

JERSEY / JUDGMENT

Halabi v Farrow and Ors [2023]

JRC 251 (13 December 2023)

[2023] JRC 251

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judgment

the master:

Introduction

1. This is my judgment in relation to an application by the First to Third and Fifth to Seventh Defendants (referred to hereafter as the "Defendants") for further information on the Order of Justice pursuant to RCR 6/15.

Background

2. The Plaintiff issued proceedings in May 2023 against six individuals (one of whom is deceased) and Suntera Trustees (Jersey) Limited (formerly Helm Trust Company and SMP Helm Trust Company Limited) (together "Helm") in relation to the alleged sale at an undervalue of a property in France in October 2019. That property was allegedly ultimately owned on behalf of a trust by private trust company called the Sijar Trust Company Limited ("Sijar"). 3. The Order of Justice is pleaded in relatively generic terms and asserts that: "The Plaintiff is the assignee of Sijar's rights to pursue its former directors for their breach of fiduciary duty and to sue Helm for its dishonest assistance in that breach of fiduciary duty." 4. As against the individual defendants, the Order of Justice lists the various duties that the Plaintiff alleges are applicable and asserts that the duties were breached. Apart from in very limited respects, it does not descend to any particulars against any specific defendant. 5. Insofar as Helm is concerned, the Order of Justice avers that: "23. Helm itself was not a director of Sijar but it was responsible for the appointment of the Sijar directors originally and it has accessory liability for dishonest assistance in their breach of fiduciary duty above." 6. A detailed Answer was filed in July 2023 denying the claims and alleging that the claim was prescribed. The Defendants also sent a request for further information under RCR 6/15 seeking answers to some 48 questions (the "RFI"). 7. The Plaintiff filed a Reply in August 2023 which pleads in relation to the issue of prescription that: "Fourthly and in any event the personal Defendants were as directors of Sijar fiduciary stewards of its assets and thus themselves trustees for the for the purposes of Article 57 Trusts (Jersey) Law 1984. As stated

at paragraph 6 of the Order of Justice, Sijar itself in turn held EHL which owned, indirectly, the Chateau. The Order of Justice alleges deliberate or reckless and/or dishonest breach of fiduciary duty and thus thereby fraudulent breach of trust for the purposes of Article 57(1)(a)." 8. Nowhere in the Order of Justice is there any expressly pleaded allegation of "deliberate or reckless and/or dishonest breach of fiduciary duty and thus thereby fraudulent breach of trust" against all or any of the individual defendants. 9. In addition to filing a Reply, the Plaintiff provided a Response to the RFI. The Defendants regarded it as unsatisfactory and issued a summons in October 2023. The Plaintiff provided a further response to the RFI on 13 November 2023 (the "Further Response to the RFI"). 10. The Defendants asked for time to review the Further Response to the RFI and requested an adjournment of the hearing. That request was resisted by the Plaintiff. Given the uncertainty as to when any new date might be fixed, I declined to adjourn the hearing but extended the time for filing documents with the Court. Skeleton Arguments were filed by the parties on 20 and 21 November 2023. By email dated 21 November 2023, the Plaintiff applied to adjourn the hearing in order to consider the issues raised by the Defendants' Skeleton Argument. That application was resisted by the Defendants. Adjournment 11. In *Dick Stock v G. B. Trustees Limited*

- [2019] (1) JLR Note 6 the Court held that: "On an application to adjourn hearing dates, the following matters should be considered: the importance of the proceedings and the likely adverse consequences to the party seeking an adjournment; the risk that that party might be prejudiced in the conduct of the proceedings if an adjournment were refused; the risk of prejudice or other disadvantage to the other party if it were granted; the convenience of the court; the interests of justice generally in the efficient dispatch of court business; the desirability of not delaying future litigants by adjourning early and thus leaving the court empty; and the extent to which the party seeking an adjournment had been responsible for creating the difficulty which led to the application (*Cummins v. Howlands (Furniture) Ltd.*, 2014 (2) JLR N [18], applied). The power to adjourn should be exercised with great care and only when there was a real risk of serious prejudice which might lead to injustice; in practice this test was difficult to satisfy (*States Greffier*
- v. *Les Pas Holdings Ltd.*, 1998 JLR N-3, applied)." 12. The Plaintiff's application to adjourn was made late in the day, on the eve of the hearing. It amounted to a request for additional time to consider the arguments made by the Defendants. In my judgment, if the Plaintiff were unsure as to the basis upon which the Defendants were seeking information, he could have asked; he did not do so. To that extent, he was responsible for the difficulty he found himself in. 13. In my judgment, adjourning the application was unlikely to advance matters: (i) the parties' respective positions were set out in their Skeleton Arguments and the Further Response to the RFI; (ii) there was no guarantee as to the outcome of any considerations by the Plaintiff; (iii) at best it might have reduced the number of live issues before the Court; (iv) on balance, given that the time estimate for the hearing was less than half a day, I thought it unlikely to do so to any significant extent. 14. Further, although the Plaintiff submitted that there was no prejudice in adjourning, in my judgment this ignores the likely

impact on the individual defendants of delaying the proceedings. Accordingly, I rejected the application but gave permission to the parties to file, sequentially, additional written submissions to enable Advocate Ingram to take further instructions from the Plaintiff.

Relevant Law 15. Master Thompson considered the relevant principles on RCR 6/15 in *Monteagle International Limited v Grocery Market Research Limited*

- [2020] JRC 244 at paragraphs 15 to 23 where he held that: "15. The power to order a party to provide further information is set out in Rule 6/15(1) of the Royal Court Rules 2004, as amended, ("RCR") as follows: - "6/15 Obtaining further information (1) The Court may at any time of its own motion or on application 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 a pleading." 16. This rule is supported by Practice Direction RC17/04. Paragraph 5 of that RC17/04 provides as follows:- "5. The Request should be concise and should only relate to matters that are reasonably necessary and proportionate for a requesting party to prepare its own case, or to understand the case it has to meet." 17. At paragraph 9 of *Holmes v Lingard*
- [2018] JRC 184 I stated as follows: - "9. Rule 6/15 was introduced by Royal Court (Amendment No.20) Rules 2017. The new Rule 6/15 replaced requests for further and better particulars, interrogatories and requests for further and better statement of case. The intended effect of Rule 6/15 (which is identical to an equivalent found in the Civil Procedure Rules) is that each party is required to make its case clear if its pleading does not do so." 18. In paragraph 10 I made this observation: - "10. Rule 6/15 should not however open the floodgates to numerous or lengthy requests. The court has previously rejected for further and better particulars in similar fashion. The court also rejected requests amounting to evidence as not being an appropriate way to proceed e.g. *Crociani & Anor v Crociani & Ors*
- [2015] JRC 177 . Nor will requests that go beyond an understanding of a case be granted (e.g. see *Booth v Collas Crill*
- [2017] JRC 038). The touch stone is whether a party's pleading is understandable or not." 19. In the matter of *A&B Trusts*
- [2018] JRC 068 the Royal Court stated at paragraph 24 as follows: - "Ultimately, a party's pleading must make their case clear so that the party required to respond to it understands what the case is." 20. It is also well known that requests for information will not be granted where they relate to matters known to the requesting party, or where they are requests for evidence... 23. I have referred to the above authorities because in evaluating requests for information made of particular paragraphs, I consider that the court should not just analyse the particular paragraph but also the pleading as a whole to see whether the case is clear. This is because, while there may be ambiguity in a particular paragraph, that ambiguity may be answered or clarified in another paragraph of the pleading. When drafting requests for information, parties and their advisers should stand-back and focus on what it is they do not understand having regard to the pleading as a whole, not just a

particular sentence or paragraph. This approach may narrow the number of requests. It may also avoid repetition of largely the same requests where a sentence by sentence or paragraph by paragraph approach only is applied to the framing of requests. The focus should therefore be on clarification of an issue being sought which may be raised in a number of different parts of a pleading, issues that are not understood or the key material facts supporting those issues. Parties should avoid descending into the minutiae or repeating requests in respect of the same issue. Brevity and clarity are to be encouraged."

16. Subsequently, in *Financial Technology Ventures II (Q) LP v ETFS*

- [2021] (1) JLR 122, Crow JA referred to the function of pleadings and RCR 6/15 in the following terms: "42 Turning more generally to the function of pleadings, it is stating the obvious to say that, as between the parties inter se, they are intended to identify the issues in dispute so that each side knows what case it has to meet and what evidence it needs to adduce at trial. As between the parties (on the one hand) and the court (on the other), the function of pleadings is to provide the court with an appropriate tool for understanding the case it has to decide and for managing the proceedings in the run-up to trial, and during the trial process. In order properly to fulfil those functions, it is critically important that pleadings should always avoid (at one extreme) including an unnecessary torrent of detail which may obscure the essential issues, and (at the other extreme) pleading the case in such exiguous terms that the court and the other side are uncertain as to the basis on which the case is being put: *Three Rivers D. C. v. Bank of England* (No. 3) (66) (
- [2003] 2 AC 1, at paras. 49-51). 43 That explains the governing provisions of r.6/8 of the Royal Court Rules 2004. Paragraphs (1) and (6) provide as follows: "(1) Subject to the provisions of this Rule, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for that party's claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits." "(6) A party may in pleadings raise any point of law." [Emphasis added.] 44 As the italics indicate, we consider it important to emphasize that the Rules require that (i) facts are pleaded, not evidence; (ii) only material facts are pleaded, not all incidental facts; and (iii) points of law may be pleaded, but do not always have to be. 45 It is also important to emphasize that r.6/15 confers a power on the court, either of its own motion or on application by a party, to make an order requiring a party to clarify any matter in dispute in the proceedings or give additional information in relation to any such matter. Accordingly, if in any case a litigant genuinely does not understand some part of the case against him, he can apply to the court for an order under r.6/15 to clarify that matter. If he fails to do so (whether through inadvertence or as a result of a deliberate, tactical choice) and if the trial court subsequently bases its decision on a finding which can properly be said to have been raised on the pleadings, albeit not prominently or perfectly clearly, it may not lie in the litigant's mouth to say on appeal that he did not realize that was the case being put against him. Litigants should not be tempted to adopt Nelsonian blindness in the hope of being able to shut out inconvenient issues at trial. Conversely, we wish to say nothing to

encourage Delphic pleading. Each side is expected to set out its case both clearly and succinctly in its pleading. If it is in any doubt about the other side's case, it is expected to seek clarification." 17. Notwithstanding that the decisions in *Monteagle International Limited v Grocery Market Research Limited* and *Financial Technology Ventures II (Q) LP v ETFS* highlight that the issue before me is a relatively narrow one, the parties have provided me with a bundle containing more than 740 pages of documents and including a significant number of English decisions. 18. As Master Thompson noted in *Holmes v Lingard*

[2018] JRC 184 , RCR 6/15 reflects a change brought about in England and Wales by the Civil Procedure Rules (the "CPR"), albeit that the CPR themselves were not replicated in Jersey. The advent of the CPR was, as noted by the editors to the 2023 edition of the White Book (at 12-51), a hugely significant change: "Nevertheless, the judiciary has stressed the concept of the CPR as "a new procedural code" in many cases...provisions in the CPR plainly based on provisions formerly found in the RSC and CCR will not necessarily be interpreted and applied in accordance with the case law that had been built up around those provisions over the years." 19. One area where a significant body of case law had accrued in England and Wales prior to implementation of the CPR was as to the formal requirements for pleadings. Many of those rules are now irrelevant in England and Wales: "The former rules of court as to pleadings were a mixture of general and specific requirements. Some of the specific provisions dealt with issues which the courts had had to resolve from case to case over the years. However, there were many more such points which were not explicitly covered by the rules. Many of these points were reflections of an over-technical approach which should not survive in a case-management system under which "statements of case" ("pleadings") are subject to judicial scrutiny. For this reason, the new provisions are fairly short. Detailed provisions are limited to those situations where more general provisions cannot guide the parties as to what they should put in their statements of case." (2021 edition of the White Book at paragraph 7.0.1) 20. The detailed provisions in the CPR relating to the contents of pleadings are set out in CPR 16 and its associated Practice Direction. The provisions of CPR 16 are in wholly different terms to RCR 6/8 and in my judgment, English decisions on points of pleading post-dating the implementation of the CPR cannot be simply read across to Jersey. 21. Nor can the decisions pre-dating the change necessarily be applied in Jersey either. RCR 6/15 was enacted in 2017 and not only did it replace requests for further and better particulars and interrogatories, but it was intended to bring in a change in attitude and process to pleadings. In terms, it continued the evolution of what Bailhache B described in *Sinel v Goldstein*

- [2003] JRC 090 as "the strictures of Southwell JA" (from *Re Esteem* (27 July 2000) Jersey Unreported 2000/150): "(3) From now on it has to be appreciated by all who are involved in civil proceedings in the Royal Court that their objective has to be to progress those proceedings to trial in accordance with an agreed or ordered timetable, at a reasonable level of cost, and within a reasonably short time.
- (4) Consistently with that objective, the correct function of pleadings needs to be kept in mind. The function of pleadings is to set out the material facts on which the parties will rely at trial to establish their causes of action or defences, and which the parties will seek at trial to establish by relevant and admissible evidence... Formal pleading is an art, not a science, and to seek to achieve some abstract level of perfection in pleadings is not consistent with the objective I have stated, or of value in terms of time, effort or expense.
- (5) It is essential that there is now a change to new ways of practice consistent with that objective, because if there is no such change advocates may find themselves either being ordered themselves to pay the costs of the opposing part, or being denied the ability to charge their own client for the work of supererogation they have performed." 22. Accordingly, the former rules of pleading, set out in the 1999 edition of the White Book, are no longer necessarily applicable in Jersey and references by parties to those rules may be of limited utility. The relevant pleading rules are those identified by Crow JA in *Financial Technology Ventures II (Q) LP v ETFS* and applied by the Royal Court. To that extent, MacRae DB recently considered the requirements for pleading fraud in *Patel v JTC Trust Company Limited*
- [2023] JRC 152 : "It has always been the case that special additional considerations apply to amendments to plead fraud / dishonesty. In summary: (i) Any pleading of fraud must set out the facts, matters and circumstances relied upon to show that the party charged with such conduct was actuated by a fraudulent intention. Full and precise particulars are required - *Makarenko v CIS Emerging Growth Limited*
- [2001] JLR 348 ; (ii) Fraud must be distinctly alleged and sufficiently pleaded. Fraud will not be sufficiently particularised where the facts pleaded are consistent with innocence - *Brakspear v Nedgroup Trust (Jersey) Limited*
- [2018] JRC 121 at paragraph 59, and see Lord Millett in *Three Rivers v Bank of England*
- [2003] 2 AC 1 at paragraph 184. Lord Millett also said: "This means that a plaintiff who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest and not merely negligent, and that the facts, matters and circumstances which are consistent with negligence do not do so." At paragraph 186, Lord Millett said: "It is not open to the Court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty and this fact must be both pleaded and proved." (iii) Fraud is not to be pleaded lightly

- a party making such a plea should ensure that allegations are set out with full particularity. The Law Society Code of Conduct makes it clear that an advocate may not draft a statement of case containing an allegation of fraud 'unless the member has clear instructions to allege fraud and has reasonably credible material which establishes an arguable case of fraud.'" 23. In my judgment, the considerations set out above are not limited to express allegations of fraud; they apply to equivalent allegations including for example, a failure to act in good faith (*Armitage v Nurse* [1998] Ch 241 at 251 "An allegation of not acting in good faith is tantamount to an allegation of dishonesty and as such must be properly pleaded"). 24. It is with those principles firmly in mind that I turn to consider the outstanding requests in the RFI and the responses to them. The Individual Requests in the RFI Request 8 25. The Plaintiff pleads that he is the assignee of Sijar's rights. The Defendants asked for a copy of the assignment and the response was that "the assignment is an equitable assignment and therefore no deed of assignment exists, or other documentation exists." The Defendants' further request is in the following terms: "...please state in relation to the alleged assignment: (a) the date thereof; (b) who acted on behalf of Sijar in granting the said assignment and on what basis they had authority so to act; (c) the person(s) in whose favour the assignment was granted; (d) the consideration (if any) paid or agreed to be paid by the assignee(s) to the assignor; (e) the other terms of the assignment." 26. The Defendants categorise this as a straightforward and concise request, the answer to which is necessary "properly to understand the case that the Defendants have to meet" in circumstances where there are factual inconsistencies, including for example: (i) in the Representation issued by the Plaintiff's father, Simon Halabi, to reinstate Sijar, he pleaded that he was the registered shareholder of the company from 13 March 2019 to 8 June 2020 and was registered as such in the Company's register of shareholders whereas the share certificate was in the name of Helm as nominee for him; (ii) the JFSC's consent issued to the company after reinstatement was for the sole purpose of issuing legal proceedings against the Company's previous associated parties (trustee/ directors) yet rather than issuing proceedings, it apparently assigned the claim; (iii) the Plaintiff's initial response to the RFI stated that the trustee of the trust was Staznet Trust Company Limited whereas an extract from the JFSC's register of companies indicates that a company called Staznet Trust Company Limited was struck off on 3 February 2023; (iv) in their pre-action correspondence, the Plaintiff's advocates referred to acting for another potential plaintiff who has not, as yet, brought proceedings. 27. The Plaintiff states in his Further Response to the RFI that this request is not a proper request within the terms of PD RC 17/04. In his subsequent written submissions to the Court, he indicated that was "fair for the Defendants to have visibility on the assignment documentation" and that this had been addressed in the Further Response to the RFI. 28. In my judgment: (i) the material facts are that firstly, the Plaintiff is the assignee of the Sijar (which has been pleaded) and secondly, the basis of that assignment; (ii) insofar as this assignment is undocumented, the date of the assignment, the identity and authority of the person who acted on behalf of Sijar, the identity of the person in whose favour the assignment was granted, and the relevant terms of the assignment are all material facts which should have been pleaded; (iii) these material facts go to the root of these

proceedings, provide the basis for the breach of duty claims and are central to the issue of prescription; (iv) it is necessary for these material facts to be properly pleaded in order that the issues between the parties can be identified at an early stage and the case actively managed in accordance with the Overriding Objective; (v) the consideration (if any) paid or to be paid for the assignment is a matter of evidence which it is not necessary to plead at this stage; (vi) having taken the assignment, the Plaintiff is well placed to answer the Request and it should be straightforward for him to do so; (vii) it is both necessary and proportionate for the Plaintiff to answer Request 8 and I direct that it be answered (save in relation to the consideration). Requests 9 to 14 29. These requests concern the allegations of breach of fiduciary duty and can be illustrated by the following extract from the Order of Justice: Duties "9. Each of Sijar's directors owed to it a fiduciary duty to -

- (1) act in a way that he considered in good faith was most likely to promote the success of the company, having regard amongst other things to,
 - (a) the likely consequences of a decision in the long term
 - (b) the need to foster the company's business relationships with clients and others
 - (c) the desirability of the company maintaining a reputation for high standards of business conduct;
- (2) exercise independent judgment;
- (3) exercise skill, care and diligence;
- (4) avoid conflicts of interest including avoiding situations in which his interests conflicted or might have conflicted with the interests of the company;
- (5) not to derive for himself or any other person any benefit from his office as director, irrespective of whether or not that benefit could have been obtained by the company itself;
- (6) act in good faith in the interests of the company;
- (7) act for proper purposes in favour of the company and not to act for purposes collateral to or against such proper purposes.
10. Those duties were clearly breached for the reasons which follow: The circumstances of the sale
11. In 2019 the Trust assets which Sijar controlled were encumbered by indebtedness which needed to be repaid or refinanced. GCH was indebted to AREO in the approximate sum of 42m euros (secured against the SAS CCB shares) and, subject to further extension, those monies fell to be repaid by 4 September

2019. There was a further c.20m euro debt to Credit Foncier repaid from the sale proceeds. The sale of the Chateau was being contemplated accordingly but alongside various refinancing proposals to consider as alternatives to a sale of the Chateau. Not only was the sale of the Chateau ultimately at significant undervalue per se (below) but the Defendants breached their duties to Sijar by consistently rebuffing alternative transactions by which Sijar's interests would have been better served.
12. The Plaintiff's belief is that there was such consistent relegation of any other suggested options for it to be inferred that collateral motives were behind the single-minded focus on the sale to Urgo. Mr Simon Halabi, for and on behalf of the beneficiaries of the Trust, on 8 October 2019 requested that the sale be stopped in order to pursue other ways of refinancing. This was dismissed out of hand without any apparent proper consideration because by email dated 9 October 2019 Mr Hugh Durrell of Helm simply stated that the sale would proceed come what may. 13..." 30. The Defendants submit that it is wholly unclear on the face of those paragraphs as to how, or why, the Plaintiff alleges that any specific Defendant breached any particular fiduciary duty. They have therefore raised a number of Requests, all of which are in similar terms in relation to each alleged duty. For example:
9. Please identify in relation to the alleged failure to act in good faith in accordance with the duties pleaded at paragraphs 9(1) and 9(6): 9.1. which of the First to Sixth Defendants is alleged to have been in breach of that duty: 9.2. in relation to each Defendant which it is said is in breach, the facts and matters set out in the Order of Justice (or otherwise) which are alleged to amount to such a breach..." 31. The Further Response to the RFI raises two objections to the provision of the information requested, firstly that the matter is properly pleaded and secondly, that the Plaintiff cannot give any additional information: "...the disclosure of relevant documents not accessible to the Plaintiff in advance will substantially contribute to the understanding of the precise manner in which the Defendants permitted an undervalue sale and failed to progress all viable alternatives, the Plaintiff has, pending such disclosure, stated that which he can to articulate his essential complaint... .. It is well-established that Defendants to some actions will by nature have substantial exclusive control over the relevant contemporaneous documents and that this imbalance requires, as the inevitable quid pro quo, the Plaintiff to enjoy a more generous ambit on pleading (see e.g. Peter Smith J reviewing the caselaw in *Emerald Supplies v British Airways plc* [2014] EWHC 3514)." 32. The alleged breach of duty is clearly in dispute. The question for the purposes of exercising my powers under RCR 6/15 is whether the information sought is necessary and proportionate. 33. The essential ingredients for a cause of action in tort are a plea of duty, breach of duty and consequent damage. The Plaintiff submits that he has pleaded all of these matters and has therefore discharged the obligation upon him. He submits that he does not need to go further and plead a case against each of the Defendants: "It is true that the Order of Justice does not pursue a conspiracy claim. With respect it does not need to. The board members are arguably each jointly and severally liable for permitting the sale to complete (against his/her fiduciary duty) - see e.g., *Re*

Washington Diamond Mining Co

[1893] 3 Ch 95 at 113..." 34. In my judgment, this is not a correct statement of either the law on breach of directors' duties or the rules of pleading in Jersey: (i) The first duty pleaded in paragraph 9 of the Order of Justice is a duty to "act in a way that he considered in good faith was most likely to promote the success of the company" ; a breach of that subjective duty can only be committed by the director whose conduct is impugned; it cannot be committed as a result of a person's status as a director; yet that is what the Plaintiff has currently pleaded. (ii) In *Macfirthisigh*

v. C. I. Trustees and Executors Limited

[2014] (1) JLR 244, Master Thompson held that: "In my judgment, nothing is set out as to why the court could conclude at trial that the sixth defendant transgressed the ordinary standards of behaviour. The sixth defendant still does not know the case he has to answer. I also consider something more is required than a bare assertion that a director is liable as a dishonest assistant, by acting as a director of a company, in order to formulate an arguable claim of dishonesty. Otherwise, an allegation of dishonest assistance could be made in every case where a director had taken a step on behalf of a company (compare *Scruton v. Bone* (9))." (iii) Although an English High Court case decided in relation to the CPR, the Court in *Scruton v. Bone*

[2001] 11 WLUK 498 held that where the claimant had chosen to proceed against the directors individually rather than against the firm, the particularisation of allegations of dishonesty in respect of each defendant was critical. The Court concluded its judgment by stating that "Allegations of guilt by association should not be allowed any more under the Civil Procedure Rules than they were under the Rules of the Supreme Court." (iv) I accept that *Macfirthisigh* and *Scruton* are both cases involving dishonesty but, in my judgment, the statement in *Scruton v Bone* set out above applies to all proceedings in the Royal Court; allegations of breach by association are not appropriate. (v) In proceedings brought against individual defendants: (a) the material facts required under RCR 6/8 are those upon which the Plaintiff relies to establish a breach of duty on the part of each individual defendant; (b) if, as is required under RCR 6/8, the Order of Justice is to be clear, each Defendant must be able to understand with a reasonable degree of precision, what is alleged against them and what they have done (or not done) so as to breach their duty; (c) if no individual action or inaction is alleged, the Plaintiff must identify clearly how and why he asserts that that individual has breached the alleged duty, whether by reason of status, agency or otherwise. 35. The Plaintiff's second submission on this issue is one of proportionality. He asserts that he cannot provide any further information as the documentation necessary to answer the Requests is in the possession of the Defendants, has not yet been disclosed and accordingly it is not proportionate to require him to provide responses. 36. This is a claim by a company for breach of fiduciary duty against its former directors, which claim has allegedly been assigned to the Plaintiff. In my judgment, before bringing any such claim, the Plaintiff should have satisfied himself that

he had all of the material necessary and to the extent that he did not, his remedy was to revert to the company, not to issue an inadequately particularised Order of Justice. If the company itself did not have the relevant documentary records, it should have explored its own remedies and/or either a different claim, or a differently-pleaded claim, could have been brought. 37. There is no evidence before me as to what the position might be in relation to the company's documents. Advocate Ingram, for the Plaintiff, submitted that the Plaintiff did not have those documents. In my judgment, that is irrelevant for the purposes of these proceedings. The Defendants cannot, in these proceedings, be held to account for any failings on the part of the company to provide relevant documents to the Plaintiff, nor can the Plaintiff simply make an unparticularised allegation in the hope that something might turn up on discovery. 38. The Plaintiff submits that in some circumstances the Court should afford leeway to a party who lacks information, and he relies on the English decision of *Emerald Supplies v British Airways plc*

[2014] EWHC 3514 . That was a competition case concerning a secret cartel where absent disclosure of the defendant's internal documentation, it was impossible for the claimants properly to plead one aspect of it. It is unnecessary for me to determine whether special rules apply in Jersey to such cases because the claim before me is not a cartel case; it is an ordinary claim for breach of duty by a company against its former directors where it is necessary and proportionate for the claims against the individual defendants to be clearly pleaded. 39. Accordingly, I direct the Plaintiff to answer Requests 9 to 14. Requests 16 (not 16.3) 40. This request arises out of the averment in paragraph 11 of the Order of Justice that "the Defendants breached their duties to Sijar by consistently rebuffing alternative transactions by which Sijar's interests would have been better served". 41. The Defendants request that the Plaintiff identifies "in relation to each such alternative transaction: "16.1. when and how it was brought to the attention of each Defendant in respect of whom the complaint is made; 16.2. which Defendant(s) are alleged to have "rebuffed" the same, when and by what actions;" 42. The Plaintiff has declined so to do stating that: "The Plaintiff would need the benefit of disclosure to be able to particularise such granular matters. They are not reasonably necessary for the Defendants to understand the case to meet and/or the Defendants can already ascertain the details from the documentation which they control. As is clear from the Order of Justice, the Defendants by their very status acted as a collective representing the executive decision-making of Sijar . The identification of an initial communication to one personal defendant but not another is not relevant detail, at least not now in order for the case to be reasonably understood." 43. Paragraph 11 of the Order of Justice purportedly provides the material facts sufficient to justify the bald allegation of breach pleaded in paragraph 10. In the absence of any proper particulars of breach being pleaded against the individual Defendants, the averment in paragraph 11 is similarly deficient in terms of allowing each Defendant to know the case that that individual has to meet. 44. However, in my judgment: (i) Request 16.1 is a request for evidence, not for a material fact which is necessary and proportionate in order for the Defendants to understand the case they have to meet; I decline to order that it be

answered; (ii) Request 16.2 should be answered by the Plaintiff's responses to Requests 9 to 14, and to the extent that it has not been answered, it is necessary and proportionate for the Plaintiff so to do in relation to each Defendant individually and I order accordingly.

Request 18 45. This arises out of the averment in paragraph 12 of the Order of Justice that "The Plaintiff's belief is that there was such consistent relegation of any other suggested options for it to be inferred that collateral motives were behind the single- minded focus on the sale to Urgo" . 46. The Defendants have requested as follows: "18. Please identify in relation to each such "suggested option": 18.1. when, how and by whom it was suggested to each Defendant in respect of whom the complaint is made; 18.2. which Defendant(s) are alleged to have "relegated" the same; 18.3. what "collateral motives" are believed to have existed and the facts and matters relied upon in support the same." 47. The Plaintiff objects on the same basis as he did to Request 16. As with Request 16, in my judgment: (i) Request 18.1 is a request for evidence, not for a material fact which is necessary and proportionate in order for the Defendants to understand the case they have to meet; I decline to order that it be answered; (ii) Request 18.2 is a request which should be answered by the responses to Requests 9 to 14 and to the extent that it is not so answered, it is necessary and proportionate for the Plaintiff so to do in relation to each Defendant individually and I order accordingly. 48. Request 18.3 relates to the Defendants' alleged "collateral motives." The Plaintiff's response to the request is that: "...the relegation of the other viable alternatives, when it was always known that the sale of the property was regarded as a last resort, is so inexplicable as to automatically suggest collateral agenda. Paragraph 12 of the Order of Justice already states that. The only intuition available to the Plaintiff on current information is that the terms agreed with KPMG induced a 'closed-mind' attitude, as stated at paragraph 18 of the Order of Justice." 49. In my judgment, the use of the word "motives" can only be read as a reference to the Defendants' state of mind. Alleging that the Defendants collectively pursued a course of conduct because of their "collateral motives" is an allegation of an intentional breach of duty on the part of all the Defendants collectively for improper reasons. In other words, a conspiracy; yet by his written submissions the Plaintiff disavows a conspiracy claim (as set out in paragraph 33 above). 50. If the conspiracy involves bad faith and/or dishonesty, it must be expressly pleaded in accordance with the requirements set out in *Patel v JTC Trust Company Limited* . Conversely, if bad faith and dishonesty are not alleged, the Order of Justice should make this clear and set out how the claim in relation to "collateral motives" is put. 51. Request 18.3 is a request which should be answered by the responses to Requests 9 to 14 and to the extent that it is not so answered, it is necessary and proportionate for the Plaintiff so to do in relation to each Defendant individually and I order accordingly.

Requests 19 and 20 52. These Requests arise from paragraphs 16 and 18 of the Order of Justice and relate to an averment that: "16. The Defendants were at all material times aware that the Halabi family had received consistent interest in possible acquisition of the Chateau from 2013 onwards but that approaches were always turned down because the preference was to retain the asset. Wider issues within the Ironzar trust structures as a whole had led to a greater interest in possible sale from 2017 onwards..."

18. Mr Durrell [sic] by email of 11 August 2019 however stated, "Frankly I am not prepared to discuss this matter of KPMG commission. It is essential that the Chateau be sold and KPMG is vital to this due to a litany of earlier attempts to sell". That was a completely false justification and known by the Defendants to be so. Interest from various interested parties had been received over the previous years but the owners' preferred interest was not to sell."
53. The Requests are in the following terms: "19. Please identify insofar as the same is relied upon: 19.1. in what terms interest had been expressed to acquire the Chateau, when, by whom it was made and by whom it was rejected; 19.2. in relation to each such instance of the expression of such interest and in relation to each of the Defendants, the date(s) on which it is alleged that it was communicated to them that such interest had been received, how and by whom the same was communicated to that Defendant.
20. Please identify which Defendant(s) it is alleged knew before or at the time that Mr Durell sent the email (said to be dated 11 August 2019, but in fact dated 11 July 2019) that he had made the said statement." 54. The Plaintiff objects to answering these requests on the basis that Request 19 seeks matters of evidence and Request 20 requires disclosure of documents in order for the Plaintiff to answer it. 55. I agree that Request 19 seeks matters of evidence, not a material fact which is necessary and proportionate in order for the Defendants to understand the case they have to meet. I decline to order that it be answered. 56. Paragraph 18 of the Order of Justice purportedly provides the material facts sufficient to justify the bald allegation of breach pleaded in paragraph 10. In the absence of any proper particulars of breach being pleaded against the individual Defendants, the averment in paragraph 18 looks similarly unparticularised insofar as it alleges that unidentified defendants knew that what Mr Durell had said was false. 57. It also makes an unparticularised allegation of dishonesty against Mr Durell, the deceased Fourth Defendant whose estate, insofar as I am aware, has not been served with these proceedings. To the extent that Mr Durell remains a party to these proceedings, this allegation must be properly pleaded against him in accordance with the decision in Patel and I so order. 58. Insofar as the other Defendants are concerned, Request 20 is a request which should be answered by the responses to Requests 9 to 14 and to the extent that it is not so answered, it is necessary and proportionate for the Plaintiff so to do in relation to each Defendant individually and I order accordingly. Requests 23 to 26 59. These relate to paragraph 19 of the Order of Justice and the allegation that "Threats of foreclosure on the Trust indebtedness were made by the Defendants to fortify their focus on the Le Lous sale. These however were very substantially exaggerated" . 60. The Defendant has requested that the Plaintiff: "23. Please identify each threat of foreclosure which it is said was made by each Defendant, stating when such threat was made, by whom, to whom, how and in what terms.
24. If such alleged threat is contained within a document, please provide a copy of the same.
25. Is it being alleged that any Defendant knew that such a threat was being exaggerated? If so, please state which Defendant knew the same and the facts and matters relied upon in respect of the same.

26. Is it being alleged that any Defendant ought reasonably to have known that such a threat was being exaggerated? If so, please state which Defendant ought so to have known and the same and the facts and matters relied upon in respect of the same." 61. The Plaintiff objects to answering the Requests on the basis that: (i) Requests 23 and 24 are matters for disclosure; (ii) Beyond stating that it was the Defendants who were exaggerating the threats, the Plaintiff cannot give any further particulars in relation to Requests 25 and 26 without discovery. 62. Paragraph 19 of the Order of Justice purportedly provides the material facts sufficient to justify the bald allegation of breach pleaded in paragraph 10. In the absence of any proper particulars of breach being pleaded against the individual Defendants, the averment in paragraph 19 looks similarly unparticularised insofar as it alleges that unidentified defendants made threats of foreclosure, which were exaggerated, in order to achieve a specific outcome. 63. In my judgment: (i) Request 24 seeks matters of evidence, not a material fact which is necessary and proportionate in order for the Defendants to understand the case they have to meet. I decline to order that it be answered using my power under RCR 6/15. However, to the extent that the reference to the "alleged threat" is a reference in a pleading to a document, there would appear to be no proper reason why I should not order that it be disclosed under RCR 6/17(5) and I so order. (ii) Requests 23, 25 and 26 are requests which should be answered by the responses to Requests 9 to 14 and to the extent that they are not so answered, it is necessary and proportionate for the Plaintiff so to do in relation to each Defendant individually and I order accordingly. Requests 27 to 31 (excluding 30) 64. These Requests concern the allegation in paragraph 20 of the Order of Justice that the "outline heads of terms agreed with Urgo initially...always excluded from the sale Sijac wine..." 65. The Defendant has requested: "27. If the said outline heads of terms are in writing, or evidenced in writing, please provide a copy of the document(s) said to contain the same.
28. If not otherwise apparent from the document(s) provided in response to paragraph 27 above, please state
- (a) which individuals agreed such heads of terms and on behalf of which entities; (b) when, where and how the same were agreed; (c) the gist of the relevant words used.
29. Please state which Defendant(s) allegedly knew that the outline heads of terms so provided and in relation to each such Defendant state when and how it is alleged that they knew the same.
31. In relation to the allegation that it was stipulated to the Le Lous family that the said assets were non-negotiable, please state: (i) which individual(s) made that stipulation; (ii) to which other individual(s); (iii) when; and (iv) how. If in (or evidenced in) writing please provide a copy of the documents said to contain the same." 66. The Plaintiff objects to answering the Requests on the basis that: (i) Requests 27 is a matter for disclosure; and (ii) Requests 28 to 31 are, for reasons which are not articulated, outside the provisions of RC PD 17/04 and further, the Plaintiff relies upon the same objection raised in relation to Request 16 (set out at paragraph 42 above and rejected by me). 67. In my judgment, the reasoning

applicable to Request 16 applies equally to Requests 27 to 31: (i) Paragraph 20 of the Order of Justice purportedly provides the material facts sufficient to justify the bald allegation of breach pleaded in paragraph 10. In the absence of any proper particulars of breach being pleaded against the individual Defendants, the averment in paragraph 20 is similarly deficient in terms of allowing each Defendant to know the case that that individual has to meet. (ii) Request 27 is a request for evidence, not for a material fact which is necessary and proportionate in order for the Defendants to understand the case they have to meet and I decline to order that it be answered using my power under RCR 6/15. However, to the extent that the reference to the "outline terms" is a reference in a pleading to a document, there would appear to be no proper reason why I should not order that it be disclosed under RCR 6/17(5) and I so order. (iii) Requests 28, 29 and 31 should be answered by the Plaintiff's responses to Requests 9 to 14, and to the extent that they are not answered, it is necessary and proportionate for the Plaintiff so to do in relation to each Defendant individually and I order accordingly. Requests 32 to 37 (excluding 34) 68. These Requests relate to an averment in paragraph 20 of the Order of Justice that "to the Defendants' knowledge, Mr Bees, for and on behalf of SAS CCB, was ultimately tricked into signing the SPA by Angela Morris of Helm because he was threatened with a loss of the Cannes apartments and Sijac wine to the buyer." 69. This is a serious allegation of impropriety against Ms Morris in respect of which the Defendants have asked a series of questions: "32. In relation to the averment "Indeed to the Defendants' knowledge", please clarify in relation to each Defendant what exactly it is being alleged that they knew and state the facts relied upon in support of that individual having the alleged knowledge.

33. Please confirm whether it is the Plaintiff's case that Mr Bees signed the SPA. If so, please provide a copy of the SPA as signed by Mr Bees...
35. Please confirm if Mr Bees read the documentation which he was asked to sign.
36. Please confirm if it is being alleged that Mr Bees misunderstood the effect of what he was signing because of what it is alleged that Mrs Morris stated. If so, in what respect(s) did he so misunderstand the documents.
37. Please confirm the Plaintiff's case as to: 37.1. whether the sale of SAS CCB would have gone ahead on the terms of the SPA if Mr Bees did not sign (and, if not, provide particulars of the basis for so stating); 37.2. whether the Cannes apartments and Sijac wine would have been lost if Mr Bees did not sign (and, if not, provide particulars of the basis for so stating)." 70. The Plaintiff objects to answering these Requests on the basis that: (i) the answer to Request 32 is clearly pleaded in paragraph 20 of the Order of Justice and further, the Plaintiff relies upon the same objection raised in relation to Request 16 (set out at paragraph 42 above) and which I have rejected above; (ii) as to Requests 33 to 37 inclusive, the basis for paragraph 20 of the Order of Justice is apparently an email from Mr Bees to the Third Defendant on 19 December 2019 to which the Defendants have access; (iii) as to Requests 35, 36 and 37, Mr Bees is a potential witness and is not the Plaintiff. 71. In my judgment: (i) Request 32 should be answered by the Plaintiff's responses to Requests 9 to 14, and to the extent that it has not

been answered, it is necessary and proportionate for the Plaintiff so to do in relation to each Defendant individually and I order accordingly. (ii) For the purposes of Requests 33 to 37, the material fact is that Mr Bees signed the SPA and this has been pleaded. To the extent that Requests 33 to 38 seek further information, this relates to evidence which it is neither necessary nor proportionate to provide at this stage and I decline to order that it be answered using my power under RCR 6/15. However, the reference to the SPA is a reference in a pleading to a document and there would appear to be no proper reason why I should not order that it be disclosed under RCR 6/17(5) and I so order. Requests 40 and 41 72. These Requests arise out of an averment at paragraph 23 of the Order of Justice that "... at the very minimum Helm had a basis for suspicion of breach of fiduciary duty but consciously failed to make appropriate further enquiries". Unlike the preceding paragraphs of the Order of Justice, this is the first paragraph of the Order of Justice setting out the claim in relation to Helm's alleged accessory liability for dishonest assistance and should therefore have been pleaded in accordance with the guidance set out in Patel . In my judgment, this paragraph in the Order of Justice does not meet that standard. 73. The Defendants have requested that the Plaintiff: "40. Please identify: (a) the individuals at Helm who are alleged to have had a basis for suspecting a breach of fiduciary duty; (b) in relation to each such individual, the matters relied upon for so alleging.

41. Please state what "appropriate further enquiries" it is alleged should have been made and what it is alleged they would have revealed." 74. The Plaintiff objects to answering these Requests on the grounds that it is not possible to do so before discovery. 75. In my judgment, having pleaded dishonest assistance, the Plaintiff must plead all the facts, matters and circumstances relied on to show that Helm was dishonest; he cannot hide behind unparticularised allegations. I therefore direct that he answers Requests 40 and 41. Request 42 76. As part of its claim of dishonest assistance against Helm, the Plaintiff asserts that actions occurring after the sale of the French property can be taken into account and these include the manner in which Sijar was wound up. The Plaintiff alleges that Helm wound up Sijar without instructions and at a time when Sijar still had handover responsibilities under the Deed of Retirement and Appointment (the "DORA"). The Defendants have requested that the Plaintiff identify what those responsibilities were. The Plaintiff has declined to do so stating that the Defendants have a copy of the DORA. 77. In my judgment, the nature of the handover responsibilities is a material fact in relation to the allegation of dishonesty against Helm and should be particularised in full. Simply referring the Defendants to the DORA is an inadequate response in relation to an insufficiently pleaded averment. I therefore order the Plaintiff to answer Request 42. Requests 43 to 44 78. In paragraph 26 of the Order of Justice, the Plaintiff alleges that the Defendants' conduct was "strongly suggestive of undisclosed conflicts of interest or collateral motives". 79. As with Request 18, the Defendants have asked for details of which Defendant(s) it is alleged had an undisclosed conflict(s) of interest or collateral motive(s), and for full particulars of the alleged undisclosed conflict(s) of interest and/or collateral motive(s). The Plaintiff objects for the same reasons he raised in relation to Requests 9 and 16 and which reasons I rejected above.

80. Accordingly, I direct the Plaintiff to answer Requests 43 and 44. Requests 45 to 47 81. At paragraph 29 of the Order of Justice, the Plaintiff refers to an August 2018 valuation and an "indicative offer made by the Japanese investment fund" as evidence that a higher price could have been achieved for the sale of the French property. 82. The Defendants have asked for: (i) a copy of the August valuation and any instructions on which it was based (Request 45); (ii) the identity of the Japanese investment fund and a copy of the indicative offer (Request 46); and (iii) an explanation as to why the offer did not lead to a transaction. (Request 47). 83. The Plaintiff objects on the grounds that: (i) Request 45 is a matter for disclosure; (ii) the answer to Request 46 is set out in an email dated 1 September 2018 which the Defendants have; (iii) he does not know the answer to Request 47. 84. In my judgment: (i) Request 45 is a request for evidence not for a material fact which is necessary and proportionate in order for the Defendants to understand the case they have to meet, and I decline to order that he answer it under RCR 6/15. However, to the extent that the reference to the "August 2018 valuation" is a reference in a pleading to a document, there would appear to be no proper reason why I should not order that it be disclosed under RCR 6/17(5) and I so order. (ii) in relation to Request 46 the Plaintiff should identify the Japanese investment fund, the date of the indicative offer and the amount. All of these matters are necessary and proportionate in order to clarify how the loss is calculated. The request for a copy of the offer is a request for evidence under RCR 6/15 which is unnecessary and which I decline to order under that Rule. However, to the extent that the reference to the "indicative offer" is a reference in a pleading to a document, there would appear to be no proper reason why I should not order that it be disclosed under RCR 6/17(5) and I so order. (iii) Request 47 has been answered. Timing 85. For the reasons set out above, I order that: (i) Requests 9, 10, 11, 12, 13, 14, 16.2, 18.2, 18.3, 20, 23, 25, 26, 28, 29, 31, 32, 40, 41, 42, 43, and 44 should be answered in full; (ii) Requests 8 and 46 shall be answered in part, as set out above; (iii) Pursuant to RCR 6/17(5) copies of the documents referred to in Requests 24, 27, 33, 45 and 46 shall be provided; (iv) Should the late Mr Durell remain a party to the proceedings, the allegations of dishonesty referred to in paragraph 18 of the Order of Justice shall be pleaded in full in accordance with the guidance in Patel . 86. The Defendants seek those responses within 14 days. In my judgment, 14 days is too short a time particularly given the impending Christmas period. I therefore direct that the responses shall be provided by 19 January 2024. Authorities Royal Court Rules 2004. Dick Stock v G. B. Trustees Limited

[2019] (1) JLR Note 6. Monteagle International Limited v Grocery Market Research Limited

[2020] JRC 244 . Financial Technology Ventures II (Q) LP v ETFS

[2021] (1) JLR 122. Holmes v Lingard

[2018] JRC 184 . Civil Procedure Rules. 2023 edition of the White Book (at 12-51). Sinel v Goldstein

[2003] JRC 090 . Re Esteem (27 July 2000) Jersey Unreported 2000/150. Patel v JTC Trust Company Limited

[2023] JRC 152 . Armitage v Nurse [1998] Ch 241 . Macfírbhisigh

v. C. I. Trustees and Executors Limited

[2014] (1) JLR 244. Scruton v Bone [2001] 11 WLUK 498. Emerald Supplies v British Airways PLC

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