IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Case No. BL-2019-000414

[2023] EWHC 1110 (Ch)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Friday, 14th April 2023

Before:
DEPUTY MASTER LINWOOD

B E T W E E N:

KAUSAR RAJA

and

TERRY GODRICK MCMILLAN

MR A KHAN instructed by Hill Dickinson LLP appeared on behalf of the Claimant
MR P COPPEL KC and MR Z KELL instructed by Cavendish Legal Group appeared on behalf of the Defendant

Hearing: Thursday 6th April 2023

JUDGMENT

(approved)

DEPUTY MASTER LINWOOD:

1. This is an application by the defendant by application notice dated 16 January 2023 for:

(1) An order pursuant to CPR Rule 18.1, further or alternatively, per the Court's general case management powers and/or inherent jurisdiction compelling the claimant, within 14 days or within such other timeframe that the Court considers appropriate to properly and fully answer requests for further information first made by the defendant on 15 July 2020 and only partially responded to by the claimant on 20 September 2022 and 4 November 2022. The particular requests for which the defendant requests an order are detailed in the first witness statement of Jonathan Ross Frankel in the enclosed draft order. The outstanding responses are required so that the defendant knows exactly what case, which is founded in fraud, he has to meet.

(2) An order pursuant to CPR 3.13(a) and (b). Further or alternatively, per the Court's general case management powers and/or inherent jurisdiction, that unless the claimant complies with the above-mentioned order number (1) above, within 14 days or within such other timeframe that the Court considers appropriate that the particulars of claim dated 10 January 2019 is struck out.

Background

2. Judgments, at first instance and in the Court of Appeal set out the background, in detail, but by way of the shortest summary, the claimant claims damages from the defendant for losses she says were caused by the collapse of a scheme to avoid the affordable housing obligation required by section 106 of the Town and Country Planning Act 1990. The claimant had to sell the flat she purchased and incurred substantial losses, mainly due to the bridging loan she took on.

3. The claimant claims in deceit and unlawful means conspiracy and says she was deceived into buying the flat by fraudulent misrepresentation, namely, that the flat was free of the affordable housing obligation as it had been staircased to 100%. The claimant says that the defendant masterminded the scheme and is liable as he was party to the unlawful means conspiracy or a joint tortfeasor.
4. The conspiracy claim is set out in paragraph 37 of the particulars of claim:

> "On dates unknown to the Claimant but prior to 19 September 2012, the Defendant, LDHA, [PGPF], PGPL, TPIL and (from around 14 January 2015) M&E with the predominant intention of harming, amongst others, the purchasers of the AHUs (including the Claimant) by causing them to purchase AHUs in the mistaken belief that the shared ownership exemption applied and that the AHUs were being purchased free of the affordable housing obligation, conspired and/or combined together with another person or persons unknown to the claimant and/or with the nominees referred to below"

Further, paragraph 53 states:

> "The claimant, herself, or alternatively, via her agent [Ravi Sethi?] relied on the representations in purchasing Flat 5 which she did with the assistance of bridging loans from Credit Capital Corporation Limited, "CCC" and TN(UK) Consultancy Limited, "TN(UK)".

5. PGPL and TPIL are companies owned by the defendant and controlled by him. "AHU" means affordable housing unit and the AHUs are all 11 flats within the Signal Building in London. The fraudulent misrepresentation claim is pleaded at paragraphs 43 to 53 and the losses at paragraphs 54 to 59. The updated schedule of losses totals just under £1,400,000, the bulk of which is interest due to TN(UK) and CCC at £691,000 and £641,000 respectively, the purchase price of £714,000 plus professional fees, legal costs and interest, less rent received as it was an investment property, the proceeds of sale in the settlement with the London Borough of Southwark of £283,000 plus the proceeds from the settlement of the claimant's claim against her previous solicitor of £471,000.
6. The defendant applied for summary judgment or strike-out of the particulars of claim, which was dismissed by Dame Sarah Worthington KC on 22 April 2020, in her judgment with NCN [2020] EWHC 951 (Ch), ("the first instance judgment"). She sets out a detailed summary of the

issues and outline facts at paragraphs one to nine. The defendant has been especially critical of the particulars of claim in respect of the pleading of fraud and dishonesty: see, particularly, paragraphs 20 and 23 and 24:

> "In the absence of proof by the defendant that the claimant's claim was bound to fail because the claimant would be unable to make out the alleged facts, as to which, see below, I am not persuaded that the claimant's claim should be struck out because the allegations of fraud are not properly pleaded. The claimant has made it plain that the defendant is facing allegations of fraud and dishonesty, and the facts on which those allegations are based have been set out in detail. It is a different matter whether the claimant would be able to prove those facts and succeed at trial but that is not the test for a strike-out or summary judgment."

7. The Court of Appeal, on 21 July 2021, dismissed the defendant's appeal in a judgment with NCN [2021] EWHC Civ 1103. The background to the claim appears in substantial detail at paragraphs 2 to 32. The defendant's application for permission to appeal to the Supreme Court was dismissed on 27 June 2022.

The requests for further information

8. The Part 18 request was first made by the defendant on 15 July 2020, seeking further particulars of the conspiracy claim, unlawful means, bridging loans and fraudulent misrepresentations. That was answered on 14 July 2022 without prejudice to the claimant's contention that the particulars of claim were properly pleaded. On 14 October 2022, the defendant said the pleaded case was unacceptable and it was not possible for the allegations to be inferred. On 4 November 2022, the claimant, again, without prejudice to her primary stance that the claim was adequately pleaded, provided further responses. This application was then issued.

The legal principles

9. CPR 18.1 states:

> "(1) The Court may, at any time, order a party to:
>
> (a) clarify any matter which is in dispute in the proceedings; or

(b) give additional information in relation to any such matter, whether or not the matter is contained or referred to in the statement of case

(2) Paragraph 1 is subject to any rule of law to the contrary.

(3) Where the Court makes an order under paragraph 1 the party against whom it is made must:

(a) file his response: and

(b) serve it on the other parties within the time specified by the Court".

10. The Practice Direction to Part 18 at paragraph 1.2 states:

> "A request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet".

11. As to that, Mr Coppel cited *HRH Prince Khaled Bin Abdulaziz Al Saud v Gibbs* [2022] EWHC 706 (Comm), where Richard Salter KC sitting as a deputy High Court judge said, at paragraph 35:

> "35. In my judgment, the requirement of the rule that the information sought must relate to a matter which is in dispute in the proceedings and the requirements of the Practice Direction that any request must be strictly confined to matters which are reasonably necessary and proportionate for one or other of the stated purposes are threshold conditions. If those conditions are not satisfied, then the Court simply has no jurisdiction to make any order under CPR Part 18, although as Thirlwall J has pointed out, there may be other powers available to the Court to assist in avoiding the waste of time and costs and in achieving the 'swift and …proportionate economical litigation' referred to by Irwin J.
>
> 36. If, however, those threshold conditions are satisfied, then the question becomes a matter for the Court's discretion. The power under CPR Part 18 is one of the Court's case management powers, and its exercise should

be considered in the context of the overall case management of the action: see *Toussaint v Mattis* [2001] CP Rep 61, at paragraph16, per Schiemann LJ".

Then, at paragraph 41:

> "41. It follows that it will not usually be either necessary or proportionate (or in accordance with the overriding objective) for the other party to request (or for the Court to order) a party who has served a compliant but concise statement of case to expand upon that pleading by the provision of more detailed information.
>
> 42. In cases begun using the procedure in CPR Part 7 disclosure and under CPR Part 31 will normally be followed by the exchange of witness statements under Part 32. It will, therefore, also not often be necessary or proportionate (or in accordance with the overriding objective) for the other party to request (or for the Court to order) a party to provide at any earlier stage information which will in due course be revealed on disclosure or which will be revealed in those witness statements or in expert reports: see e.g., *National Grid Electricity Transmission PLC v ABB Limited* [2012] EWHC 869 (Ch) per Roth J, at paragraph 73 to 74 and *Stocker v Stocker* [2014] EWHC 2402 (QB) at paragraph 27, per HHJ Parkes QC.
>
> 43. Of course, each case must depend on its own facts. As Schiemann LJ went on to say in *Toussaint*, 'The Court now has a wide range of case management powers and they are capable of being used flexibly to meet the precise needs of an individual case'…
>
> 45. The burden must, nevertheless, always be on the party seeking an order under CPR Part 18 both to demonstrate that the threshold conditions identified in paragraph 35 above are met and (to the extent not already implicit in the satisfaction of those conditions) to satisfy the Court that, in all the circumstances, the making of such an order would assist in dealing with the case justly in accordance with the overriding objective".

12. The note in the 2023 *White Book* at 18.1.10 says:

"When considering whether to make an order, the Court must have regard:

(a) to the likely benefit which will result if the information was given; and

(b) to the likely cost of giving it; and

(c) to whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with such an order.

These considerations, although not stated in Rule 18.1 are consistent with the overriding objective stated in Rule 1.1 on which the Court is obliged to give effect to when exercising any power given to it by the CPR".

13. Mr Khan referred me to *Loreley Finance (Jersey) Limited v Credit Suisse Securities (Europe)* [2022] EWCA Civ 1484 at paragraph 57 where Males LJ said:

"57. There is a spectrum of relevance, however. Not everything which is relevant can be the subject of a proper request under CPR 18.

58. While CPR 18 itself is expressed in wide terms, giving the Court power to order a party to clarify any matter which is in dispute in proceedings or give additional information in relation to any such matter, whether or not the matter is contained or referred to in a statement of case, the circumstances in which this power should be exercised are regulated by a Practice Direction. This provides…".

Then, paragraph 1.2 above appears.

14. Then:

"59. This is an important requirement in order to keep litigation within reasonable bounds. It applies equally to commercial litigation where, because of the large sums involved, there can be a tendency to apply a scorched earth policy to the conduct of proceedings, as it does to any civil litigation: see paragraph D14.1(c) of the

Commercial Court Guide (11th Edition) 2022 which refers to information which is 'strictly necessary to understand another party's case'".

15. Mr Khan submits that I should have regard to some nine points he sets out at paragraph 27 of his skeleton argument, which, in short summary are:

(1) The likely benefit of the information as given.
(2) The cost of providing it.
(3) The financial resources of the party.
(4) Permission refused if it goes to cross-examination as to credit.
(5) The requests are fishing.
(6) Not allowed if the information would be provided on disclosure or in witness statements.
(7) If the statement of case is compliant but concise, it is usually neither necessary nor proportionate to expand upon it.
(8) A request must not amount to an abuse of process in the sense of a collateral attack on an earlier final decision; and, finally
(9) Compliance with the overriding objective and the need to deal with cases justly and proportionally.

16. Mr Coppel reminded me of the ingredients of a claim in unlawful means conspiracy: see *Civil Fraud* 1st Edition, paragraph 2.008:

(1) "A combination of agreement between the given defendant and one or more others.
(2) An intention to injure the claimant.
(3) Unlawful acts carried out pursuant to the combination or agreement as a means of injuring the claimant.
(4) Causing loss by the claimant".

The request and the replies

17. These have been helpfully copied into a composite schedule by Mr Coppel. That schedule is attached and accordingly I will not set out all of the requests and the responses.

Submissions

18. Mr Coppel, understandably, places substantial emphasis on the very basis of the claim in unlawful means conspiracy that the defendant has to meet. He submits these are most serious allegations levelled at a businessman and the findings could go beyond the parties themselves. The legal principles underpinning this arise from the decision of Lord Diplock in *Lonrho v Shell Petroleum Co Limited (No 2)* [1981] 3 WLR 33, in that conduct, not actionable when undertaken by a single person becomes actionable when, in combination with a number of people, and each conspirator is jointly and severally liable for all losses, notwithstanding that the act was by someone else.
19. That oddity has, he submits, an explanation in that individuals in a group, team or herd will do whatever they would not do individually. Therefore, the identity of that group is not just a nice detail in the conspiracy claim but critical to the tort itself and transforms what may be benign conduct into actionable conduct.
20. Referring to paragraph 37 of the particulars of claim, Mr Coppel submits that there are two groups of legal entities: those who are unknown and those who are nominees. Everyone in paragraph 37, named, is a puppet of the defendant, the concept being the puppet master conspiring with his puppets. The Court of Appeal said it is arguable but more facts are needed. The draft is, therefore, added, "with another person or persons unknown" to provide protection from the puppeteer or puppet master which might arise. However, the substantial importance of knowing if they exist and who they are becomes apparent. If the defendant cannot conspire with his company's nominees or the LBHA, then, the conspiracy must fall at the first hurdle. The pleaders recognised that but he submits that that is not good enough.
21. As to request two, Mr Coppel submits that the claimant may not know the names but to make the allegation of other conspirators, there must be a factual basis for saying the same. Mr Coppel submits, if there are others, they need to be named. They want to approach them and take statements. In essence, it is known or not known. If the latter, it should not be in the particulars of claim.

22. Mr Coppel then referred to requests three, four and five as they are all similar, concerning paragraph 37(d). None of (a), (b) and (c) are unlawful, only (d) is. In summary, what he is asking goes to the root of the allegation as to if there is an unlawful means conspiracy by 2012 as if there was not, the claim is doomed. In particular, Mr Butt, as chairman of LDHA is central to the whole transaction. He is not named as a conspirator but LDHA is.

23. Request six also relates to paragraph 37(d). Mr Coppel submits the November response was evasive in that intentionality matters as it is an essential component of the claimant's cause of action, and again, the defendant needs to know what the claimant's case is. The defendant requests a detailed explanation as to what is being alleged about the timing of the conspiracy and the timing of the alleged beliefs, so as to amount to the requisite intention necessary to amount to an intention to harm.

24. Mr Khan emphasises in the first instance judgment paragraphs 37 and 39 and especially:

> "40. In short, and despite any shortcomings in the particulars of claim (as to which, see *Cunningham v Ellis & Others* [2018] EWHC 3188 (Comm) at paragraph 43 citing *Portland Stone Firms Limited v Barclays Bank PLC* [2018] EWHC 2341 (QB) at paragraph 27,(noted at paragraph 22 above), I am of the view that the particulars of claim are sufficient to alert the defendant as to the case he must answer in this regard, and that the alleged facts, especially in combination with the other facts surrounding the conspiracy alleged in the particulars of claim are sufficient to indicate to the defendant the evidence on which proof of a conspiracy is to be based. Further, there is no reason to suppose that C is bound to fail in making out the facts to support that evidence at trial.
>
> 41. Secondly, D suggested that various persons alleged to be parties to the conspiracy, such as the nominee tenants, could not have been party to any conspiracy initiated 'prior to 19 September 2012'; particulars of claim, paragraph 37, since they were not even in contemplation at that stage. Particulars of claim, paragraph 37 and its construction were the subject of oral submissions at the hearing (see below at 84). D urged that this paragraph makes it plain that the combination was necessarily complete by the nominated date, other than in respect of M&E (one of the DCs), who is specifically named as entering later. The paragraph is not elegantly drafted, but the more logical reading of it is that the conspirators initiating the plan prior to 19 September 2012 had a scheme

to involve others, including the nominee tenants, who were to be recruited in the future, paid, and utilised to achieve the nominated ends. Whatever the drafting difficulties, it must have been plain to D the case he had to answer, and the allegations as to who was involved in the conspiracy and how: see the approach set out in *Kuwait Oil Tanker SAK v Al Bader* [2000] 2 All ER (Comm) 271, outlined at 28 above. Moreover, even on D's interpretation, nothing of substance would change in relation to C's claim against D: all the alleged facts relating to the nominee tenants would remain relevant to the plan to implement the alleged conspiracy involving D, even if the particulars of claim had, by virtue of a drafting error failed to capture the nominee tenants as additional co-conspirators; these nominee tenants could, in any event, be bound into the plan and given directions by DC as a result of the trust arrangements under which the sub-leases are held".

25. In the Court of Appeal Lord Justice Nugee said:

> "68. Mr Buttimore accepted that the current pleading of the conspiracy in paragraph 37 of the particulars of claim was, in the Judge's words, 'not elegantly drafted': judgment at 41, and I have little doubt that Ms Raja's legal team will want to revisit the drafting in any event after disclosure, as is very common in fraud claims, but even if there were a pleading point open to Mr McMillan, I do not think that it would make it appropriate to strike out the conspiracy claim; the whole question of what Mr McMillan believed about the effectiveness of the scheme, and when, will necessarily be in issue at trial in any event".

Then:

> "72. I do not propose to consider this passage, or the various criticisms that Mr Coppel made of it, as I do not see that it goes anywhere. There is no doubt that the pleaded claim in conspiracy does allege that the conspirators intended to harm the purchasers of the flats, including Ms Raja: see paragraph 37 of the particulars of claim which, as the judge points out, judgment at 57, in fact, alleges that the conspirators had a predominant intention to

harm the purchasers despite the fact that it is unnecessary to allege this, so the claim cannot be said to be inadequately pleaded.

73. Nor do I think it can be said that the claim is hopeless on the facts. Mr Coppel said that there was never any intention to harm the purchasers: the purpose of the scheme was not to cause loss to them as the scheme was believed to be effective and it was intended that they would indeed take the flats free from the affordable housing obligation, but as can be seen this again depends on Mr McMillan's case that he continued to believe that the scheme was effective. If, which is Ms Raja's case, he knew, at the latest by April 2016, that the scheme did not work, or was reckless as to whether it did, then this point disappears. His intention, in that case, would no doubt have been to maximise his own profit, but the way in which he would do that would be by deceiving the purchasers into thinking that the flats were free of the affordable housing obligation and hence into paying more than they were worth. If that case is made out, then that seems to me, amply sufficient to establish that he intended to harm the purchasers, whatever the precise ambit of this requirement".

26. Nugee LJ ended his judgment by repeating the first instance judgment:

"74. The judge's overall view on this aspect of the case was as follows:
'There is considerable debate over the meaning of "intent to cause damage", or "intent to harm or to injure". Here the parties disagree on the law. They also disagree on whether certain facts set out in the particulars of claim provide support or deliver a rebuttal of this aspect of C's claim. In such circumstances, the proper response is surely that seriously contested issues of law and fact should be aired fully, with all the relevant detail before the Court after full discovery and cross-examination, and not by way of an application such as this. That is my view. However, the parties addressed the issues in some detail, so I provide a response'.

> As that makes clear, the ensuing discussion, detailed and erudite as it is, does not purport to decide anything final, nor is it the basis on which she refused the strike out, which was the simple one that seriously contested issues of law and fact should be determined at trial".

27. Mr Coppel submits the claimant's pleading is incomplete in that whilst it names various entities, it leaves open that there are others potentially party to the conspiracy. Accordingly, the defendant does not know how the claimant will present her case. He poses the question that if the persons are unknown, how does she know they exist, let alone, are part of the conspiracy? Once they are identified, then, the defendant can approach them for their account. He will seek to obtain witness statements and evidence from them.
28. Mr Coppel submits the reference to the first instance and Court of Appeal judgments are irrelevant in the summary judgment and strike-out jurisdiction and Part 18 requests are, together with their applicable tests, wholly different. In other words, the fact the particulars of claim survived the applications under 34.3(4)(1)(a) and Part 24 does not decide this application. They are dissimilar, like, as he put it "apples and oranges". The pleading and particulars of it are especially important due to the need for any allegation of fraud or dishonesty to be "distinctly alleged and as distinctly proved and it must be sufficiently particularised": *Three Rivers DC v Governor of the Bank of England (Number 3)* [2001] 3 All ER at 184 to 185.
29. Mr Khan submits in the light of the Court of Appeal decision the particulars of claim is compliant for the purpose of trial. Further, necessity is a strict test: see *Stocker v Stocker*, :

> "23. Mr Price's reference to '*bona fide* litigious purpose' recalled the words of Lord Woolf in *Hall v Sevalco* [1996] PIQR 344 at 349, where emphasis was laid on the stringency of the test of necessity: 'It cannot be necessary to interrogate to obtain information or admissions which are or are likely to be contained in pleadings, medical reports, discoverable documents or witness statements unless, exceptionally, a clear litigious purpose would be served by obtaining such information or admissions on affidavit'".

And, also, at paragraphs 24 and 25.

30. Mr Khan submitted that the defendant's application is a collateral attack and an abuse of process as it is founded on the premise that the particulars of claim are inadequately pleaded and that the defendant cannot understand the case against him; but the pleading was found to be adequate in the sense the defendant knows the case he has to meet as to conspiracy as set out in the judgments of first instance and in the Court of Appeal, especially at paragraphs 66 and 67 and 72 and 73.

31. Mr Khan cited *Hunter v Chief Constable of West Midlands Police* [1982] AC 529 at page 541(b):

> "The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made".

In addition, at 542(c), "The passage from Lord Halsbury's speech…", that is in *Reichel v Magrath* [1889] 14 AC 665,

> "…deserves repetition here in full:
> 'I think it would be a scandal to the administration of justice if the same question, having been disposed of by one case, the litigant was to be permitted by changing the form of the proceedings to set up the same case again'".

32. Mr Coppel submits that *Hunter* can easily be distinguished. It involved a criminal conviction at a final trial, whereas, here, there has been no full trial, section 11 of the Civil Evidence Act 1968 which is, again, not involved here, and the above quotations are, in his submission, unhelpful. I agree with his submission. This is a very different case with a different question. The position here is far from being on all fours with *Hunter*, and I do not accept Mr Khan's submission that this is a collateral attack. There is a substantial difference between the requirements for a pleading, see, also, CPR 16, and a request that should be answered, if necessary, by compunction of this Court.

33. Mr Frankel, the solicitor for the defendant, in his witness statement in support dated 16 January 2023, at paragraph 37(d) and paragraphs 33 to 34 of the particulars claim says, at paragraph four:

> "Despite their gravity, the allegations are vaguely pleaded, leaving it to the defendant to have to guess what exactly he is said to have done or not done, know how he did it, and when he did it and if he did it and so forth".

34. He slightly tempers this later at paragraph 14, where he says:

> "It is fair to say that, in general, in cases of conspiracy, the detail of the underlying conspiracy of the combination may not be discoverable",

but then goes on to say, "Vague statements and unparticularised allegations are unacceptable". Those criticisms of the pleading do not, in my judgment, have substance in view of the paragraphs of the first instance and Court of Appeal judgments I have set out or referred to. His submissions are, as to the pleading itself, somewhat exaggerated. But that is not the answer to the defendant's request for further information. As Mr Coppel submits, this is "apples and oranges".

35. Mr Pabla, the claimant's solicitor, in his witness statement, at paragraph 12, referring to costs and delays says:

> "Assuming the defendant has spent at least as much as the claimant on the appeal, it is likely over £250,000 has been spent to date on the defendant's applications attempting to frustrate the claim, not including the costs associated with the application for permission to appeal to the Supreme Court. As a result of the delays caused by the defendant's application and appeals, the claim has not yet reached the disclosure stage, despite having been issued over four years ago, in February 2019".

36. Then, at paragraph 13:

> "In light of the above, the claimant considers the defendant's strategy in this litigation has been to obstruct and delay the progress of the claim and place the claimant under as much cost pressure as possible in the hope that she will discontinue or, otherwise, seek to settle on disadvantageous terms. The claimant considers that the defendant's latest application is firmly part of this strategy".

At 14:

> "The defendant's application concerns a Part 18 request for further information dated 15 July 2020. This Part 18 request raised 62 separate requests for further information. It is the second Part 18 request raised by the defendant. The first was served on 26 July 2019 and consisted of 133 separate requests. The defendant's combined request for further information therefore total 195 requests. The claimant considers the defendant's requests for further information to be oppressive and were served with the prime intention of increasing costs for the claimant and finding a fault to justify issuing a further application".

37. Mr Khan conveniently divides the requests into two categories which I adopt, namely "Category One": requests which relate to the alleged inadequacy of the particulars of claim concerning the pleaded claim of conspiracy and fraudulent misrepresentation which are requests two, three, four, five and six, and "Category Two": requests which relate to the evidence such as bridging loans upon which the *quantum* claim is based, although they are based upon the alleged inadequacy of the pleaded case: requests 20 and 21. As for Category One, Mr Khan's submission was that this is a collateral attack: see *Hunter*, but I have explained I do not accept his submission in that respect, and also that sufficient information has been provided so the defendant is not entitled to anything else, especially as the claimant does not and probably never will have all the details of the conspiracy, and as applies to several requests, the claimant may plead additional details post disclosure, as is also noted in the Court of Appeal judgment at paragraph 68, with regard to paragraph 37 of the particulars of claim.

Decision

38. Each request clearly, in my judgment, relates to a "matter which is in dispute in the proceedings", as the matters pleaded are denied by the defendant. Therefore, the first threshold is met.
39. I therefore next turn to whether the requests are "strictly confined to matters which are reasonably necessary and proportionate" to enable the defendant to prepare his own case "or understand the case he has to meet". Then, if that threshold is met, I must determine whether I should exercise my discretion in the context of the overall case management of this claim, bearing in mind the benefit, cost and financial resources and the overriding objective as an umbrella above those factors.

Request two

40. This concerns paragraph 37. Here the claimant is asked to list all the facts and matters she relies upon in support of her allegation that the defendant, LDHA, PGP, PGPL, TPIL and M&E conspired and/or combined with another person or persons unknown to injure the claimant. This, Mr Coppel submits is fundamental as it goes to exactly who were the parties. Whilst she suggests, in her answer, as the defendant denies the conspiracy claim, "The full facts and matters of that conspiracy are unlikely to be uncovered", that does not explain why she positively asserts another person or persons is likely to be involved.
41. Mr Coppel adds that the claimant's explanation that the complexity of the scheme means it is probable others were involved, is insufficient as the defendant must be able to understand the fundamentals of the claim against him.
42. I disagree. I refuse to order the information sought for these reasons:

(1) It is not reasonably necessary. Whilst I recognise the high standard of pleading necessary in fraud claims, in the general sense, here, the defendant had sufficient to meet the case he has to meet.
(2) Nor is it reasonably necessary, as the pleaded claim against the defendant has been examined, at length and in detail by Dame Sarah Worthington KC and the Court of Appeal, who have considered that the pleadings are more than sufficient for trial. In particular, Dame Sarah Worthington KC at paragraph 41 said:
"It must have been plain to the defendant the case he had to answer and the allegations as to who was involved in the conspiracy and how".
(3) Further, it is also unnecessary because information may, in the usual way in fraud claims, become available upon disclosure: see the Court of Appeal judgment at paragraph 68.
(4) I also do not consider that the benefit, I am told, which will flow, namely the opportunity for the defendant to trace witnesses and take statements from them to assist his understanding is a real one in circumstances where the documentation to be disclosed may well hold the answers.

(5) I say that particularly because that documentation must be known to the defendant but currently is not, I was informed, known to his legal team. There may be the possibility that this is an attempt to remove part of a pleading which could be answered, in due course, by disclosure. I did put to Mr Coppel that one alternative, in those circumstances, was to adjourn his application until after disclosure, including any applications for specific disclosure. That, understandably, was not welcomed by Mr Coppel. But there is a point of substance here; it would be wrong to, in effect, pre-judge disclosure or affect its ambit by restricting the pleading itself.

43. I must also consider my discretion in the context of overall case management if my above reasons are wrong. I must presume the financial resources of the claimant would not prevent her from replying to this and the other requests. I heard no evidence upon the point. Likewise, the cost of answering these few requests is not disproportionate nor costly in the overall scheme of this litigation for which some £1,400,000 is claimed.

44. I do have, in terms of case management, concerns as to the conduct of the defendant for these reasons:

(1) This claim was issued in February 2019, over four years ago. The trial is not listed until 2024, the original trial date having been lost due to the appeals. Five years to trial for a claim which is neither extensively long, at eight days, nor for a particularly substantial sum of money is too lengthy a period and is disproportionate to the issues and the value.

(2) That is supported by the fact that disclosure is only likely in the next two months or so. The claimant's costs, in terms of the appeals amount over £250,000 according to Mr Pabla.

(3) Mr Pabla, in his paragraph 13, alleges the defendant's strategy has been to obstruct and delay to place the claimant under such pressure, she will discontinue or accept disadvantageous settlement terms, and this application is part of that strategy. There appears to be some force in this, and more so, in pursuing this application in the light of the first instance and the Court of Appeal judgments. The fact is that the defendant has complied with requests for further information which total 195. This supports Mr Pabla's concerns.

(4) Those matters are allied to events which immediately preceded this hearing, namely, the failure of the defendant's solicitors to inform the claimant's solicitors of the date listed for this application leading to the claimant's nominated

counsel being unavailable. Further, the defendant's reply evidence was served nine days late with no explanation nor request for an extension of time. Apparently, personal reasons caused, at least, the first issue but, certainly, the former has prejudiced the claimant.

45. The concerns I list in [44] above are such that it would not be in accordance with good case management and the overriding objective for me to make an order as the defendant requests, as this matter needs to proceed to trial as directly, efficiently, and cost-effectively as possible, in view of the substantial delays and costs which have occurred to date.

Request three

46. This concerns intention in the context of fraudulent misrepresentation as to the date and conception of the alleged conspiracy of 19 September 2012 which is fundamental, Mr Coppel submits and sets the bounds of the activity the participants conspired about. Mr Coppel further submits this is reasonably necessary and proportionate for the defendant to prepare his own case and/or understand that that he must meet. That especially relates to the exact period in time.
47. The November response accepts that paragraph 37 has not been "elegantly drafted" and refers to the first instance judgment at paragraph 41. It repeats reliance upon the pending disclosure and then the claimant sets out as much detail as she can, her case pending disclosure. In particular, the defendant's belief, is, as the Court of Appeal found at paragraph 68, an issue at the trial.
48. Again, I refuse to order the claimant to answer this request for the reasons set out at [42] and in the alternative [44] above.

Requests four and five

49. These concern paragraph 37(d) and the issue of fraudulent misrepresentation. Request four involves intention behind misrepresentation as to if the sublease had been staircased to 100% so as to ensure the exception applied to these flats. This is fundamental to the claim, and accordingly, the defence. Request five concerns the intention behind alleged misrepresentation to purchasers that the AHUs were sold free of the section 106 obligation.

50. The claimant's response is that these matters are sufficiently set out, and secondly, it is not necessary for the defendant to prepare his case. However, Mr Coppel maintains both requests are reasonably necessary and proportionate and that the particulars of claim had been inadequately drafted and need clarification.
51. I will not order the claimant to answer requests four and five for the reasons that appear at 42 above, except at subparagraphs (1) and (2) and, in the alternative, at paragraph 44 above.

Request six

52. This also relates to paragraph 37(d) and the Part 18 request of July 2019. Critical, Mr Coppel submits, is intention to harm by no later than 19 September 2012, and the defendant wants a detailed explanation of what is alleged as to timing, including the timing of the belief set out in the request, as paragraph 51 of the particulars of claim does not, contrary to the claimant's submission, sufficiently set out the necessary information. The claimant again says that her case has been sufficiently set out.
53. I agree. I refuse this request for the reasons at paragraph 42 subparagraphs (1) and (2) and, in the alternative, at paragraph 44 above.

Requests 20 and 21

54. These concern the basis of the *quantum* claim. As can be seen, they request detail of the agreement for the loans taken by the claimant from TN(UK) and CCC; the charges those companies had over the flat, the exact sums advanced and the claimant's source of funds from the balance of the purchase price. The claimant says these matters are adequately pleaded and not necessary for the defendant to answer the case he has to meet.
55. I refuse these requests for the simple reason they concern documents and evidence, not information which are matters properly to be addressed on disclosure or in witness statements. The defendant well knows the case in this respect he has to meet. The schedule of loss has been updated and a further explanation given by Mr Pabla as to the figures.
56. If I am wrong as to that, in the alternative, I refuse, for the reasons set out at paragraph 44 above. I will now hear counsel as to costs and the form of the order.

End of Judgment.

Appendix to the judgment of Deputy Master Linwood
SCHEDULE
Relevant RFI requests, the September Response and the November Response

	Request [175]	September Response [190]	November Response [206]
	Of §37: (a) Is the Claimant guessing that the Defendant, LDHA, PGP Finance No 8 LP, PGPL, TPIL and M&E conspired and/or combined with another person or person unknown to the Claimant? If "no" to (a), list all the facts and matters upon which the Claimant relies in support of the allegation that the Defendant, LDHA, PGP Finance No 8 LP, PGPL, TPIL and M&E conspired and/or combined with another person or person unknown to the Claimant (as opposed to conspiring between themselves).	The Claimant's case has been sufficiently set out in the Particulars of Claim for the Defendant to understand the case he has to meet. Nor does it appear that this the request reasonably necessary to enable the Defendant to prepare his own case.	1. The Claimant is not guessing. 2. The claim is adequately pleaded as has already been established by the High Court and Court of Appeal and the response below is without prejudice to this primary position. 3. It is the Claimant's case that by the very nature of the conspiracy pleaded, the full facts and matters of that conspiracy are unlikely to be uncovered given, in particular, the Defendant's denial of the same. 4. However, given the complexity of the scheme and the number of entities involved, it is probable that other persons

			who have not been specifically mentioned in the Particulars of Claim were also involved. 5. Their identities may or may not be revealed following disclosure but are currently unknown to the Claimant.
	<u>Of §37(d)</u>: (a) Is it being alleged that at or before 19 September 2012 Phillip Butt (the Chairman of LDHA) intended that the Defendant should fraudulently misrepresent to purchasers (such as the Claimant) that the sub-leases had been granted to individuals in the need of Affordable Housing in the LBS? b) If "yes" to (a), list all the facts, matters and circumstances upon which the Claimant relies to infer this intention? (c) Is it being alleged that at or before 19	The Claimant's case has been sufficiently set out in the Particulars of Claim for the Defendant to understand the case he has to meet. Nor does it appear that this the request reasonably necessary to enable the Defendant to prepare his own case.	6. It is the Claimant's contention that the claim has been adequately pleaded and the responses set out below are without prejudice to this primary contention. 7. The preamble to paragraph 37 of the Particulars of Claim is not elegantly drafted but this asserts the Claimant's case that the conspirators initiating the plan prior to 19 September 2012 had a scheme to involve others, including the nominee tenants, who were to be recruited in the future, paid, and utilised to achieve nominated ends (see the Judgment of Sarah Worthington QC §41).

	September 2012 Fraser Allen (the Estates Manager of LDHA) intended that the Defendant should fraudulently misrepresent to purchasers (such as the Claimant) that the sub-leases had been granted to individuals in the need of Affordable Housing in the LBS? (d) If "yes" to (c), list all the facts, matters and circumstances upon which the Claimant relies to infer this intention?		8. It is likely that the scheme would have developed in the period up to the sale of the flats. 9. Pending disclosure, the Claimant does not know at which point in time LDHA acting under the direction of Philip Butt and/or Fraser Allen formulated an intention to make the fraudulent misrepresentations relied on in the Particulars of Claim. 10. However, given it was a necessary part of the scheme from the outset that the flats, on sale to third parties, should be given the appearance of being free from the affordable housing obligation, it follows that it must have been the intention of the conspirators who were involved from the outset to make representations to third-party purchasers to that effect.

			11. Whilst the full facts surrounding the conspiracy have not been disclosed, it is difficult to see (in the circumstances pleaded in the Particulars of Claim) how, LDHA by Philip Butt and/or Fraser Allen could have honestly believed from the outset (i.e. when the scheme was formulated from prior to 19 September 2012) that the scheme would work i.e. how they could honestly have held the belief that the representations, like the ones eventually made and relied on the Particulars of Claim, would be true. The Claimant therefore maintains that LDHA probably formed at least a reckless intent from the outset. 12. In any event, it is the Claimant's case that at some point between the time when the scheme was formulated and its implementation by the sale of the flats (in particular Flat 5), LDHA by Philip Butt

			and/or Fraser Allen (and indeed, the Defendant), knew that representations made to that effect, if made, would not be true or that they would not honestly have a belief in their truth i.e. recklessly. 13. Pending disclosure, the Claimant is unable to be more specific in relation to this request.
	<u>Of §37(d)</u>: (a) Is it being alleged that at or before 19 September 2012 Phillip Butt intended that the Defendant should fraudulently misrepresent to purchasers (such as the Claimant) that the subleases had been staircased up to 100% thereby triggering the Shared Ownership Lease Exemption? b) If "yes" to (a), list all the facts, matters and circumstances upon which the Claimant relies to infer this intention?	The Claimant's case has been sufficiently set out in the Particulars of Claim for the Defendant to understand the case he has to meet. Nor does it appear that this the request reasonably necessary to enable the Defendant to prepare his own case.	14. The Responses to Request 3 are repeated here.

	(c) Is it being alleged that at or before 19 September 2012 Fraser Allen intended that the Defendant should fraudulently misrepresent to purchasers (such as the Claimant) that the subleases had been staircased up to 100% thereby triggering the Shared Ownership Lease Exemption? d) If "yes" to (c), list all the facts, matters and circumstances upon which the Claimant relies to infer this intention?		
	<u>Of §37(d)</u>: (a) Is it being alleged that at or before 19 September 2012 Phillip Butt intended that the Defendant should fraudulently misrepresent to purchasers (such as the Claimant) that the AHUs were being sold free of the AHO?	The Claimant's case has been sufficiently set out in the Particulars of Claim for the Defendant to understand the case he has to meet. Nor does it appear that this the request reasonably necessary to enable the Defendant to prepare his own case.	15. The Responses to Request 3 are repeated here.

	b) If “yes” to (a), list all the facts, matters and circumstances upon which the Claimant relies to infer this intention? (c) Is it being alleged that at or before 19 September 2012 Fraser Allen intended that the Defendant should fraudulently misrepresent to purchasers (such as the Claimant) that the AHUs were being sold free of the AHO? d) If “yes” to (c), list all the facts, matters and circumstances upon which the Claimant relies to infer this intention?		
	<u>Of §37(d)</u>: Please now answer Request 26 in the Pt 18 request dated 26 July 2019: given the criticality of this allegation, paragraph 51 of the Particulars of Claim does not sufficiently identify what were the	The Claimant's case has been sufficiently set out in the Particulars of Claim for the Defendant to understand the case he has to meet.	16. The reference to “inception” of the alleged conspiracy presupposes that it is the Claimant’s case the plan as implemented was fully formulated at the time when the scheme was initially devised. In this regard reference should be made to the Response to Request 3 above.

	conspirators' intention at the inception of the alleged conspiracy. *Request 26 (26.07.19):* (a) Is it being alleged that each of the conspirators believed that the sub-leases would not be staircased up to 100%? (b) Is it being alleged that each of the conspirators believed that the Shared Ownership Lease Exemption would not be triggered? c) Is it being alleged it being alleged that each of the conspirators believed that the AHUs would not be sold free of the AHO?	Nor does it appear that this the request reasonably necessary to enable the Defendant to prepare his own case.	17. As pleaded in paragraph 37 of the Particulars of Claim, not all the alleged conspirators were involved at the outset of the scheme. M&E was involved only from around 14 January 2014 and Mr Cooper- Attard and Mr Chryso Josephides were only involved once they had been recruited by the Defendant, or others involved in the conspiracy. 18. In relation to request 26 of the Pt 18 Request of 26 July 2019: a. Particulars of Claim §37(d) (as is stated at the end of that sub-paragraph) is further particularised later in the Particulars of Claim, namely at paragraphs 43-51. b. As stated in the Pt 18 request of 26 July 2019, the Claimant's case has been adequately set out.

	<u>Of §53</u>: (a) Was the loan from Credit Capital Corporation Limited pursuant to a written agreement?) If "yes" to (a), did the Claimant sign that written agreement herself? c) If "no" to (b), what is the name of the person who signed that written agreement on behalf of the Claimant?) If "yes" to (a), on what date was the loan agreement made? Was the loan from TN (UK) Consultancy Limited pursuant to a written agreement?	*<u>As to (a):</u>* The Claimant's case has been sufficiently set out in the Particulars of Claim for the Defendant to understand the case he has to meet. Nor does it appear that this the request reasonably necessary to enable the Defendant to prepare his own case. The request for documents is noted and will be considered at the disclosure stage. *<u>As to (b)-(l):</u>* The Claimant's case has been sufficiently set out in the Particulars of Claim for the Defendant to understand the case he has to meet.	34. It is the Claimant's contention that the claim has been adequately pleaded. It is not understood why this request is necessary for the Defendant to understand the Claimant's case or to prepare his own case. Further, this is a request for documents/evidence and not information. The request will be considered at the Disclosure stage.

	) If "yes" to (e), did the Claimant sign that written agreement herself? (g) If "no" to (f), what is the name of the person who signed that written agreement on behalf of the Claimant?) If "yes" to (e), on what date was the loan agreement made?) Did CCC have a first charge over Flat 5? (j) If "no" to (i), did CCC have a second charge over Flat 5?) Did TN (UK) Consultancy Limited have a first charge over Flat 5?	Nor does it appear that this the request reasonably necessary to enable the Defendant to prepare his own case. The request for documents is noted and will be considered at the disclosure stage.	

	(l) If "no" to (k), did TN (UK) Consultancy have a second charge over Flat 5?		
	Of §§53-4: a) What is the exact sum of each bridging loan? b) To the extent that the purchase price was not covered by the sum of the bridging loans, what was the Claimant's source for the purchase price?	The Defendant is referred to the attached Schedule of Loss and enclosures thereto for these figures. Interest continues to accrue and an updated Schedule of loss will be provided in due course.	35. The Defendant is again referred to the Schedule of Loss previously served and the enclosures thereto. It is not understood on what basis the Defendant considers the response provided to be inadequate.

Transcript of a recording by Ubiqus
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiqus.com

Ubiqus hereby certify that the above is an accurate and complete record of the proceedings or part thereof

This transcript has been approved by the judge.