

Approved Judgment

Mr Justice Julian Knowles:

PREAMBLE

1. There are before me applications by the Defendants in the two actions to strike out the Claimant's claims against them pursuant to CPR r 3.4(2), and/or for summary judgment pursuant to CPR r 24.2. I deal with these in Part 1 of this judgment. There are also a number of applications by the Claimant. These are dealt with in Part 2.

2. I held a remote hearing by Microsoft Teams on 10 December 2020. The First, Second, Fourth and Fifth Defendants (who I will call 'the Represented Defendants') were represented by Mr Pillai QC and Mr Higgins. The Third Defendant was represented by Mr Cochran (she was originally unrepresented, hence the nomenclature I have adopted). I am grateful to him and to Advocate for representing the Third Defendant on a *pro bono* basis.

3. I had two substantial Skeleton Arguments from the Defendants, a bundle of documents running to 2775 pages, a supplementary bundle of 572 pages, and over 1000 pages of authorities. I also had various documents from the Claimant but no formal Skeleton Argument. The Claimant chose not to attend the hearing.

4. Before turning to the substance of the matters before me, I need to deal with some preliminary issues.

5. On 29 October 2020 I held a remote hearing on a number of applications brought by the Claimant in the two actions. The Claimant submitted a Skeleton Argument but chose not to attend. I reserved my decision.

6. On 17 November 2020 the Claimant made an application with a draft order seeking no less than 23 orders, some of which sought to vary or substitute earlier orders, and some of which were repetitious of orders which the Claimant had unsuccessfully sought earlier in the proceedings. In his tenth witness statement the Claimant said this at [5]-[7]:

> "5. The Court will note that a hearing was listed and took place on 29 Oct 2020 before Mr Justice Knowles (sic) to purportedly hear the Application Notice dated 4 Aug 2020. The failure of Mr Justice Knowles to make an Order is disrespectful and deeply insulting to me and amounts to a gross breach of CPR1.1. and Article 6. I find it shocking that Mr Justice Knowles has also failed to respond to numerous requests made by email to provide an Order which his lordship has a duty to make when he conducts a hearing
>
> 6. It is my respectful submission that I have outlined here that case management can only properly be described as careless and bordering on incompetent. There is no Judge in the High Court or the Appeal Court or the Supreme Court when working as a barrister would tolerate such nonsense.

> 7. I am disabled not stupid. The way the Court is treating me is disrespectful, insulting and offensive."

7. Of course, I had made no order on 29 October 2020 because I had reserved my decision and so there was nothing to order.

8. Warby J dealt with this application in an order made without a hearing on 2 December 2020. He certified most of the Claimant's applications being totally without merit (TWM). In his reasons Warby J said this at [7]:

> "The claimant's demands on the Court system are highly unreasonable. He has deluged the Court with voluminous papers and applications and appears to expect almost instant hearings and determinations. This is not a reasonable way to conduct litigation. It is based on unreasonable expectations and consumes vast amounts of judicial time which is in short supply, and needs to be devoted to other cases as well as the claimant's. The draft orders he presents go well beyond the orders which are sought in the body of the application notice. His evidence is voluminous, but not always detailed enough to make his position clear. The Court has so far dealt with this barrage with patience and tolerance. By contrast the claimant's own conduct in repeatedly writing to the court making demands for orders and other action is unacceptable. His immoderate language is unwarranted and inappropriate. The impact on the defendants of the claimant's conduct of this litigation will also need consideration."

9. Later in this judgment I will address other instances of the way in which the Claimant has addressed members of the judiciary, as well as the other parties to the litigation.

10. Warby J ordered various of the matters sought to be dealt on a date convenient to the Court. One of these was an application to adjourn the 10/11 December 2020 hearing. It was convenient to deal with this at a remote hearing on 7 December 2020 when I handed down my judgment in the earlier matter: *Senna v Henderson and others* [2020] EWHC 3345 (QB) (the First Judgment). The Claimant again chose not to attend. I dismissed the Claimant's applications and certified them all to be TWM. I am told by Mr Pillai that since the Claimant commenced these actions in April and May 2020 there have been no fewer than 27 applications by the Claimant which have been certified as TWM.

11. As I explained in my First Judgment at [23]-[29], the Claimant has, over the years, been a prodigious litigant and has brought numerous pieces of failed litigation. He has been made subject to two extended civil restraint orders (in 2011 and 2017).

12. At the 7 December 2020 hearing I refused the Claimant's adjournment application. The Claimant claimed that he had a conflicting medical appointment and also a court hearing in an action against the Commissioner of the Metropolitan Police. I refused the application because: (a) the 10 December 2020 hearing had been listed for many months (since about July 2020 pursuant to the order of Master Dagnell of 7 July 2020); (b) the parties had been asked to supply dates to avoid for listing and the Claimant had not indicated that the 10/11 December 2020 were dates to avoid; (c) he

had filed no evidence to corroborate his claims of conflicting appointments (for example, a medical appointment letter); (d) he had not explained what steps, if any, he had taken to re-arrange these matters; (e) he had not attended the hearing to make his application. I asked my clerk to make immediate contact with the Claimant to tell him that his adjournment application had been refused so that he had as much notice as possible.

13. I should say for completeness, that the Claimant does, in fact, have an on-going claim against the Commissioner (Case No QB-2020-006610). An application in that case was listed before me (I think in error) on 10 December 2020. Certainly, neither my clerk nor I had been given notice of that listing. I therefore adjourned it to a directions hearing.

14. One of the other orders sought by the Claimant in his 17 November 2020 application was for 'in-person' hearings. On 7 July 2020 Master Dagnall had ordered that the 10/11 December hearing should not be remote, unless the Court ordered otherwise. Acting on my own motion, and in accordance with current Queen's Bench practice, without a hearing I ordered that the hearing later that week should be a remote one. In so ordering I bore in mind that prior to the October 2020 hearing the Claimant had expressed a strong preference for a hearing in open court with all parties present and had submitted a letter from his GP to the effect that he found remote hearings 'challenging' (for reasons which were not specified) and asking this to be borne in mind (see my earlier judgment at [1]-[7] and [21]-[22]). But as I also explained in my First Judgment at [7], there has been at least one earlier remote hearing in this litigation which the Claimant was able to take part in.

15. The order which was issued following the 7 December 2020 hearing refusing the adjournment and ordering a remote hearing did not contain the wording contained in orders made without a hearing to the effect that by virtue of CPR r 23.8(c), PD2A 11.2, CPR r 3.3(5) and (6) any party affected has the right to apply to vary or discharge the order. The Claimant is well aware of this right, having received a number of orders made without a hearing containing the relevant wording (most recently on 2 December 2020), a procedure about which he has complained. However, out of an abundance of caution, I directed that an amended order containing that wording be issued on the afternoon of 9 December 2020.

16. On the morning of 10 December 2020 at 8:51 the Claimant emailed my clerk an unsigned application notice seeking to set aside my order for a remote hearing. The reasons in support read as follows:

> "I am very unwell and my carer helped me to write this Application Notice. I wish to give my evidence orally in person at a hearing which must be in person in a Court room. I cannot cope with the stress of writing out a witness statement and preparing exhibit bundle only to be fobbed off by judges behaving like judicial gangsters. I want to kill myself. I am on the edge. I am getting a psychiatric assessment on 11 Dec 2020. Mr Justice Knowles does not care about my mental health problems and he has no regard to rulings of other judges who have permitted me in person hearings. I am going to COA CIv Div about Orders of Mr Justice Knowles and Mr Justice Warby."

17. On a number of occasions that Claimant has made reference to having mental health problems, however he has never filed any medical evidence save for the GP letter to which I have referred.

18. I did not understand the reference to the Claimant having to prepare an exhibit bundle: the Represented Defendants had already prepared the bundle and the supplementary bundle. These contains every document of any relevance and they had been served on the Claimant in hard and soft copy form, as Mr Pillai informed me. Nor did I understand the reference to difficulties in producing a witness statement. As I have said, in the course of this litigation the Claimant has lodged no fewer than 10 witness statements (including one as recently as 17 November 2020), and many other documents besides. However, after receiving this application, I asked my clerk to contact the Claimant straightaway to encourage him to participate in the hearing, but again he chose not to do so. Following submissions, I refused to set aside my order and proceeded to hear argument from Mr Pillai and Mr Cochran. I reserved my decision.

PART 1

Introduction

19. By an Application Notice dated 5 June 2020 the Represented Defendants have applied:

    a. to strike out the First Claim under CPR r 3.4(2)(a) (b) and (c) and/or for summary judgment pursuant to CPR r 24.2 in respect of the Claim Form and Particulars of Claim, both dated 1 May 2020 in claim number: QB-2020-001516 (the First Claim); and

    b. to vary the orders of Master Dagnall dated 22 and 26 May 2020 by which the Claim Form dated 18 May 2020 and Particulars of Claim dated 26 May 2020 (the Second Claim) were issued, or in the alternative, to strike out the Second Claim or for summary judgment on it.

20. On 15 September 2020 the Third Defendant issued a similar application.

21. In his written and oral submissions on behalf of the Third Defendant Mr Cochran was content to adopt the submissions made on behalf of the Represented Defendants so far as they were relevant to his client's position, although he made a number of additional points on her behalf.

22. In their Skeleton Argument at [1] the Represented Defendants describe the two claims as 'weak and abusive'. In his Skeleton Argument [6]-[9] Mr Cochran observes as follows:

> "6. C claims that his litigation is '… about breach of contract, tortious interference of contract and business relationship, theft of IP, fraud, conversion, and harassment'
>
> 7. It is not.

> 8. It is not about any of those things - and not merely because C lacks a valid cause of action against Ds. Had C had a genuine - however mistaken - belief in his entitlement to some sort of contractual, tortious, or proprietary relief, it could not explain the litigation presently before the Court, nor could it provide an account for C's conduct of that litigation. There is no *bona fide* claim here.
>
> 9. What does explain the proceedings - and the manner in which they have been conducted by C - is that C is (by his own admission) a deeply-troubled individual, who seeks to control D3 and exercise power over her."

23. This is reference to the Claimant's Skeleton Argument for the 29 October 2020 hearing in which he wrote at [80]-[81]:

> "80. Claimant is suffering from chronic mental health problems and is at breaking point …
>
> 81. Claimant is a head case and likely to take the law into his own hands if the Court fails to act."

24. In his pleadings and evidence, the Claimant makes a number of very serious allegations about the Defendants. I will need to set out of some these allegations later in this judgment. However, I make clear, right at the outset, that all of the Defendants completely deny all of the Claimant's allegations against them, as well as denying that he has any legally cognisable claim against them.

25. The reader is referred to my First Judgment for the factual and procedural background to the claims, which I will not repeat in full.

26. The First Defendant is a successful Scottish businessman. The Second Defendant is a company of which he is a director and 50% shareholder. It is an e-cigarette business. The Third Defendant is a Polish/Argentinian national who did seasonal work in Ibiza in the marketing/promotion business. She was also involved in the Ibiza music scene. The First Defendant and Third Defendant met in Ibiza in November 2018 when she was working for another e-cigarette company which the First Defendant is a director of.

27. The Third Defendant left Ibiza at the end of the summer season in 2019. In October 2019, after staying briefly in Amsterdam, she moved to London. Initially, she stayed with a friend, however she met the Claimant in November 2019. It is common ground between the parties that the Claimant offered her money for a nude modelling photoshoot at his London flat and that she was paid for her modelling. The Third Defendant told the Claimant of her experience as an artist manager and event promoter. She told him that she wanted to make her own way in the electronic music industry, opening a booking and management agency for artists. He offered to help her, and registered a number of website domain names for potential use by her.

28. The Third Defendant says that she stayed with the Claimant at his flat in London from the last week of November until she flew to Argentina for Christmas 2019 (First Witness Statement, [27]). She returned from Argentina in January 2020. She says she did have a sexual relationship with the Claimant but she felt forced into it because he told her that if she wanted him to pay for things or to help her, she would have to sleep with him. She said she needed the money and felt she had no other choice but to do what he said. It is common ground that the Claimant made various purchases for the Third Defendant's benefit during the time they lived together. The Claimant's case is founded on contracts he said he and the Third Defendant entered into while she was living with him and/or while she was in Argentina.

29. She decided to leave the Claimant in March 2020 because he was becoming more abusive and threatening towards her.

30. In late March 2020 the Third Defendant was due to fly back to Argentina but was unable to do so because of the onset of the pandemic. Following a request from a mutual acquaintance, and as a kind gesture, the First Defendant agreed to accommodate her at his family home in Scotland.

31. At one point in early April 2020 the Third Defendant was going to return to London to see the Claimant, but in the event did not do so. Shortly after that, during April 2020 the Claimant began to send messages to the Third Defendant which became increasingly threatening in nature. He also sent unwanted gifts to the Third Defendant at the First Defendant's house. Eventually, on or about 18 April 2020 the Third Defendant reported the Claimant to the police for harassment.

32. Shortly after that, in late April 2020, the Claimant instituted proceedings for breach of contract against the Third Defendant, who he described in his evidence as his girlfriend. The alleged contracts – the existence of which the Third Defendant denies – related to the music business in Ibiza; modelling; and selling items on Ebay. I will set out some of the detail later. He also sued the First Defendant and the Second Defendant.

33. The Claimant's self-composed Particulars of Claim dated 4 May 2020 in the First Claim (the First Particulars of Claim) are not always easy to follow but appear to contain the following causes of action: (a) breach of contract (against the Third Defendant only), (b) procuring a breach of contract and tortious interference (against the First and Second Defendants), (c) harassment (against the First to Third Defendants), and (d) fraud (against the First and Third Defendants. There may also be a claim for defamation, although that is not entirely clear.

34. The Represented Defendants' position is that they have nothing to do with any alleged contracts that the Claimant and the Third Defendant may have entered into. They say this is nuisance litigation aimed to trying to obtain a payment from them, the Third Defendant being essentially impecunious. On behalf of the Third Defendant, Mr Cochran put the matter this way in his Skeleton Argument, [39]-[40]:

> "39. ….C has had no substantial dealings with [the Represented Defendants; they are present in this litigation because they are wealthy and because C blames them for 'losing' D3.

> 40. The litigation is, therefore, a scheme by which C seeks to extort monies from the Represented Defendants and to punish D3 for failure to cooperate."

35. The First Defendant says in his First Witness Statement, [9], [21]:

> "9. In summary, I understand that the Claimant has made allegations that I have intentionally induced the Third Defendant to breach her contracts, interfered with contractual relations, committed fraud and harassed him. Brodies have explained to me the gist of the legal points that are made but I am not a lawyer. As I explain further below, I have helped out the Third Defendant by providing her with a place to stay at a difficult time when she was stuck at Heathrow airport around the time of the lockdown coming into force and unable to get home to her family in Argentina. I did not have any prior knowledge of the alleged contracts between her and the Claimant, and I have at no stage intended to cause them to be breached, or intended to interfere with any relevant relationship between the Claimant and Third Defendant.
>
> …
>
> 21. I have been told by the Third Defendant that she first met the Claimant in or around November 2019. I had never been in contact with the Claimant before receiving messages and phone calls (detailed below). I had no knowledge of the Claimant or any of his alleged business ventures before I was informed of his allegations by the Third Defendant on or around 21 April 2020 as a result of the Claim and related harassment by the Claimant. Before the Third Defendant arrived in Scotland (detailed below). Duncan McGregor told me that she had been having problems with some guy she was seeing, which is why she needed to come and stay with me. I didn't ask any questions at that stage as it was none of my business."

36. In his Skeleton Argument at [16]-[17]] Mr Cochran said:

> "16. C blames the Represented Defendants for his loss of control over D3. C's attitude towards D3 is that D3 is a chattel which belongs to him which the Represented Defendants have misappropriated. C's email to D1 of 22 April 2020 … is instructive in this regard:
>
> > 'You stole my girl out of my house and out of my business.
> >
> > You have groomed her with your drugs and alcohol and kept her in hiding from me.

> You have been given every reasonable opportunity to bring her to my door and make amends. And apologise.'
>
> 17. That is how the Represented Defendants find themselves involved in this matter. They appear to have had no meaningful commercial or other dealings with C before D3 took up temporary residence with D1."

37. Towards the end of May 2020 the Claimant began the Second Claim against the existing three Defendants and the Fourth and Fifth Defendant. The Fourth Defendant is a large and well-known Scottish law firm which represents the First, Second and Fifth Defendants. The Fifth Defendant is the First Defendant's brother and, at the relevant time was a 50% shareholder in the Second Defendant.

38. Again, the Particulars of Claim in the Second Claim (the Second Particulars of Claim) are not easy to follow and it is difficult, in particular, to ascertain exactly what the Fourth Defendant is accused of, or what the basis of the Claimant's cause of action against it is, but in [9] there seems to be an allegation that the First, Second and Fifth Defendants 'groomed, cajoled, persuaded, convinced and coerced' the Third Defendant to make a complaint of harassment against the Claimant to the police, and that the Fourth Defendant, 'played a willing role in this fraudulent scheme'. In a number of places the Claimant appears to accuse the Fourth Defendant of knowingly putting false evidence before the Court. There is a also a claim for 'breach of warranty' seemingly on the grounds that the Claimant says the Fourth Defendant was not entitled to act for the Represented Defendants. The Claimant has persistently refused to acknowledge that the Fourth Defendant can act for the First, Second and Fifth Defendants. A repetitive theme in his applications and evidence is that it is not properly authorised to act for the Represented Defendants, or that it cannot act for them because he is suing it alongside them.

39. The Fifth Defendant is accused *inter alia* of using the Third Defendant's phone to call abuse the Claimant down the phone (Second Particulars of Claim, [6)]. He also appears to be accused of interfering in the contractual relations between the Claimant and the Third Defendant. There are other 'Particulars of Fraud' alleged in [32]. He says in his Witness Statement, [14]:

> "I know that the Claimant later issued the Second Claim in which I am named as an additional Defendant, along with Brodies LLP ("Brodies"), the solicitors acting on behalf of myself, my brother and the Second Defendant. I have been informed by Brodies that, similarly to the First Claim, the Claimant alleges that he entered into 7 different contracts with the Third Defendant. I have been named in the Second Claim despite not having anything to do with the alleged contracts or the Third Defendant. I believe I have been dragged into these claims by the Claimant as a means of putting pressure on my brother and me and the Second Defendant to make a payment."

40. As I have said, the Third Defendant did, in fact, complain to the police about the Claimant. She says that from about 8 April 2020 onwards she received constant

messages and calls from the Claimant even though she had asked him to stop (First Witness Statement, [38]). She eventually removed her SIM card from her phone and bought a new one to prevent him from calling. He also sent unwanted gifts to the First Defendant's house for the Third Defendant. Eventually, at the First Defendant's suggestion, she contacted the police and reported the Claimant for harassment. Following further communications, Mr Senna was arrested and released on bail, but in the event no further action was taken by the police.

41. The Represented Defendants say in their Skeleton Argument at [6]:

> "C's conduct of his claim is characterised by aggression, abuse and repetitive meritless applications. Where the Defendants (or their representatives) dispute or challenge him, they are wrongly accused of 'fraud' or threatened. Where the Court has tried to impose discipline, judges are wrongly accused of bias and are told to recuse themselves. He has routinely ignored a court order."

42. The last sentence is a reference to an order made by Master Dagnall on 7 July 2020 that the Claimant only communicate with the First, Second and Fifth Defendants via their legal representatives, the Fourth Defendant. Because the Claimant refuses to accept that the Fourth Defendant can validly act for its clients, he has refused to do so.

Procedural history

43. I set out the labyrinthine procedural history at [50] et seq of my First Judgment. That was the position as at 26 October 2020. As I have noted, the Claimant has made further TWM applications since then. I understand that further applications are outstanding and are due to be dealt with later this year.

44. As Warby J said in the passage I have set out, with which I agree, the Claimant has placed totally unreasonable demands on the court system. As well as making application after application that have been held to be TWM, and often refusing to take 'No' for an answer (a feature of his approach to litigation noted by Newey J in *Birdi and Senna v Price and another* [2017] EWHC 1859 (Ch), [41]) by then making repeated similar applications, applications to substitute orders that have been made or applications to set them aside, he has also regularly written abusive emails aimed at members of the judiciary. I will return to this later.

The Claimant's litigation history

45. This is addressed in my First Judgment at [23] et seq.

46. The Claimant is a convicted drug smuggler who was sentenced to 15 years imprisonment in 1998 under the name Dhanota. He was recalled to prison three times following his release on licence.

47. Over the years he has mounted numerous failed judicial review applications many, if not all, of which were certified as TWM. He has been made subject to two extended civil restraint orders (ECROs). In 2002 Gibbs J recorded that he was driven to conclude that the Claimant's conduct had the hallmarks of a 'vexatious litigant', who attempted to abuse the court's process in order to pursue 'numerous and repetitive

allegations and arguments most, if not all, of which are wholly lacking in any arguable merit': *Dhanota v Birdi,* Unreported, 23 June 2002, [30].

48. As I noted in my First Judgment at [12], a feature of the Claimant's approach to litigation is that he frequently applies for judges to recuse themselves when they have taken decisions to which he objects, or he perceives they may do so.

The strike out/summary judgment applications

Summary

49. The Defendants say that not only are the claims meritless, they are abusive. They reply on an email sent by the Claimant signing himself 'Shrek' (the Shrek email), in which he sought to persuade the Third Defendant to give a witness statement supporting his case against the First Defendant as a result of which he said he would obtain '£2 million to 5 million in damages, possibly more', and offered the Third Defendant a £1 million share in return for the witness statement. The Third Defendant said in her Third Witness statement that she regarded this as an offer of a bribe to give false evidence.

50. The Defendants also rely on the Claimant's repeated threats of violence and retaliation made in the course of the litigation against them and their lawyers. They say that, taken together, this conduct justifies striking the claims out as an abuse of process pursuant to CPR r 3.4(2)(b). They also rely on other matters, described below.

51. The Defendants also say that the Claimant's Particulars of Claim in both claims fail to comply with pleading rules and that they are so deficient, incomplete and/or incomprehensible that they do not disclose any coherent cause of action and so should be struck out on that basis also under CPR r 3.4(2)(a)(b)(c), or that summary judgment should be awarded in their favour under CPR r 24.2(a)(i).

The test for striking out a claim and for granting summary judgment

52. CPR r 3.4(2) provides:

> "(2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order."

53. The notes to this Rule in the *White Book 2020* in [3.4.1] state that:

"Ground (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence …

Ground (c) covers cases where the abuse lies not in the statement of case itself but in the way the claim or defence (as the case may be) has been conducted. The strike-out can be made even where there was nothing in the rule, practice direction or court order breached which specified that this might happen as a consequence of breach. In many circumstances such a strike-out would seem unduly harsh unless the party concerned was warned (possibly in writing by another party) of the risk of their statement of case being struck out if they did not comply with the rule, practice direction or court order in question."

54. PD3A, [1.4]-[1.5] add the following:

"1.4 The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):

(1) those which set out no facts indicating what the claim is about, for example 'Money owed £5,000',

(2) those which are incoherent and make no sense,

(3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.

1.5 A claim may fall within rule 3.4(2)(b) where it is vexatious, scurrilous or obviously ill-founded."

55. CPR r 24.2 provides:

"(2) The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –

(a) it considers that –

(i) that claimant has no real prospect of succeeding on the claim or issue; or

(ii) that defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial.

> (Rule 3.4 makes provision for the court to strike out(GL) a statement of case or part of a statement of case if it appears that it discloses no reasonable grounds for bringing or defending a claim)"

56. The test for granting summary judgment under CPR r 24.2 is well-established and has been set out in many cases: see eg, *G4S Care and Justice Services Ltd v Luke* [2019] EWHC 1648 (QB), [19]; *Atrill v Dresdner Kleinwort and another* [2011] EWCA Civ 229, [22]-[23]. Often quoted is the judgment of Lewison J (as he then was) in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch), [15]:

> "The correct approach on applications by defendants is, in my judgment, as follows:
>
> (i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success: *Swain v Hillman* [2001] 2 All ER 91;
>
> (ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472, [8]
>
> (iii) In reaching its conclusion the court must not conduct a 'mini-trial': Swain v Hillman
>
> (iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]
>
> (v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
>
> (vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

> (vii) On the other hand it 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. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

Discussion

57. I now turn to the various bases on which the Defendants say that the claims should be struck out, or summary judgment entered in their favour.

(i) The claims should be struck out as an abuse of process because of the Claimant's misconduct

58. The Defendants say that the claims should be struck out as an abuse of process under CPR r 3.4(2)(b) on the grounds of the Claimant's misconduct. They rely on *Masood v Zahoor* (Practice Note) [2010] 1 WLR 746, [71]:

> "…where a claimant is guilty of misconduct in relation to proceedings which is so serious that it would be an affront to the court to permit him to continue to prosecute his claim, then the claim may be struck out for that reason."

59. At [73] the Court pointed out that one of the objects to be achieved by a strike out was to '*stop* the proceedings and *prevent* the further waste of precious resources on proceedings which the claimant has forfeited the right to have determined' (original emphasis). The Court concluded at [75] that the sole question for the judge below ought to have been, 'whether, by reason *of Mr Masood's forgeries and fraudulent evidence*, the claimants had forfeited the right to have an adjudication of their claims' (original emphasis).

60. In *Alpha Rocks Solicitors v Alade* [2015] 1 WLR 4534, [21]-[22] the Court emphasised the draconian nature of striking out at an early stage and said that a judge asked to strike out on the grounds of abuse of process needs to act cautiously:

> 21. It is important first to emphasise, as did Lord Clarke JSC in [*Summers v Fairclough Homes Ltd* [2012] 1 WLR 2004] the range of available remedies when a situation arises in which a party to litigation thinks that his opponent has exaggerated his claim, whether fraudulently or otherwise. Establishing fraud without a trial is always difficult. And it is open to a defendant to seek summary judgment on the claim under CPR r 24.2(a)(i), without seeking a strike out for abuse of process. As in *Masood's* case and the *Summers* case also demonstrate, striking out is available in such cases at an early stage in the proceedings, but only where a claimant is guilty of misconduct in relation to those proceedings which is so serious that it would be an affront to the court to permit him to continue to prosecute the claim, and where the claim should be struck out in order to prevent the further waste of precious resources on proceedings which the claimant has forfeited the right to have determined. The other available remedies for such a default follow the proceedings once they have run their course, but are none the less important. They include costs and interest penalties and proceedings for contempt of court or criminal prosecution.
>
> 22. Returning to the early stages of proceedings, it is, of course, always open to the court to strike out or grant summary judgment in respect of the impugned part of the claim, as opposed to the whole. In my judgment, the court should exercise caution in the early stages of a case in striking out the entirety of a claim on the grounds that a part has been improperly or even fraudulently exaggerated. That is because of the draconian effect of so doing and the risk that, at a trial, events may appear less clear cut than they do at an interlocutory stage. The court is not easily affronted …"

61. The Defendants submit that the Claimant's claims constitute an abuse of process because of (a) the 'Shrek email', and (b) what they term his 'appalling' and 'disgusting' conduct generally (Represented Defendants' Skeleton Argument, [71]; Third Defendant's Skeleton Argument, [21]). The latter basis breaks down into a number of sub-issues.

62. *The 'Shrek email'*: 'Shrek !' is a 1990 fairy tale picture book about a green ogre of that name which was later made into a successful series of animated films. Shrek's sidekick is a donkey (called Donkey). The Defendants say that on 24 April 2020 at 10.06pm, the Claimant sent the 'Shrek email' to the Third Defendant. This email was sent shortly before the First Claim was issued and the day after Claimant's application for an injunction had been rejected on the papers by Martin Spencer J.

63. The Defendants say that the email set out a list of matters about which the Claimant wanted the Third Defendant to give false evidence, in exchange for which the Claimant (referring to himself 'Shrek') would obtain millions of pounds in damages from the other Defendants, of which £1m would be given to the Third Defendant. It read as follows (emphasis as in original):

"SHREK LOVES YOU
SHREK misses his donkey
SHREK has your back
Always.

There is no argument that SHREK is the smartest person you know.
PLEASE TRUST HIM JUST THIS ONCE

You have an open and shut opportunity to make a lot of money
All you have to do is get away from Connor and his people
Go to a place where they cant reach you (whatever money you need just ask)
You dont ever have to see SHREK but you must call him. Put the SIM back in the phone.
But you must give SHREK a witness statement to confirm the following:

1. Connor knows about all the contracts with Senna
2. Connor persuaded, cajoled, convinced and induced you to breach the contracts knowing the economic loss this would cause to Senna
3. You breached the contracts
4. You had a change of heart and wanted to make good and pursue restitution and finish the work, you decided to go back on 8 April.
5. Connor persuaded, cajoled, convinced and induced you and stopped you from going back to London, knowing this would obstruct you from performing on the contracts.
6. Connor did not care about the truth
7. Connor told you not to tell Senna where you are
8. Connor offered you facilities and funding to do the work with his people and take the business away from Senna
9. Connor gave you cocaine and alcohol and told you to STAY HIGH BABY

This statement will allow Senna to get £2million to 5million in damages, possibly more
What will this mean for you and your family?
£1million is guaranteed by SHREK.

This is going to end very badly if you dont listen
Senna will make between £150,00 to about £750,000 for the claim he is issuing in the High Court against Connor and you watch what Spanish Police are going to do to Connor if he tries to go to Ibiza or Spain
He will never get a licence to run any business in Ibiza Social services are going to take away his children because of cocaine abuse
ALL BECAUSE CONNOR HELPED YOU

> What do you think is going to happen to you?
>
> Senna has help from the Embassy of Kenya, Raila Odinga and William Ruto to get his diplomatic status reinstated
> Look them up
> He has personal protection for armed agents from the Embassy of Kenya
> Once he gets his diplomatic status, game over.
> Even police cant touch him
> SHREK loves you
> You love SHREK
>
> GET AWAY FROM CONNOR TO A SAFE PLACE AND MAKE THE CALL
>
> TALK TO KEVIN ABOUT THIS"

64. This email was sent from a 'gmail' email address in the Third Defendant's name to three email addresses, one of which was a gmail address in a different variation of the Third Defendant's name. Her evidence is that the Claimant set up the gmail account from which the email was sent, and then hacked it and changed the password before she was able to, and so had the ability to send emails from it: see her First Witness Statement, [16], [32], [41].

65. The Defendants say it is obvious that the Claimant is 'Shrek' and is the author and sender of this email. First, he has access to the email account from which the email was sent. Second, the Claimant is the person suing Connor Henderson and the other Defendants, and is thus the person who would be awarded substantial damages (so he believes) if the Third Defendant provided the requested witness statement. Further, the Third Defendant says that she recognises that the Claimant is the author (First Witness Statement, [42]):

> "The email also copied in Kevin Williamson, an ex-boyfriend of mine who the Claimant alleges to be a business contact of his. It is clear to me that the Claimant wrote this email as the style of writing is the same as other emails he has sent me in the past. He signed this using the name 'SHREK'. I think he did this because that is a nickname for him (his nickname for me is Donkey) created when we watched the film 'Shrek' together. I have not replied to this email or provided a witness statement. On 5 May 2020 I forwarded this email to the First Defendant who sent it to his solicitors. Of course I am not going to do what the Claimant has asked because such a witness statement would not be true."

66. The Claimant's case is that he did not send the email and that it is a forgery (Sixth Witness Statement, [21]). In his Seventh Witness Statement, [67], the Claimant additionally says the email does not make sense because it is dated 24 April 2020 and refers to a claim, whereas the claim did not exist until 4 May 2020. The same point is

repeated in his draft affidavit in support of a claim for contempt of court against the Third Defendant at [41] (Bundle, p1408).

67. The Defendants point out that the Claimant's bare denial of authorship is significant because he has not suggested, for example, that this email is innocent. He has not contended, for example, that he believed that the suggested evidence from the Third Defendant would be true, or that he believed that this would be a proper email to send. They say that that argument would have been untenable in any event because if that were the case, it is not apparent why the Claimant would have to offer a £1 million payment to the Third Defendant in exchange for giving true evidence. They say it is obviously improper for a party to litigation to offer to make a payment to a witness to give certain evidence, particularly where that is contingent on the outcome. They say the reason the Claimant resorted to a codename (albeit one which the Third Defendant immediately recognised) and crude subterfuge is because he understood that this was an improper course of conduct.

68. The Defendants say the Claimant's point on timing is hopeless. That is because, first, as early as 21 April 2020 the Claimant had written to the First and Third Defendants stating, 'You have been served with High Court proceedings' (Bundle, p475). Second, a Claim Form and Particulars of Claim had been issued by the Claimant on 21 April 2020 (Bundle, p467). Third, as well issuing a claim, by 24 April 2020 the Claimant had sought an injunction, and had it refused on the papers on 23 April 2020 by Martin Spencer J (who had noted that the matter appeared to arise out of a failed relationship between the Claimant and the Third Defendant, while the role of the First Defendant was 'unclear'). Also, less than two hours before the 'Shrek email' was sent the Claimant emailed the court pushing for an urgent hearing of his injunction application The details of the contacts from 21 – 24 April 2020, between the Claimant, the First and Third Defendants, and the Court are contained in Mr Rutherford's Third Witness Statement at [84].

69. In short, the Defendants say that I can be satisfied that the Claimant offered the Third Defendant a bribe to give false evidence. They say that is plainly an abuse of sufficient seriousness to justify striking out the claim, even approaching the exercise of that power with caution as I am required to do according to the authorities.

70. *Conduct* Turning to the Claimant's conduct more generally, the Defendants submit that this also provides a basis for striking out the claims. As I said, the Represented Defendant used the epithet 'appalling' to describe some of it. They say that his conduct goes well beyond anything that could be regarded as proper even in the most aggressively fought litigation, and that it amounts to contempt of court. In a trenchant submission, Mr Cochran put the matter this way in his Skeleton Argument at [21]:

> "21. Over the past seven months, C has conducted this litigation in a disgusting fashion. It is not merely that C uses rude language or that he continually launches unmeritorious applications; C has designed his behaviour to cause the maximum amount of fear and annoyance to:
>
> (a) D3, whom he seeks to punish for leaving him;

> (b) The Represented Defendants, whom he blames for his loss of control over D3;
>
> (c) Legal representatives, Court staff, the judiciary, and anyone else whom he sees as an obstacle to his designs."

71. The Defendants highlight the following matters in particular.

72. First, the Claimant has repeatedly made threats of physical violence to other parties. In his First Witness Statement dated 21 April 2020 there was a reference to 'ripping off' the First Defendant's face (at [58]). In the same witness statement at [59] the Claimant said that in a phone call with the First Defendant on 18 April 2020, 'I told him that I was going to go to his house and deal with him man to man.' On 22 April 2020 the Claimant sent an email to the First and Third Defendant in which he said to the First Defendant, 'TRUST ME in the High Court you will feel like 'I just ripped off your head and pissed down your neck.'' (Bundle, p476). On 11 May 2020 he wrote an email to the First Defendant and the clerk to Andrews J (who had refused the Claimant an injunction on 1 May 2020) saying that he would, 'come up there a [sic] rip your face off' and stated, 'This will end very badly for you' (Bundle, p802).

73. In an email of 12 May 2020 (sent to all parties) he wrote (Bundle, p810):

> "Nowacki, oh dear oh dear, look what you have done. Feel good?
>
> You best sober up and get in touch with me ASAP You must file your Acknowledgment of Service and Defence Running to Police with false allegations is not a legal Defence in the High Court You lied to me and you stole from me. You lived in my house and ate my salt and without any shame YOU STOLE FROM ME.
> You know how to fix things.
> Think carefully. You cant hide forever. You know whats coming.
>
> …
>
> Look forward to ripping your faces off in Court."

74. In his Second Witness Statement of 13 May 2020 he again referred to 'ripping faces off' and then contended that even if he did so, it would not bar him from prosecuting the First Claim. He wrote:

> "29. … In my fury and state of being emotionally charged, in some communications, I have expressed to them in the strongest terms that if they [D1, D2 and D5] don't stop the interference and the fraud and if they harm a hair on the head of D3, hell hath no fury, I will go up there and rip their faces off …

> 30. It is my respectful submission that even if from a wheelchair I somehow managed to rip their faces off from 400 miles away, it does not bar me from bringing and prosecuting my Claim. I crave leave to speak candidly, D1 and D2 have the misconceived notion that they can steal from me, fuck my girlfriend, bully me, threaten me, call me a p*** c*** and get away with it. Any reasonable person would accept that they would have their faces ripped off if that is how they choose to behave, and complaining to the Court or the Police is not valid or legal Defence to my civil Claim for tortious interference, fraud, racial abuse and harassment".

75. The Claimant also threatened the Third Defendant with having acid thrown in her face by way of revenge for an email she sent. As I recorded in my First Judgment at [39]:

> "39. In an email exchange on 14 May 2020, copied to the Court, the Claimant objected to Brodies LLP filing an Acknowledgment of Service on behalf of the First and Second Defendants, and contended that the Third Defendant had been told to keep silent. In an email she denied this, and alleged that the Claimant was a 'stalker' and a 'predator'. She stated that she was afraid of him and did not want to have anything further to do with him. The Claimant then forwarded this email to a number of people, including the First and Fifth Defendants, with the comment that:
>
> > 'Making such serious allegation is the reason women get sulphuric acid thrown in thier [sic] faces'."

76. In addition, Mr Cochran pointed out that the Claimant has on numerous occasions sought to have the Third Defendant imprisoned, or her liberty otherwise restricted. On 22 June 2020 he wrote to Master Dagnall about this email, and demanded the Third Defendant be sent to prison:

> "On 14 May 2020 Nowacki sent you a disgusting email accusing me rape of D3 and 2 friends of D3 You failed to do anything about it. Nowacki must be sent to prison for contempt of court of the highest order. Later today I am making an application for committal You must direct Nowacki to surrender forthwith both her passports to Tuckers Solicitors until after the outcome of contempt proceedings"

77. In his Skeleton Argument at [41] Mr Cochran also referred to 'repeated - and totally groundless - applications whereby C has tried to compel D3 to stay and/or return to the UK and to have her (or other Ds) arrested.' He referred to the application which went before Martin Spencer J on 23 April 2020 in which the Claimant sought an *ex parte* order that

> "By 4pm on 27 April 2020 the 2nd Respondent must honour the agreement made with myself on 1 April, 2 April, 3 April, 6

> April and 7 April 2020 to return to London and honour the contracts and business relationship with me"

78. Martin Spencer J described that application as 'plainly inappropriate' (Bundle, p64).

79. In July, the Claimant made further applications seeking to restrict the Third Defendant's travel and demanding she surrender her passports. This was dismissed by Lane J on 5 August 2020. The day before, on 4 August 2020, the Claimant had made another attempt to control the Third Defendant's movements, including an order that unless she returned to the UK 'forthwith', she be debarred from making any submissions from outside the jurisdiction and any submissions she had been be struck out. I refused these applications in my First Judgment at [113] et seq.

80. The Defendants also say that the Claimant has threatened their lawyers. On 27 October 2020, shortly before the hearing before me, the Claimant wrote to the Court in respect of Mr Douglas Cochran, the Third Defendant's counsel, who had recently accepted instructions to act for her (Bundle, p2662):

> "I will pay him a visit at his Manchester office if he wants to try to bully me. Lets see how it works out in person."

81. I need hardly say that Mr Cochran has not done anything improper. I observe that the Claimant often claims people are 'bullying' him when they have done nothing of the sort.

82. Further threats were contained in the Claimant's Skeleton Argument for the 29 October 2020 hearing (Bundle, p2708, 2713, 2715). He wrote:

> "20. Court must not allow D4 to address the court other than as Defendant 4 otherwise the Claimant will take the law into his own hands and administer old school justice to Rutherford of D4, a bully and a fraudster who will have no trouble understanding.
>
> 21. Court must not expose Claimant to mental breaking point which will expose D4 to risk of harm from those who care deeply about the welfare of the Claimant. …
>
> …
>
> 49. When the Claimant asked the Court to issue the First Claim and the Second Claim, the Court did not tell Claimant that orders will be made without hearings and all hearings will be remotely held.
>
> 50. If this was made clear to the Claimant, then Claimant would not have issued the Claims. Instead the Claimant would have taken the law into his own hands and sought remedy and redress using any force necessary …
>
> …

> 81. Claimant is ahead case [understood to be "a head case"] and likely to take the law into his own hands if the Court fails to act."

83. Next, the Defendants say that the Claimant has deliberately flouted a court order with which he disagrees. As I have indicated the Claimant steadfastly refuses to accept that the Fourth Defendant is properly retained and entitled to act for the Represented Defendants, and in particular the Second Defendant (see eg his Second Witness Statement, [11]). He has regularly demanded proof in the form of Board resolutions, a matter which was ventilated at the hearing before Andrews J on 1 May 2020. The Fourth Recital to her order read:

> "AND UPON the Court refusing to make a direction that the Second Defendant should provide the minutes of the Board Meetings authorising their solicitors and counsel to act for them in these proceedings or reveal any other information about how it is paying for this litigation to the Claimant, this Court having no reason to doubt the authority of solicitors on the record as acting for a party to appear in court and instruct counsel;"

84. The Claimant has refused to communicate with the other Represented Defendants via their legal representatives the Fourth Defendant and would only deal with the Represented Defendants directly, including by sending material to the Second Defendant's customer service email address. The Represented Defendants therefore sought an order requiring that the Claimant communicate with them only via the Fourth Defendant: see Mr Rutherford's Second Witness Statement, [29].

85. Master Dagnall made such an order on 7 July 2020:

> "(7) Without prejudice to the Claimant's contention that the Fourth Defendant does not act or is not entitled to act for the First, Second or Fifth Defendants, and except in respect of documents requiring personal service or if the Court otherwise orders:
>
> a. the Claimant shall correspond with the Fourth Defendant only in respect of the positions of and matters relating to the First, Second and Fifth Defendants and shall not communicate directly with the First, Second or Fifth Defendants in respect of this litigation"

86. The Represented Defendants say that despite this order, the Claimant continued to communicate directly with the Represented Defendants. On 29 July 2020 Mr Rutherford wrote to the Claimant (Bundle, p1269):

> "We write with reference to your email below of 28 July 2020 (14:36). You reiterate in your email that you do not recognise Brodies LLP as lawyers acting on behalf of any other party in these proceedings and that we can only contact you in the capacity of Defendant.

> You continue to address email correspondence directly to our clients (being the First, Second and Fifth Defendants). This is in contravention of the Order of Master Dagnall dated 7 July …
>
> …
>
> Please therefore immediately cease to contacting our clients directly or copying them into any further correspondence. As directed by the Court, this correspondence should be sent to Brodies LLP only. The appropriate email addresses are those of myself and Ms Jamil.
>
> Should you continue to send/copy correspondence to the First, Second or Fifth Defendants or contact them in any way other than through Brodies LLP as legal representatives in accordance with the Order of 7 July 2020, we reserve the right to take the necessary steps against you, including (but not limited to) asking the Court to apply sanctions against you."

87. The Claimant replied to Mr Rutherford on 3 August 2020 (Bundle, p1277) (sic):

> "Go take a running jump. You do not tell me what to do.
> Master Dagnall has no jurisdiction to make injunctions without a hearing
> I am applying to set aside his order and order his recusal if necessary
> I do not recognise you a a lawyer
> You are a fraudster
> You intentionally lied to the High Court.
> Hang you head in shame
> You committed fraud on the Court then tried to cover it up You must be disqualified
> You must be struck of the Law Society roll
> You are D4. What part is it you don't understand ?
> I am applying to set aside his order and order his recusal if necessary."

88. In fact, Master Dagnall's order has not been appealed or set aside and so is in force and is binding upon the Claimant, whether he likes it or not.

89. In their Skeleton Argument the Represented Defendants say that for reasons of proportionality they have not taken more formal action to date. They say the Court has its own legitimate interest in seeing its orders complied with and not defied.

90. Next, the Defendants say that the Claimant has improperly tried to interfere with their right to legal representation. This has taken various forms. Mr Rutherford put it this way in his First Witness Statement at [75] (citations omitted):

> "The Claimant's conduct in commencing proceedings against Brodies in particular is a flagrant abuse. In circumstances where there was no proper basis on which to doubt the authority of

> Brodies to act for the First or Second Defendant, the Claimant's conduct in commencing proceedings against Brodies, with wide ranging allegations of fraud, in order that the First, Second (and presumably) Fifth Defendants be deprived of the legal representation of their choice, is deserving of condemnation. That motivation is demonstrated by the Claimant's express assertions that the fact of being joined will prevent them from representing their clients (see e.g. his email to Master Dagnall on 14 May 2020 at 12.50 where he wrote
>
>> 'Brodies will be D4 in this claim, This disqualifies them to represent D1.'"

91. In my First Judgment at [79] et seq I refused an application by the Claimant for an injunction restraining the Fourth Defendant from acting for the First, Second and Fifth Defendants. I said at [83]:

> "It seems to me that the Claimant's ambition is to deprive the First, Second, and Fifth Defendants of their competent and well-resourced chosen legal representatives. And, as those Defendants point out in their Skeleton Argument at [70], the Claimant has also adopted this tactic with respect to the Third Defendant's *pro bono* counsel, by threatening to seek costs and damages against him personally and by threatening to turn up at his chambers."

92. The Defendants also point to the repeated threats against the Fourth Defendant, and in particular, the threat made to Mr Rutherford prior to the 29 October 2020 hearing threating violence (see above) and the email of 3 August 2020 threatening disciplinary proceedings (again, see above)

93. Also, in an email on 5 August 2020 sent to an assistant solicitor with the Fourth Defendant (Bundle, p1301) he said, 'Stop giving advice and assistance to Nowacki'. In the same email he wrote:

> "For the final time, stop interfering
> You are not fit to represent anyone
> You must be struck off for fraud on the Court and then trying to cover it up
> Stop pretending and going through the motions like it didn't happen"

94. The Claimant also threatened contempt proceedings against the Fourth Defendant. I understand proceedings may have been issued against the Third and Fourth defendant. In an email to Master Dagnall on 22 October 2020 he wrote (Bundle, p2652):

> "Fraud by D4 is the core part of the CPR 81 Application against D4
> The same fraud is the reason to disqualify D4 and report them to the Law Society to be struck off, the reason behind my application listed on 29 Oct"

95. He also suggested that the Third Defendant could not receive assistance from non-lawyers without an application by them to act as a *McKenzie* Friend. (This is not correct; anyone is free to accept legal advice from anyone else out of court; permission from the Court to have the assistance of a *McKenzie* Friend is only necessary for in-court assistance). He also alleged that that Master Dagnall, 'has no right to give legal advice to D3 to file AOS' (Sixth Witness Statement, [31]).

96. The Claimant also took steps to try and prevent the Third Defendant from obtaining *pro bono* representation. Initially he challenged Advocate's ability to assist the Third Defendant. He wrote to Master Dagnall on 8 September 2020 (Bundle, p1842):

> "I have contacted Advocate (formerly the Bar Pro Bono Unit) who confirmed that they accept any applications in any area of law in England and Wales But do not provide free legal advice to foreign nationals living overseas This should be obvious to any High Court Judge, because judges have previously been barristers It follows that D3 has obtained free legal advice improperly or unlawfully from Mr Christopher Brockman."

97. Further, as well as threatening violence against Mr Cochran, the Claimant threatened him with personal costs liability (Bundle, p2662):

> "Mr Douglas [viz, Mr Cochran] must be held personally responsible for Costs when I win
> He is meddling and this must have consequences."

98. Next, the Represented Defendants say that the Claimant has repeatedly written to the court in intemperate and disrespectful terms, including alleging 'cockups' by the court (Bundle, p2712) and demanding that 'Heads must roll' as a result of a minor administrative error (an email sent by court staff to the Claimant's old email address which was, in the event, soon forwarded on to the correct address) (Bundle, p2647)).

99. In his Second Witness Statement at [32] he wrote about the Defendants:

> "When you are in trouble, and the 'shit has hit the fan', and you have the money, you go to the biggest and best lawyers you can find to 'cover up' for you and 'save your ass'. Its not rocket science. What part is that the High Court Judges don't understand ?"

100. In his Fourth Witness Statement at [15] he wrote:

> "On 1 May 2020, my protests and objections [about whether the Fourth Defendant had been validly appointed] were written off out of hand by Mrs Justice Andrews on the assumption that it is inconceivable that Senior Counsel and reputable solicitors would not have the appropriate authorities in place. Total hogwash. Her Ladyship made a catastrophic error."

101. In an email of 13 October 2020 he wrote to Master Dagnall (Bundle, p68):

> "Permit me to be candid
>
> You are a new Master and you have made a number of mistakes because you are green behind the ears
>
> This is rough and tumble of daily life
>
> I am not too fussed as long as we sort it all out
>
> I have asked you 3 times to recuse yourself because I don't want to fall out with you
>
> I say you should be a referee not the boss. I am the boss because I am the claimant.
>
> You should be marshalling the litigation, not taking control of it."

102. This prompted a rebuke from the Master which I will set out in a moment.

103. The Claimant later described my order for a remote hearing on 29 October 2020 as 'total bullshit' (Bundle, p2662); he asked in an email to the Court, 'What part of 'DETERMINED BY A HIGH COURT JUDGE' is it that Master Dagnall does not understand?'; and he alleged in an email dated 30 November 2020 that Warby J and myself were in contempt of court. In the same email he wrote (Bundle, p2662):

> "The conduct and behaviour of Mr Justice Warby and Mr Justice Julian Knowles is nothing short of disgusting abuse of power and bullying
>
> It is disrespectful, offensive and insulting
>
> It amount to perverting the course of justice and obstructing my access to the Court (sic)
>
> It is across volition of Article 6 and grotesque breach of CPR 1.1
>
> I am entitled to immediate remedy and redress
>
> The Court must deal with my Applications and I demand costs on an indemnity basis from the Court
>
> I am disabled NOT stupid. STOP TAKING THE PISS"

104. Finally, in the email that I set out earlier of 10 December 2020, the Claimant accused judges (and, I think, me in particular) of behaving like 'judicial gangsters'.

105. Next, the Represented Defendants submit that the Second Claim is an abuse of process because (a) the facts and matters contained within it overlap substantially with those set out in the First Claim; (b) the Claimant's first approach was to seek to amend the First Claim to add the allegations against the Fourth and Fifth Defendant; (c) when the Claimant was informed that he would require the court's permission to add parties, he sidestepped that requirement (and the court's control) by issuing a new claim. Mr Rutherford says in his First Witness Statement at [52]:

> "It appears that the Second Claim was issued as a direct attempt by the Claimant to circumvent conventional and proper court procedures by which he would have been required to make an application to the Court to add parties to the First Claim. That route was the one the Court had directed (see Master Dagnall's email of 14 May 2020 at 11.25 [Bundle, p881]. Furthermore there was no compelling reason why the Adjoin Application should be made on a without notice basis without a hearing. The overlap between the First and Second Claims is obvious."

106. The Represented Defendants say that bringing a second repetitious claim simply to avoid judicial scrutiny is an abuse.

107. Finally, it is the Third Defendant's case that the claim is no more than an attempt by the Claimant to abusively use court proceedings (or their threat) to force her (or to force others to require her) to return her back to him. In her Second Witness Statement at [11.1]-[11.3] she quotes from various communications sent by the Claimant to her and/or the First Defendant (Bundle, pp419-420):

> "11.1 In a text on 18 April 2020 to the First Defendant he said:
>
> > 'Send her back to a London Check her into hotel on Leinster Gardens She can keep her business obligations and our contracts When finished you can carry on'
>
> 11.2. On 21 April 2020 in an email to me and to the First Defendant he said:
>
> > 'Please attend your phone and unblock me immediately Confirm orally and by text that Angie will not try to leave the country If I don't[sic] get confirmation by 6pm today I will inform the Border Agency and seek a High Court injunction at 10.30am on Wednesday 22 April 2020 2020 [sic] This email will be produced to the High Court Judge'
>
> 11.3. On 23 April 2020 he made good on this threat and applied for an injunction which included an application that I disclose my mobile phone number to him and that:

> "By 4pm on 27 April 2020 the 2nd Respondent must honour the agreement made with myself on 1 April, 2 April, 3 April, 6 April and 7 April 2020 to return to London and honour the contracts and business relationship with me."

108. This injunction application was the one refused by Martin Spencer J on 23 April 2020, the day before the 'Shrek email' was sent.

Analysis

109. The question for me, per *Masood*, supra, [71], and *Alpha Rocks*, supra, [21], is whether the matters set out above, whether alone or in combination, mean that the Claimant has been guilty of misconduct:

> "… in relation to those proceedings which is so serious that it would be an affront to the court to permit him to continue to prosecute the claim, and where the claim should be struck out …"

110. I begin with the 'Shrek email' and the question of who authored it, given that the Claimant has denied doing so.

111. I am entirely satisfied that the Claimant was the author for the reasons advanced by the Defendants and for the following reasons: (a) the Third Defendant, who was in a relationship with the Claimant for a time, recognises his style of writing based on other emails he sent to her and says that he wrote it; (b) the email was sent from one of the Third Defendant's email accounts which the Claimant had created for her but then hacked and secured access to; the Claimant has not suggested anyone else had access to it; (c) 'Shrek' and 'Donkey' were their pet names for each other; (d) the statement 'Shrek loves you' suggests very strongly the author is, or was, in a romantic relationship with the Third Defendant, and the Claimant has not suggested any other candidate who fits this description; (e) the matters which 'Shrek' wanted the Third Defendant to say in her witness statement, eg, that the First Defendant procured a breach of contract, link directly to the matters pleaded in the Claims by the Claimant against the First Defendant as they eventually emerged, and only the Claimant could have known what was in his Claims and what (he believed) would assist by way of evidence from the Third Defendant; (f) the author knew that at the time the email was sent the Third Defendant was living with the First Defendant (as the Third Defendant in fact was), or closely associated with him; again, no other candidate has been suggested who had this knowledge other than the Claimant; (g) the email was copied to Kevin Williamson, the Third Defendant's ex-boyfriend, who the Claimant knows and claims to have as a business associate. Finally, one only need ask, 'Cui bono ?' to see that the answer can only be 'the Claimant'. He had just begun litigation against the First to Third Defendants and he is the only person who would have stood to benefit from a witness statement from the Third Defendant in support of a claim against them.

112. I agree the Claimant's argument about timing is hopeless. Among many other pieces of evidence, it is undermined by [7] in the Particulars of Claim in the Second Claim:

> "On 19 Apr 2020, after C served notice by text to D1 and D3 for legal action for breach of contract tortious interference and fraud …"

113. I am also entirely satisfied that this was an attempt to suborn the Third Defendant. It was an obvious attempt to get her to give false evidence in return for a share of the damages the Claimant believed he would be awarded having successfully sued the First Defendant and others. She was quite clear in her witness statement that what the Claimant asked her to write would not have been true. Indeed, part of her Defence to both Claims is that there never were any contracts between her and the Claimant (Third Defendant's Defence to Second Claim, Bundle p61):

> "The claimant never provided evidence of contracts because there is no contract."

114. Hence, she could not have truthfully given a witness statement admitting to breach of contract, as the 'Shrek email' asked her to do.

115. Furthermore, she is clear that until she went to stay with the First Defendant in late March 2020 when she could not return to Argentina because of the pandemic, the Claimant and the First Defendant were entirely unknown to one another. She says in her First Witness Statement, [11]:

> "The First Defendant has not, to my knowledge, ever met the Claimant. The Claimant is a contact of mine and before the events leading up to the Claim and the harassment (detailed below) took place from around 18 April 2020, the First Defendant did not know who the Claimant was or that I was previously staying with him in London as we never spoke about it. The First Defendant had no previous knowledge of the various discussions and alleged contracts between myself and the Claimant, other than what I have told him more recently in late April 2020, as a result of the harassment and the Claim. The First Defendant has not told me to act in any particular way or "induced" me to do anything."

116. As well as arguably being a criminal offence, by inciting the Third Defendant to provide a false witness statement in return for money the Claimant is likely guilty of contempt of court. In *Arlidge, Eady & Smith on Contempt* (5th Edn), the authors say at 11-301:

> "It would appear to be a contempt to endeavour by intimidation or bribery to induce a party to put in a false pleading …"

117. I turn to the question of the Claimant's conduct more generally. It can properly be described as appalling and inexcusable. Particularly concerning are his express threats of violence against the First Defendant and the threat that the Third Defendant would have acid thrown in her face. A recurring threat by the Claimant is 'ripping off faces' of those who oppose him. He has also threatened the Defendants' lawyers with violence. Indeed, I was so concerned about the threat to Mr Rutherford last October that I specifically drew his attention to it. Also, the Claimant has continually tried to

interfere with the Defendants' legal representation and has threatened contempt proceedings against Mr Rutherford.

118. The Claimant's threats of violence are also a blatant contempt of court. In *Arlidge,* supra, the authors say at 11-294 (citations omitted):

> "There are obvious limits to what is regarded as legitimate pressure, even so far as parties are concerned. Accordingly, it has been held to be a contempt to threaten a party with personal violence, or exposure in some disreputable way, in order to influence the conduct of a case. Other forms of molestation against parties, their directors or employees, customers or business associates, can also amount to contempt."

119. His unwarranted implied threats of instituting disciplinary proceedings against Mr Rutherford are also probably a contempt of court: *Arlidge*, supra, 11-298; *Attorney-General v Martin (Peter)*, The Times, 12 April 1986 (Lexis).

120. Taken together, suborning perjury and repeatedly threatening violence against other parties and their lawyers, and thus being in contempt of court, together with all the other misconduct relied on by the Defendants (apart from the judicial abuse: see later), easily satisfies the *Masood* test, even exercising due caution in the exercise of the draconian power of strike out.

121. The Court is affronted by such behaviour. It is just not acceptable for a litigant to conduct himself as the Claimant has done. If a party who has been sued seeks to defend themselves, and they and their lawyers are then threatened with violence for doing so by the opposing party, then the very rule of law is threatened. The Court must impose severe and deterrent sanctions in response. A litigant who behaves in such an extreme manner forfeits his opportunity to come to court to vindicate his rights. That is because the right to ask the court for justice comes with responsibilities – the most fundamental of which is to behave in a proper and lawful fashion in the conduct of the litigation. If that responsibility is jettisoned in a serious enough manner, then the court is entitled to say to the litigant that their right may not now be exercised. That point has been reached in this case.

122. It is not as if the Claimant was not warned about his conduct. On 18 October 2020 Master Dagnall wrote to him:

> "You must moderate your language when communicating with the court (judges or staff). While I appreciate that the process of litigation is stressful and can generate strong emotions, it is necessary for communications to be framed in an appropriate manner to the court and judicial process."

123. Despite this warning, mere days later the Claimant threatened Mr Rutherford and Mr Cochran with violence.

124. I am entirely satisfied that no other remedy short of strike out would be adequate or effective. No form of 'unless' or other order would restrain the Claimant. He ignored Master Dagnall's warning. His refusal to abide by the Master's order

requiring him only to communicate with the Represented Defendants via the Fourth Defendant demonstrates his willingness to disobey orders of the Court with which he disagrees.

125. The First and Second Claims are therefore struck out under CPR r 3.4(2)(b) as an abuse of process because of the Claimant's serious misconduct in the course of the litigation.

126. This conclusion makes it unnecessary for me to consider in detail some of the other bases for strike out put forward by the Defendants under this heading. However, on the basis of his pleadings and evidence, and their tone and content, I am quite satisfied, as Mr Cochran submitted, that his real motive in bringing these proceedings has more to do with his 'loss' (as he sees it) of the Third Defendant and the loss of his opportunity to control her. He wants to punish her and the other Defendants for that loss. As Mr Cochran said in his Skeleton Argument at [34(a)] it is clear the Claimant wishes to cause the Defendants problems of expense, harassment, commercial prejudice, and the like, of a type far beyond that ordinarily encountered in the course of properly conducted litigation.

127. I should also say a word about the abuse the Claimant has levelled at the judiciary, myself included. Whilst obviously it is disrespectful and inappropriate to write to or about judges in such terms, and the Master was quite right to warn the Claimant, what the Claimant wrote was merely vulgar abuse, as opposed to anything more serious. Judicial backs are broad, and our skins are thick. As Vos LJ (as he then was) said in *Alpha Rocks*, supra, [22], 'The court is not easily affronted …' Hence, I would not have (and do not) regard the Claimant's abuse of the judiciary as a sufficiently serious matter to justify striking out the claims. I should make clear, for the avoidance of doubt, that I have entirely put out of my mind in deciding this case the abuse which the Claimant has directed at the judiciary, including myself. He has received a fair and impartial hearing, albeit he chose not to take part in it.

(ii) Failure to comply with orders, rules and practice directions

128. Between [86]-[251] of their Skeleton Argument the Represented Defendants' dissect the Claimant's pleadings in very considerable detail in order to demonstrate how and why they are fundamentally flawed. For the reasons they have set out, I agree that the claims also fall to be struck out under CPR r 3.4(2)(a)(b) and (c) because the Claimant has failed to comply with the relevant rules of pleading contained in the CPR. He has also failed to comply with the order of Master Dagnall on 29 April 2020 which required him to re-plead the First Claim in compliance with various requirements which were not satisfied. Further he did not take the opportunity he was offered by Master Dagnall of 11 May 2020 to make further amendments.

129. I agree with the Represented Defendants that the breaches are not technical ones and that I should not grant the Claimant any further indulgence by permitting leave to amend (which has not been applied for in any event). In his Skeleton Argument at [33] Mr Cochran helpfully reminded me of the commentary in the *White Book 2020* at 3.4.3.7 (emphasis added):

> "The court may strike out, as an abuse of process, particulars of claim which are so badly drafted that they fail to reveal to

> the defendant, or to the court, the case the defendant can expect to meet at trial. However, proof of bad drafting is not, by itself, sufficient. The court should not strike out the particulars without first giving the claimant an opportunity to amend (see In Soo Kim v Youg [2011] EWHC 1781 (QB)). *Strike out may be appropriate where the court is satisfied that the claimants have made it clear that they have no intention of trying to amend to put forward a coherently pleaded and intelligible claim* (Spencer v Barclays Bank Plc, 30 October 2009, unrep. (Ch D)) or where, following amendment, and the provision of further information, the claim remains vague and incoherent (Towler v Wills [2010] EWHC 1209 (Comm))."

130. The italicised sentence aptly describes the situation in this case.

131. In the paragraphs which follow I consider some (but not all) of the points made in the Represented Defendants' Skeleton Argument and the Third Defendant's Skeleton Argument.

132. As I have said, there are two sets of Particulars of Claim dated 1 May 2020 (First Claim) and 26 May 2020 (Second Claim) respectively.

133. The first version of the Particulars of Claim in the First Claim is dated 21 April 2020 (Bundle, p467). These were before Martin Spencer J on 23 April 2020 when the Claimant applied for an injunction. In rejecting that application the judge said that (Bundle, p66, [7]):

> "… the draft Particulars of Claim and evidence filed so far doubtfully disclose a reasonably arguable cause of action and the Applicant should obtain his own legal advice".

134. On 29 April 2020, Master Dagnall considered the proposed Claim Form and Particulars of Claim in the context of the Claimant's request that the Claim Form be issued. He made a lengthy order (Bundle, p67). This set out various requirements in the CPR and its practice directions, drawing the Claimant's attention to (and describing the effect of) CPR r 16.4(1)(a), PD16 [7.3], [7.4] and [8], and in particular the requirement to set out details of any fraud, and the principle that 'any allegation of a defendant having had in their mind the intentional element of any wrong must be stated together with facts or matters relied upon from which it is sufficient for the court to draw an inference that that party had had that intention (as opposed, for example, to having had a contrary, even if a negligent, belief).'

135. Master Dagnall also noted that the then draft Particulars of Claim did not appear to be 'easily intelligible' (Bundle, p68, [3]), and that they contained a schedule of damages for large sums with no indication of how the amounts were said to be calculated or how they related to, or were caused by, any of the breaches of contract or wrongs alleged. He also noted that the draft did not, or arguably did not, set out in an intelligible fashion what were the alleged breaches of contract (and in particular what the Third Defendant was obliged to do but had not done). Accordingly, Master Dagnall was concerned as to whether any or all of the jurisdictions or matters within CPR r 3.4(2) applied.

136. The Master permitted the claim to be issued, but required the Claimant to file amended Particulars of Claim which complied with the CPR and its PDs (including those set out above) and which, in relation to the schedule of damages, set out precisely how each sum had been calculated and was said to have been caused by the breaches of contract or wrongs alleged (Bundle, pp68-69).

137. The First Claim was issued on 29 April 2020 and sealed on 4 May 2020. According to [1] of the Particulars of Claim in the Second Claim the Claimant believed the revised Particulars of Claim in the First Claim dated 1 May 2020 complied with Master Dagnall's order. He was wrong. The Particulars of Claim fail to comply with the CPR in such a serious way that the claim must be struck out. The Particulars of Claim in the Second Claim suffer from similar faults and it, too, must be struck out.

138. Among the deficiencies in the First Particulars of Claim are the following (inter alia).

139. *Requirements for pleading on a contract not complied with:* The requirements for pleading a claim on a contract have not been complied with. By CPR PD 16, [7.3], where a claim is based on a written agreement, 'a copy of the contract or documents constituting the agreement should be attached to or served with the particulars of claim …'. Paragraph 7.4 provides that, 'Where a claim is based upon an oral agreement, the particulars of claim should set out the contractual words used and state by whom, to whom, where and when they were spoken.' These paragraphs were drawn to the Claimant's attention by Master Dagnall in his 29 April 2020 Order. The Claimant's case appears to be the contracts in question were partly written and partly oral. He has not produced any written agreements despite having been requested to produce them by the Fourth Defendant on 22 May 2020 (Bundle, p997). Nor has he set out the contractual words allegedly spoken.

140. *Failure to particularise loss:* next, despite a specific direction from the Master, the Claimant has failed to properly particularise his loss. Paragraph 2(b) of the 29 April 2020 order required the Claimant to file Particulars of Claim:

> "… which in relation to the Schedule of Damages set out precisely how each sum is calculated and is said to have been caused by the breaches of contract or wrongs alleged."

141. The Particulars of Claim do not comply with this direction. The 'Particulars of Special Damages' at p12 is simply a list of items (eg 'Make up for photoshoots', 'Creative direction for photoshoots', 'Transport by taxi and Uber', 'Cost of business trip to LA on 12 Mar 2020 to 18 Mar' etc) with figures beside them (for these items, £3500, £3500, £500, £3700). No attempt has been made to show how the sums claimed have been calculated, nor has there been any attempt to relate them to the alleged breaches of contract by the Third Defendant. Further, I note that the sums claimed are all round numbers. They appear to me to have all the hallmarks of just having been made up. For example, I do not readily believe that the cost of the trip to Los Angeles was £3700 *exactly*. I also note that the Claimant has been granted fee remissions in this litigation on the grounds of impecuniosity. How it was possible, therefore, for him to have been able to spend thousands of pounds on the Third Defendant less than a year ago is a mystery.

142. *Other matters*: The Defendants also point to other shortcomings in the Claimant's pleadings. The Claimant refers to various documents in the First Particulars of Claim, which the Represented Defendants were entitled to inspect pursuant to CPR r 31.14 and which were requested by letter of 22 May 2020 (Bundle, p997). Those included the text messages which were said to evidence the Third Defendant's admissions regarding breaches of contracts and the First and Second Defendant's alleged knowledge of them. These have not been provided. Additionally, to the extent that there is a claim for defamation (eg Particulars of Claim, [18], 'On 18 April 2020 D1 and D2 made false allegations against C that D1 and D2 needed to protect D3 against threats of C, causing C considerable alarm distress pain suffering and loss of amenity') the Defendants say the requirements of PD 53B set out in recital (6) of Master Dagnall's 29 April 2020 Order have not been met. This provided:

> "PD 53B providing that in relation to media and communications claims (which including claims for libel and slander):
>
> a. Paragraph 4 requires in claims for libel and slander the Claim Form to identify the subject of the claim and the person to whom words were spoken and when
>
> b. Paragraph 5 requires the Particulars of Claim to state the precise words used, and when, how and to whom the statement was published, details of all imputations asserted, the facts and matters relied upon to satisfy the requirement that the publication must have caused serious harm to the reputation of the claimant, and full details of all facts and matters relied upon in relation to any claim for damages."

143. I agree there has not been compliance with these requirements.

144. It follows that the First Particulars of Claim do not comply with the pleading rules in the CPR and PDs and do not comply with the Master's orders. The First Claim is accordingly struck out under CPR r 3.4(2)(c) so far as it relates to the claims in breach of contract; inducing breach of contract; and defamation (if there is such a claim). Breach of contract is an essential element of the tort of procuring breach of contract, and so because the claim against the Third Defendant for breach of contract has been struck out, so must the claims for procuring breach of contract in the First and Second Claims. For the avoidance of doubt, I also regard these claims as liable to be struck out under CPR 3.4(2)(a) and (b).

(iii) Defective pleadings generally

145. For the following reasons the Claimant's two sets of Particulars of Claim are manifestly defective in other ways apart from the specific pleadings rules in the CPR and Master Dagnall's orders, and so the remaining causes of action fall to be struck out under CPR r 3.4(2)(a)(b)(c) for the following reasons.

146. *Failure properly to plead breach of contract/procuring breach of contract:* the Represented Defendants point out that they face no claim for breach of contract, and it is not necessary for them to defeat the claim against the Third Defendant for breach of

contract in order for the claims against them to be struck out. However, they say that since proof of the alleged contracts and their breach are an essential element in the claim for inducing breach of contract which is made against them, the Claimant's wholly defective case on breach of contract means the case against them fails on that basis.

147. The premise of the Represented Defendants' argument is correct. The elements of the tort of procuring a breach of contract are as follows (see *Grant & Mumford*, Civil Fraud, Law, Practice and Procedure, Chapter 3, *Bullen & Leake*, [60-02] – [60-07]). The Claimant must show: (a) there was a contract between the Claimant and Third Defendant D3; (b) it was breached, (c) the relevant Defendant knew about the contract and that it would be breached by the Third Defendant; (d) the relevant defendant in fact induced the Third Defendant to breach the contract, (e) the relevant Defendant intended to that a breach of contract would result, (f) that loss was suffered, and (g) lack of justification.

148. The Represented Defendants say, in summary: (a) the context to the alleged contracts is that the Claimant and Third Defendant were for a time in an intimate relationship (whether or not there was a business relationship); (b) the Claimant pleads nine contracts (Particulars of Claim, [21]; Bundle, p10) said to have been agreed on a variety of occasions during that period, covering a wide range of topics (down from an initially-pleaded 19 contracts in the Particulars of Claim at Bundle, p468 and p510); (c) the Claimant alleges a series of payments were made pursuant to these contracts but such payments do not appear to be tied to any specific contracts; (d) the pleading of the formation, terms and breach of these contracts are often obscure, (e) as is the question of loss.

149. I agree with all of these points, and in particular, (c), (d) and (e). I dealt with (c) and (e) in the preceding paragraphs.

150. I have already noted that the Claimant has failed to provide copies of the alleged written contracts. Further, despite his allegation that the agreements were made 'mostly in the presence of others' (Bundle, p148) those 'others' have not been identified, still less have those individuals provided evidence.

151. I agree with the Represented Defendants' submission that given (a) the Claimant and Third Defendant were in a relationship during at least part of the relevant period and (b) that according to the Claimant, he made payments to the Third Defendant for helping him with his physical disability (First Witness Statement, [3]), it is important to identify with clarity what contracts are said to have been made; by what method; on what date; what the terms of them were; how the Third Defendant's conduct is alleged to have been a breach of those contracts; and what loss was caused to the Claimant as a consequence. That is the starting point for an allegation of inducing a breach of contract against any of the Represented Defendants.

152. The First Particulars of Claim fail to do any of these things. In order to illustrate this point, it is sufficient to examine how two of the contracts, and their alleged breach, have been pleaded.

153. The first apparently pleaded contract is a music promotion agreement (First Particulars of Claim, [1(i)]):

"On 28 Nov, 30 Nov, 5 Dec and 6 Dec 2019 at 18 Leinster Gardens W2 3BH and on 6 Jan and 7 Jan 2020 on Facetime with +54 9 11 3138 3945 and on 9 Feb 2020 at 18 Leinster Gardens W2 3BH, C and D3 discussed in confidence the ideas, business models, business plans, designs, drawings, trade secrets and technological innovations in relation to music industry, artist management, modelling, makeup and styling. C and D3 agreed to work together on a number of ventures, including and not limited to, under the brand "Stay High Baby", "Backstage Queen" and "Glossy Possy". C showed D3 how to make use of high level industry contacts in the techno/house music scene in Ibiza, to create for C, a database of top 100 DJs in techno/house music and do the same for top 100 DJs in other genres of music, and secure music distribution contracts with the top 100 DJs for an online business. This required C to provide all the technology, law and funding. This required D3 to (a) compile a detailed biography with text and images (b) compile detailed discography of all the music tracks and DJ sets on MSExcel Spreadsheet (c) download all MP3 files and save online in Dropbox account set up by C (d) then upload to webserver of C, all of the database of top 100 DJs and the MP3 files (e) do the same for top 100 Dis in other genres of music (f) in Dec 2029 and March 2020 travel to Argentina to scout for artists and secure representation, music distribution and website contracts for new talent DJs to include Kevin Williams, Nestor Carbajal and Matias Fontanella (c) From Feb 2020 to May 2020, pursue best endeavours to get personal contact details of 100 headliner DJs in techno/house music scene including Michael Bibi, Hot Since 82 and others for purpose of getting agency representation, music distribution and website business (g) In March 2020 to travel to USA to pursue best endeavours to get in personal details of Maceo Plex for the purpose of getting agency representation, music distribution and website business

D3 has been paid in full and in advance by C (see paragraph (2) below)

On 5 Dec 2019 D3 went to Argentina to do the work for C and on 9 Feb 2020 D3 returned to UK to work with and for C. Without help of C, D3 had no means to be in UK. On 11 Feb 2020 at the request of D3, C paid to bring Florencia Braceiro from Argentina, until 13 Jun 2020 to work for and with D3 on this project and planned to take her to Ibiza with help of D1 and D2. On 19 Feb 2020, Braceiro failed to do any work and returned to Argentina On 12 March to 18 March 2020 C paid for D3 to go to LA for event of Maceo Plex, to get contact details. D3 failed to do so. On 18 Mar 2020 at the request of D3, C paid to bring Lucia Ramos from USA to work with and for D3 on this project and planned to take her to Ibiza with help of D1 and D2. On 24 Mar 2020 Ramos failed to do any work and returned

> to USA. On 20 Mar, D3 arranged Kevin Williams, Nestor Carbajal and Matias Fontanella to work on the database as well as sign up for agency representation, music distribution and websites. On 22 Mar D3 delivered up to C, a database of only 8 DJs: Maceo Plex, Michael Bibi, Hot Since 92, Dixon, Mano Le Tough, Nina Kraviz, Richie Hawtin, and Tale of Us. There were no MP3 files C paid for airline tickets, shopping food and accommodation to Braceiro, Ramos and D3. C arranged D3 and Ramos to go to Argentina on 26 Mar and return on 7 May 2020. C paid for websites for D3 and Ramos. On 24 Mar 2020 D3 absconded from Heathrow Airport and went into hiding with D1 and D2, and abandoned working with C. On 26 Mar, 27 Mar, 31 Mar and 3 April D3 failed to take the flight to Argentina. On 6, 7 and 8 April, D3 made a contract with C to return to London, be carer for C, deliver up the balance of the database and the MP3 files, and finish the work on the project. D3 failed to return and has not been seen since 8 April 2020."

154. In [2], the Claimant pleaded that:

> "On 29 Nov, 30 Nov, 5 Dec and 6 Dec 2019 at 18 Leinster Gardens W2 3BH and on 6 Jan - 7 Jan 2020 and 1 Feb — 3 Feb 2020 on Facetime with +54 9 11 3138 3945 and on 9 Feb 2020 at 18 Leinster Gardens W2 3BH, C and D3 made oral and written agreements for which C offered and D3 accepted as payment in full, various forms of payment which include and are not limited to the following …"

155. There follows a list of items, eg:

> "(i) C helped D3 with Business Plan and offset the fee £2500 as payment to D3
> (ii) C helped D3 with Financial Plan and offset the fee £1500 as payment to D3 …"

156. There is no coherent relationship pleaded between the various value transfers alleged in this paragraph and the particular contract pleaded at [1(i)]

157. Further, under the heading 'PARTICULARS BREACH OF CONTRACT' the Claimant simply pleaded (Bundle, p10):

> "b. D3 breach of contract in relation to database of top 100 DJs"

158. This is obviously a manifestly inadequate pleading.

159. There are other points which might be regarded as suggestions of breaches of contract in [1(i)], eg, that the Third Defendant only delivered up a database of eight DJs and without MP3s, and that she went to an event in Los Angeles but failed to 'get contact details', but these are not pleaded as breaches.

160. There is no coherent pleading of what if any loss is alleged to have arisen as a result of these alleged breaches of contract. As I discussed earlier, although there is a section of the pleading headed 'Particulars of Special Damage' these are not identified as having arisen from any specific alleged breach of contact. Annexed to the Particulars of Claim is a 'Schedule of Damages' containing figures under a huge variety of heads of loss from 'Harassment/Severe Depression' to 'Business model for top 100 DJs in techno/house', in connection with which the figures of £5 million and £2.5 million are listed. As far as the latter is concerned, how it is said to arise from the alleged breach of contract is again wholly opaque, to say the least.

161. Numerous forensic points can be made about the 'Schedule of Damages'. For example, item 7 states: '

> "Contracts with each of the top 100 DJs: £3.6 million over next 3 years"

162. There is no coherent explanation of what services the Claimant would have provided to the 'top 100 DJs' such as to justify £3.6m of payment (or profit) over the next three years, or what loss, if any, was caused by any identifiable breach of contract by the Third Defendant.

163. For completeness, I should set out the Third Defendant's response. In her First Witness Statement she says at [15] and [51.1]-[51.3]:

> "15. During my interview at the Claimant's Flat, I told him that I had been working as an Artist Manager and Event Promoter for the past 2 years in Ibiza and that I wanted to make my own way in the electronic music industry. I was already doing press kits, press releases, reviews and online strategies but wanted to make it more professional and eventually open a booking and management agency for artists (the "Project"). The Claimant told me at this meeting that it was a brilliant idea and that he believed in my Project and wanted to invest so that he could help me achieve my dream.
>
> …
>
> 51 In response to each of the alleged contracts set out in paragraphs 1(i) – 1(vii) of the First PoC:
>
> *Paragraph 1(i)*
>
> 51.1 I did not agree to enter into the ventures as described by the Claimant at paragraph 1(i). The Project is my own business and the Claimant offered to assist but there was no contract or agreement. The Claimant had the idea to create a platform with music from the top 100 DJs as he already had this platform available from creating a similar website for salsa music (as explained below). He told me that Magento II was the best platform for a website but this was never set up for me and I did not use it. The Claimant said he would provide me with the best

technology for the Project (Mageneto II) and that it would cost a lot of money and time but he would give me the money and I would only be required to pay it back once I had made 3x the amount he had given. These were not arrangements that were ever finalised or that I acted on. To me it does not seem that there was a contract between me and the Claimant as he was just offering to help me with the Project and I did not sign any documents. At this time, the Claimant and I still had a personal relationship and were on friendly terms. If I knew that he would view this as a legal relationship I would not have agreed to accept his help.

51.2 The Claimant told me that he had a website for salsa music with an extensive playlist that a friend of his in Barcelona provided him with. I did not see this website. When the Claimant found out about my passion and contacts in electronic music, he wanted to work with me to create a similar website with electronic music which would involve creating a list of the top 100 DJs, writing biographies and downloading each track in MP3 to be uploaded to the Claimant's website. I didn't want to harm the electronic music industry but the Claimant told me that this website would be a great opportunity for electronic artists and would act in a similar way to Spotify and they would be able to sell merchandise. Because the Claimant did not have any knowledge or contacts he encouraged me to find DJs I trusted to help me, which is why I contacted the DJs detailed below at paragraph 55 of this witness statement

51.3 The Claimant spoke to me about how he wanted to work with me to create this music platform for the top 100 DJs and how he wanted to help me set up a business to manage DJs but I do not understand how discussing these things with the Claimant amount to a contract which I have now breached."

164. I turn to the next pleaded agreement in [1(ii)]. This relates to allegedly unpaid wages owed to the Third Defendant from when she worked as a belly dancer at a club in Wembley and was not paid £750 in wages. The Claimant claims he and the Third Defendant, on four dates in November and December 2019, agreed to work together to pursue a claim against her former employer, on the basis that the Third Defendant could retain any damages, and the Claimant would retain costs.

165. As the Represented Defendants observe, no explanation is given as to what contractual obligation the Third Defendant is said to have breached, and how this gives rise to a recoverable loss on the part of the Claimant. None has been alleged.

166. Similar, and other, criticisms can be made of the other pleaded agreements in [1(i)] of the First Particulars of Claim. There is a failure either properly to plead the terms of the agreement; the alleged breaches; how loss is said to have arisen; and how that loss has been quantified. Overall, the Particulars of Claim are unreasonably vague, incoherent, vexatious and obviously ill-founded. It follows that the pleaded claims

for breach of contract and procuring breach of contract in the First and Second Claims must be struck out under CPR r 3.4(2)(a)(b).

167. The Claims includes a claim for tortious interference with contractual relations against the First, Second and Fifth Defendant. It is alleged that they 'fraudulently interfere[d] with contracts and business relationship between D3 and C'. For example, in the First Claim it is contended (Bundle, p10):

> "a. D3 is in breach of contract
>
> b. D1 and D2 have knowledge of the breach of contract D1 and D2 intentionally procured the breach and continuance of it
>
> c. D1 and D2 intentionally induced D3 to the breach and continuance of it D1, D2 and D3 have knowledge of the economic harm and loss to C …"

168. Under the hearing 'Particulars of tortious interference' in the Second Claim, the Claimant alleges, for example, that on or around 7 April 2020, the Third Defendant accepted an

> "… inducement from D5 to break off all communications with C and stay away from C". It is said that "D5 knows that this inducement is tortious interference, causing loss and damage to C, and procuring a furtherance of breach of contract."

169. This claim is hopeless. The tort of tortious interference with contractual relations requires proof that the defendant in question (a) performed some tortious or unlawful acts against, and independently actionable by, a third party (here presumably D3); which (b) thereby interfered with the freedom of the third party to deal contractually with the Claimant; (c) intended to cause loss to the Claimant by those unlawful means; and (d) in fact caused loss to the Claimant.

170. The failure by the Claimant properly to plead the contracts; how they were breached; what loss was caused; and how the loss was calculated means the claim is bound to fail. In any event, no tort vis-à-vis the Third Defendant is pleaded. Even if the other Defendants did persuade her by some means not to contact the Claimant any longer, this is not a tort. It also fails for the reasons given in the Represented Defendant's Skeleton Argument at [173] et seq.

171. *Harassment* Turning to the claim in harassment, s 3(1) of the Protection from Harassment Act 1997 provides:

> "(1) An actual or apprehended breach of [section 1(1)] may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.
>
> (2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment."

172. Section 1 provides:

> "(1) A person must not pursue a course of conduct—
> (a) which amounts to harassment of another, and
> (b) which he knows or ought to know amounts to harassment of the other.
>
> …
>
> (2) For the purposes of this section [or section 2A(2)(c)], the person whose course of conduct is in question ought to know that it amounts to [or involves] harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to [or involved] harassment of the other.
>
> (3) Subsection (1) [or (1A)] does not apply to a course of conduct if the person who pursued it shows—
>
> (a) that it was pursued for the purpose of preventing or detecting crime,
>
> (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
>
> (c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

173. The Claimant must therefore show that the relevant Defendant (a) pursued a 'course of conduct'; (b) which in fact amounted to harassment of another; (c) which that defendant knew amounted to harassment of another; or (d) a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

174. By s 2 of the 1997 Act, a person who pursues a course of conduct in breach of s 1(1) is guilty of an offence and liable to a term of imprisonment not exceeding six months or a fine. The seriousness of the conduct impugned must therefore be measured against that scale.

175. According to Lord Nicholls in *Majrowski v Guy's and St Thomas' NHS Trust* [2007] 1 AC 22, [30]:

> "Where the … quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct

> must be of an order which would sustain criminal liability under section 2."

176. Similarly, in *Ferguson v British Gas Trading Ltd* [2010] 1 WLR 785, [18]:

> "…in life one has to put up with a certain amount of annoyance: things have got to be fairly severe before the law, civil or criminal, will intervene."

177. Further by s 1(3) of the 1997 Act, subsection (1) does not apply to a course of conduct if the person who pursued it shows (a) 'that it was pursued for the purpose of preventing or detecting crime", or (b) 'that in the particular circumstances the pursuit of the course of conduct was reasonable'.

178. I agree with the Represented Defendants that the claim in harassment fails because the allegations do not meet the requirements of the tort. In the First Claim, the Claimant pleads three 'PARTICULARS OF HARASSMENT": (a) alleged racial (verbal) attacks and violent threats and false allegations by the First and Second Defendant in a phone call on 18 April 2020; (b) **t**he posting of a video of the Third Defendant and 'sexualised photos' on social media by the First, Second and Third Defendant; (c) a conspiracy between these three defendants to make false allegations to the police to get the Claimant arrested, causing 'hurt, alarm, distress, pain, suffering and loss of amenity and damage to reputation.'

179. In the Second Claim, five particulars are pleaded, which in reality are three particulars, one of which is repeat of a particular in the First Claim, namely, the allegedly false complaint to the police) as already made against the First, Second, and Third Defendants in the First Claim): (a) on 18 April 2020 the Fifth Defendant took control of the Third Defendant's phone, swore at the Claimant, calling him an 'old cripple and a pervert, and telling the Claimant that the Third Defendant was with him, implying a sexual relationship'. It is said that this was 'cruel, degrading, humiliating and inhumane'; (b) second, **t**hat on 19 April 2020 and on or about 25 April 2020, the First, Second and Fifth Defendants convinced the Third Defendant to make false allegations to the police that the Claimant was stalking and harassing the Third Defendant, and that the First, Second, Third, and Fifth Defendants gave false statements against the Claimant to 'intentionally fabricate a false case against C'; (c) on 14 May 2020, the First, Second and Fifth Defendants persuaded the Third Defendant to harass the Claimant by making a false allegation to Master Dagnall that the Claimant had 'non-consensual sex' with the Third Defendant.

180. I agree with the Represented Defendants that the allegations are either inadequately pleaded, fail to meet the necessary threshold of harassment, were reasonable in the circumstances, or pursued for the purposes of preventing/detecting crime. Accordingly, this claim falls to be struck out under CPR r 3.4(2)(a)(b)(c).

181. So far as the alleged telephone abuse is concerned, even on the Claimant's case, this was little more than a shouting match with unpleasant language being hurled in both directions. The Claimant says that he called the First Defendant a 'dirty drug peddler' who groomed young girls with drugs, and the Claimant said he was going to 'rip his face off'. Thus, even if the Claimant's account were accurate, it was a conversation

which included threats from the Claimant as well as from the First Defendant. On his account, the Claimant initiated the call. This cannot amount to harassment.

182. For the same reasons, the alleged telephone abuse by the Fifth Defendant in which unpleasant language is said to have been used, cannot amount to harassment. In any event, both the Third and Fifth Defendant say this was not the Fifth Defendant, but a man called Robert Frame. I therefore agree the Claimant, who does not claim ever to have spoken to the Fifth Defendant, has no proper basis to plead a case against him. Even if it were made out, since none of the other allegations have anything to do with the Fifth Defendant, he would not have engaged in a 'course of conduct'. Nor, in the absence of cogent pleading as to why any other Defendant could be responsible for this, could it form part of any other Defendant's 'course of conduct'.

183. So far as the posting of 'lewd material' online is concerned, this is not said to refer to the Claimant and so cannot possibly constitute harassment. In any event, there is no evidence to suggest this happened. In any event, as the Third Defendant says in her Skeleton Argument at [112], what she posts on social media is her own business.

184. Regarding the 'False' allegations of harassment to the police, whilst the Represented Defendants accept in theory that repeated knowingly false reports to the police *could* constitute harassment, in my judgment in this case no facts have been pleaded from which the Court could properly infer that the Represented Defendants made deliberately false allegations, or did so on a repeated basis so as to amount to harassment. Further, the Fifth Defendant had nothing to do with this. In any event, the report which was made to the police plainly falls within the preventing or detecting crime exception in s 1(3) of the 1997 Act. The evidence from the Third Defendant shows that from the time she arrived in Scotland the Claimant bombarded her with messages, calls, and unwanted gifts. She says in her Witness Statement, [31], [39]:

> "31. As soon as I arrived in Scotland on 24 March 2020, the Claimant started to call me every day, threatening and intimidating me, saying that he would find me and make a call to Buenos Aires so somebody could hurt my parents if I did not go back to London.
>
> …
>
> 39. The Claimant also sent unwanted gifts to the First Defendant's home addressed to me on 17 and 18 April 2020 … These gifts were perfume, letters from the Claimant and a nose ring. The First Defendant suggested that we contact the police because the constant harassment was becoming distressing for both of us. I called the police because I wanted the Claimant to be arrested for all of the harassment."

185. Finally, regarding the allegation that the various Defendants got the Third Defendants to make allegations to Master Dagnall, the Third Defendant says she wrote an email to the Master saying the Claimant is a sexual predator who deceives young girls to sleep with him and that it is true. She says in her First Witness Statement at [45]-[46]:

> "45. On 14 May 2020 (12:50) the Claimant sent an email to the Court which copied in myself, Brodies and the First and Second Defendant. In this email, the Claimant said that I been telling my family and friends that I had spoken to the First Defendant's lawyers and that they told me to 'remain quiet' and let them deal with it. He also told lies about me saying that I was on drugs. What he said in this email was not true. I had spoken to Brodies but as I say above, this was only to help them in preparing the application for their clients and I know that they do not act for me.
>
> 46. As a result of the Claimant's email, I felt very angry that he was telling lies about me and I decided to respond to the email setting out my side of the story. I said (amongst other things) that the Claimant was a predator, that I have never met Callum Henderson and that I wanted nothing more to do with the Claimant. Nobody told me to write that email or helped me to write it. It was all the truth and I still believe it is the truth as the Claimant has manipulated me and other girls in the past, including my own friends. I did not show anyone else a draft of this email and nobody knew that I was writing this email until I had sent it to the Court."

186. It was this email which prompted the Claimant to make the comment about women having acid thrown in their faces.

187. There is no basis, even if this could amount to harassment, on which it could be concluded the other Defendants had any involvement with it, and it is hard to see how it could be said to form part of an actionable course of conduct.

188. Further, even if as alleged the First, Second or Fifth Defendants are to be taken in some way to have encouraged the Third Defendant to send the relevant message, that could not sensibly amount to harassment by any of the Represented Defendants in the absence of facts from which the court could infer that they believed the allegations to be untrue.

189. *Failure properly to plead fraud*: Allegations of fraud are scattered throughout the Claimant's two sets of Particulars of Claim. For example, at (Bundle, p10), under the heading 'Particulars of Fraud' the following is pleaded:

> "Fraud by D1, D2 and D3 to act in bad faith and intentionally pursue conduct knowing it to be wrong, dishonest, a gross abuse of trust
>
> a. D3 groomed, cajoled and manipulated C with promises of friendship, loyalty and sex, in order to obtain from C: disclosure of IP, favour, money, shopping, trips and otherwise cause loss to C
>
> b. D3 accepting payment in advance from C knowing that D3 had no intention to perform on the contracts

> c. D3 accepting inducement from D1 and D2 for IP of C
>
> d. D1 and D2 conduct is unlawful to groom, cajole and manipulate D3 to accept inducement for IP of C, procure breach of contract with C, further breach of contract with C and obstruct performance of contract by D3 …"

190. There then follow further supposed particulars of fraud.

191. Also by way of example, in [7] of the Second Particulars of Claim there is reference to 'a fraudulent attempt to get C arrested by the Police' and to 'fraudulently prop[ping] up the 'a failed relationship' defence'. In [10] there is reference to 'Brodies LLP … played a willing role in this fraudulent scheme … by fraudulently covering up the role of D5, making out that 'Robert' on 18 Apr 2020 was not D5 …'. This is apparently a reference to a phone call the Claimant had with someone called Robert who the Claimant believes was in fact the Fifth Defendant. Paragraph [12] asserts, 'D4 are fully aware of the fraudulent scheme pursued by D1, D2, D3 and D5 to mislead the Police and mislead the High Court of Justice …' At [32] various supposed 'Particulars of Fraud' are pleaded.

192. In their Skeleton Argument at [202]-[249] the Represented Defendants make a number of points about the various allegations of fraud in the pleadings. I adopt these but will not repeat them.

193. It is self-evident that the Claimant has not properly pleaded his claim in fraud. It is well established, and indeed one of the most fundamental rules of pleading, that a claim in fraud must be distinctly pleaded and alleged. This was pointed out to the Claimant by Master Dagnall in his order of 29 April 2020 at recital (5), and the Claimant pleaded the relevant passage from *Three Rivers District Council v Governor and Company of the Bank of England* (No 3) [2003] 2 AC 1 at [22] of the 'law' section of the First Particulars of Claim (Bundle, p21), including,:

> "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."

194. Nonetheless, the Particulars of Claim do not set out sufficient details of any fraud, including alleging where necessary that a particular defendant had a necessary intention, together with facts or matters from which it is sufficient for the court to draw the inference that that party had that intention (as opposed for example to having had a contrary, even if negligent, belief).

195. The 'Particulars of Fraud' pleaded at (Bundle, p10) are manifestly deficient. They therefore do not comply with the requirements of the rules or caselaw, nor with the terms of the 29 April 2020 Order of Master Dagnall. As to caselaw, Stuart-Smith J's discussion in *Portland Stone Firms Ltd and others v Barclays Bank Plc and others* [2018] EWHC 2341 (QB), [29] is helpful:

> "… if a case alleging fraud or deceit (or other intention) rests upon the drawing of inferences about a Defendant's state of mind from other facts, those other facts must be clearly pleaded and must be such as could support the finding for which the Claimant contends ... I endorse and adopt the statement of Flaux J in *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [20] that:
>
> > 'The Claimant does not have to plead primary facts which are only consistent with dishonesty. 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. As Lord Millett put it, there must be some fact "which tilts the balance and justifies an inference of dishonesty." At the interlocutory stage … the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud.'"

196. The Particulars of Fraud in the Second Particulars of Claim (Bundle, pp42-43) are equally inadequate. Some of the allegations are incomprehensible, let alone as particulars of fraud. So, particular (a) alleges:

> "From 24 Mar 2020 onwards, D1 D2 and D5 fraudulently continue to "hide" D3 under the false claims of harassment of D3 from C, knowing that there no harassment going on."

197. On his own case, the Claimant knew where the Third Defendant was, and he was in contact with her. The allegation of 'hiding' is not easily understood. And the evidence shows that there was a tenable claim of harassment which was investigated by the police.

198. Particular (f) alleges:

> "On 1 May 2020, D3 accepted inducement from D1, D2 and D5 and coaching from D4, to fraudulently 'say nothing', to 'remain silent' and to 'let them handle it', knowing this was a fraudulent scheme to manipulate, improperly influence and mislead the High Court."

199. Among the points that can be made about this are (a) the 'fraudulent scheme' is not specified (although elsewhere it seems to consist, variously, of allegations that the High Court was misled about the nature of the Claimant's relationship with the Third Defendant, whether it had failed, and that he had stalked her; and whether the Fourth Defendant was properly authorised to act for the Second Defendant; (b) it is hard to see how staying silent can be a fraud, absent particular special circumstances; (c) in any event the Third Defendant made witness statements on 5 June 2020 and 15 September 2020 and so did not stay silent.

200. Particular (h) alleges:

> "On 1 May 2020 D1, D2, D4 and D5 intentionally and fraudulently misled the High Court, that D4 and Counsel were properly appointed by a Board Resolutions of D2 from a Board Meeting which was correctly convened, legally constituted, properly held and of which written records kept. D1 D2 D4 and D5 and Counsel knew that D4 and Counsel were not properly appointed."

201. Even if this were true, it is difficult to see how it caused any loss to the Claimant. Whether the Fourth Defendant was properly appointed to act for the other Defendants was a matter for it, the Second Defendant's Board and Directors, and nothing whatsoever to do with the Claimant, no matter how indignant about it he feels. In any event, as I will discuss in a moment, the Fourth Defendant has been properly appointed to act.

(iv) Strike-out/summary judgment: conclusion

202. Earlier I indicated that the two claims would be struck out under CPR r 3.4(2)(b) because of the Claimant's conduct.

203. For all of the reasons given above in sections (ii) and (iii), the two claims are also struck out against all the Defendants under CPR r 3.4(2)(a)(b)(c) because they have been pleaded in a way which does not comply with the rules, practice directions and/or the orders of Master Dagnall; and/or because the pleadings are generally deficient and do not set out what needs to be set out in order to amount to coherent and legally cognisable claims. They disclose no reasonable grounds for bringing the claims, or are otherwise incoherent and make no sense; alternatively, to the extent that they do contain a coherent set of facts, the facts, even if true, do not disclose any legally recognisable claim against the Defendants.

204. Alternatively, I grant summary judgment on the claims in favour of the Defendants on the grounds that the claims have no realistic prospects of success.

205. Taking a step back, and as Martin Spencer J remarked as long ago as 23 April 2020, at the heart of this case is the Claimant's failed relationship with the Third Defendant which it is plain he has had trouble accepting. Both sets of Particulars of Claim contain very many complaints about the role of the other Defendants in (as he would have it) keeping her away from him. The allegations are wholly unsubstantiated and the pleaded causes of action are all totally deficient. I certify both claims as TWM.

PART 2

206. I now turn to the Claimant's applications. I can deal with them briefly.

207. The first application is the Claimant's application of 19 May 2020 to 'adjoin' the Second Claim to the First. I have struck out both claims so nothing remains of this application and it is moot.

208. Next, I address the Claimant's application dated 20 May 2020 (Bundle, p969) to strike out the Acknowledgement of Service dated 11 May 2020 of the First Defendant and the Second Defendant in the First Claim, and for Default Judgment. According to Mr Rutherford, First Witness Statement, [49], in this application:

> "… the Claimant makes a series of allegations (many relating to the alleged substance of his case). He contends that Brodies are not authorised to act for the Second Defendant in the absence of Board Resolutions, and asserts that the fact that he has brought a claim against Brodies "automatically disqualifies them and invalidates the AOS". On that basis it is said that the Acknowledgment of Service filed by Brodies on behalf of the First and Second Defendants is invalid and must be struck out, and the Claimant seeks default judgment and indemnity costs against the First and Second Defendants."

209. This is a hopeless application. Although the Claimant has relentlessly claimed that the Fourth Defendant has not been properly appointed to act for the First, Second and Fifth Defendants, his claim is meritless. I dealt with the issue in my First Judgment at [79] et seq when I refused the Claimant's application for an injunction to restrain the Fourth Defendant from acting for the Represented Defendants:

> "79. I begin with the Claimant's application for an injunction to restrain the Fourth Defendant from acting in the proceedings for the First, Second and Fifth Defendants. As I have said, the Fourth Defendant is a large and well-known Scottish law firm.
>
> 80. I agree with the Defendants' argument that this application is misconceived and meritless. The Claimant has not set forth any coherent legal basis upon which such a claim could be sustained. He has merely asserted in various places that the Fourth Defendant is disqualified or has been guilty of fraud and so cannot act. Thus, for example, [29] of his Particulars of Claim in the Second Claim alleges:
>
> > 'On 18 May 2020 in an email timed at 8.10pm, D3 sent to the Court and myself an AOS purportedly prepared and signed by her. This AOS is invalid and a fraud on the Court. It has been prepared by D4 who are coaching her. D4 know they are not allowed to assist D3 because D4 are being joined as a co-defendant in the proceedings and because of the nature of the allegations in the POC are automatically disqualified from representing anyone in the same action.'
>
> 81. Paragraph 3 of his Skeleton Argument baldly states:
>
> > 'Board Resolution dated 3 June 2020 is fraudulent and invalid. D4 has no right of audience as

> representatives of D1 D2 and D5 until the CPR 81 and disqualification is decided by the Court'

82. I will return to that Board Resolution in a moment.

83. It seems to me that the Claimant's ambition is to deprive the First, Second, and Fifth Defendants of their competent and well-resourced chosen legal representatives. And, as those Defendants point out in their Skeleton Argument at [70], the Claimant has also adopted this tactic with respect to the Third Defendant's *pro bono* counsel, by threatening to seek costs and damages against him personally and by threatening to turn up at his chambers.

84. I can readily assume that the Fourth Defendant is aware of its responsibilities, and that should it find itself with a conflict of interest, then it would cease to act for any other Defendant with whom it had a conflict. There is nothing to substantiate the Claimant's accusations of wrongdoing against it.

85. One of the Claimant's points is that the Fourth Defendant was not authorised to act on behalf of its clients at the hearing on 1 May 2020 and that they have, since then, somehow perpetuated that alleged fault.

86. I accept Mr Rutherford's evidence in his third witness statement at [54]-[75] that, at all times, his firm has been properly and duly authorised to act for the other Defendants. Further, as Mr Pillai submitted, the matter is put beyond doubt by the evidence demonstrating the Second Defendant's ratification of the actions taken by the Fourth Defendant on its behalf.

87. On 3 June 2020 the Second Defendant's directors wrote directly to the Claimant enclosing the Board Resolution to which I have referred and confirming:

> "1. We have engaged Brodies LLP to act on our behalf in this Litigation;
>
> 2. We consider there to be no issue or conflict with Brodies being engaged and authorised to act for Connor William Henderson ("D1"), Brodies ("D4") or Callum Robert Henderson ("D5") in this Litigation and have declared their interests as appropriate in the manner set out in terms of article 14 of the Company's articles of association (the "Articles");

> 3. Brodies was and is authorised to conduct the Litigation on the Company's behalf and do everything necessary, including, but not limited to, engaging counsel to appear at hearings (including the hearing before Mrs Justice Andrews on 1 May 2020), and signing and filing an acknowledgment of service on 11 May 2020;
>
> 4. Brodies obtained authorisation to act in this matter on or around 28 April 2020 from Connor Henderson, Callum Henderson and William Rooney, being a majority of directors, who were authorised per article 7 of the Articles to bind the Company. In any case, we consider it necessary to point out that many Company decisions taken do not require specific board approval in terms of company law or the Articles.
>
> As is made clear by article 16 of the Articles (a copy of which is enclosed with this letter) 'subject to the articles, the directors may make any rule as they see fit about how they take decisions, and about how such rules are to be recorded and communicated to the directors'.

88. I reject the Claimant's unsubstantiated allegation that this Board resolution was fraudulent.

89. In terms of the *American Cyanamid* test for the grant of an injunction, the Claimant does not even get to first base: there is no issue to be tried, let alone a serious one. He has no legal right to prevent the Fourth Defendant from acting. His complaint about lack of authorisation by the Second Defendant, if it ever had any substance, which it did not, has now been fully answered for the reasons I have given."

210. I certify this application as TWM.

211. Next, is the application by the Claimant dated 28 July 2020 which was emailed to Master Dagnall and the parties (Bundle, p1231) together with his eighth witness statement seeking an order (a) that the Fourth Defendant be disqualified from representing any party in the proceedings; (b) the Acknowledgement of Service filed by the Fourth Defendant in the First Claim for the First and Second Defendants be struck out; and (c) default judgment against the First and Second Defendants in the First Claim.

212. This is identical to, and fails for the same reasons as, the May 2020 application. I certify it as TWM.

213. Next, I deal with the Claimant's application for summary judgment against the Fourth Defendant. By an application dated 28 July 2020 he seeks summary judgment in

respect of a claim for 'breach of warrant of authority'. In his Second Particulars of Claim (Bundle, p43) under the heading 'Breach of Warranty of Authority' he asserts:

> "On 30 April 2020 and 1 May 2020 D4 and Counsel knowingly made false representations to and/or fraudulently misled, the High Court of Justice that they were properly authorised by Board Resolutions of D2 from a Board Meeting which was correctly convened, legally constituted, properly held and of which written records kept …"

214. Paragraphs [45]-[46] of his eighth witness statement claim:

> **"**45. I am 100% right in my allegation of Fraud that on 1 May 2020 D4 was not properly authorised by a Board Resolution and intentionally misled the Court, Mrs Justice Andrews and me. The Court got it wrong and the Judge got it shamefully wrong, to trust D4 and Counsel. I was treated like a dog for asking to see the Board Resolution as will be confirmed by the transcript and video recording of the hearing on 1 May 2020
>
> 46. I am entitled to Summary Judgment for the Second Claim in relation to breach of warranty of authority which should have proceeded by way of Part 8. Clearly fraud is proved and in fact admitted by the document dated 3 June 2020 purporting to be a valid Board Resolution."

215. This claim is hopeless. The evidence I have quoted shows that at all times the Fourth Defendant has been properly authorised. I refuse the application and certify it to be TWM.

216. Finally, I deal with the Claimant's application for judgment in default against the Third Defendant. By application dated 19 May 2020, the Claimant sought to strike out the Third Defendant's acknowledgment of service in the First Claim and to obtain default judgment against her. The basis of the application, according to the Claimant's Third Witness Statement, [71]-[73] seems to be that:

> "71. The AOS of D3 which has been fraudulently back dated to 15 May 2020 and sent my email to the Court on 18 May 2020 is invalid.
>
> 72. D3 has made false declarations on the AOS in respect of address and email address
>
> 73. The AOS of D3 has not been properly filed within the time limit which expired on 19 May 2020".

217. This, too, is hopeless and TWM. The Acknowledgement of Service was properly filed.

Civil restraint order

218. I am invited by the Defendants to make a civil restraint order against the Claimant given the number of TWM applications he has made in these proceedings and that I have certified the Claims themselves as TWM.

219. Paragraph 3.1 of PD 3C provides:

> "3.1 An extended civil restraint order may be made by –
>
> (1) a judge of the Court of Appeal;
>
> (2) a judge of the High Court; or
>
> (3) a Designated Civil Judge or their appointed deputy in the County Court,
>
> where a party has persistently issued claims or made applications which are totally without merit."

220. In *CFC 26 Ltd v Brown Shipley & Co Ltd* [2017] 1 WLR 4589, [13], Newey J considered what was meant by 'persistently' in this context and held, in agreement with previous first instance authority, that 'persistence' in this context requires at least three TWM claims or applications. This was approved by the Court of Appeal in *Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225, [28]. In *MB v RGB* [2020] EWHC 3022 (QB), [61], Choudhury J said:

> "There it was held that although at least three totally without merit claims or applications are the minimum, the question remains whether the party concerned is acting 'persistently'. That will require an evaluation of the parties' overall conduct. In deciding to make a CRO, the Court is entitled to take into account any previous claims or applications that were found to be totally without merit."

221. The Claimant easily satisfies the test of 'persistence'. As I indicated earlier, Mr Pillai told me there had been 27 TWM applications by the Claimant in these proceedings. That figure includes the applications certified as TWM by Warby J following the Claimant's 17 November 2020 application, but in any event I have added to that figure in this judgment and it is plain that the number of wholly meritless applications made by the Claimant far exceeds the necessary figure of three to amount to 'persistence'. Furthermore, since at least 2002 the Claimant has been a serial nuisance litigator who has been subject to two extended civil restraint orders in the past. The present claims are merely the latest sorry chapter of failed litigation that has disproportionately utilised precious court resources and caused distress, expense and inconvenience to others.

222. I will therefore make an extended civil restraint order against the Claimant for a period of two years from the date of the order. The effect of the order is that during that period of two years, the Claimant is in certain cases restrained from issuing claims or making applications in the High Court or the County Court. By virtue of [3.3(1)] of PD 3C, if the Claimant issues a claim or makes an application in a court identified in the order concerning any matter involving or relating to or touching upon

or leading to the proceedings in which the order is made (ie, the First and Second Claims) without first obtaining the permission of a judge identified in the order, the claim or application will automatically be struck out or dismissed.

223. I invite the Represented Defendants' counsel to draw up an order reflecting the terms of this judgment and also containing the extended civil restraint order. I draw attention to the requirements of PD 3C, [3.9], as to what must be included in that order.

Conclusions

224. My conclusions are therefore as follows:

a. The First and the Second Claims are struck out under CPR r 3.4(2)(a)(b)(c), further or alternatively:

   (i) the First, Second and Third Defendants are awarded summary judgment under CPR r 24.2 on the First Claim and

   (ii) all of the Defendants are awarded summary judgment under CPR r 24.2 on the Second Claim.

b. Both Claims are certified as being TWM.

c. The Claimant's application to 'adjoin' the two Claims is dismissed as moot.

d. The Claimant's application dated 20 May 2020 to strike out the Acknowledgement of Service dated 11 May 2020 of the First Defendant and the Second Defendant in the First Claim, and for Default Judgment against them, is dismissed and certified to be TWM.

e. The Claimant's application dated 28 July 2020 for an order (i) that the Fourth Defendant be disqualified from representing any party in the proceedings; (ii) the Acknowledgement of Service filed by the Fourth Defendant in the First Claim for the First and Second Defendants be struck out; and (iii) default judgment against the First and Second Defendants in the First Claim, is dismissed and certified to be TWM.

f. The Claimant's application dated 28 July 2020 for summary judgment against the Fourth Defendant on the grounds of breach of warranty of authority is dismissed and certified as being TWM.

g. The Claimant's application dated 19 May 2020 to strike out the Third Defendant's Acknowledgement of Service in the First Claim is dismissed and certified as being TWM.

h. I make an extended civil restraint order against the Claimant pursuant to PD 3C, [3.1], for a period of two years.