IN THE HIGH COURT OF JUSTICE **Case No. BL-2019-001045**

BUSINESS AND PROPERTY COURTS IN MANCHESTER

BUSINESS LIST (ChD)

B E T W E E N:

CLAIM: **ASERTIS LTD**

Claimant

-and-

(1) MR MARK DAMIAN CLARKSON
(2) PAGEFIELD DEVELOPMENTS LIMITED
(3) MR GLENN THOMAS
(4) MR JOHN UNSWORTH
(5) MR RICHARD LUXMORE
(6) MR COLIN HOWARD BOSWELL
(7) MDSC (LIVERPOOL) LIMITED
(8) TAYCO002 LIMITED

Defendants

PART 20
CLAIM:

MARK DAMIAN CLARKSON

Part 20 Claimant

-and-

(1) ASERTIS LTD
(2) FUTURE RESOURCES FZE
(3) MR PRADEEP SINGH
(4) HOLY GROUP LIMITED
(5) SUDARSHAN SADANA
(6) GMT GLOBAL (FZE)
(7) MR VIJAY PAL GANDHI
(8) MR RAJINDER KUMAR

Part 20 Defendants

AND IN THE MATTER OF

IN THE HIGH COURT OF JUSTICE **Case No. E30MA305**

BUSINESS AND PROPERTY COURTS IN MANCHESTER

BUSINESS LIST (ChD)

B E T W E E N:

CLAIM: **MR MARK DAMIAN CLARKSON**

Claimant

-and-

(1) FUTURE RESOURCES FZE
(2) MR PRADEEP SINGH
(3) HOLY GROUP LIMITED
(4) MR SURDASHAN SADANA
(5) WHITEACRES HOLDINGS LIMITED
(6) TEN ACRES HOLDINGS LIMITED
(7) MR ANDREW DAVID PICKLES
(8) CERTUS HOLDINGS LIMITED

Defendants

SKELETON ARGUMENT ON BEHALF OF
ASERTIS LTD AND THE PART 20 DEFENDANTS

for hearing on 8 February 2021 at 10:30 am

Except where stated otherwise, all references are to the pages of the hearing bundle

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Time estimates

Pre-reading: *1 day*
Hearing: *2 days*

A. Introduction

1. This is the hearing of three applications made in the following set of proceedings:

    1.1 claim number BL-2019-001045 (the "**London Proceedings**"), transferred from London by order dated 6 October 2020 so that the applications could be heard together; and

    1.2 claim number E30MA305 (the "**Manchester Proceedings**").

2 This is the skeleton argument on behalf of:

    2.1 Asertis Ltd, the Claimant and the First Part 20 Defendant in the London Proceedings ("**Asertis**"), represented by TWM Solicitors LLP ("**TWM**"); and

    2.2 the Second to the Eighth Part 20 Defendants in the London Proceedings (the "**Part 20 Defendants**")[1], of whom the Second to the Fifth Part 20 Defendants (the "**Lenders**") are also Defendants in the Manchester Proceedings, represented by Fladgate LLP ("**Fladgate**").

3 In summary, the Court may recall the Manchester Proceedings, having dealt with this matter in both (i) autumn 2018 to January 2019 and again on (ii) 8 November 2019.

    3.1 The Manchester Proceedings concerned the claims of a Mr Mark Clarkson, as a claimant ("**Mr Clarkson**"), seeking various declarations concerning a substantial

[1] While Asertis is listed in the heading as the First Part 20 Defendant, as discussed below, no substantive relief is sought against it within the Part 20 Claim. For this reason, and for convenience, the defined term "Part 20 Defendants" refers to the Second to the Eighth Part 20 Defendant only.

short-term loan taken out by Ten Acres Holdings Limited ("**Ten Acres**") from the Lenders, as to which default had occurred. As part of that claim, Mr Clarkson asserted that he was the ultimate beneficial owner ("**UBO**") of a property in Manchester called 'Ten Acres' (the **"Property**"), which had been purchased using the Lenders' money and was held in the name of Ten Acres[2]. What was memorable about the claim was Mr Clarkson's own evidence; where he admitted perpetrating a fraud against the Lenders, having disguised his (alleged) ultimate beneficial interest in the Property, having hid behind a "front man"[3], knowing that had he been identified by the Lenders they would have lent no money to Ten Acres (Mr Clarkson being married to a mortgage fraudster). What was then truly bizarre, in the context of that admitted fraud, was that Mr Clarkson was asking the Court to then recognise his alleged equitable interest as against the Lenders. Unsurprisingly, the Lenders sought to strike out Mr Clarkson's claim. After one adjourned hearing, the matter settled on terms set out in a schedule to a Tomlin Order (the "**Settlement Agreement**"), which included a declaration, by Mr Clarkson, that he had no interests in Ten Acres or the Property[4]. In respect of the Settlement Agreement Mr Clarkson was represented by his current solicitors and leading counsel.

3.2 The matter then returned before this Court on 8 November 2019 after Mr Clarkson had refused to comply with the terms of Settlement Agreement imposed on him requiring him to remove certain unilateral notices at the Land Registry. The Lenders, having sought an order for specific performance, faced arguments from Mr Clarkson that the Settlement Agreement was unenforceable and that he had been the subject of a conspiracy against him. As to that conspiracy it was, in brief, that the Lenders had colluded to obtain the Property from Mr Clarkson for themselves by forcing him into the Settlement Agreement, whilst then preventing

[2] The shares in Ten Acres were wholly owned by Whiteacres Holdings Limited ("**Whiteacres**"), a Belize registered corporate entity; which was in turn owned by TPT Corporate Services ("**TPT**"), a Nevis entity, as its registered shareholder. A Mr Andrews Pickles had asserted to the Lenders that he was the UBO of the shares registered in TPT's name, under trust; albeit Mr Clarkson then said in the Manchester Proceedings that this was a sham (designed by him to fool the Lenders) and that it was him who was the UBO of the shares is Whiteacres under a concealed trust.

[3] Mr Clarkson's own words: see **[2823]**

[4] See clause 6 **[595]**

him from obtained further borrowings from a lender called FundingSecure Limited, which would have allowed Ten Acres to pay off the Lenders. At that hearing, HHJ Hodge QC rejected Mr Clarkson's arguments, holding that the Settlement Agreement was enforceable (and ordered its enforcement) and that, by the terms of the Settlement Agreement, Mr Clarkson had released any claim he might have had to beneficial ownership of the Property.

3.3 That, therefore, was an end to the Manchester Proceedings. The Property was subsequently sold by receivers, albeit the net receipts did not cover the sums due to the Lenders from Ten Acres under the terms of the Settlement Agreement. In other words, and contrary to Mr Clarkson's assertion, the Lenders did not obtain a windfall.

4 Separately, there are the London Proceedings.

4.1 These were originally commenced by FundingSecure Limited ("**FundingSecure**"), an online peer-to-peer lending platform, against both Mr Clarkson and a range of other defendants. Following the administration of FundingSecure in October 2019, that claim was assigned to Asertis Limited ("**Asertis**"), the current claimant in the London Proceedings. What is alleged by Asertis is that Mr Clarkson, in conspiracy with others, fraudulently obtained large sums from FundingSecure and its customers (i.e. members of the public) by either simply taking money from FundingSecure's account and/or creating post-event loan agreements to cover unauthorised borrowing. Mr Clarkson and the other defendants, being the Second to Fourth and the Sixth to Eighth Defendants in the London Proceedings ("**the MC Defendants**"), deny wrongdoing, but (variously) admit to having received monies from FundingSecure. Mr Clarkson himself admits to owing FundingSecure (and now Asertis) the sum of £6,639,447.77, with the MC Defendants admitting separate lesser sums.

4.2 As part of the London Proceedings, FundingSecure obtained a freezing injunction against Mr Clarkson and Mr Luxmore (only) in June 2019 granted by Mr Justice Arnold. Whilst Mr Clarkson issued an application to discharge the freezing injunction on 9 July 2019, that application has continually been adjourned by

consent. That injunction was then (by consent order agreed with Mr Clarkson) continued by Asertis as the new claimant.

4.3 On the 29 April 2020 Asertis, Mr Clarkson and the MC Defendants agreed what was, in effect, a stay for ADR to take place. Despite that agreement, on 20 May 2020 Mr Clarkson and the MC Defendants applied for permission to issue a Part 20 claim against Asertis and the Part 20 Defendants, with the latter to be added to the London Proceedings. That hearing was heard *ex parte* without notice by Master Kaye on the 29 July 2020, with permission being granted. When ADR failed in August 2020, the Part 20 Claim was served in September 2020[5].

4.4 On the 2 October 2020, Asertis and the Part 20 Defendants issued various applications for summary judgment/strike out and to enforce (yet again) the Settlement Agreement.

4.5 It should be noted that the Part 20 Claim is put forward by Mr Clarkson (only) as a set-off against Asertis' claim, in circumstances where Mr Clarkson and the MC Defendants have admitted a substantial liability to Asertis.

5 When the Part 20 claim is considered, the Court will notice that the allegations now made by Mr Clarkson are exactly the same as those he was making before the 8 November 2019 hearing in front of HHJ Hodge QC. Mr Clarkson is regurgitating the same complaint he made back in 2019, albeit now he has thrown in both Asertis and Mr Kumar for good measure (conveniently thereby also setting up a set-off defence to the admitted liability). The basis of the Part 20 claim is unaltered, and, just as in 2019, is hopeless. Hence, Asertis and the Part 20 Defendants seek in the London Proceedings to strike out Mr Clarkson's Part 20 claim on the basis that:

5.1 It is a blatant abuse of process contrary to the existing finding of HHJ Hodge QC that Mr Clarkson lost any interest in the Property;

5.2 Further, to the extent that there is anything new in anything Mr Clarkson has to say, he should (and could) have brought that in November 2019;

[5] The issuing of the Part 20 Claim involved no pre-action letter being sent to the Part 20 Defendants and, when issued, no Initial Disclosure was provided

5.3 In any event, Mr Clarkson comes to Court with the dirtiest of hands. He is (by his own evidence) a fraudster, who is coming to this Court (yet again) asking it recognise his (alleged) interest in the Property, despite having deliberately lied about that (alleged) interest to the Lenders, inducing them to lend money to Ten Acres. Without that interest, he has suffered no loss;

5.4 His claim in conspiracy is woeful, pleading no primary facts to allege dishonesty, and should be struck out; and

5.5 His other 'scatter-gun' allegations have no merit.

6 In the Manchester Proceedings the Lenders also seek an order for specific performance of the Settlement Agreement, which required Mr Clarkson not to seek to litigate matters (as to which he agreed he had no interest).

7 It follows that in the absence of a Part 20 claim, Asertis is entitled to judgment on the admitted debts owed by Mr Clarkson. It is also entitled to judgment against the MC Defendants. It thus seeks such judgments in the London Proceedings.

B. Applications Listed for Determination

8 To assist the Court, the following applications have been listed for determination at this hearing:

(i) The Part 20 Defendants' Application (London Proceedings)

8.1 The Part 20 Defendants' application in the London Proceedings dated 2 October 2020 **[434]** (the "**Part 20 Defendants' Application**") for an order that:

8.1.1 Mr Clarkson's Part 20 Claim (the "**Part 20 Claim**") be struck out pursuant to CPR r.3.4(2)(a),(b) and/or (c) and/or in the Court's inherent jurisdiction;

8.1.2 further or alternatively, for summary judgment on the Part 20 Claim pursuant to CPR r.24.2; and

8.1.3 the order of Master Kaye dated 29 July 2020 (the "**Master Kaye Order**") be revoked and/or set aside pursuant to CPR r.3.1(7) and/or the Court's inherent jurisdiction on account of Mr Clarkson's failure to comply with his duty of full and frank disclosure.

(ii) The Tomlin Order Application (Manchester Proceedings)

9.1 The Lenders' application in the Manchester Proceedings dated 2 October 2020 **[1303]** ("**the Tomlin Order Application**") for an order:

9.1.1 requiring Mr Clarkson, the Claimant in the Manchester Proceedings, to comply with the terms of the Schedule to the Tomlin Order dated 15 November 2018; and

9.1.2 to discontinue, as against the Lenders, the Part 20 Claim.

(iii) Asertis' Application (London Proceedings)

9.2 Asertis' application in the London Proceedings dated 2 October 2020 **[1002]** ("**Asertis' Application**") for an order (*inter alia*):

9.2.1 for summary judgment against the Second to Fourth and the Sixth to Eighth Defendants in the London Proceedings ("**the MC Defendants**") and Mr Clarkson pursuant to CPR r.24.2 on a number of issues, or alternatively judgment based on admissions pursuant to CPR r.14.3, or alternatively an order for interim payments pursuant to CPR 25.7(1)(a) and/or (c);

9.2.2 that paragraph 52 of Mr Clarkson and the MC Defendants' Defence (the "**Amended Defence**"), which contains an allegation of set-off, be struck out pursuant to CPR r.3.4(2)(a) or (b) or in the Court's inherent jurisdiction, and/or for summary judgment thereto pursuant to CPR r.24.2;

9.2.3 that the Master Kaye order be set aside or revoked;

9.2.4 that the Part 20 Claim be struck out pursuant to CPR r.3.4(2)(a) and/or (b) and/or in the Court's inherent jurisdiction.

(iv) The Application to re-Amend (London Proceedings)

9.3 Mr Clarkson and the MC Defendants' application in the London Proceedings by notice dated 26 January 2021 to re-amend their Amended Defence **[1076]** (the "**Application to re-Amend**").

(v) The Freezing Order Applications (for directions only) (London Proceedings)

10 Separately, the Court will note from the London Proceeding that there are two other applications which have been issued and not determined. They are as follows:

10.1 Asertis' application by notice dated 5 June 2019 for the continuation of the freezing order dated 4 June 2019 (the "**Continuation Application**", the "**Freezing Order**") **[421]**; and

10.2 and Mr Clarkson's application by notice dated 9 July 2019 for discharge of the Freezing Order (the "**Discharge Application**") **[432]**

(together the "**Freezing Order Applications**").

11 In respect of both of these applications it has been agreed on 27 January 2021, by signed consent order, that they will be listed at this hearing for directions only **[169]**. It was only by Taylors' letter of 2 February 2021 that Mr Clarkson indicated that he now wishes to renege on that agreement.

C. Suggested Adjournment of Matters

12 By letter dated the 26 January 2021 Taylors Solicitors ("**Taylors**") wrote to both TWM and Fladgate **[3034]** and, for the first time, suggested that this hearing should not deal with the

Part 20 Defendants' Application, the Tomlin Order Application and the Asertis Application. Rather, it proposed that those applications be adjourned pending determination of the Freezing Order Applications (at some unspecified point in the future). By letter of 2 February 2021, Taylors further confirmed that Mr Clarkson's counsel will be seeking an adjournment of the above matters.

13 Despite such proposals in correspondence, no application to adjourn has been issued Taylors. What is particularly remarkable is that:

13.1 This hearing has been fixed since 11 November 2020; and

13.2 Only days before their 26 January 2021 letter, on the 21 January 2021, Taylors had agreed to list the Freezing Order Applications for directions only at this 3-day hearing, *without any* reference to any proposed adjournment.

14 It is also important to note that in their letter dated 26 January 2021, Taylors asserted that on the hearing of the Discharge Application, Mr Clarkson will be seeking to "*vary it to permit [him] to raise money for costs*". What Taylors seem to have forgotten is that the Discharge Application is for the complete discharge of the freezing injunction; it does not seek *any* variation. It hence (obviously) contains no details of what variation is sought, let alone any no evidence or argument in support.

15 Subsequently, in their letter of 2 February 2021, Taylors went even further, stating that Mr Clarkson "*will be asking the Court to discharge the Freezing Order in its entirety"* (emphasis added) or, as an "*interim measure*", that the order be "*significantly varied".* The former assertion is contrary to what was previously agreed and recorded in the approved consent order. The latter (again) overlooks the fact that there is no application to vary the Freezing Order.

16 Thus:

16.1 Mr Clarkson appears to be seeking to pursue an application to adjourn which does not exist:

16.2 On the basis of the alleged need to determine an application to vary a freezing injunction, which does not exist; and

16.3 Which completely overlooks the position of the MC Defendants which are not affected by any of this.

17 *If* an application to adjourn is issued by Mr Clarkson and the MC Defendants, it is anticipated, based on Mr Clarkson's third witness statement dated 29 January 2020 ("**Clarkson3**") and Taylors' letter of 2 February 2021, that it will allege that Mr Clarkson has a need to raise money to pay for legal fees. When the Court considers Clarkson3, it should treat the same with extreme caution, containing many remarkable (and false and unsubstantiated) allegations, including the claim that both Asertis, Part 20 Defendant and their solicitors and counsel have (i) abused the granting of the freezing injunction (and, it is presumed) its continuation by consent and (ii) engaged in a deliberate exercise of starving Mr Clarkson of means to fund his legal expenses, including abusing the Court process.

18 Briefly taking matters in turn (and subject, of course, to whether an application to adjourn being issued and ordered to be heard at this hearing):

18.1 There is no application for variation of the freezing injunction to permit funds to be raised for legal expenses, only for complete discharge (on the basis that no order should ever have been granted by Mr Justice Arnold). Hence there is no application to vary the Freezing Order for the Court to consider and the point of any adjournment is therefore not understood.

18.2 In any event, and as to the financing of legal fees, since the granting of the freezing injunction by Mr Justice Arnold on 4 June 2019, Mr Clarkson has engaged both solicitors and counsel in both the Manchester Proceedings *and* the London Proceedings. This has included Taylors at all times and no less than 3 different counsel, some of very significant seniority (and cost).

18.3 Separately, it should be noted that the MC Defendants (as distinct from Mr Clarkson) have also been continually represented by Taylors and counsel in the London Proceedings. The MC Defendants are *not* subject to a freezing injunction. To the extent that they are not ready for the hearing, that must be for reasons wholly

unrelated to the freezing injunction (and none have been articulated – let alone evidenced – by Taylors).

18.4 For this hearing Mr Clarkson and the MC Defendants (i) are represented by both solicitors and very senior (and, one suspects, expensive) leading counsel and (ii) have been able to file evidence in this matter, right up to the 2 February 2021 (as they have done throughout the London Proceedings and the Manchester Proceedings).

18.5 Whilst Mr Clarkson now seeks to assert an inability to fund legal representation (albeit that evidence is woefully incomplete), there has never been *any* evidence from the MC Defendants that they are unable to fund representation (or in fact any evidence from them at any point in time). The MC Defendants are subject to the Asertis Application, separately from whatever position is adopted by Mr Clarkson.

18.6 To the extent that funds have (apparently) been drained by Mr Clarkson, he could (and should) have deployed them more sensibly. Instead, he instructed very senior leading counsel (i) to draft the Part 20 Claim and Amend the Defence, (ii) conduct the hearing to obtain permission to add the Part 20 Defendants and the Part 20 Defendants before Master Kaye and (iii) now appear before this Court for this hearing. In the Manchester Proceedings, Mr Clarkson was ably represented by Tina Ranales-Cotos and it is submitted that, if necessary, a more cost-effective counsel could and should have been used by Mr Clarkson and the MC Defendants.

18.7 Finally, no individual has a right to legal representation of their choosing (and certainly not that of leading counsel). To the extent that Mr Clarkson *and* the MC Defendants have drained all their available funds (which has not been proven by *them*), this Court frequently deals with litigants in person and there is no evidence that they would be prejudiced by such a course.

19 Further, as to the freezing injunction of Mr Justice Arnold and the assertion in Clarkson3 that the Court process has been deliberately abused by Asertis and the Part 20 Defendants:

19.1 Paragraph 11(1) of the Freeing Order provides as follows **[95]**:

"This order does not prohibit the Respondent from spending £1,000 a week towards his ordinary living expenses and also a reasonable sum on legal advice and representation. But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from." (emphasis added)

19.2 Accordingly, the Freezing Order allows Mr Clarkson to spend reasonable sums on legal advice and representation. Mr Clarkson himself plainly understands this, having referred to a "*'carve-out' for legal costs"* in his statement dated 29 January 2021 **[1081]**. Asertis has never been asked to consent to Mr Clarkson spending money on legal fees (presumably because Mr Clarkson understood that he did not need permission to do so) and, for the avoidance of doubt, Asertis has *never* objected to Mr Clarkson spending monies on his reasonable legal advice and representation.

19.3 Mr Clarkson's position is that he does not have any money to spend on legal fees, hence the above "carve-out" is of no use to him, and what he needs is a variation of the Freezing Order to allow him to *raise* funds for legal fees in relation to the applications currently before the Court.

19.4 As to Mr Clarkson's request to consent to a variation, even though the Part 20 Defendants' Application, the Asertis Application and the Tomlin Order Application were served at the start of October 2020, the first time Mr Clarkson approached Asertis about a variation of the Freezing Order to raise funds in respect of his legal fees in relation to this hearing was on 13 January 2021. Further, Taylor's letter of 13 January 2021 **[1276]** consisted of a bare request for an unspecified variation, without any indication as to how Mr Clarkson proposed to raise funds or other necessary details.

19.5 Asertis promptly responded, by TWM's letter of 15 January 2021 **[1277]**, requesting the information reasonably required to consider the request, including how Mr Clarkson proposed to raise funds and as to the matters set out in *Tidewater Marine v Phoenixtide* [2015] EWHC 2748. Had Mr Clarkson issued an application

to vary the Freezing Order (which he had not done), he would have needed to provide this information. Mr Clarkson would need to establish, in particular, that there are no other sources of funds available to him. This is not something Mr Clarkson can address by bare assertion. His substantial expenditure on legal costs, while the freezing injunction was in place (and when, according to his affidavit of assets dated 12 June 2019, any cash he had did not exceed £1,000), raises serious questions in this regard, and Asertis' request for further information was entirely reasonable.

19.6 Mr Clarkson never responded to TWM's letter of 15 January 2021 or otherwise provided the information requested.

19.7 For completeness, there had been earlier correspondence in relation to Mr Clarkson raising funds, not in respect of legal fees, but in respect of Mr Clarkson's admitted debt in the sum of £150,000 owed to a third party which is subject to a pending bankruptcy petition. By letter of 27 November 2020 **[3140]**, Taylors asked Asertis to confirm that if Mr Clarkson were to "*sell or to charge assets in order to clear the Petition Debt and costs ... this will not amount to a breach of the Freezing Injunction"*. No information was provided (as a bare minimum) as to what assets Mr Clarkson proposed to sell or to charge.

19.8 In response, by letter of 30 November 2020 **[3141]**, TWM said that the request required an explanation of the transaction Mr Clarkson had in mind. Again, this was an entirely reasonable request, and this is the context of TWM's letter of 1 December 2020 **[3143]**, erroneously relied upon in paragraph 6.13 of Clarkson3. Further, it is not clear what Mr Clarkson's point is in relation to the 1 December 2020 letter. All that was said by TWM is that Mr Clarkson must not deal with the assets caught by the Freezing Order without Asertis' consent; again, an entirely reasonable position to take.

19.9 In any event, it is not clear how Mr Clarkson could raise any funds from any of his properties. In relation to all but one of the properties declared in his statement of assets, Asertis is the first charge-holder and has the benefit of negative pledges, pursuant to which no further security can be granted without Asertis' consent. As to the Lytham Property, which is expressly referred to in paragraph 7(c) of the

Freezing Order, Mr Clarkson has already raised £282,000 against it without Asertis' consent, in a transaction which involved a breach of Mr Unsworth's declaration of trust in favour of FundingSecure (now assigned to Asertis). As set out in the Fifth Statement of Mr Brew dated 2 February 2021 ("Brew5"), the transaction has led to a dispute before the Land Registry Tribunal, which has directed that the matter be stayed pending the outcome in these proceedings. Against that background, any suggestion by Mr Clarkson that he wishes to raise further funds against the Lytham Property requires an explanation (before even turning to what he proposes).

D. Bundles and Suggested Pre-Reading

20 A paginated electronic bundle has been prepared. If preferred, a hard copy can also be provided on request.

21 The Court is invited to consider the following material as suggested pre-reading. It is acknowledged that this material is substantial, albeit, once distilled, this is a relatively straightforward matter. As such, the Court may prefer to spend the entirety of the first day completing pre-reading, rather than the half day originally proposed, with the hearing commencing on the second day, being the 9 February 2021. In the opinion of Counsels for Asertis and the Part 20 Defendants two days of oral submissions will be sufficient to dispose of this matter.

22 As to suggested pre-reading:

22.1 *Pleadings, Orders and Judgments*

22.1.1 Judgment of HHJ Hodge QC dated 8 November 2019 **[773]**;

22.1.2 Re-Amended Particulars of Claim in the London Proceedings **[12]**;

22.1.3 Re-Amended Defence of the First to Fourth and Sixth to Eight Defendants and the First Defendant's Counterclaim and Set-Off against Asertis and Part 20 Claim against the Part 20 Defendants **[54]**;

22.1.4 Freezing Order of Mr Justice Arnold and Note of Hearing **[92]**;

22.2 *Witness evidence*

22.2.1 First witness statement of John Mark Buckley dated 2 October 2020 ("**Buckley1**") **[441]**;

22.2.2 First witness statement of Vijay Gandhi dated 2 October 2020 ("**Gandhi1**") **[859]**;

22.2.3 Witness statement of Adosh Chatrath dated 2 October 2020 **[916]**;

22.2.4 First witness statement of Rajinder Kumar dated 2 October 2020 ("**Kumar2**") **[924]**;

22.2.5 Second witness statement of John Mark Buckley dated 2 October 2020 ("**Buckley2**") **[996]**;

22.2.6 Third witness statement of Simon Brew dated 2 October 2020 ("**Brew3**") **[1006]**;

22.2.7 Fourth witness statement of Simon Brew dated 18 January 2021 ("**Brew4**") **[1023]**;

22.2.8 Third witness statement of Mark Clarkson dated 29 January 2021 ("**Clarkson3"**) **[1080]**;

22.2.9 Witness statement of John Green dated 29 January 2021 **[1169]**;

22.2.10 Witness statement of Andrew Maclean dated 29 January 2021 **[1181]**;

22.2.11 Fifth witness statement of Anthony Catterall dated 2 February 2021 ("**Catterall5**") **[1184]**;

22.2.12 Second witness statement of Rajinder Kumar dated 2 February 2021 ("**Kumar2**") **[1292]**;

22.2.13 Second witness statement of Vijay Gandhi dated 2 February 2021 ("**Gandhi2**") **[1296]**;

22.2.14 Third witness statement of John Mark Buckley dated 2 February 2021 ("**Buckley3**") **[1300]**; and

22.2.15 Fifth witness statement of Simon Brew dated [3] February 2021 ("**Brew5**") **[3194]**.

E. Factual Overview

23 This is a remarkable set of connected proceedings which revolve around Mr Clarkson and his web of nominees, front men (by his own description) and offshore corporate structures.

24 On Mr Clarkson's own factual account of the events which gave rise to the Manchester Proceedings and the Part 20 Claim in the London Proceedings, he is a fraudster. While denying the allegations of fraud in the main claim in the London Proceedings, Mr Clarkson has admitted liability for at least £6,639,447.77. Seeking to avoid (or delay) the inevitable summary judgment in the London Proceedings, Mr Clarkson has issued a hopeless Part 20 Claim in a misconceived attempt to resurrect long-settled matters.

25 The factual background is complex and the Court is invited to read the following overview first, before then considering the matter further by reference to the factual background is set out in paragraphs 27 – 104 of Buckley1 **[456] – [475]**, which the Court is invited to read in full.

(i) The Manchester Proceedings

25.1 In 2017, Mr Clarkson, on his own account, wished to buy a potential development site in Manchester ("**the Property**"), but needed finance to do so, and arranged for an approach to be made to the Lenders, seeking funds to Purchase the Property.

25.2 On Mr Clarkson's own case, he hid his identity from potential lenders, including the Lenders, due to concerns that they would find out about his wife's fraud conviction. To this end, Mr Clarkson says he set up corporate structures involving

(*inter alia*) a Belize company and a Nevis offshore trust, and deployed a certain Mr Andrew Pickles ("**Mr Pickles**") as his "*front man"* (using Mr Clarkson's own description).

25.3 Following a series of representations orchestrated by Mr Clarkson (supported by documents) as to the legitimacy of the proposed transaction, the authority of Mr Pickles to act on behalf of the purchasing entity and Mr Pickles' assertion status as the UBO of the entire scheme (i.e. not Mr Clarkson, of whom there was no mention), the Lenders provided short-term funding of about £8.3m to Ten Acres (the "**Loan**") to allow it to purchase the Property.

25.4 Ten Acres subsequently defaulted on the Loan. The Lenders enforced their rights pursuant to the Loan documentation, taking control of Whiteacres, the sole shareholder of Ten Acres.

25.5 It was only at this point did Mr Clarkson came out of the shadows, alleging that he was the UBO of the issued shares in Whiteacres, registered in the name of TCP, a Nevis entity (and hence, in turn, Ten Acres and the Property)[6]. He commenced the Manchester Proceedings, seeking a series of declarations, including as to the (alleged) invalidity of the Loan documentation. The Lenders, as well as Whiteacres and Ten Acres (the Fifth and Sixth Defendant in the Manchester Proceedings respectively) applied for strike-out and/or summary judgment, given Mr Clarkson blatantly fraudulent conduct.

25.6 On 12 November 2018, Mr Clarkson (represented by solicitors and leading counsel, Lesley Anderson QC), the Lenders, Ten Acres, Whiteacres and GMT Global (FZE) (an assignee: "**GMT**") entered into the Settlement Agreement, pursuant to which Ten Acres agreed to make a series of payments to discharge its liability to the Lenders. The Settlement Agreement provided that, in the event of default, the Lenders were to be the legal and beneficial owners of Whiteacres (and therefore, indirectly, Ten Acres). It also contained an agreement by Mr Clarkson that he had no legal or beneficial interest in any aspect of the corporate structure in

[6] For completeness, it has never been accepted by the Lenders that Mr Clarkson is the UBO of the issued shares in Whiteacres. They have no knowledge of such matters, except that both Mr Clarkson and Mr Pickles are fraudsters who have, at various times, claimed to be the UBO.

existence which own the Property. Importantly, the agreement provided that if the debt to the Lenders was repaid in full and on time by Ten Acres, they would transfer their shares in Whiteacres back to TPT; it then being a matter for TPT as to what it did with those shares[7]. The terms of the Settlement Agreement were recorded in the Schedule to the Tomlin order dated 15 November 2018 (the "**Tomlin Order**").

25.7 Ten Acres subsequently defaulted under the Settlement Agreement in March 2019 which, given the terms of the Settlement Agreement, should have been the end of that matter.

(ii) The London Proceedings

25.8 The London Proceedings were issued by FundingSecure, an FCA-regulated online peer-to-peer lending platform which facilitated short-term loans, matching borrowers with lenders.

25.9 It is common ground that Mr Clarkson had dealings with FundingSecure between 2015 and 2018, both individually and through a series of nominees, arranging for Mr Clarkson to borrow money from FundingSecure and its clients (i.e. members of the public). FundingSecure alleged (and, following the assignment of its claim to Asertis, Asertis now alleges) that the loans were obtained by fraud involving, *inter alia*, a conspiracy with a former director of FundingSecure, Mr Luxmore, and others. It is Asertis' case that Mr Clarkson dishonestly obtained £8,155,552.25.

25.10 In June 2019, FundingSecure issued the London Proceedings.

(iii) The Freezing Order

25.11 On 4 June 2019, Mr Justice Arnold found that it was "*very hard* indeed" to imagine an innocent explanation for the emails passing between Mr Clarkson and Mr Luxmore, and granted a freezing order against both of them (the "**Freezing Order**"). The Freezing Order remains in place as against Mr Clarkson; this is the order which is the subject of the Freezing Order Applications.

(iv) Investment into FundingSecure

[7] In this way the Lenders avoided any argument as to who was, or was not, beneficially entitled to those shares, whether that be Mr Clarkson, Mr Pickles or whomever.

25.12 In the autumn 2018, FundingSecure found itself in financial difficulty as a result of the fraud (although the cause of the financial "hole" was not yet known)[8]. It was in need of external investment, which was provided by Mr Rajinder Kumar ("**Mr Kumar**"), the Eighth Part 20 Defendant. He became a director and a shareholder of FundingSecure in October 2018.

25.13 Subsequently, there was further investment from a company called EZ Invest Limited, of which Mr Vijay Gandhi ("**Mr Gandhi**"), the Seventh Part 20 Defendant, was a director. Mr Gandhi became a director of FundingSecure in May 2019. Coincidentally, Mr Gandhi is also a director of Holy Group Limited ("**Holy Group**"), one of the Lenders. Mr Gandhi and Mr Kumar have confirmed, in evidence, that they only came to know each other in mid-December 2018, when they were introduced by Mr Adosh Chatrath ("**Mr Chatrath**"), a solicitor. Mr Chatrath has confirmed the same in evidence. This account is also supported by contemporaneous evidence, being various WhatsApp correspondence in relation to the introduction[9].

25.14 It is worth noting at this point that Mr Clarkson now expressly pleads, in the Part 20 Claim, that by the end of March 2018 at the latest (i.e. over eight months earlier), the Lenders, GMT, Mr Gandhi, Mr Kumar and FundingSecure entered into an agreement or combination to obtain the Property "*for themselves*". As discussed below, there are several fundamental problems with this allegation, but it is worth noting at the outset that (a) neither Mr Gandhi nor Mr Kumar had become directors of FundingSecure at this point (nor are they alleged to have exercised control over FundingSecure in any other way), and that (b) Mr Kumar is not one of the Lenders, has no interest in any of the Lender companies, was not party to the Settlement Agreement, and is not alleged to have benefited from the alleged conspiracy in any way.

(v) Mr Clarkson's challenge in the Manchester Proceedings

[8] It is worth noting that Mr Clarkson, even on his own case, admits that he owes FundingSecure £6,639,447.77.
[9] For completeness, there is no evidence of them having any prior dealings with each other.

25.15 Following Ten Acres' event of default under the Settlement Agreement in March 2019, Mr Clarkson started to write to the Lenders (through his solicitors) raising various complaints, which included assertions that some of the terms of the Settlement Agreement were unenforceable penalties.

25.16 Separately, the Lenders sought to appoint a receiver to sell the Property. However, a number of unilateral notices which remained registered against the Property's titles were posing problems. These should have been removed by Mr Clarkson pursuant to his obligations under the Settlement Agreement, but he had failed to do so.

25.17 On 28 October 2019, the Lenders therefore issued an application to enforce the terms of the Settlement Agreement as recorded in the Tomlin Order, seeking an order for specific performance against Mr Clarkson (the "**2019 Enforcement Application**").

25.18 In response, Mr Clarkson sought to challenge the Settlement Agreement. Represented by solicitors and counsel, Mr Clarkson presented to the Court draft particulars of claim, prepared by counsel ("**the Draft Particulars of Claim**") **[756]**, which he said he wished to pursue. He also made direct allegations, as set out in his evidence for the hearing of the 2019 Enforcement Application, that he was the subject of a fraud perpetrated against him with the aim of depriving him of any beneficial interest in the Property (i.e. the allegations he makes, again, in the Part 20 Claim).

25.19 On 8 November 2019, at a contested hearing (the "**November 2019 Hearing**"), HHJ Hodge QC dismissed all of Mr Clarkson's arguments. HHJ Hodge QC held that Mr Clarkson had no interest in Ten Acres (and hence the Property), that the Settlement Agreement was enforceable, and granted the Lenders' 2019 Enforcement Application (the "**HHJ Hodge QC Judgment**")[10] **[773]**. Mr Clarkson never appealed against the HHJ Hodge QC Judgment.

[10] Contrary to what is said in Clarkson3, the submissions made on behalf of Mr Clarkson and the HHJ Hodge QC Judgment were not concerned with only the attempt to adjourn matters. What they concerned was whether the Lenders were entitled to the relief they claimed, in the context of Mr

(vi) Sale of the Property

25.20 Following Mr Clarkson's removal of the unilateral notices, receivers were appointed and the Property was sold, in an arms' length transaction, on 13 February 2020, for about £13m. The net proceeds, after deduction of professional costs, were £12,938,402.67. The amount due under the Settlement Agreement at this point was £13,156,608.93. In other words, the Lenders did not recoup all of the sums due to them under the Settlement Agreement, being left marginally out of pocket.

(vii) The Part 20 Claim

25.21 On 20 May 2020, amidst ongoing without prejudice discussion, Mr Clarkson and the MC Defendants (i.e. with the exception of Mr Luxmore) issued a without notice application for permission to issue a counterclaim against Asertis and to bring an additional claim against the Part 20 Defendants (the "**Without Notice Application**").

25.22 The Without Notice Application was heard (and granted) by Master Kaye on 29 July 2020, who made the Master Kaye Order. As set out below, it is Asertis' and the Part 20 Defendants' position that Mr Clarkson failed to comply with his obligations of full and frank disclosure in the process, and that the Master Kaye Order ought to be revoked or set aside. In particular, Master Kaye was not properly taken to the various assertions and allegations made by Mr Clarkson in the Manchester Proceedings and as to full implications of the HHJ Hodge QC Judgment.

25.23 In the Part 20 Claim, Mr Clarkson seeks to revive the allegations he made in the Manchester Proceedings of a conspiracy by the Part 20 Defendants to obtain the Property "for themselves" by, *inter alia*, preventing FundingSecure from lending Mr Clarkson money to cover the instalments under the Settlement Agreement.

F. <u>The Part 20 Defendants' Application</u>

Clarkson's various assertions and allegations which he had then evidenced in the Manchester Proceeding.[11] See also Bradford and Bingley v Seddon [1991] 1 WLR 1482 at 1490.

26 The Court is invited to read Mr Clarkson's Part 20 Claim **[70]**. By their applications, the Part 20 Defendants seek an order that:

26.1 an order for strike-out and/or summary judgment in relation to the Part 20 Claim; and

26.2 the Master Kaye Order be revoked and/or set aside.

27 As set out above, the Part 20 Defendants' Application is made pursuant to CPR r. 3.1(7), CPR r.3.4 and/or CPR r.24.2 **[434]**. The Court will be very familiar with those provisions, which are therefore not set out here. To the extent necessary, submissions as to the same will be made orally.

28 The grounds for the Part 20 Defendants' Application are dealt with in the following sections:

28.1 *Res judicata*/abuse of process;

28.2 Clean hands/illegality;

28.3 Unlawful means conspiracy: defects;

28.4 Lawful means conspiracy: defects;

28.5 Deceit/breach of contract: defects; and

28.6 Breach of duty of full and fair disclosure.

(i) Res judicata/abuse of process

29 The first basis for the Part 20 Defendants' Application is that Mr Clarkson is barred from pursuing the Part 20 Claim by the doctrine of *res judicata /* abuse of process.

Relevant law

30 As to issues decided in earlier proceedings, as set out by Lord Keith in *Arnold v National Westminster Bank plc* [1991] 2 AC 93 at 105D:

"*issue estoppel may arise when a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue.*"

31 As to issues which might have been, but were not, decided in earlier proceedings, the Court will be familiar with the following statements by Wigram V-C in *Henderson v Henderson* (1843) 3 Hare 100:

"*the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only the points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."* (emphasis added)

32 See also *Johnson v Gore-Wood* [2002] 2 AC 1 at [31A-D][11]:

... Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the

[11] See also Bradford and Bingley v Seddon [1991] 1 WLR 1482 at 1490.

raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. ... [The] *approach… should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not.*

33 Further, in *Johnson*, Lord Bingham also held that the *Henderson v Henderson* principles apply with at least equal force where the first proceedings have been compromised by settlement:

"*An important purpose of the* [Henderson v Henderson] *rule is to protect a defendant against the harassment necessarily involved in repeated actions concerning the same subject matter. A second action is not the less harassing because the defendant has been driven or thought it prudent to settle the first; often, indeed, that outcome would make the second action more harassing."*

34 The *Henderson v Henderson* principle is not restricted to proceedings between the same parties. In *Aldi Stores Ltd v WSP Group Plc* [2008] 1 W.L.R. 748 at [6], the Court of Appeal cited, with approval, the following principle stated in *Dexter Ltd v Vlieland-Boddy* [2003] EWCA Civ 14:

"*Where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process"* (emphasis added)

Relevant facts

35 Having induced (on his own account) the Lenders to believe that Mr Pickles was the UBO of Ten Acres, when Ten Acres defaulted on the Loan, Mr Clarkson issued the Manchester

Proceedings alleging, *inter alia*, that he, and not Mr Pickles, was the beneficial owner of Whiteacres (and therefore the UBO of the Property).

36 Mr Clarkson's claim in the Manchester Proceedings was settled when Mr Clarkson (by consent and whilst represented by solicitors – being Taylors – and leading counsel), the Lenders, Whiteacres, Ten Acres and GMT entered into the Settlement Agreement on 12 November 2018 and the Tomlin Order.

37 The Settlement Agreement **[590]** provided for repayment of the outstanding amounts to the Lenders, and included the following terms:

37.1 that on the occurrence of default:

"5.2.1. the Revised Debt, plus accrued interest, less any payment made pursuant to Clause 2, shall become immediately due and payable by Ten Acres;

5.2.2. all provisions of clause 2 of this settlement agreement shall immediately cease to apply and the Lenders shall not be under any obligation to transfer the shares in Whiteacres to TPT Corporate Services;

5.2.3. the Lenders legally and beneficially validly own the shares in Whiteacres (including beneficially); and

5.2.4. that any and all benefits derived from their ownership of the shareholding in Whiteacres shall be solely that of the Lenders.

5.2.5. The Claimant shall, forthwith, take all steps necessary to remove all and any unilateral notices, restrictions and cautions which he has caused or is in the process of causing to be recorded at HM and Land Registry in relation to all and any titles to the Property."

37.2 Clause 6 (Release): "[Mr Clarkson] *hereby releases and forever discharges, all and/or any actions, claims, rights, demands and set-offs, whether in this jurisdiction or any other, whether or not presently known to him or to the law (of*

any jurisdiction), and whether in law or equity, that he has ever had, may have or hereafter can, shall or may have against any of the First to Sixth Defendants arising out of or connected with:

6.1.1 the Claim;
6.1.2 the underlying facts relating to the Claim; (together the 'Released Claims')".

37.3 Clause 7 (Agreement not to sue): "7. [Mr Clarkson] *agrees not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against any of the First to Sixth Defendants, any action, suit or other proceedings concerning the Released Claims, in this jurisdiction or any other.*"

38 Following Ten Acres' default on 1 March 2019, the outstanding amounts became immediately payable and the Lenders became the sole beneficial owners of the shares Whiteacres pursuant to clause 5.2 of the Settlement Agreement.

39 On the same day, Mr Clarkson wrote to the Lenders (by his solicitors), alleging that clauses 2.3 and 5.2 of the Settlement Agreement were unenforceable penalty clauses . Remarkably, in circumstances where he had entered into the Settlement Agreement with the benefit of advice from solicitors and leading counsel, Mr Clarkson also sought to reserve his right to argue that the Settlement Agreement was voidable for duress.

40 When Mr Clarkson failed to remove the unilateral notices on the Property, on 28 October 2019, the Lenders made the 2019 Enforcement Application for an order enforcing the terms of the Settlement Agreement.

41 By the 8 November 2019 Hearing, the allegations now made in the Part 20 Claim had been raised and articulated by Mr Clarkson:

41.1 in his statement in support of the Discharge Application dated 6 August 2019 (paragraphs 31 – 35) **[403]**; and

41.2 in his statement in opposition of the 2019 Enforcement Application dated 4 November 2019 (paragraphs 12 and 16).

42 At the 8 November 2019 Hearing, Mr Clarkson presented the Draft Particulars of Claim **[756]** to the Court and sought an adjournment of the 2019 Enforcement Application to allow him to bring proceedings to challenge (*inter alia)* clauses 2.3 and 5.2.2 – 5.2.5 of the Settlement Agreement as unlawful penalties. His counsel also submitted "*that the lenders had mounted a pincer movement to secure a stranglehold on Mr Clarkson's funds to enable the lenders to be repaid."* **[784]**

43 HHJ Hodge QC not only dismissed Mr Clarkson's application to adjourn, he also went on to grant the Lenders the substantive relief they had sought in the October 2019 Application. In doing so he found, *inter alia*, as follows:

43.1 *"It seems to me that that assertion that* [Mr Clarkson] *is the ultimate beneficial owner of the shares in Whiteacres is an essential part of the claim which was expressly released by clause 6. It therefore seems to me that Mr Clarkson, the claimant, is no longer in any position to seek to rely upon his ultimate beneficial ownership of shares in Whiteacres in order to challenge the settlement agreement."* (paragraph 20) **[782]**

43.2 "*The fact is* [...] *that if Mr Clarkson lacks the necessary standing to challenge the settlement agreement because he is precluded from asserting that he is the ultimate beneficial owner of Whiteacres, then it would be pointless to prolong matters and to grant an adjournment."* (paragraph 27) **[784]**

Submissions

44 The Lenders, who are parties to both the Manchester and the London Proceedings, submit that Mr Clarkson is barred from pursuing the Part 20 Claim for the following reasons:

44.1 Pursuant to the Settlement Agreement, the Lenders are the legal and beneficial owners of the shares in Whiteacres. That was the effect of the judgment of HHJ Hodge QC.

44.2 Further, it was held that Mr Clarkson released (i.e. lost) any contention he might have had to be the UBO of the Shares in Whiteacres. That was the determination of HHJ Hodge QC when he considered and heard Mr Clarkson's submissions on the Settlement Agreement, as encompassed in the agreed Tomlin Order. By his own action Mr Clarkson was held to have to walked away from any ability to later claim such an entitlement and cannot now be heard to seek to reargue that contention[12].

44.3 That current contention of Mr Clarkson (that he has that entitlement) is critical to his claim of unlawful means conspiracy and resultant financial lost; but, if that entitlement was lost, it was as a result of the Settlement Agreement, as per the judgment of HHJ Hodge QC.

44.4 Further, the issue of the enforceability of the Settlement Agreement was *also* decided at the November 2019 Hearing. The Lenders had applied, by the 2019 Enforcement Application, to enforce the terms of the Settlement Agreement, as recorded in the Tomlin Order. The enforceability (or otherwise) of the Settlement Agreement was a necessary issue in the Lenders' 2019 Enforcement Application, and the 2019 Enforcement Application was granted by HHJ Hodge QC. There was no appeal against his judgment.

44.5 In the circumstances, the issues of Mr Clarkson's alleged entitlement as UBO of the Shares in Whiteacres and of the enforceability of the Settlement Agreement are matters of issue estoppel.

44.6 To the extent that any issues relevant to the enforceability of the Settlement Agreement were not before HHJ Hodge QC, they could and should have been so raised by Mr Clarkson at the time. In particular, Mr Clarkson's own evidence in opposition of the 2019 Enforcement Application (and his earlier evidence in London Proceedings) contained the allegations of conspiracy now made in the Part

[12] As detailed above, and for the avoidance of doubt, it is not accepted that Mr Clarkson was the UBO of Whiteacres, that is his contention in circumstances in which he (and others) were acting fraudulently.

20 Claim. If they were known by Mr Clarkson *no later* than the 6 August 2019, they should have been pursued 3 months later.

44.7 Separately, the Draft Particulars of Claim presented to HHJ Hodge QC **[756]**, contained substantively the same allegations as the allegations now made under the Consumer Credit Act. In the Draft Particulars of Claim, Mr Clarkson alleged (inter alia) that clauses 2.3, 5.2.2 – 5.2.5 of the Settlement Agreement were unenforceable penalty provisions (paragraph 21 and 24). These are the same terms which Mr Clarkson now alleges are "inherently unfair" in paragraph 116 of the Part 20 Claim.

44.8 Mr Clarkson is therefore barred from pursuing the Part 20 Claim due to issue estoppel and/or the *Henderson v Henderson* principles.

45 GMT, Mr Gandhi and Mr Kumar likewise rely on *Henderson v Henderson*, as they are entitled to do even though they are not parties to the Manchester Proceedings. This is not a case where there might be legitimate reasons for a claimant to bring an action against certain parties only in the first instance, and to bring a further action against other parties later. A conspiracy claim involving allegations of a single conspiracy between several individuals and entities cannot be brought against some of the alleged co-conspirators first, and others later.

46 For the above reasons, the Part 20 Defendants submit that Mr Clarkson is debarred from bringing the Part 20 Claim on the grounds of *res judicata* and abuse of process, and the Part 20 Claim should be struck out.

(ii) Clean hands/illegality

47 Further, the Part 20 Defendants submit that Mr Clarkson is barred from pursuing the Part 20 Claim by the clean hands and/or the illegality doctrine.

Relevant law

48 The Court will be familiar with the maxim of equity that "*he who comes into equity must come with clean hands*", which applies to those who, as stated by the Court in *CF Partners (UK) LLP v Barclays Bank Plc* [2014] EWHC 3049 (Ch) (per Hildyard at [1133]):

"*have put themselves beyond the pale by reason of serious immoral and deliberate misconduct such that the overall result of equitable intervention would not be an exercise but a denial of equity"*

49 Further, there is also the common law illegality defence, concerned with various types of "*illegal or immoral acts"* as set out by the Supreme Court in *Les Laboratoires Servier v Apotex Inc* [2014] UKSC 55 at [25]:

"*The paradigm case is, as I have said, a criminal act. In addition, it is concerned with a limited category of acts which, while not necessarily criminal, can conveniently be described as "quasi-criminal" because they engage the public interest in the same way.* [...] *this additional category of non-criminal acts giving rise to the defence includes cases of dishonesty or corruption, which have always been regarded as engaging the public interest even in the context of purely civil disputes* [...]." (emphasis added)

50 The principles have been re-stated by the Supreme Court in *Patel v Mirza* [2016] UKSC 42 as follows (at [120]):

"*it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or, possibly, certain aspects of public morality, the boundaries of which have never been made entirely clear and which do not arise for consideration in this case). In assessing whether the public interest would be harmed in that way, it is necessary (a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, (b) to consider any other relevant public policy on which the denial of the claim may have an impact and (c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts."*

Relevant facts

51 The relevant facts are set out in paras 34 – 46 of Buckley1 **[457] – [460]**, the key point being that on Mr Clarkson's own account, Mr Clarkson:

51.1 deliberately concealed his interest in Ten Acres from potential lenders, including the Lenders, because he was aware that if they found out about his wife's criminal conviction for mortgage fraud, in particular obtaining property by deception, they would not lend any money to Ten Acres (which was correct);

51.2 therefore "*conceived the idea of using Mr Pickles as a 'front man' for the Ten Acres mortgage facility*" (using Mr Clarkson's own words);

51.3 accepts that, throughout the negotiations with the Lenders, it was fraudulently represented to them that Mr Pickles was the claimed UBO of Whiteacres; and

51.4 further accepts that the solicitor acting for the Lenders would have formed the understanding that Mr Pickles was the sole beneficial owner of Whiteacres.

Submissions

52 Mr Clarkson is a fraudster, happy to engage in deceitful and *prima facie* criminal conduct. Depending on the details of the arrangements (which are outside of the Part 20 Defendants' knowledge), it may have involved, for example, the offence of conspiracy to defraud (*R v Evans* [2014] 1 WLR 287 at [36] – [48]) or fraud by false representation contrary to s. 1 and 2 of the Fraud Act 2006. In any event, and on any view, as a bare minimum, Mr Clarkson's conduct was dishonest and therefore "*quasi-criminal"*.

53 Mr Clarkson's conduct is not somehow peripheral to what Mr Clarkson is now seeking to do by his Part 20; it goes to the core of his claim. His claim is that he has lost an alleged beneficial interest, an interest which only exists as a consequence of, and for the purposes of, his dishonest conduct. An honest person would have simply become the registered shareholder in either Ten Acres or Whiteacres. He *deliberately* did not do so; instead, on his own account, hiding behind a sham trust to which Mr Pickles was said to benefit. In order to prove his lost alleged financial interest under the Part 20 Claim Mr Clarkson has to plead and prove that beneficial interest which he (says) he dishonestly created.

54 The Part 20 Defendants submit that Mr Clarkson is debarred from pursuing the Part 20 Claim in circumstances where:

54.1 He does not come to the Court with clean hands. On his own account, Mr Clarkson is guilty of serious misconduct, but for which the events giving rise to the Part 20 Claim would not have occurred. For the Lenders (who have only recently recovered most – and not all – of what they were due) to be sued by Mr Clarkson in the above circumstances would make a mockery of equity.

54.2 The illegality defence applies. The underlying public policy against fraudulent conduct is self-evident, i.e. the protection of individuals against fraud. That purpose would be undermined if, having finally recovered most (but not all) of the sums due to them, the Lenders were to then be sued by the *very* person who had tricked them into providing the Loan in the first place and who had falsely induced them to believe that they were providing finance for the benefit of someone else. The denial of the Part 20 Claim would not be disproportionate in circumstances where the Lenders have not obtained any windfall; in fact, they remain marginally out of pocket.

(iii) Unlawful means conspiracy: defects

55 Further, the Part 20 Defendants submit that Mr Clarkson's unlawful means conspiracy case is defective and/or has no real prospects of success.

Legal principles

56 The elements of unlawful means conspiracy are as follows: (e.g. *Constantin Medien AG v Ecclestone* [2014] EWHC 387 (Ch) at [321]):

56.1 a combination or agreement between a given defendant and one or more others;

56.2 an intention to injure the claimant;

56.3 unlawful acts carried out pursuant to the combination or agreement as a means of injuring the claimant; and

56.4 causing loss or damage.

57 The requirements of a valid plead of fraud have been set out as follows in *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [20][13]:

"*The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. As Lord Millett put it, there must be some fact "which tilts the balance and justifies an inference of dishonesty". At the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud*." (emphasis added)

Pleaded case

58 It is Mr Clarkson's pleaded case that:

58.1 The Part 20 Defendants agreed, conspired or entered into a common desire to obtain the Property "*for themselves*" "*no later than the date of entry into the Loan alternatively* [...] *on 29 March 2018"* (paragraph 105 of the Part 20 Claim) **[83]**.

58.2 FundingSecure become a party to the conspiracy when "*it became under the control of the* [Lenders] *in March 2018"* (paragraph 101(viii))[14] **[82]**.

59 There is no pleaded basis for the allegation that FundingSecure became under the control of the Lenders in March 2018. None of the Part 20 Defendants had any involvement in FundingSecure in March 2018, nor are they alleged to have had any.[15]

[13] See also principles set out in *Portland Stone v Barclays Bank* [2018] EWHC 2341 at [25] to [31].

[14] It should be noted that whilst in Clarkson3 at para.8.4 seeks to water Mr Clarkson's claim down to bare assertion of some conspiracy forming by November 2018, his *pleaded* claim is that the conspiracy was formed by March 2018. It is that allegation that is subject to scrutiny.

[15] Mr Kumar and Mr Gandhi did not become directors or shareholders of FundingSecure until 12 October 2018 and 15 May 2019 respectively.

60 Further, in so far as Mr Clarkson has pleaded primary facts, none of the alleged primary facts justify an inference of fraud. Whilst these will be dealt with further in oral submissions as necessary, by way of illustration, in relation to Mr Kumar, the alleged primary facts are as follows:

60.1 that he is a business associate of Mr Gandhi (without pleading when they became associates) (paragraph 105(vii));

60.2 that he became an investor, a director and a shareholder of FundingSecure on 12 October 2018 (paragraph 86);

60.3 that he told the incumbent directors and shareholders of FundingSecure that its lending business would continue to be undertaken by those directors (paragraph 101(iii);

60.4 that he communicated with Mr Gandhi in relation to ensuring that FundingSecure was not a source of funds for payment of the sums under the Settlement Agreement (paragraph 105(vii));

60.5 that he encouraged, caused or prevented FundingSecure from advancing funds to Mr Clarkson (paragraph 100(ii));

60.6 that he did not contact or cause others to contact Mr Clarkson to explain why FundingSecure would not advance funds to him (paragraph 101(v)); and

60.7 that he caused Simon Brew to attend FundingSecure's premises, in December 2018, with a view to trying to discover whether any form of proceedings could be commenced against Mr Clarkson or any of his loans be called in (paragraph 105(viii)).

Submissions

61 Whilst (again) detailed submissions will be provided as to the defective nature of the Part 20 Claim, by way of illustration:

61.1 The pleaded facts in relation to Mr Kumar are consistent with innocence. The fact of becoming a director of a lending platform, or the alleged fact of preventing that lending platform from advancing funds to a (on any view) problematic borrower in circumstances where the company is in financial difficulty, does not justify the inference of fraud, and nor do any of the other pleaded facts. That is particularly the case in circumstances where Mr Kumar would have had nothing to gain from Ten Acres' default under the Settlement Agreement. Mr Kumar was not one of the Lenders, he had no interest in any of the corporate Lenders, and is not alleged to have been promised a cut of the alleged windfall.

61.2 Mr Clarkson's allegation that FundingSecure was a participant in the conspiracy cannot succeed if Mr Clarkson's allegations against Mr Kumar fail for the following reasons:

61.2.1 The sole pleaded basis of control over FundingSecure is the fact that Mr Kumar and Mr Gandhi became directors and shareholders (paragraph 105(iv)).

61.2.2 Mr Gandhi did not become a director until 15 May 2019, i.e. after Ten Acres' default under the Settlement Agreement. Accordingly, on Mr Clarkson's own pleaded case, the only Part 20 Defendant who could have caused FundingSecure to participate in the alleged conspiracy is Mr Kumar. However, as set out above, the pleaded facts regarding Mr Kumar do not support an inference of fraud. Accordingly, the allegation that FundingSecure is a participant in the conspiracy collapses with the allegation that Mr Kumar is a participant.

61.3 Once the allegations against Mr Kumar and FundingSecure collapse, the entire unlawful means conspiracy case collapses and should be struck out. As set out in paragraphs 132 – 136 of Buckley1, once the allegations against FundingSecure and Mr Kumar fall way, in terms of the pleaded allegations of unlawful means, this only leaves the alleged breaches of fiduciary duties by Mr Gandhi and Mr Sadana. In light of the facts set out in paragraph 136 of Buckley1, the allegations of breaches of fiduciary duties have no real prospect of success.

(iv) Lawful means conspiracy: defects

62 Further, Mr Clarkson's pleading of lawful means conspiracy is defective.

Relevant law

63 The ingredients of a claim in lawful means conspiracy are as follows (e.g. *Kuwait Oil Tanker v Al Bader* [2000] 2 All E.R. (Comm) 271 at [108]):

63.1 a combination or agreement between the defendant and one or more others;

63.2 a predominant purpose to injure the claimant;

63.3 acts carried out pursuant to the combination or agreement; and

63.4 causing loss or damage.

64 It is well established that the claimant cannot establish a predominant purpose to injure on the basis that injury to the claimant is the obverse side of the coin from gain to the defendant: *JSC BTA Bank v Khrapunov* [2017] EWCA Civ 40 at [11].

65 *Civil Fraud (Law, Practice and Procedure)* says as follows at [2-142]:

"*a proper basis for an allegation (necessary in lawful means conspiracy cases) that defendants acted with the predominant purpose of injuring the claimant will generally be less easy to find. Care should be taken that such an allegation is not made unless there is sufficient material to support it. If the allegation is pleaded, it should be made clear that a predominant intention to injure is alleged."*

Pleaded case

66 It is Mr Clarkson's pleaded case that "*the purpose of the* [lawful means] *conspiracy was to harm* [Mr Clarkson] *by defeating any claim that he had to the shares in Whiteacres whether legally beneficially or otherwise"* (paragraph 109).

67 Further, paragraph 105 says that the Part 20 Defendants entered into "*a common desire to obtain the Property for themselves and in order to do so needed to obtain beneficial ownership of the entire issued share capital of Whiteacres"*.

Submissions

68 Mr Clarkson has failed to plead, as is required for lawful means conspiracy, a predominant purpose to injure. The Part 20 Claim should thus be struck out.

(v) Consumer Credit Act 1974

Relevant Law

69 Section 140A(1) of the Consumer Credit Act 1974 ("**CCA**") provides as follows:

"*(1)The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following—*

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor)."

Pleaded case

70 In paragraph 115, Mr Clarkson describes the Settlement Agreement as follows:

"*It constituted the provision of financial accommodation by the Defendants as shown therein, alternatively the Lenders, to* [Mr Clarkson]*, namely the postponement of the enforcement of their security over the assets of Whiteacres and Ten Acres in consideration for* [Mr Clarkson] *personally seeking and then procuring the payment of the sums contained therein, and the attendant opportunity afforded to* [Mr Clarkson] *to regain the legal title of the Whiteacre shares and the beneficial ownership of the same."*

Submissions

71 The Part 20 Defendants submit as follows:

71.1 Mr Clarkson's description of the Settlement Agreement in paragraph 115 is misconceived. The Settlement Agreement makes it clear that the debt is that of Ten Acres. It says nothing anything about Mr Clarkson "*regaining*" the beneficial ownership of the shares in Whiteacres; in fact, it makes clear that he has no such interest (see Judgment of HHJ Hodge QC). If the debt was repaid in full by Ten Acres, the shares in Whiteacres would be returned to TPT as the former registered legal owner of those shares. Mr Clarkson is not a debtor under the Settlement Agreement and s.140A CCA therefore does not apply.

71.2 Further and in any event, Mr Clarkson has no real prospect of success of establishing unfairness, having entered into the Settlement Agreement with the benefit of advice from solicitors (which he still retains) and leading counsel.

(vi) Breach of duty of full and fair disclosure

72 Further, the Part 20 Defendants submit that Mr Clarkson acted in breach of his duty to give full and frank disclosure in relation to the Without Notice Application, and that the Master Kaye order should be revoked or set aside as a result.

Relevant law

73 The Court will be familiar with the principles which govern the duty to make a full and frank disclosure of all the material facts in a without notice application, where materiality "*is to be decided by the court and not by the assessment of the applicant or his legal advisers"* (*Brink's Mat Ltd v Elcombe* [1988] 1 W.L.R. 1350).

Relevant facts

74 As set out in paragraphs 106 – 112 of Buckley1:

74.1 Master Kaye was not provided with a copy of the HHJ Hodge QC Judgment, which was not exhibited to either of the two witness statements in support of the Without Notice Application; and

74.2 while Mr Catterall, Mr Clarkson's solicitor, said that "*it may be asserted that there is some form of issue estoppel or res judicata"* in his evidence, there was no mention (in the evidence in support or at the oral hearing) of the fact that Mr Clarkson had already alleged the existence of a conspiracy (as is now alleged) prior to the November 2019 Hearing, nor that it had been determined by HHJ Hodge QC that Mr Clarkson had lost any interest he might have had in the shares in Whiteacres.

Submissions

75 In light of the considerations set out in the section on *res judicata*, the above matters were plainly material to the Without Notice Application and should have been properly drawn to the attention of Master Kaye.

G. The Tomlin Order Application

76 The Lender seek an order enforcing the terms of the Settlement Agreement as recorded in the Schedule to the Tomlin Order by requiring Mr Clarkson to discontinue the Part 20 Claim.

77 As set out in paragraph 44.1 – 44.5 above, the issue of enforceability of the Settlement Agreement is *res judicata.* As to Mr Clarkson's allegation that the issue of the alleged fraud has not yet been decided, the Lender rely on the *Henderson v Henderson* principles as set out in paragraphs 44.6 - 45 above.

H. Asertis' Application (Part I): set-off

78 Asertis' position in relation to the pleaded set-off is as follows:

78.1 It is understood that as regards Asertis, Mr Clarkson relies on the Part 20 Claim solely by way of set-off.

78.2 In paragraph 52 of the Amended Defence, Mr Clarkson and the MC Defendants have pleaded a set-off. Given that the Part 20 Claim is brought by Mr Clarkson

alone, there is no basis for a set-off in favour of the MC Defendants'. The Court is invited to strike out the reference to the MC Defendants in paragraph 52.

78.3 Further, Asertis seeks an order for summary judgment and/or strike-out of the pleaded set-off on the same grounds relied on by the Part 20 Defendants above.

I. The Application to re-Amend

79 Mr Clarkson and the MC Defendants seek the Court's permission to re-amend the Amended Defence. Two of the proposed amendments are uncontroversial, namely the minor amendments to paragraphs 37(3) and 40 of the Amended Defence. These are not opposed by Asertis.

80 However, the Application to re-Amend is opposed in relation to the proposed amendments to paragraphs 26(4) and 26(7) of the Amended Defence. The MC Defendants refer to these, in the application notice, as "*the clarification of the admissions"* made by Mr Clarkson and the MC Defendants. However, the suggestion that the proposed amendments do not amount to an attempt to withdraw admissions is misconceived. The proposed amendments to paragraphs 26(4) and 26(7) do consist of withdrawals of formal admissions of liability. In particular:

80.1 In paragraph 26(4) of the Amended Defence, "*the MC Defendants"* (defined, in the Amended Defence, as the First to Fourth and Sixth to Eighth Defendants, i.e. the MC Defendants as defined in this skeleton plus Mr Clarkson) admit being "*liable for a payment of £124,000"*.

80.2 In paragraph 26(7) of the Amended Defence, "*the MC Defendants"* admit being "*liable to repay £860,000 paid to* [Mr Unsworth] *at his order by way of loan".*

81 The MC Defendants now wish to withdraw the above admissions by amending the above wording to only refer to Mr Clarkson.

(i) Relevant law

82 To withdraw an admission made after the commencement of proceedings, a party requires the Court's permission pursuant to CPR r.14.1(5).

83 Pursuant to Practice Direction 14, paragraph 7.2:

"*In deciding whether to give permission for an admission to be withdrawn, the court will have regard to all the circumstances of the case, including –*

(a) the grounds upon which the applicant seeks to withdraw the admission including whether or not new evidence has come to light which was not available at the time the admission was made;

(b) the conduct of the parties, including any conduct which led the party making the admission to do so;

(c) the prejudice that may be caused to any person if the admission is withdrawn;

(d) the prejudice that may be caused to any person if the application is refused;

(e) the stage in the proceedings at which the application to withdraw is made, in particular in relation to the date or period fixed for trial;

(f) the prospects of success (if the admission is withdrawn) of the claim or part of the claim in relation to which the admission was made; and

(g) the interests of the administration of justice."

84 In *American Reliable Insurance Company and others v CNA Insurance Company Ltd v others* [2008] EWHC 2677 (Comm), Steel J said that the first of the above considerations, i.e. the grounds upon which the applicant seeks to withdraw the admission, is "*an important one"*. He went on to say as follows at [17] – [18]:

"*There is, as I have already indicated, and this is accepted, no new evidence whatsoever. What is entirely absent, it seems to me, is any real explanation of the reasons why and justification for the application.* [...] *This, it seems to me, is, as I put it, a formidable threshold difficulty. Where a party makes an application of this kind in circumstances where highly important and, it must be accepted, prejudicial admissions are made, the court is entitled, it seems to me, to receive a fairly full and frank explanation of how things have gone wrong, or at least appear to have gone wrong, namely to identify the basis upon which the background to the admission is to be withdrawn, the reasons for it, how it came about that the admission was made in the first place, and so on*." (emphasis added)

85 As to the approach where a party has simply changed its mind, in *SL Claimants v Tesco Plc* [2019] EWHC 3312 (Ch), the Court said as follows:

"*Where all that is relied on is a change of mind, the burden of justifying any adverse impact on the proceedings seems to me to be particularly heavy."*

86 Further, in *Henning Berg v Blackburn Rovers Football Club* [2013] EWHC 1070 (Ch), the Court said as follows:

" *On 1st April 2013, the Overriding Objective was radically amended. It now places emphasis not merely on the need to deal with cases justly but to do so at proportionate cost, expeditiously, to enforce compliance with the Rules and orders and to allot to each case an appropriate share of the Court's resources. This amendment of the overriding objective is likely to have a significant impact on the approach to be adopted to applications of this kind, which will now be approached by courts much more rigorously than perhaps has been the practice in the past, particularly where formal admissions are made on behalf of parties represented by experienced and specialist professional advisors.*" (emphasis added)

(ii) Submissions

87 The MC Defendants' position that the Court should simply waive through withdrawals of formal admissions of liability at a total value just short of £1m without an application (or any explanation) is remarkable.

88 The MC Defendants have not applied for permission to withdraw the above admissions. In the absence of permission to amend, to the extent that the Application re Re-Amend relates to paragraphs 26(4) and 26(7) of the Amended Defence, it must fail.

89 If the MC Defendants were to apply for permission, for which it is now too late, they would need to address the relevant factors, including those specifically listed in Practice Direction 14, paragraph 7.2. The Court is in no position to consider the matter unless and until there is an application, supported by evidence as to the above factors, including an explanation

as to why the admissions are sought to be withdrawn, and whether this is due to any further evidence which has come to light (and, if so, what evidence) or a change of mind.

90 Any such application, if made, would likely be hopeless in circumstances where the relevant admissions were made about 15 months ago, in October 2019, when the initial defence of Mr Clarkson and the MC Defendants (prepared by Mr Neil Berragan) was filed and served. Since, Mr Clarkson and the MC Defendants have instructed Mr Stephen Cogley QC, and have filed and served the Amended Defence. The Amended Defence was no doubt carefully considered at that point. Further, the Asertis Application, which expressly relies on these paragraphs in Brew2 [1012], was served on the MC Defendants at the start of October 2020, at which point they would be in no doubt about the existence of the admissions of liability. Yet the first time the proposed amendments were raised was in correspondence on 22 January 2021.

91 For the above reasons, the Court is invited to dismiss the Application to re-Amend, in so far as it relates to the above admissions.

J. Asertis' Application (Part II): admissions

92 Asertis seeks an order for summary judgment, alternatively judgment based on admissions pursuant to CPR r.14.3, and alternatively an order for interim payments pursuant to CPR r.25.7 in relation to Mr Clarkson's and the MC Defendants' formal admissions of liability.

i. Mr Clarkson

93 In paragraph 42 of the Amended Defence, Mr Clarkson has admitted that he is liable to repay all sums admitted to be outstanding in annotated Annex 2A.

94 In paragraph 10.1 of his witness statement dated 29 January 2021, Mr Clarkson has expressly confirmed that this amounts to an admission of liability for £6,639,447.77.

95 In fact, as set out in paragraph 14 of Brew3, Mr Clarkson has admitted liability for £6,939,447.77. The second sentence of paragraph 42 of the Amended Defence, by which Mr Clarkson seeks to reduce his admission of liability by £300,000, was introduced without

the Court's permission. Mr Clarkson's attempt to seek permission in paragraph 10.1 of Clarkson3 is a further attempt to withdraw an admission without making an application.

ii. MC Defendants

96 Assuming the MC Defendants do not obtain permission to withdraw the two above-mentioned admissions, Asertis seeks summary judgment and/or judgment based on admissions and/or an order for interim payments in relation to the admitted liabilities as listed in paragraph 20 of Mr Brew's statement dated 2 October 2020, together with admitted interest as calculated in paragraphs 23 – 36 of Mr Brew's statement.

Advances

97 In particular, Asertis seeks summary judgment in relation to the following admissions of liability by the MC Defendants (where all paragraph references are to the Amended Defence):

97.1 the MC Defendants' admission of liability (jointly with Mr Clarkson) for £124,000 in paragraph 26(4);

97.2 the MC Defendants' admission of liability (jointly with Mr Clarkson) for £860,000 in paragraph 26(7);

97.3 the Seventh Defendant's ("**MDSC**") admission of liability (jointly with Mr Clarkson) for £968,000 in paragraph 26(10);

97.4 Mr Unsworth's admission of liability for £300,000 in paragraph 30(2);

97.5 the Eighth Defendant's ("**Tayco**") admission of liability (jointly with Mr Clarkson) for £120,000 in paragraph 30(4); and

97.6 the Second Defendant ("**Pagefield**") admission of liability (jointly with Mr Clarkson) for £548,000 in paragraph 30(5).

98 As to Pagefield's admitted liability, the wording of paragraph 30(5) is slightly different from the wording of the other admissions, in that is does not expressly refer to Pagefield being "*liable"* for £548,000. However, Pagefield (and Mr Clarkson) have admitted that the £548,000 "*was paid to them*". In circumstances where Pagefield had entered into a corresponding loan agreement with FundingSecure, as set out in paragraph 21 of Brew3, and where it has admitted receipt of the funds, Asertis submits Pagefield has no real prospect of defending the claim for £548,000.

Interest

99 Further, Asertis seeks summary judgment and/or judgment based on admissions and/or an order for interim payments as to admitted interest in relation to Pagefield's £548,000 loan and Mr Unsworth's £300,000 loan on the following basis:

99.1 Both of these loans are Category 3 Advances, i.e. transactions in relation to which the relevant documentation, including a loan agreement, was entered into before they were made.

99.2 In paragraph 34 of the Re-Amended Particulars of Claim, Asertis claims, in relation to Category 3 Advances, *"pursuant to the terms of the loan agreements to which Category 3 Advances relate* [...] *interest at the contractual rate".*

99.3 Further, by paragraph 5 of the prayer, Asertis claims "*such sums as are found to be due and owing"* in respect of Category 3 Advances.

99.4 In paragraph 50 of the Amended Defence, Mr Clarkson and the MC Defendants admit liability for "*interest on loans, either in accordance with signed loan agreements, or pursuant to s.35A of the Senior Courts Act 1981, as appropriate."*

99.5 Accordingly, Mr Clarkson and the MC Defendants have admitted liability in relation to interest at the contractual rate.

100 On that basis, Asertis further seeks summary judgment and/or judgment based on admissions and/or an order for interim payments in relation to interest and related charges against Pagefield and Mr Unsworth as calculated in paragraphs 28 – 36 of Brew3.

K. The Freezing Order Applications: directions

101 The Freezing Order Applications have been listed for directions only by consent **[171]**, and submissions as to the progression of those application (if still relevant) will be addressed at the conclusion of the hearing.

L. Conclusion

102 For all of the above reasons, the Court will be invited to:

a. grant the Part 20 Defendants' Application;
b. grant the Tomlin Order Application;
c. dismiss the Application to re-Amend;
d. grant Asertis' Application;
e. give directions as to the Freezing Order Applications as appropriate; and
f. make the relevant costs orders in favour of Asertis and the Part 20 Defendants.

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3 February 2021

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