Neutral Citation Number: [2024] EWHC 525 (Comm)

Case No: LM-2022-000089

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 8 March 2024

Before:

SIMON TINKLER
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between:

Christopher Gary Hoole	**Claimant**
- and -	
(1) Meredith Charles Limited	
(2) Michael Bold	
(3) John Craig Gabriel	
(4) Gregory Robert Bryce	
(5) Pardus Property Limited	
(6) Pardus Capital Holdings PLC	
(7) Pardus Wealth Limited	**Defendants**

- -
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James Russell, solicitor-advocate, of Humphries Kerstetter LLP for the Claimant
The Defendants were unrepresented

Hearing dates: 23 - 26 January 2024

- -

Approved Judgment

This judgment was handed down remotely at 14:00 on 08 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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SIMON TINKLER SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Simon Tinkler:

Structure of judgment

1. This judgment is set out as follows:

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Parties

2. Mr Hoole is the claimant. He is a financial intermediary. The first defendant ("**MCL**") is a company. It is also a financial intermediary. Its owners and, at the material times, directors were Mr Bold and Mr Gabriel, the second and third defendants. The fourth defendant, Mr Bryce, is a financial trader. He is a director and an owner of the fifth, sixth and seventh defendants. Those defendants are companies that are in the same group as each other (the "**Pardus Companies**" or "**Pardus**"). The fifth defendant ("**Pardus Property**") is a company that provides services to the sixth defendant. The sixth defendant ("**Pardus Capital**") is a special purpose vehicle created to issue a bond (the "**Pardus Bond**" or the "**Bond**"). The money raised in the Bond was to be used to trade in securities and commodities. The seventh defendant ("**Pardus Wealth**") provided services to Pardus Capital. The Pardus Companies had different names at different stages. I will use their current names in this judgment. I will also use the generic name "Pardus" except where the identity of the specific company is important. All the parties were, at the material times, present in England. Mr Bold has recently moved to Portugal and Mr Bryce has recently moved to Dubai.

3. Mr Gabriel, the third defendant, settled the claim against him before the case came to trial. He was called as a witness.

4. Other relevant people and companies in this case include:

    i) a pension fund ("**Organic Pensions**") associated with Organic Insurance Limited ("**Organic Insurance**");

    ii) Organic Investments Group Limited ("**Organic Investments**") a company based in the same building as Organic Pensions but apparently legally unrelated;

    iii) Chris Knight ("**Mr Knight**") one of the trustees of Organic Pensions;

    iv) Andy Myers ("**Mr Myers**"), an individual who seems to have been involved in Organic Investments in some capacity and possibly Organic Pensions and/or Organic Insurance; and

    v) Dalriada Trustees Limited ("**Dalriada**"), an independent pension trustee appointed by the pension regulator to replace Mr Knight.

Summary of claim

5. Pardus Property appointed MCL as a "master introducer" to find investors for the Pardus Bond (and other financial products) under a contract dated 26 February 2019 (the "**MCL/Pardus Contract**"). Pardus Property agreed to pay commission to MCL for finding investors.

6. MCL appointed Mr Hoole as a "sub-introducer" under a contract dated 7 March 2019 (the "**Hoole/MCL Contract**") to find investors who MCL could then introduce to Pardus. MCL agreed to pay commission to Mr Hoole for introducing these investors. MCL agreed to pay significantly less to Mr Hoole than they received from Pardus; MCL thus anticipated making a significant profit on the introduction.

7. Mr Hoole says that, in breach of contract, MCL has not paid him some £800,000 commission that it should have paid. He says that this is because the other defendants unlawfully caused MCL to breach its contract with him.

8. MCL says that it does not owe Mr Hoole any money under the contract because it agreed with him a full and final settlement of all his claims for commission under the Hoole/MCL Contract in return for a payment of £65,000, which it paid. Mr Hoole denies there was any such agreement.

9. The other defendants say that even if MCL is in breach of its contract with MCL then they are not liable to Mr Hoole for that.

10. The defendants were unrepresented at trial. They had been legally represented throughout the pre-action correspondence, during the proceedings and until October 2023 (in the case of Mr Bryce and the Pardus Companies) and December 2023 (in the case of Mr Bold). At various points the defendants also had a significant degree of common legal representation, notwithstanding their differing interests.

11. The defendants often made statements when cross examining witnesses that were submissions. They also gave what seemed like witness evidence when making their submissions. I wanted to ensure that they had full opportunity to put their case and so allowed them as much leeway as was reasonable on this. By the conclusion of the trial I had as a clear an understanding as possible of their evidence and their submissions.

12. There have been a number of very unsatisfactory matters in the proceedings for this case. These include:

    i) at least three of the defendants creating fake documents;

    ii) some of the defendants signing disclosure statements which they knew listed those fake documents;

    iii) the court being misled by, or on behalf of, at least one defendant in order to try and delay the trial;

    iv) the defendants providing fundamentally different explanations of why they had no liability on different occasions in a way that (a) significantly and unnecessarily expanded the list of issues before the court and (b) was completely inconsistent with the overriding objective;

v) the defendants apparently failing to comply with rules on disclosure including by late disclosure of relevant documents, inappropriate redaction of material information and failing by trial fully to disclose all relevant material; and

vi) failures by the defendants to comply with other court orders and rules.

13. The majority of these matters will impact on decisions to be made at the hearing of consequential matters. I will address them in more detail at that hearing. The fake documents were, however, directly relevant to my determination of the issues in this case. I have set out more detail about those fake documents in the section on evidence below.

Summary of evidence

Witnesses

14. The court heard evidence from five witnesses. Their detailed evidence is set out later in this judgment. My overview of their evidence is as follows.

Mr Hoole (claimant)

15. Mr Hoole's evidence was straightforward, not least because many of the factual disputes in this case related to conversations or events to which he was not party or where he was not present. There were, however, several key matters where the evidence of Mr Hoole and others was different. I deal with my assessment of that in detail below.

Mr Bold (second defendant/director of MCL)

16. My assessment was that Mr Bold was as careful as he could be not to lie under oath; he was aware of the consequences of a possible charge of perjury. He often said he was unable to remember things where the answer would have (a) damaged his case if his answer had been truthful and (b) would probably have been shown to be untrue if he lied. I also formed the view that Mr Bold would not answer questions if a truthful answer would have implicated Mr Bryce. Mr Bryce/Pardus had agreed to pay money in the future to Mr Bold which Mr Bold perhaps was concerned would not be paid. Mr Bold was also well aware of the litigation Mr Bryce had brought against Mr Gabriel seeking returns of large amounts of money said to be "owed" to Pardus after Mr Gabriel turned against Mr Bryce.

Mr Gabriel (third defendant/director of MCL)

17. Mr Gabriel has settled the claim by Mr Hoole against him. His witness statement was given prior to that settlement. His witness evidence at trial differed to a degree from what he said, or did not say, in his witness statement. His evidence at trial seemed generally to be consistent with the contemporaneous documents. He also acknowledged matters that did not show him in a favourable light. He accepted, for example, that he personally was a key driving force in wrongly causing MCL not to pay Mr Hoole any more money.

18. Mr Gabriel was being sued by Mr Bryce and/or the Pardus Companies. This related to the basis on which Mr Gabriel had left Pardus. Mr Bryce made allegations at various

points about Mr Gabriel's behaviour when at Pardus. Mr Gabriel said that Mr Bryce was making up the allegations in order to get money back from, and exercise leverage over, Mr Gabriel. I bore in mind the clear animosity between Mr Gabriel and Mr Bryce when assessing their evidence.

Mr Bryce (fourth defendant/director of fifth to seventh defendants)

19. Mr Bryce spoke quickly. When he was in full flow he was hard to stop, whether that was to clarify what he was saying or to bring him back to the relevant question. This was probably more difficult than usual as he was giving evidence via videolink. He did not react well when he was challenged and became quite confrontational. I found his evidence problematic. It often directly contradicted evidence he had given in his witness statement, or the position in his pleaded defence, or what he had said just moments before in his evidence. Ultimately, he seemed to me to be quite happy to say whatever suited him at a particular time. He did not seem concerned if he said something completely different later.

Mr Courtney-Cook (witness)

20. Mr Courtney-Cook started work with Pardus in 2022 having been in sporadic contact with Mr Bryce since late 2018. His evidence was, in my judgment, largely straightforward and truthful. It was uncontroversial but did not go to the heart of the issues in this case. He mainly gave evidence that things might, or might not, have been discussed. He was largely unable to recall whether they actually were discussed or, if so, what the contents of the discussion were.

Documents

21. The court was provided with hundreds of pages of text and Whatsapp messages. Those were largely between Mr Bryce, Mr Gabriel and Mr Bold. The messages are direct evidence of what was, and what was not, being discussed at the relevant times.

22. The messages were full of comments that were explicitly racist, explicitly homophobic and explicitly misogynistic. The messages included pornography that the participants were sharing with each other. The language regularly contained swear words that many people would find extremely offensive.

23. Whilst the messages and language were often shocking, that was not in itself generally relevant to the matters in dispute. At certain points however, the language seemed to me to indicate the defendants' attitudes towards (a) other people with whom they were dealing and (b) the legal rights of those people.

24. There was little email evidence. Indeed, the defendants only disclosed some five emails that they said were relevant during the entirety of the period in question. Mr Bryce said that this was because they said that their business was discussed by Whatsapp or text, or by phone, or in the pub. Mr Bold contradicted this. He said there were only five emails because he no longer had access to the MCL email account, and that his Pardus emails had been on a laptop that was stolen.

25. Other documents that were relevant included correspondence from regulators, bond offering documents, bank statements and invoices.

Fake documents

26. By the time of the trial Mr Bold, Mr Gabriel and Mr Bryce each admitted that they had created false documentary evidence. These admissions were extracted from them slowly and painfully. It did not seem to me that even by the trial they understood, let alone accepted, the seriousness of what they had done.

27. I view the creation and presentation to the court of these fake documents by these defendants as extremely serious. Modern technology perhaps makes it easier to create false documents and a false evidential trail than it has been before. It is absolutely vital, however, to the functioning of the judicial system that parties (a) fully understand that they must present truthful evidence to the court and (b) actually present truthful evidence to the court.

The Fake Termination Letter

28. The first fake document that was created was a letter purporting to terminate the Pardus/MCL Contract (the "**Fake Termination Letter**"). It was created on 31 March 2020. It was fake because it was backdated to 1 March. Mr Hoole said it was backdated to cover up the fact that Mr Bryce, Mr Bold and Mr Gabriel were on 31 March 2020 concocting a story to avoid paying Mr Hoole commission he was due. The letter was also fake because it included a purported reason for terminating the Pardus/MCL Contract which the defendants now accept was not the real reason.

29. At 11.45am on 31 March 2020 Mr Bold sent the Fake Termination Letter by email to Mr Hoole. That letter was from Pardus Property (on notepaper headed "*[Pardus] Capital wealth management*"), was addressed to MCL and was dated 1 March 2020. The letter stated:

> "*Please take this letter as formal termination of [the Pardus/MCL Contract] in regards to all matters related to Pardus with immediate effect.*
>
> *Since the decision to list the bonds on the Deutsche Boerse, for the benefit of the majority of your clients, the current commission structure is now untenable given the huge increase in costs associated with being a listed product.*
>
> *Please direct all existing and new clients to [Pardus Wealth] who will re-negotiate and deal directly with all agents*".

30. The defendants represented that this letter was genuine for a considerable time. On 29 March 2021, for example, Mr Bryce signed a letter from Pardus Capital to Mr. Hoole's solicitors on behalf of itself and the fourth to seventh defendants. The letter said:

> "*The sole agreement between Pardus Property Limited and [MCL] dated 26 February 2019 was validly terminated on 1 March 2021*."

31. Pardus and MCL changed their position entirely in their defences in July 2022. They said that the Fake Termination Letter was not a genuine record of the termination of the Pardus/MCL Contract. They said that the Pardus/MCL Contract had not been terminated in March 2020 at all. They claimed instead that the purpose of the letter had been to "*save face*" in relation to a termination that allegedly happened in January 2020.

32. They did not, however, admit they had created the letter on 31 March 2020 and backdated it; they still said it was genuinely written on 1 March 2020. Mr Bold was still claiming on 22 December 2023 in his witness statement that the letter was a genuine "*formal letter of termination of [MCL's] agreement with [Pardus*]" and had been issued on 1 March 2020.

33. It was only when the full texts and messages between the defendants were disclosed in very late 2023 that it became clear that the letter had been backdated. The relevant texts between Mr Bryce, Mr Bold and Mr Gabriel were as follows:

> "*Mr Bryce [31/3/20 - 08.48.18]: got a text message from chris hoole who wants to talk*
>
> *Mr Bryce [31/3/20 – 08:55:31]: I'll do that letter this morning mike*
>
> *Mr Bold [31/3/20 – 08:57:45]: ok [thumbs up emoji]*
>
> *Mr Bold [31/2/20 – 10:14:01]: Got the letter thanks [thumbs up emoji]*"

34. Mr Bryce initially continued to maintain at trial that the Fake Termination Letter was written to "save face". He said that it was necessary to avoid further threats from Mr Hoole. The fundamental flaw in Mr Bryce's explanation was exposed in cross examination. Mr Bryce admitted he had written the Fake Termination Letter before he had allegedly received the threats from Mr Hoole. He clearly, therefore, did not write it to "save face" in relation to those threats. Despite this, and the text evidence above, the most Mr Bryce would accept in cross examination was "*Maybe I have got the timeline wrong. I don't know. For that I am sorry. So if it's wrong, it's wrong*". Any contrition Mr Bryce was feeling does not seem to have lasted long, however, because Mr Bryce then almost immediately said "*But that's how I saw it and that's how I played it* ".

35. Eventually in cross examination Mr Bryce accepted "*well, alright so I backdated it to 1 March.".* He still failed to accept the importance of this, asserting that *"It's still well after the event. It doesn't make any difference*".

The Fake Invoices

36. MCL admitted at trial that they had also created fake invoices (the "**Fake Invoices**"). This was to try and cover up how much MCL had been paid by Pardus in January 2020 for investors introduced by Mr Hoole.

37. MCL had sent real invoices to Pardus in January 2020. Pardus had paid those invoices. MCL subsequently argued, however, that it only had to pay Mr Hoole if it had been paid by Pardus. Independent auditors were therefore appointed in late 2020 to calculate how much MCL had been paid by Pardus. MCL then created fake invoices to mislead those auditors about the true amount.

38. Mr Bold admitted that fake invoices had been created. He said at trial that "*It cannot be denied that the action of tampering with …invoices is extremely improper and MCL concedes that"*. Mr Bold seemed to accept that he had been involved in creating them. He would not, however, say who else had been involved. He said in evidence that "*I am not confirming or denying that anybody was involved*".

39. Mr Bryce denied being involved in the creation of the fake invoices. There were, however, two key pieces of evidence that undermined Mr Bryce's denial.

40. The first piece of evidence is the following text exchange. It dates from February 2021. It was in the period when the auditors were gathering evidence to calculate how much MCL had been paid.

> "*[24/02/2021, 14:08:22] Greg Bryce: haven't you got an invoice for me to settle regards hoole?*
> *[24/02/2021, 14:48:25] Mike Bold: Greg what's your address again* 😂😂
> *[24/02/2021, 14:58:38] Greg Bryce: home address ?*
> *[25/02/2021, 08:35:30] Greg Bryce: love this*
> *[25/02/2021, 08:46:08] Mike Bold:* 😂😂"

41. There was no real invoice to Mr Hoole, MCL or Pardus dated or settled around February 2021; the last invoices and payment had been in January 2020. In his witness evidence Mr Bryce was unable to provide any explanation of the text conversation above. He simply denied ever having received any letters or documents at his home address.

42. The second piece of evidence is the fact that the fake invoices were disclosed by Mr Bryce himself. Mr Bryce was unable to explain how he had possession of the fake invoices. It is hard to see how he came to have possession of fake invoices created in 2021, having paid the real ones in 2020, unless he had also been involved in 2021 in creating the fake invoices.

43. There was further evidence that Mr Bryce was involved in the creation of false invoices. In texts on 20 October 2020 he said:

> "*just got to fabricate a few invoices to sort a couple of bits out and i should be signing off on both companies next week for filing [*two fingers crossed emojis*]*"

It is not clear, however, whether that message related to these fake invoices or other fake invoices.

Interaction of documentary and witness evidence

44. In this case, the defendants created fake documents. They also admitted that they had not been truthful at various points in the correspondence and proceedings. This does not, however, mean that everything they said was untrue. It is perfectly possible for someone to tell the truth about one matter and to not tell the truth about another matter, whether deliberately, inadvertently or through the fallibility and bias of human memory. It was important to consider each factual question carefully to ascertain what had actually happened. In doing so I bore in mind, in particular, the observations of Males LJ in *Simetra Global Assets Ltd v Ikon Finance Ltd*:[1]

> "*In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's*

[1] [2019] EWCA Civ 1413 at paragraph 48

> *internal documents including emails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour while giving evidence*"

45. I also bore in mind the observations of Leggatt J (as he then was) in *Blue v Ashley* [2]

> "*65. It is rare in modern commercial litigation to encounter a claim….based on an agreement which is not only said to have been made purely by word of mouth but of which there is no contemporaneous documentary record of any kind. In the twenty-first century the prevalence of emails, text messages and other forms of electronic communication is such that most agreements or discussions which are of legal significance, even if not embodied in writing, leave some form of electronic footprint.*"

46. Ultimately, where the evidence from witnesses differed to other witness or documentary evidence, I considered carefully all the relevant evidence including the presence, and absence, of relevant documents and text/Whatsapp messages. I have set out below my conclusions on each of the disputed factual matters.

Issues

47. I now turn to the substance of the case. There are two core issues:

    i) Is MCL in breach of the Hoole/MCL Contract?

    ii) If so, are some or all of the other defendants liable to Mr Hoole for losses caused by the breach?

    I have set out the law and my findings of fact separately for each of these two questions in order to make this judgment easier to follow.

Is MCL in breach of the Hoole/MCL Contract?

Mr Hoole's case

48. Mr Hoole says this is a simple claim for the commission payable to him by MCL under the terms of the Hoole/MCL Contract.

MCL's defence

49. MCL said that it reached a binding agreement with Mr Hoole on 11 January 2020 in which he agreed to waive all future rights to commission of just under £800,000 in return for payment of £65,000 (the "**January 2020 Settlement Agreement**").

[2] [2017] EWHC 1928 (comm) paragraph 65

This was not the defence put forward by MCL in pre-action correspondence. On 12 May 2020 the solicitors acting for MCL wrote to Mr Hoole. There was no mention of the alleged January 2020 Settlement Agreement. The letter said, instead, that:

i) the Pardus / MCL Contract had been terminated by the Fake Termination Letter;

ii) because the Pardus/MCL Contract had been terminated by the Fake Termination Letter, MCL was entitled to terminate the Hoole/MCL agreement with immediate effect;

iii) MCL had paid all the commission it owed Mr Hoole for prior periods; and

iv) accordingly, MCL did not owe Mr Hoole any further money.

50. There was no explanation of when or how MCL said it had actually terminated the Hoole / MCL Contract or, indeed, whether it had actually terminated it.

51. In the period that followed, Mr Hoole's solicitors pointed out to MCL the following clause in the Hoole/MCL Contract :

> "*3.13 Termination of this agreement, howsoever arising, shall not affect the continuation in force of this clause 3 and [MCL's] obligation to pay Commission to [Mr Hoole] in accordance with it.*"

52. Mr Hoole's solicitors also pointed out that a listing of the Pardus Bond was specifically contemplated in the offering memorandum and so the purported reason in the Fake Termination Letter made no sense. They finally directed MCL to the clause in the Hoole/MCL Contract which required MCL to act in good faith towards Mr Hoole. They said MCL had breached this clause and therefore MCL was liable under the contract in any event.

53. MCL then changed its position. In its defence in July 2022 MCL said that the Hoole/MCL Contract had not been terminated by the Fake Termination Letter. It had in fact been terminated by the January 2020 Settlement Agreement. MCL maintained that general position until the conclusion of the trial. The exact people said to be involved in making the January 2020 Settlement Agreement and when it occurred were, however, not always consistent.

Legal test as to whether there was a binding agreement between Mr Hoole and MCL

54. The legal test as to whether a binding agreement had been reached was not disputed. The only dispute was a factual dispute as to whether Mr Hoole and MCL had on 11 January 2020 reached an agreement that if MCL paid Mr Hoole £65,000 then Mr Hoole had no further entitlement to commission.

Evidence that there was a January 2020 Settlement Agreement

55. The only evidence of the existence of the January 2020 Settlement Agreement came from Mr Bold. He gave different versions on behalf of MCL at different times of who agreed the settlement and when.

56. In its defence MCL said that at a meeting in early January Mr Gabriel and a representative of Mr Hoole (who they now identify as Mr Myers) agreed in principle that a full and final payment of £65,000 would be made to Mr Hoole. There was then a telephone call between Mr Hoole and Mr Gabriel in which the terms of that settlement were agreed. There was a further call on 11 January 2020 between Mr Bold and Mr Hoole in which Mr Hoole confirmed the settlement. Mr Bold maintained this position in his witness statement.

57. In his submissions Mr Bold presented events differently. He continued to say that Mr Gabriel had agreed with Mr Hoole that if MCL paid £65,000 then Mr Hoole would have no right to any more commission from MCL. Mr Bold now said that he had then called Mr Hoole who, in complete contrast to MCL's position in the defence, denied to Mr Bold that he had agreed a full and final settlement with Mr Gabriel.

58. Later in his submissions Mr Bold presented another version of this call. Mr Bold said that he had told Mr Hoole on the telephone that the agreement had already been terminated by an agreement between Mr Myers and Mr Gabriel at the meeting which preceded the call.

59. Mr Bold provided no real explanation as to why Mr Hoole wished in January 2020 to accept £65,000 in lieu of the full amount of commission of almost £800,000.

Evidence that there was no January 2020 Settlement Agreement

Mr Hoole's evidence

60. Mr Hoole denied having any call with Mr Bold or meeting or call with Mr Gabriel in which he agreed to accept £65,000 in full and final settlement of his commission claims for almost £800,000. He said that MCL paid him £65,000 in January 2020 as part of the commission that he was due from MCL. He said that he had not been paid as much as he expected that quarter because Organic had not put as much money into the Pardus Bond as everyone had expected. He said the £65,000 was not a full and final settlement of all his claims for that quarter (for which his contractual entitlement was £113,250), let alone a waiver of future commissions of some £800,000. He said he expected to be paid the balance of money he was due from MCL.

Mr Gabriel's evidence

61. Mr Gabriel gave some evidence in his witness statement on the topic. It was vague. It did not mention any specific meetings or calls. He said that he was not party to any conversations with Mr Hoole. In witness evidence he was asked briefly about this topic. His evidence was that he recalled discussing the £65,000 with Mr Myers at a meeting. He said that the reduced payment was related to the £120,000 that Organic had not invested as hoped. Mr Gabriel confirmed that Mr Hoole was not at the meeting. Mr Gabriel gave evidence that there was a further meeting scheduled with Mr Hoole, or possibly Mr Knight or Mr Myers, to discuss further fees payable to Mr Hoole. The meeting was cancelled when the pension regulator intervened in the Organic pension fund.

Invoice

62. Mr Hoole sent an invoice on 11 January 2020 to Mr Bold at MCL. The invoice does not refer to the fees being on "*full and final settlement*". It was "*In respect of commission due*". MCL did not send any email or other reply indicating that payment was in full and final settlement. The invoice was paid by MCL on 13 January 2020.

Text and Whatsapp evidence

63. On 8 February 2020 Mr Bryce texted:

> "*never did ask, chris knight and chris hoole did that get sorted the other day ?*"

Mr Gabriel replied :

> "*nope. Still going on*"

Mr Bold added:

> "*I will meet up with Hoole at some point to work something agreeable*"

64. Mr Hoole contacted Mr Bold around 31 March 2020 to ask for his next commission payment from MCL. Mr Bold did not reply saying that Mr Hoole had already agreed that MCL had paid him all the commission he was due. Instead, he suggested Mr Hoole talk to Mr Bryce.

65. Mr Hoole therefore contacted Mr Bryce by Whatsapp on 31 March 2020: "*Morning Greg…Chris Hoole here, I've been referred directly to by Mike from Meredith Charles regarding quarterly introducer payments would it be possible to speak with you today? and if so what time would be convenient*?"

This text exchange between Mr Bryce, Mr Bold and Mr Gabriel then took place:

> "[*31/3/20 – 09:06:43] Mike Bold: I spoke to [Mr Hoole] last night, will call you shortly….*
>
> *[31/3/20- 09:18:03] Greg Bryce: as far as I'm concerned, there is no conversation, the party line is that Dalrida have taken over total control of all Organic money and until that is sorted there will be no discussion/renegotiation or anything….*
>
> *[31/03/2020, 17:33:45] Greg Bryce: right chris hoole just tried ringing me again so i'm going to call him in the morning see what he wants (😅) then plead ignorant of everything except that Dalraida are in charge of all organic stuff and i take direction only from them regards organic clients and until that is dealt with there will be no third party payments of any description and on top of that due to the listing i cancelled MCs master agreement and all numbers are being re-negotiated.that about cover it ?*
> *[31/03/2020, 17:35:15] Greg Bryce: i really don't want to get drawn into a long he said she said saga, but i got a horrid feeling this is where this one ends up gents*
> *[31/03/2020, 17:46:47] Mike Bold: Yeah about right*
> *[31/03/2020, 17:54:49] Craig: Don't get involved*
> *Text to say everything with Dalriada*

[31/03/2020, 18:06:44] Craig: Hence avoid call
And just say MC no longer have agreement
With Listing numbers reduced dramatically
Otherwise you'll get drawn into call….

[31/03/2020, 20:04:38] Craig: Re organic
Just tell Hoole/knight dalriada have requested funds back
Therefore no commission payments are payable
Also in line with listing the commission figures available are relative to what you would expect with a listed product on a regulated exchange
[31/03/2020, 20:04:49] Craig: They wouldn't know any different
*[31/03/2020, 20:07:36] Greg Bryce: not telling the c*** anything blocked him* 😂
[31/03/2020, 20:12:44] Craig: Wise move…

[02/04/2020, 10:11:39] Greg Bryce: i've email hoole and blind copied the pair of you
[02/04/2020, 10:14:32] Craig: Seen it
[02/04/2020, 10:14:54] Craig: He's relentless…
*[02/04/2020, 10:15:25] Mike Bold : Well he can f*** off* 😊
*[02/04/2020, 10:24:11] Greg Bryce: i won't answer him again boys, he is defo someone we want rid of and no way can he take the clients away either so he proper f***ed* 😂😂*...*"

66. These were chats that did not include Mr Hoole. The participants are likely to have been open with each other about the position with Mr Hoole. None of the above messages, however, include any reference to the alleged January 2020 Settlement Agreement.

67. Mr Hoole emailed Mr Bold on 8 April 2020 to chase up payment of commission he said he was owed by MCL:

"*Hi Mike*
We are still outstanding the commission underpaid on Pardus payments for the last two quarters as you refuse to answer the phone to resolve this would you email me what your intentions are .
The amount outstanding is £130,000 and I refer you to Craig's email where he details the commercials of our agreement.
Not the subsequent agreement you emailed me which only dealt with clients I was to introduce to you .
We then need to discuss this months commission due which is £110000 . So in total £240000 is owed .
Ignoring me will only ensure further action is taken to elicit a response from you so please make contact .
Let's agree a settlement and you are free to move on with your role as director of Pardus.
Thanks

Chris Hoole"

68. Mr Bold replied on 10 April:

> "*Chris,*
> *I acknowledge receipt of your email. I will take the holiday period to reflect on its content and respond to you at the latest by the end of business this time next week.*
> *Mike*"

69. There is again no reference in the above emails to the alleged January 2020 Settlement Agreement.

Conclusion on alleged January 2020 Settlement Agreement

70. In my judgment, the inescapable conclusion from the evidence is that Mr Hoole and MCL did not agree on 11 January 2020 that Mr Hoole would waive his rights to almost £800,000 of commission if he was paid £65,000 that month. Mr Bold's claim that there was such an agreement is, in my view, a complete fabrication. He created this claim at some point between May 2020 and July 2022 when he realised that MCL's previous excuse for not paying Mr Hoole was not going to work.

71. In reaching this conclusion I place particular weight on the following evidence:

    i) the text sent by Mr Bold in February 2020 in which he explicitly recognised that the position with Mr Hoole was not settled;

    ii) the messages in March and April 2020 between Mr Bold, Mr Gabriel and Mr Bryce discussing how to avoid paying commission to Mr Hoole which make no mention of any existing settlement but refer instead to their belief that if the Pardus/MCL Contract was terminated then MCL did not have to pay Mr Hoole any more money;

    iii) the fact that the Fake Termination Letter was created on 31 March 2020 - it would not have been needed at all if the January 2020 Settlement Agreement had genuinely occurred;

    iv) Mr Bold's response on 10 April to Mr Hoole's email asking to settle matters and in which Mr Bold makes no mention of any existing settlement, merely saying he needs to "*reflect on its content*";

    v) the fact that in the period from 11 January 2020 to May 2020 there is not a single document or piece of electronic communication that exists that refers to any settlement agreement;

    vi) the fact that having taken legal advice, and presumably having considered the factual position, MCL did not refer to this alleged settlement in its pre-action response; and

    vii) the lack of any plausible explanation as to why Mr Hoole would accept £65,000 in lieu of commission of some £800,000 at a time when Pardus were unaware of the impending pension regulator intervention.

72. The witness evidence reinforced the conclusions I drew from the above documentary evidence. Mr Hoole and Mr Gabriel's evidence, which I found credible and consistent, confirmed that there was no agreement between MCL and Mr Hoole in January 2020.

This contrasted to Mr Bold's evidence which was inconsistent as to who had agreed the settlement and when.

Other possible defences

73. Mr Bold, on behalf of MCL, appeared to confirm in submissions that MCL's only defence was the January 2020 Settlement Agreement. There were several other possible defences mentioned at various points in the proceedings which I will, for the sake of completeness, address.

Termination of Pardus/MCL Contract

74. In its defence MCL pleaded that the Pardus/MCL Contract had been terminated in January 2020. MCL said at paragraph 35 (iii) that no further commission was therefore payable to Mr Hoole. This was followed by the statement, also in 35(iii) that the termination of the Pardus/MCL Contract was not "as a result of any wrongful act on the part of MCL". This completely contradicted the assertion that the Pardus/MCL Contract was terminated by Pardus for repudiatory breach. There was no explanation of the legal basis for MCL's assertion that termination of the Pardus/MCL Contract would mean that no commission was payable to Mr Hoole. MCL did not make any submissions in support of this at trial. As it was included in the original defence, I will, however, record my conclusions on it.

75. I have determined at paragraph 154 below that the Pardus/MCL Contract was not, as a matter of fact, terminated in January 2020. Even if it had been, clause 12.2 of the Hoole/MCL Contract requires MCL to give Mr Hoole written notice of termination of the Hoole/MCL Contract if MCL wishes to rely on termination of the underlying Pardus/MCL Contract. There was no evidence of any such written notice before the court.

76. Even if such written notice had been given then clause 3.13 of the Hoole/MCL Contract states:

> "*Termination of this agreement, howsoever arising, shall not affect the continuation in force of this clause 3 and [MCL's] obligation to pay Commission to [Mr Hoole] in accordance with it.*"

That clause and thus the obligation to continue to pay commission explicitly survives termination of the Hoole/MCL Contract.

Limitation of MCL's liability to amounts paid by Pardus to MCL

77. There was some reference to the Hoole/MCL Contract purporting to limit the obligation to make payment to Mr Hoole to amounts received by MCL from Pardus. As a matter of fact MCL received £111,068.10 in January 2020 from Pardus in relation to Organic. MCL only paid £65,000 to Mr Hoole. That left a shortfall of £46,068.10 payable to Mr Hoole. MCL also received payments from Pardus that were not payable to other sub-introducers of at least £109,441.00 (in June 2019) and £174,783.64 (in September 2019). There is some evidence of other payments from Pardus to MCL such as the £35,000 in January 2020 referred to in Whatsapp messages. The full details were not before the court but the total seems to have been at least £300,000 that was received by

MCL from Pardus which did not relate to other sub-introducers, and was not paid to Mr Hoole.

78. More fundamentally, clause 4.1 of the Hoole/MCL Contract requires MCL to act in good faith towards Mr Hoole. It has plainly not done so, for the reasons set out in the rest of this judgment but including:

    i) Its intentional failure to take any steps to enforce its contractual rights to commission from Pardus;

    ii) Its false claim that the Pardus/MCL Contract was terminated on 1 March 2020;

    iii) Its false claim that the Pardus/MCL Contract was terminated for repudiatory breach in January 2020; and

    iv) Its deliberate creation of fake invoices to cover up the amount of commission it should pay Mr Hoole.

79. Consequently, Mr Hoole has a claim for breach of MCL's obligation of good faith. The amount of that claim would equal any amount of commission that he has wrongfully not been paid by MCL. In other words, even if MCL's pleadings, properly construed, provide them a defence to Mr Hoole's primary claim for commission then Mr Hoole can in any event claim that amount for the breach by MCL of their obligation of good faith.

July 2019

80. I note for completeness that Mr Bold also said in his final submissions that he thought MCL had been entitled to terminate the Hoole/MCL Contract in July 2019. He went on to say that MCL had not terminated it as it was in MCL's financial interests to carry on with the contract. He said he was not relying on the right to terminate because they had not actually exercised that right.

Overall conclusion in relation to breach of Hoole/MCL Contract by MCL

81. None of the defences put forward by MCL have been successful. Mr Hoole has therefore succeeded in full in his claim against MCL for breach of contract. I deal with the consequences of that below.

Are some or all of the second, fourth, fifth, sixth and seventh defendants liable to Mr Hoole for losses caused by the breach of contract by MCL?

82. This question is more complex than the question of whether MCL is in breach of the Hoole/MCL Contract.

83. Mr Hoole says that Mr Bold, Mr Bryce and the Pardus Companies are liable to him for:

    i) conspiracy to cause Mr Hoole loss by unlawful means;

    ii) procuring the breach by MCL of the Hoole/ MCL Contract; and

iii) Unlawful interference with the contractual rights of MCL thereby causing damage to Mr Hoole's rights under the Hoole/MCL Contract.

84. Mr Hoole need only establish that a particular defendant is liable to him for one of these torts, which were all pleaded in the alternative.

85. The following other legal issues arose:

i) the principle in *Said v Butt*[3]**;** namely**,** the circumstances in which a director can be liable for inducing a breach of contract by the company of which he is a director; and

ii) contractual requirements in relation to repudiatory breach.

86. These claims were set out in the Particulars of Claim, at which point all the defendants were legally represented. By the time of the trial they had all ceased to be legally represented. Mr Russell, for the claimant, was in my judgment very fair in making sure that the court had before it all relevant legal authorities and principles.

87. Each of the defendants had a different role in the case. The claim and defences used the phrase "joint venture" at various times. That phrase did not really assist in the legal analysis. It was instead necessary to consider the behaviour of each of the parties at the relevant times in relation to the specific tests for each of the separate torts that were alleged.

Defences

The initial defence

88. As set out above, MCL changed its defence during the proceedings to the breach of contract claim by Mr Hoole. The other defendants did the same in relation to the claims against them.

89. In pre-action correspondence the defendants asserted that the Pardus/MCL Contract had been validly terminated by the Fake Termination Letter. They said that Pardus and the other defendants could therefore not be liable to Mr Hoole as all Pardus had done was lawfully exercise its contractual rights.

90. On 29 March 2021 Pardus Capital maintained this line of defence. It wrote to Mr Hoole's solicitors, explicitly on behalf of itself and the fourth to seventh defendants. Mr Bryce signed the letter. The letter said:

"The sole agreement between Pardus Property Limited and [MCL] dated 26 February 2019 was validly terminated on 1 March 2021"

In the period after this letter and before the defence, Mr Hoole's solicitors wrote to the defendants explaining why for the reasons set out above (a) that explanation did not provide any defence to MCL and (b) the other defendants were liable to Mr Hoole for breach by MCL of its obligations to Mr Hoole.

[3] [1920] 3 KB 497

The defence in the pleadings

91. In July 2022 the fourth to seventh defendants changed their position. In their joint defence they now asserted that:

    i) Mr Bryce had on behalf of Pardus Property terminated the Pardus/MCL Contract for repudiatory breach by MCL on or about 30 January 2020; and

    ii) MCL agreed that Pardus Property was entitled to terminate the Pardus/MCL Contract and accepted the termination by Pardus Property at that time.

    They went on to say in their defences, in essence, that because the Pardus/MCL Contract had been validly terminated (a) there could be no breach of contract by MCL of the Hoole/MCL Contract and (b) in any event any breach was between MCL and Mr Hoole and had nothing to do with them.

    They asserted that this termination for repudiatory breach was because the investments in the Pardus Bond by Organic had been invested via an Organic company rather by the Organic pension scheme. That had, they said, been in breach of the scheme rules and/or a breach of the trustee duties (the "**wrongful investment**"). They said that Mr Hoole had orchestrated and/or caused that wrongful investment. Pardus was, they said, entitled because of the wrongful investment to terminate the Pardus/MCL Contract pursuant to clause 5.8 of the Pardus / MCL Contract. The defence went on to say that "*[Mr Bryce believed the] wrongful investment in the Bond …was the fault of Messrs Hoole and Knight and not Messrs Bond and Gabriel*".

92. The defence further asserted that even if Pardus had not been entitled to terminate the Pardus/MCL Contract, Mr Bryce honestly believed at that time that he was entitled to do so.

93. The defendants still claimed that the Fake Termination Letter had been sent on 1 March 2020.

94. All the defendants denied:

    i) being involved in a joint venture;

    ii) being involved in an agreement to change the Bond introducer structure in order to benefit others at the expense of Mr Hoole; and

    iii) withholding details of their relationship with each other.

95. Mr Bold in his capacity as second defendant made similar arguments in his defence. He referred to the Pardus/MCL Contract being terminated by Mr Bryce because "*the intervention of the Pensions Regulator was damaging to the reputation of the Bond*".

The "Myers defence"

96. Shortly before the trial the second and fourth to seventh defendants attempted to raise a different defence. They made no application, however, to amend their pleaded defence. They seemed to argue that they had no liability to Mr Hoole because Mr Myers had been involved in the Organic Pension scheme. This had somehow caused Pardus

to terminate the Pardus/MCL Contract for repudiatory breach. This purported defence was not in their pleadings; Mr Myers was not even named in any defence. This purported reason was not clearly put forward by any defendant until late 2023.

Evidence

97. The following section sets out the key evidence that relates to the claim against the second, and fourth to seventh defendants. Some of it is relevant background and some of it is necessary to determine the claim. I have grouped it by subject area and in chronological order where possible.

The Bond

98. In order to understand the behaviour of the parties in January 2020 it is useful to set out some background information about the Pardus Bond.

99. Pardus set out the terms available to those investors in a Bond Offering Memorandum dated 2 October 2018 (the "**Bond OM**"). That document was not issued by an authorised person. The Pardus Bond was described as "*unregulated*" and "*only suitable for exempt persons*" including sophisticated investors and high net worth individuals. Mr Bryce explained in evidence about why he did not want the bond to be regulated *"I'm talking about reputationally...having letters from the FCA and stuff like that. I did not want that. I did not regulate my bond for that very, very reason I wanted to stay outside of that environment*."

100. The Bond OM promised potential investors a fixed rate of return of 1% per month.

101. The Bond OM said that "[*Pardus Capital] has purchased bond offering insurance*" for investors for the "*protection of their investment*". It was one of the key protections listed. Pardus never, however, paid the premium for the Insurance Policy. Pardus was therefore self-insured, or perhaps more accurately, uninsured. There is no evidence before the court that it ever told Organic or its other existing investors that their investment was uninsured.

Finding investors and commission payments

102. In February 2019 Mr Bold and Mr Gabriel told Mr Hoole they had an exclusive business opportunity. It involved investing in the Pardus Bond. They described the Bond to him.

103. Mr Knight was one of the trustees of the Organic Pension scheme. On 6 March 2019 Mr Hoole arranged for Mr Bold and Mr Gabriel to meet Mr Knight to discuss Organic investing in the Pardus Bond. On 7 March 2019 Mr Hoole and MCL entered into the sub-introducer contract. Mr Hoole agreed to find investors and MCL agreed to pay a fee to Mr Hoole for investors he introduced. The only investor who Mr Hoole seems to have introduced was Organic.

104. Pardus agreed to pay commission to MCL for finding investors. The commission rate was the staggeringly high rate of 20% per month on money invested by people introduced by MCL.

105. The fee commission payable by MCL to Mr Hoole was 5% per month. Whilst eye watering, this was of course much lower than the fee payable by Pardus to MCL.

106. The Bond Offering Document referred to a fee of 2% being deducted to pay for expenses/administration. It did not include any reference to the payment of the fee of 20% per month to introducers which would reduce the amount available to the Bond company for investment.

Organic investments in the Pardus Bond

107. From 1 June 2019 onwards Organic money started to be invested into the Pardus Bond. They invested £170,000 on 1 June 2019, £435,000 on 1 August 2019 and £150,000 on 1 September 2019. That is a total investment of £755,000. Pardus and MCL thought that Organic should have invested more. Mr Bryce described this as there being a "*missing investment*" of £120,000, although there was no evidence that Organic ever contractually agreed to invest more than they did; at best, there may have been some expectation that they would.

108. After Dalriada were appointed as trustees of the Organic Pension scheme they attempted to get the money back from Pardus that had been invested in the Bond. On 8 March 2022, some two years after Dalriada were appointed, Pardus finally returned £781,903.50 to Organic Pensions.

Pardus funds go "missing"

109. It seems that by October 2019 Pardus had received at least £1,000,000 from investors. By January 2020 this money was apparently no longer under the control of Pardus. Mr Bryce provided various explanations of this.

110. In his submission Mr Bryce said that "*We tried to [use those funds to make an investment]. That investment failed. We lost £1m. We then tried another investment at 1.5m euros. That failed also*". The clear implication was that Pardus had attempted to make trades but those trades had resulted in a loss of all funds. There was no mention of fraud or the money being stolen.

111. When giving evidence Mr Bryce said something different. He said that the "*[£1,000,000] was supposed to trade, but it never did trade. It got stolen by an intermediary*".

112. Immediately afterwards Mr Bryce went on to say that the money was "*recovered in a normal trading cycle…if you have investments the markets go up and down. They will come less, they will go more. That's simple economics I am afraid*."

113. He was cross examined on this explanation that the money had been lost in markets going down before being recovered in a "*normal trading cycle*" which completely contradicted his assertion that it had been stolen:

> "*Q: The markets go up and down...but you have just told us this money was stolen…*
>
> *A: It was stolen yes because that was the nature of that investment. We were defrauded by someone in the middle. Both…one of them, at least, we took to court*".

114. When Mr Bryce was asked the simple question as to whether Pardus Capital actually in October 2019 had the money Mr Bryce ventured that it "*could have been in an overseas bank account*". He did not provide any further insight as to where the money actually was, or what bank account that might be. There was nothing before the court to explain what had actually happened to the money invested. Mr Bryce merely asserted that by January 2020 it was "*missing*" and did not provide a coherent explanation as to where it had gone.

Commission payments to Mr Hoole

115. MCL paid Mr Hoole his first commission payment in the summer of 2019. That was a full payment of the amount due. In October 2019 the position changed. MCL and Pardus said that because of the "*missing investment*" of £120,000 they were unwilling to pay Mr Hoole all the commission that he said he was due for the preceding quarter. They did not pay him the full amount due.

116. Around this time Pardus seemed to be having general cash flow issues that were causing problems paying commissions.

117. The next commission payment due was in January 2020. Mr Hoole was paid £65,000 of the commission he was due. This is the payment MCL claimed had been in full and final settlement of all Mr Hoole's rights to commission. This is the last commission payment MCL made to Mr Hoole.

The pension regulator and Dalriada

118. In December 2019 the pensions regulator became interested in the Organic Pension scheme and the investments it had made. It is unclear who knew about this, and when.

119. Mr Bryce said at various points in the case that because the Bond was unregulated he could not accept pension money into it. In his defence, on the other hand, he asserted that he was expecting money from Organic to be invested "*by [their] new pension fund*". Mr Bryce made no attempt to explain how his defence that he expected the investment to be from a pension fund was consistent with his position that regulated pension money could not be invested into the Pardus Bond.

120. On 27 January 2020 Dalriada wrote to Mr Bryce to inform him that (a) Mr Knight had been removed as a trustee of Organic Pensions by the Pensions Regulator (b) they had replaced him as trustee and (c) they were suspending investments into the Pardus Bond. They used Mr Bold's email address at his previous employers, Binary Capital. Binary Capital forwarded the email to Mr Bryce the next day. Mr Bryce emailed Dalriada to say that he no longer worked at Binary and all communication had to go to Pardus. On 10 February Dalriada wrote to Pardus. They directed Pardus not to use any funds provided by Organic Pensions.

The events immediately following the Dalriada letter of 27 January 2020

121. Mr Bryce, Mr Bold and Mr Gabriel had different recollections of what then happened. They also gave different versions at different stages of the proceedings. It was hard to piece together what they were claiming. Ultimately, the key elements became clear enough.

122. On 28 January Mr Bryce sent an email to Mr Bold and Mr Gabriel. Mr Hoole questioned whether the email was genuine or whether it was created later when the purported repudiatory breach in January 2020 was first mentioned, but I am prepared to accept for current purposes that the email was genuine.

123. The email said:

> "*gents,*
> *do you want to find out what the f*** has gone on with those organic c***s. I told you that would blow up somehow as we have pension f***ing regulator looking at it!!!!*
> *…….*
> *speak to that mug Knight or that Celine bitch* [the current pension trustees] *and find out please.*
>
> *we need this like a hole in the f***ing head*"

124. Mr Bold, Mr Bryce and Mr Gabriel all now claim that around 30 January 2020, either on the phone or in a meeting:

i) Mr Bryce asserted on behalf of Pardus Property that MCL was in repudiatory breach of the Pardus/MCL Contract;

ii) MCL acknowledged that it was in such breach; and

iii) the Pardus/MCL Contract agreement therefore terminated.

125. There is no documentary, text or Whatsapp evidence from January 2020 that any of these events occurred. There is no written notice or letter from any Pardus company. There is no written acknowledgement from MCL. As far as I can see, there is nothing in writing that even refers to a purported termination for repudiatory breach before the defences were filed in July 2022.

126. There were however certainly discussions between Mr Bold, Mr Bryce and Mr Gabriel in late January 2020 when the defendants became aware that the pensions regulator was investigating the investment by Organic into the Pardus Bond.

127. Mr Bryce was asked in cross examination about what happened:

> "*I think I spoke to Mike and Craig. They were always together so I probably spoke to them together. I don't recall a lot of the conversation as I was so angry but I terminated the arrangement with Merdith Charles there and then*"

He then said that he actually terminated the Pardus/MCL Contract in both a telephone call and a physical meeting, although he couldn't actually recall, but he was certain he was angry.

> "*Q: Do you think you would have been as angry at that stage?*
>
> *A: Of course, I was lied to, by Chris Hoole, by Craig Gabriel, by Mike Bold*"

This answer is somewhat odd. Mr Bryce said in his witness statement that he did not even know in January 2020 who Mr Hoole was. He said "*I may have heard the name before but it meant no more to me than Fred Bloggs or Jane Doe…I never spoke to him. I never met him.*"

When Mr Bryce was asked what the real reason was for terminating the Pardus/MCL Contract he said "*Well, we know the reasons – Mike Bold and Craig Gabriel lied to me about the involvement of Andy Myers with Chris Hoole. …so they were terminated on reputational damage based on that. It's clear….*"

In his defence Mr Bryce did not say that Mr Gabriel or Mr Bold lied to him. He said that he did not hold Mr Bold or Mr Gabriel "*morally responsible*".

128. Mr Bryce could not explain clearly what he said in order to try and terminate the contract for repudiatory breach:

> "*Q: where you terminated MCL with [Mr Bold] and [Mr Gabriel] to be completely clear, you didn't refer to clause 5.6 of the [Pardus/MCL Contract] did you?*
>
> *A: Absolutely not."*
>
> "*Q: you don't recall specifically talking about [Hoole, Knight and Myers]*
>
> *A: Well, no I don't but…*"

129. Mr Bryce gave evidence about his state of mind about the impact on Mr Hoole if the Pardus/MCL Contract was terminated.

> "*Q: would you have specifically said that Mr Hoole is not to get anything?*
>
> *A: Well, I'm not saying if I'd have that but if MCL weren't going to get anything Chris Hoole wasn't going to get anything,was he?....*
>
> *Q: Was that your recollection and belief at the time that if MCL didn't get anything Mr Hoole didn't get anything?*
>
> *A: Well of course, none of them would*"

130. Mr Bold gave little specific details on the conversation with Mr Bryce in which Pardus alleged that MCL were in repudiatory breach and in which MCL allegedly accepted their breach. The only explanation appeared to be reputational damage to Pardus from Organic investing in their bond. There was no explanation of how this could have led to lawful termination of the contract.

131. Similarly. Mr Gabriel gave little detailed evidence of the alleged termination for repudiatory breach. In fact, in his witness statement made before he settled the claim against him he said "*I believe [the refusal to pay] to be a clear breach of the agreement by Pardus Property*"; in other words, he thought the breach was by Pardus and not MCL.

132. Mr Bryce and Mr Gabriel's concerns about the pensions regulator investigating the position, however, continued into March 2020:

"*Craig Gabriel: Greg don't forget to address pension regulator re change of name on documents. Last thing we need is them f***ers coming in*

Craig Gabriel: Re organic 🖋

Greg Bryce: you mean that administrator bitch ??

Craig Gabriel: Yes"

The proposals for Mr Bold and Mr Gabriel to join Pardus

133. There were discussions between Mr Bold, Mr Gabriel and Mr Bryce over a long period of time about Mr Bold and Mr Gabriel joining Pardus. They started long before the pensions regulator became involved. The precise date they started is unclear but by late December 2019 the discussions were well advanced.

134. In December 2019 Mr Bold, Mr Gabriel and Mr Bryce involved terminating the Pardus/MCL Contract in exchange for Mr Bold and Mr Gabriel receiving 40% of Pardus Wealth. Mr Bold said this was because the current arrangement between Pardus and MCL was "*unsustainable*". Mr Bold says that he asked Mr Bryce about the sub-introducers with whom MCL had contracted. Mr Bryce told him that "*they would come to a mutual agreement with them*".

135. Mr Bryce texted Mr Gabriel on 3 December 2019:

"*When u say "our cases" are you talking MC or Pardus coz u pardus now so every case is partially yours*".

On 13 December 2019 this was followed by Mr Bryce texting:

"*maybe a good time to start using pardus emails*".

On 4 February 2020 Mr Bryce texted Mr Gabriel to say:

"*so effectively i'm the CIO, craig becomes head of sales, mike COO, will cover investor/platform relationships etc and Richard Platform and Investment Complianc [04/02/2020, 15:58:29] Greg Bryce: trading side*"

Mr Bryce went on to refer to MCL and whether MCL would continue to deal with sub-introducers:

"*how do you want to address the MC relationship to keep IBs away from us, although my feeling is that it comes in-house to plc, to simplify the moving parts*"

136. On 6 February 2020 Mr Bryce and Mr Bold exchanged further What'sapp messages:

"*[06/02/2020, 13:52:24] Greg Bryce: last question, do you want to be individuals or Meredith Charles in terms of paperwork as soon as i get sorted with chris, i'd prefer individuals i think but i'll ask chris as well what is best*
[06/02/2020, 13:55:50] Greg Bryce: this will all be in place this month of course because of the listing
[06/02/2020, 14:37:31] Mike [Bold]: We spoke also and would prefer individuals

[06/02/2020, 14:38:59] Greg Bryce: good"

This conversation continued the next day:

"*[07/02/2020, 10:31:12] Greg Bryce: ok so my plan is as follows…basically i will split wealth 60/40 as in 60 is mine CEO and 20each for you (COO) and craig (MD or whatever he wants) A shares and the 3 of us make up the board…*

[07/02/2020, 10:31:49] Greg Bryce: this works out at least 25% more to the both of you rather than the mc original deal plus the company upside on the whole entity

[07/02/2020, 10:33:17] Mike [Bold]: That's seems fair to me mate"

137. On 26 February 2020 Mr Bold and Mr Gabriel become directors of Pardus Capital.

138. In evidence Mr Bryce said:

"*As shown, the conversation had been ongoing for most of the year with Craig and Mike as to me bringing them into the company. That I eventually did bring them in on worse terms for them was a business opportunity I saw to reduce my cost base and improve the position of Pardus. Again, this is my role and duty as a director to further my company's interests. There is no crime in that.*"

139. Mr Bold said in his witness statement that "*in lieu of the [Pardus/MCL Contract] Mr Bryce proposed a shareholding in Pardus Wealth of 40% which could be split between Mr Gabriel and me*". In other words, MCL would lose its contractual rights and Mr Bold and Mr Gabriel would personally benefit from a shareholding in Pardus.

Mr Myers

140. Mr Bold and Mr Gabriel say that after the meeting with Mr Hoole in March 2019 when he introduced Organic they went to the pub with him. They all called Mr Bryce. There are two versions of this call. Everyone says the call was very short and was some 10 seconds or so. Mr Bold now says that this call was critical and that the only purpose of the call was for Mr Bryce to ask Mr Hoole whether Mr Myers was involved in the investment. Mr Hoole, on the other hand, said that he was briefly introduced to Mr Bryce as someone who had just introduced an investor to Pardus and it was purely a "say hello" call.

141. This is the only call in which Mr Hoole is alleged to have talked to Mr Bryce about Mr Myers. The first time Mr Bold and Mr Gabriel mentioned this call was in their witness statements in late 2023 although it was never clear how it assisted them legally. This is despite the involvement of Mr Myer apparently being a crucial factor in the events of January 2020 and now being central to their defence.

142. Mr Bryce said in his witness statement that:

"*I never spoke to [Mr Hoole]. I never met him*."

Mr Bryce was asked about the call in cross examination:

> "*Q: That's not in your defence is it, that telephone call?*
>
> *A: Well, no because actually I don't even remember it until he put it in Mike's statement that he put him on the phone*"

143. The call was supposed to be evidence that Mr Bryce knew nothing about Mr Myers being involved in the Organic Pensions before January 2020. The evidence shows, however, that Mr Bryce knew about it long before that in any event. Mr Bryce's own evidence was that it was "*always my gut feeling that Andy Myers was involved*".

144. This is backed up by contemporaneous messages. In October 2019 for example Mr Bryce sent the following message:

> "*this is final warning for andy myers and the rest…I don't give a f*** how much he got in, it's a two year bond and he had no call to get it out*".

This was around the time that Mr Bryce believed that Organic should have put another £120,000 into the Pardus Bond, and which Mr Bryce regarded as a missing investment.

Mr Bryce also confirmed in a text on 15 March 2020*:*

> "*[Andy Myers] is involved mate I know that 100% had it confirmed months ago* 😂😂😂🙈"

145. There was no explanation from any of the defendants as to why in the first and only conversation that Mr Hoole ever had with Mr Bryce the only question he asked was about Mr Myers, who Mr Bryce had no reason to suspect had anything to do with Mr Hoole.

146. In my judgment, the evidence shows that there was no telephone discussion between Mr Hoole and Mr Bryce in 2019 about Mr Myers.

The alleged repudiation of the Pardus/MCL Contract in January 2020

147. Mr Bryce and the Pardus Companies argued that the Pardus/MCL Contract had been lawfully terminated by Pardus Property following a repudiatory breach by MCL. They said that they therefore could not be liable to Mr Hoole for conspiracy to cause loss by unlawful means or for procuring a breach of contract. That would be correct if (a) the termination was lawful and (b) the termination by Pardus Property was the only action by Mr Bryce and Pardus that caused loss by unlawful means or procured a breach of contract. I will consider first if a lawful termination for repudiatory breach occurred.

148. There are in essence two requirements for a contract to be terminated for repudiatory breach. The first is for a contract breaker to "*clearly shown an intent to abandon and refuse to perform the contract*"[4] "*which a reasonable person in the position of the other, innocent, party would regard as clear and absolute*"[5]. That "*question is to be judged at the time of termination of the contract, having regard to all the circumstances*".[6]

[4] *Eminence Property Developments Ltd v Heaney* [2010] EWHC CA Civ. 1168 at paragraph 61
[5] *SK Shipping (S) Pte Ltd v Petroexport Ltd* [2009] EWHC 2974 (Comm) at 86
[6] *SK Shipping (S) Pte Ltd v Petroexport Ltd* [2009] EWHC 2974 (Comm) at 86

149. The second requirement is for the other party to accept that repudiatory breach. An unaccepted repudiation is a "*thing writ in water*". [7] The Pardus/MCL Contract required all notices to be given in writing.

150. In *SK Shipping* Flaux J went on to confirm that in his judgment the law also requires the innocent party to subjectively believe that the other party has evinced an intention not to perform the contract.[8]

151. The allegation by Pardus was that MCL had repudiated the Pardus/MCL Contract. The defence does not clearly explain what contractual obligation MCL refused to perform. The only allegations seem to be that (a) money already invested by Organic had been routed via a company rather than from the pension fund directly and (b) the pensions regulator having become involved in the investments by Organic into the Pardus Bond. There is no explanation of how this was a breach by MCL of the Pardus/MCL Contract. MCL's only function had been to introduce Organic to Pardus and it was Pardus who had responsibility for conducting due diligence and KYC checks on the sender of the funds. As far as I can see, at no point did MCL refuse to perform any of its future obligations. Indeed, it had already performed its obligations as it had introduced investors to Pardus.

152. If MCL had committed a repudiatory breach by refusing to perform a future obligation then Pardus would, under the Pardus/MCL Contract have had to give notice in writing to MCL that it intended to treat MCL's actions as a repudiatory breach. No such notice was ever given. The first time Pardus appears to have thought MCL had committed a breach that Pardus could treat as repudiatory was in July 2022.

153. In my judgment, the Pardus/MCL Contract was not terminated in January 2020 for repudiatory breach by MCL. The reasons are as follows:

    i) there is no evidence of a breach by MCL; the only pleaded case relates to the routing of money via an Organic company and there is no evidence that MCL were responsible for this or that it related to a future unperformed obligation;

    ii) there is no evidence that MCL indicated that it would not perform its obligations nor any pleaded case as to what those obligations were; and

    iii) there is no evidence that Pardus gave notice in writing to accept any such alleged repudiatory breach.

154. The final observation on this topic is that the Fake Termination Letter itself is clear evidence that on 31 March 2020 none of Mr Bryce, Mr Bold or Mr Gabriel believed that the Pardus/MCL Contract had been terminated for repudiatory breach in January 2020. If it had been, then they would not have needed to create the Fake Termination Letter.

155. There is a refence in reply 7.e to the RFI to the possibility of the defendants meaning fundamental breach, rather than repudiatory breach. This was in response to a request for MCL to clarify how the Pardus /MCL Contract was terminated orally [for

[7] Howard v Pickford Tool Co Ltd [1951] 1 KB 417 at page 421
[8] At paragraph 94

repudiatory breach] when the contract required written notice. The somewhat confusing response from the defendants' solicitors was:

> "*The breach of the [Pardus / MCL Contract] was a fundamental repudiatory breach going to the root of the agreement. The repudiatory breach was accepted by Pardus Property Limited. [MCL] was responsible for the repudiatory breach having introduced Mr Hoole, and unknown to them at the time, and contrary to the express agreement not to, his associate Mr Andrew Myers to the Bond. Liability for the breach under the [Pardus/MCL Contract] is accordingly that of [MCL]*."

156. Firstly, there is no express agreement anywhere in the documents before the court that requires any party not to introduce Mr Myers to anyone. Secondly, the involvement of Mr Myers was known to Mr Bryce (as evidenced by the October 2019 texts), Mr Bold and Mr Gabriel (as confirmed by their witness evidence) long before January 2020.

157. If this response was intended to refer to a breach of a fundamental term of the contract by MCL introducing Mr Myers then:

i) it is not properly pleaded;

ii) it is not supported by any evidence as to it being a term of the contract, let alone a fundamental term;

iii) it is shown by the evidence to be something known to all the defendants in any event; and

iv) no written notice of termination as required by the contract was ever served by Pardus.

158. There was therefore no lawful termination by Pardus of the Pardus/MCL Contract in January 2020.

159. There seems to me to have been, instead, a fundamental confusion in the mind of Mr Bryce between a decision that he no longer wanted Pardus to pay MCL and a legal right for Pardus not to pay MCL. The evidence is that it was Pardus that refused to comply with its contractual obligations. Mr Bryce, Mr Bold and Mr Gabriel all clearly had the impression that Pardus was not intending to make any further payments to MCL.

160. That might have entitled MCL to terminate the contract with Pardus. However it is not part of MCL's pleaded case that MCL terminated the Pardus/MCL Contract. Any such termination would, in any event, have not terminated MCL's existing rights to commission. It seems that MCL has not taken any steps to enforce its rights to such commission. Indeed, the precise state of the contractual arrangements between Pardus and MCL is not a matter on which this court is required to reach any findings, other than to conclude that there was no lawful termination by Pardus Property which protects Pardus Property, or any other defendant, from the claims by Mr Hoole.

Tortious liability for conspiracy to cause loss by unlawful means

Legal test

161. The key elements of this tort are set out in *Kuwait Oil Tanker Co SAK v Al Bader* [9], subsequently summarised in *Constantin Median AG v Ecclestone* by Newy J[10] and then by Arnold LJ in *The Racing Partnership and others v Sports Information Services Limited* [11], and Calver J in *ED & F Man*[12] . They are:

    i) a combination between the defendant and one or more others;

    ii) concerted action pursuant to the combination which is unlawful;

    iii) an intention to injure the claimant, which need not be the predominant purpose; and

    iv) damage to the claimant.

162. Combination in this context is described as follows:

> "*It is sufficient if two or more persons combine with a common intention or in other words they deliberately combine albeit tacitly to achieve a common end*"[13]

163. It is not necessary for the conspirators to all join the conspiracy at the same time:

> "*but…the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of.*"[14]

164. It is also not necessary for the parties to know that the "*means is unlawful.…in order for the tort of conspiring to injure by unlawful means to be established where the means is an infringement of a private right*".[15]

165. In *Bourgoin SA v Minister of Agriculture* [16]Oliver J said the following as regards the required intention, in a passage that was approved in *Kuwait Oil*:

> "*If an act is done deliberately and with knowledge of the consequences I do not think the actor can say that he did not "intend" the consequences or that the act was not aimed at the person who, it is known, will suffer them*"[17]

166. In *Meretz Investments NV v ACP Ltd* Arden LJ added the clarification that a person does not have the requisite intent if he "*believes he has a contractual right to do it as against the relevant person, notwithstanding the act would coincidentally cause that person detriment or loss*".[18]

The elements of the tort

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[9] [2000] 2 All ER (Comm) 271at [108]
[10] [2014] EWHC 387 (CH) at 321
[11] [2020] EWCA Civ 1300 at paragraph 105
[12] See footnote at 465 and 466
[13] *Kuwait Oil Tanker* at 111
[14] Kuwait Oil Tanker at 111
[15] The Racing Partnership at paragraph 144
[16] [1986] 1 QB 716 at page 777
[17] Paragraph 121
[18] [2008] 2 WLR at paragraph 127.

Combination

167. The evidence set out above clearly shows in my view that Mr Bryce and Mr Bold were acting in combination throughout the period in question. I do not need to decide when they started acting together but by mid December 2019 at the latest and most certainly by 30 January 2020 they were acting together in pursuit of a common goal. That goal was:

i) to renegotiate and reduce the commission payable to sub-introducers;

ii) to reduce the commission payable by Pardus;

iii) to stop MCL from receiving commission from Pardus so that sub-introducers could not recover money from MCL;

iv) to keep the Bond going with its current and future investors;

v) to distance Pardus from the pensions regulator and Organic investment scheme as much as possible; and

vi) for Mr Bold and Mr Gabriel to receive significant payment as employees from and / or equity in Pardus in return for Pardus having reduced obligations to MCL and (indirectly) sub-introducers.

Concerted action

168. The non-payment of its sub-introducers by MCL was an agreed plan between Mr Bold, Mr Gabriel and Mr Bryce. The non-payment of MCL by Pardus was part of that plan. Mr Bryce and Mr Bold executed that plan. This is an unlawful interference with the contractual rights of third parties being (a) MCL's rights to receive commission from Pardus and (b) Mr Hoole's right to receive commission from MCL.

Intention

169. There is a difference between motivation and intention. The motivation in January 2020 for both Mr Bold and Mr Bryce was personal enrichment. Mr Bold wished to enrich himself by taking equity and receiving money from Pardus. Mr Bryce wished to enrich himself by reducing the money that Pardus would pay to MCL and its sub-introducers. They had themselves described these payments as "*unsustainable*". The evidence shows that in January 2020 Pardus really did not want to pay, and was quite possibly unable to pay, the commissions it had previously agreed to pay. It had made a bad bargain and wanted to get out of it.

170. Mr Bold and Mr Bryce also were motivated by a desire, in my judgment, to minimise interaction with the pensions regulator. This was because:

i) Mr Bryce knew that some £1,000,000 that had been invested was either missing, or lost in a trade or stolen, or otherwise not available to Pardus;

ii) Mr Bryce knew that pension funds were not allowed to invest in the Pardus Bond;

iii) they both knew the pension regulator was looking at the investment by Organic Pensions, directly or indirectly, into the Pardus Bond; and

iv) they both knew that the Bond had been marketed to Organic and other investors with a representation that it was insured, when it was not.

171. Their intention was to achieve these aims by causing MCL to breach its contract with Mr Hoole. Mr Bryce also intended to cause Pardus Property not to pay MCL under the Pardus / MCL Contract. Mr Bold intended that MCL would waiver, or certainly not enforce, its rights against Pardus. Mr Bold and Mr Bryce therefore both intended that Pardus should breach its contractual obligations to pay commission to MCL. They both intended that MCL would breach its obligations to sub-introducers, including Mr Hoole.

172. Mr Bold specifically knew that MCL would breach its obligations to Mr Hoole. I am also satisfied that Mr Bryce knew that MCL would breach its obligations to Mr Hoole. Mr Bryce gave evidence that he had not spoken to Mr Hoole and didn't know who he was in January 2020. The evidence shows, however, that Mr Bryce knew that:

i) MCL had sub-introducers to whom it paid commission received from Pardus;

ii) The sub-introducers included the person who introduced Organic Pensions;

iii) Mr Bryce had spoken to Mr Hoole in March 2019 when Organic were first introduced; and

iv) Mr Bryce had organised payment of invoices to MCL that named Mr Hoole as an introducer.

It seems to me that Mr Bryce's knowledge that MCL was going to breach its obligations to sub-introducers generally (who Mr Bryce knew included Mr Hoole even if Mr Bryce did not know his name) would be enough to satisfy the requirements. When added to the specific knowledge of Mr Bryce regarding Mr Hoole then that is plainly sufficient, in my judgment, for Mr Bryce to know as a matter of law that MCL would breach its contract with Mr Hoole.

Damage to Mr Hoole

173. There is damage to Mr Hoole – he has not been paid money that he is due under the Hoole/MCL Contract.

Mr Bryce's belief that Pardus was entitled to terminate the Pardus/MCL Contract

174. Mr Bryce asserted in his defence that he believed he had the right lawfully to terminate the Pardus/MCL Contract. Mr Bryce could not explain on what basis he thought he could lawfully terminate the contract. The main bases he raised, namely Mr Myers and / or the investment being routed via Organic Insurance, provide no justification. The evidence is that Mr Bryce did not even consider these explanations until long after the event, so they cannot have been the basis of any belief in January 2020. I have also already found as a matter of fact that there was no purported termination for repudiatory breach in January 2020. On 31 March 2020, for example, Mr Bryce still believed the

contract was in existence because he created the Fake Termination Letter. I do not consider that Mr Bryce had any genuine belief in January 2020 that Pardus was entitled to terminate the contract; he merely had a desire that Pardus should not comply with its contractual obligations. He does not satisfy the requirements for belief in *Meretz Investments.*

Conclusion in relation to Mr Bold and Mr Bryce

175. It follows that Mr Hoole has proved all the requisite elements of the tort of conspiracy to cause loss by unlawful means against Mr Bold and Mr Bryce.

The Pardus Companies

176. It is now necessary to consider the extent to which the three Pardus Companies were party to the conspiracy. In order to do this it is necessary to consider the actions of Mr Bryce as an individual, and whether in any of those actions he was acting in his capacity as director of the companies.

177. Mr Bryce was asked in cross examination about who he was acting for when he was involved in causing MCL to breach its contracts.

> "Q: *at the meeting where you terminated, that you said that corporate entities controlled by you were willing continue to work with Messrs Bold and Gabriel…and both [Pardus Capital] and [Pardus Wealth] paid money to Mr Bold and Mr Gabriel*
>
> *A: That's correct*."
>
> "*Q: so you, as an officer of [Pardus] Wealth, which is a different company to the one you're writing from here, you're directing MCL to send all of their sub-introducers to come and negotiate with another company you control, is that correct?*
>
> *A: Correct*"

178. I turn firstly to Pardus Property. This was the company that benefited directly from not paying commission due to MCL. The evidence shows that Mr Bryce believed he was acting in the best interests of Pardus Property when he refused to pay MCL. It does not matter whether he was or was not actually acting in the best interests of that company when he took those steps. That is matter between the company and him. What is relevant is that he was a director of Pardus Property. He held himself out as acting on its behalf in refusing to meet its contractual obligations. Pardus Property also participated in the conspiracy by writing the Fake Termination Letter. Pardus Property is therefore liable for the actions carried out by Mr Bryce.

179. Pardus Wealth was also directly involved in the conspiracy. It was the company to which the sub-introducers were directed after Pardus Property refused to perform its obligations in the Pardus/MCL Contract. It was therefore active in the scheme under which Pardus Property breached the Pardus/MCL Contract and under which MCL breached the Hoole/MCL Contract. It follows that it is also liable for the conspiracy.

180. Pardus Capital was also involved in these matters. It was the entity which received the money from Organic and made the investments. It must have had an express or implied contractual arrangement with Pardus Property in order to provide funds for Pardus Property to pay the commission. It benefited therefore from the reduced commission payable to sub introducers. I also note that Mr Bryce in essence confirmed that he believed he was acting on behalf of all Pardus Companies when carrying out all his actions. I therefore find that Pardus Capital is also liable for participating in the conspiracy.

181. It follows that Pardus Capital, Pardus Property and Pardus Wealth are also jointly and severally liable with Mr Bold and Mr Bryce to Mr Hoole.

Tortious liability for procuring a breach of contract

Legal test

182. The tort of procurement of breach of contract is where a person knowingly and without justification takes active steps by which they facilitate a breach of contract thereby causing damage.[19]

183. The underlying principle was set out by Lord Denning MR in *Emerald Construction Co. Ltd v Lowthian*:

> "*…it was a perfectly lawful contract. The parties to it have a right to have their contractual relations preserved inviolate without unlawful interference by others: see Quinn v Leathen by Lord Macnaghten….For is it unlawful for a third person to procure a breach of contract knowingly or recklessly, indifferent to whether it is a breach or not*"[20]

184. The ingredients of the tort of inducing or procuring a breach of contract are: (i) there must be a contract; (ii) there must be a breach of that contract; (iii) the conduct of the relevant defendant must have been such as to procure or induce that breach; (iv) the relevant defendant must have known of the existence of the relevant term in the contract or turned a blind eye to the existence of such a term; and (v) the relevant defendant must have actually realised that the conduct, which was being induced or procured, would result in a breach of the term.[21]

Contract

185. It is not disputed that there was a contract between Mr Hoole and MCL.

Breach of contract

186. I have determined above that MCL was, and is, in breach of its contractual obligation to pay commission to Mr Hoole.

[19] British Motor Trade Association v Salvadori and others [1949] Chancery 556
[20] [1966] 1 WLR 691 at 700
[21] ED & F Man Capital Markets Limited v Come Harvest Holdings Limited and others [2022] EWHC 229 (Comm) at para 453

Conduct procured or induced the breach of contract

187. I have already set above how the defendants combined to cause the breach of both the Hoole/MCL Contract and the Pardus/MCL Contract.

Knowledge of the existence of the relevant term in the contract

188. I have already set above how the defendants knew of the existence of the obligation to pay sub-introducers, including Mr Hoole.

Realisation that the conduct would result in a breach of the term

189. Again, I have set out above how the evidence shows that the defendants all knew that their conduct would result in the breach by MCL of the Hoole/MCL Contract.

Conclusion in relation to Mr Bryce and the Pardus Companies

190. The evidence in my judgment shows that the fourth to seventh defendants (inclusive) satisfy all the conditions for being liable for procuring the breach of the Hoole/MCL Contract by MCL. Accordingly, they are jointly and severally liable to Mr Hoole for his losses.

Position of Mr Bold as director of MCL

191. The evidence above demonstrates the same conclusion in relation to Mr Bold. There is, however, a further hurdle before he is liable to Mr Hoole. This is the principle in *Said v Butt*.

The principle in Said v Butt - the circumstances in which a director can be liable for inducing a breach of contract by the company of which he is a director

192. Mr Bold is a director of MCL. Generally speaking, directors are liable for torts committed by companies at their direction:

> "*If…those in control expressly directed that a wrongful thing can be done, the individuals as well as the company are responsible for the consequences*."[22]

193. This does not, however, apply if the tort alleged is procuring a breach of contract. In *Said v Butt*[23] at page 506 McCardie J laid out the following principle:

> "*…if a servant acting bona fide within the scope of his authority procures or causes the breach of a contract between his employer and a third person, he does not thereby become liable to an action of tort at the suit of the person whose contract has thereby been broken*."

[22] Rainham Chemical Works Ltd v Belvedere Fish Guano Co Ltd [1921] 2 AC 465,467
[23] [1920] 3 KB 497

194. In *IBM*[24], Eyre J quoted with approval the following passage of Gloster J from *Crystalens Ltd v White*[25], which he described as using "*more modern language and setting the rule in the context of the corporate entity doctrine and the principle of limited liability*":

> "*11…the general rule that, in circumstances where a director is acting bona fide and within the ambit of his authority, he has no personal liability for procuring his company to commit a breach of contract….*
>
> *15. In my judgment, it would be contrary to the principle of limited liability if, in the circumstances postulated in Said v Butt, namely that an employee director is acting within his authority and bona fide in the interests of his company, could be liable in such circumstances for inducing a breach of contract on the part of the company in circumstances absent, additional features, such as conspiracy or dishonesty.*"

195. It seems to me that paragraph 15 above has a couple of elements that merit observation. Firstly, Gloster J may well have had in mind the concept of the separate legal personality, rather than limited liability. The latter relates to the liability of shareholders, rather than directors. It seems to me that it is the fact that a company has its own legal personality that underpins the need to ensure that a director, acting properly, is not personally liable for, and thus synonymous with, the acts of the company. This is consistent with the way in which the principle is explained in *Said v Butt* itself. McCardie J used the description of "servant" and "master" and referred to the servant being the "alter ego" of the master whose actions in law were the acts of his employer. He explained that it is the master who has breached the contract, by his agent, and that "*an action against the agent [for procuring a breach of contract] must fail…just as it would if brought against the master himself for wrongfully procuring a breach of his own contract*".

196. Secondly, the "*additional features, such as conspiracy or dishonesty*" are circumstances where, in my view, the director would not be acting "*within his authority and bona fide in the interests of the company*". In other words, those features take the actions outside the concept of "*good faith and acting within authority*" rather than being a subset of behaviour within that concept.

197. I do not think, however, those two points affect the underlying analysis in this case.

198. The principle in *Said v Butt* was analysed by Lane J in *Antuzis and others v D J Houghton Catching Services Ltd and others*[26]. His judgment was further considered by Eyre J in *IBM United Kingdom limited v LZLABS GmbH and others*[27]. The relevant principles are set out by Eyre J in paragraph 31 to 36.

199. In my judgment the following principles can be derived from these cases:

[24] [2022] EWHC 884 (TTC)
[25] [2006] EWHC 2236 (Comm)
[26] [2019] Bus LR 1532
[27] [2022] EWHC 884 (ICC)

1. If a director acts:

    1. in good faith; and

    2. within the scope of their authority

    then under the principle in *Said v Butt* they will not be liable in tort for procuring a breach of contract by the company;

2. The question of good faith is whether the director acted in good faith towards the company, rather than in good faith towards a third party;

3. The question of whether a director acted in good faith and within the scope of their authority will be very dependent on the circumstances of the case;

4. A director will not have been acting in good faith if they have acted in breach of their duties under s172 Companies Act 2006 ("**s172**");

5. Not every instance of a causing a company to breach a contract or legal obligation will involve a director being in breach of s172;

6. The key will be whether the director was properly acting to promote the success of the company taking account of those matters to which they are required by s172 to have regard;

7. Relevant factors in assessing that question include:

    1. the motivation of the director, including the degree to which the director is acting in their own financial interests;

    2. the nature of the duties said to be broken, including whether there is a statutory duty (other than s172 itself) said to be broken;

    3. the nature and consequences of the breach; and

    4. the degree to which the breaches were deliberate and repeated.

200. Relevant factors do not include the duties to any third party and any bad faith towards that party.

201. There is a further point, which is that any allegation that a director is personally liable must be pleaded including both the allegation and the factual basis; a failure to do so means a tenable cause of action has not been articulated.[28] In this case the allegation was properly pleaded.

202. At some stage prior to its insolvency the directors duties become modified to include acting in the best interest of the creditors of the company. *BTI 2014 LLC v Sequana SA and others*[29]. At the trial Mr Bold asserted that MCL was insolvent. There was no

[28] IBM at paragraphs 28 -30 referring to Holding Oil Finance, OBG v Allan and Crystalens
[29] [2022] UKSC 25

information before the court to indicate when or, indeed, if it had become insolvent and I did not consider any extension of the director's duties to creditors.

Application of the tests

203. I have already determined that Mr Bold acted as he did for personal gain. In essence he tried to exchange MCL's right to commission from Pardus for personal reward to himself in terms of salary from, and shares in, Pardus. Mr Hoole described it as stealing the commission rights of MCL. It seems clear to me that Mr Bold acted in bad faith towards MCL, a company of which he was a director. He took no steps to enforce MCL's rights and tried to enrich himself at MCL's expense. He cannot be said to have been acting to promote the success of the company. The breaches were deliberate. They were exacerbated by dishonest creation of documents to cover up the truth. He seems to me to plainly be in breach of s172.

204. There was no real dispute as to whether Mr Bold was acting within the scope of his authority and thus the second limb of the exception test is satisfied.

205. In my judgment Mr Bold is therefore not protected from liability for the tort of procuring the breach of contract by MCL by the principle in *Said v Butt.*

Unlawful interference with the contractual rights of MCL thereby causing damage to Mr Hoole's rights under the Hoole/MCL Contract

206. The tort of unlawful interference with contractual rights will generally compensate a claimant in a situation where the tort of procuring the breach of contract or the tort of conspiracy to cause loss by unlawful means has not been established. Both those torts have been established in this case and I do not need to consider the tort of unlawful interference.

Myers defence

207. The "*Myers defence*" was a complete red herring.

208. There is nothing in any contract or agreement before the court that refers to Mr Myers. There is no term of any contract that places any restriction on any introducer on persons who could be introduced to Pardus.

209. It is also completely untrue that Mr Myers was "*unknown to [MCL] at the time*". Mr Bold and Mr Gabriel gave evidence at the trial that they had known about Mr Myers since at least July 2019.

210. Mr Bryce and thus Pardus also knew that Mr Myers was involved. This is shown by Mr Bryce's message in October 2019. At that point Mr Bryce wanted Organic to put more money into the Pardus Bond. He certainly was not refusing to accept the existing investment let alone turning down further investment, or regarding the involvement of Mr Myers as troubling.

211. Consequently, even if it had been properly pleaded, the involvement of Mr Myers in Organic does not provide any defendant with any defence to the claim by Mr Hoole. Mr Bold, Mr Gabriel and Mr Bryce were all perfectly well aware of Mr Myers

involvement long before January 2020. I have already found that as a matter of fact there was no termination for repudiatory breach in January 2020. Even if the involvement of Mr Myers had been important to any defendant in January 2020 it would not have entitled Pardus or MCL to terminate their respective contracts. The fact that the involvement of Mr Myers was not mentioned until late in the proceedings indicates that, in my judgment, it was another attempt to retrospectively justify actions which had, at the time, no justification.

Conclusion

212. MCL is liable to Mr Hoole for breach of its contractual obligations to pay him commission due under the Hoole/MCL Contract.

213. Mr Bold, Mr Bryce and the Pardus Companies are all jointly and severally liable to Mr Hoole for losses caused to him by MCL's breach of the Hoole/MCL Contract for the torts of (a) conspiracy to cause loss by unlawful means (b) and procuring the breach of contract by MCL.

214. I have provided the parties with a copy of this judgment in draft and invited them to agree the form of order, failing which I will determine it. There will be a hearing on hand down of this judgment to address consequential matters including the form of the order (if not agreed), any costs to be awarded and the amount of any costs to be paid on account of those final costs.

8 March 2024