

JERSEY / JUDGMENT

Holmes -v- Lingard [2015]

JRC 226 (11 November 2015)

[2015] JRC 226

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judgment

the deputy bailiff:

Introduction

1. This judgment represents my decision as to whether or not Mr Holmes and the defendants have reached a settlement of all of their claims and therefore whether or not I should strike out the plaintiff's claims on the basis that to allow proceedings to continue, where a settlement had occurred, would be vexatious or an abuse of process. 2. The background to Mr Holmes' claims is set out in my judgment reported at *Holmes v Lingard*

[2015] JRC 172 at paragraphs 2 to 6. I also refer to paragraph 7 to 11 which deal with other proceedings between Mr Holmes and the defendants which are relevant to matters before me. Relevant Chronology 3. By reference to two affidavits filed by Mr Holmes dated 27 th August and th September, 2015, and the first and third affidavits of the Mr Lingard dated 3 rd September and 20 th September, 2015, and communications with the Court on the court file, I set out the following as a chronology of relevant events. 4. On 22 nd June, 2015, at 9:44, Mr Holmes emailed Advocate Mark Taylor, then advocate for the defendants, setting out a proposal to resolve the hearing referred to at paragraph 10 and 11 of my earlier judgment. In an email from Mr Lingard to Advocate Taylor which is also dated 22 nd June, 2015, Mr Lingard confirmed his agreement with Advocate Taylor that there was no attraction to this proposal (see exhibit HJL3/3). An English solicitor Mr Michael Fitton who assists Mr Lingard express the same view (see exhibit HJL3/4). 5. On 24 th June, 2015, Mr Holmes emailed a Mr Andrew Robertson. By reference to an affidavit filed by Mr Robertson, to which I refer to later, Mr Robertson describes himself as knowing Mr Holmes for a number of years in both a professional and social capacity and as acting as a messenger or a go-between between Mr Holmes and Mr Lingard. 6. The email from Mr Holmes contained a proposal that all cases between him and Mr Lingard were dismissed with each party bearing their own costs, Mr Lingard receiving £6,000 out of an escrow account with the balance being paid to Mr Holmes. 7. This proposal was forwarded that day (i.e. 24 th June) by Mr Robertson to Mr Lingard who in turn forwarded it to Advocate

Taylor and Mr Fitton indicating that he, Mr Lingard, had previously rejected the proposal and reconfirming his rejection of it. I note that as part of his proposal Mr Holmes raised the issue that he wanted all prior judgments of the Court set aside as part of any settlement. 8. Rejection of Mr Holmes' proposal was confirmed by Advocate Taylor to Mr Holmes in an email also dated 24 th June, 2015, sent at 15:41. 9. At 15:54 on 24 th June, 2015, following rejection of his proposal for an overall settlement, Mr Holmes indicated that he was prepared to withdraw the appeal listed for 26 th June, 2015, subject to reasonable terms. After an exchange of emails between Mr Holmes and Advocate Taylor, by an email sent by Mr Holmes on 26 th June, 2015, at 14:03, Mr Holmes confirmed that he had signed the consent order authorising the hearing of 26 th June, 2015, to be vacated. 10. On 29 th June, 2015, Mr Robertson texted Mr Holmes at 16:55 stating:- "to finalise dispute with Harry, you drop the case and Harry will drop his case. Put this matter to bed once and for all, all you need to do is write to Mark Taylor once that has been done and finished I can meet you to discuss another matter." 11. Mr Robertson in his affidavit does not explain what this other matter is. Mr Holmes in his first affidavit states that one of the key terms of the settlement with the defendants was that he would receive a deal worth £100,000. He does not explain how this key term was agreed, his understanding of Mr Robertson's text message of 29 th June, 2015, or what the other matter was. In oral submission however Mr Holmes contended that the other matter referred to was receipt of a deal or a sweetener worth £100,000. 12. It appears from the text messages exhibited by Mr Holmes that he and Mr Robertson spoke on 3 rd July, 2015. Neither gives any evidence in relation to this call. 13. However, on 6 th July, 2015, Advocate Taylor sent a settlement agreement to Mr Holmes by email:- "I gather you have been in discussions with my client and I am instructed to send you this settlement agreement to seek to bring to a conclusion to all outstanding matters that exist between my clients, you and your companies." The email then invited comments on the settlement agreement prepared by Advocate Taylor. 14. This email appears to have followed a communication from Mr Robertson to Mr Lingard dated 3 rd July, 2015, sent 06:12 pm, where Mr Robertson states:- "have been negotiating with Shane Holmes on your behalf and I have successfully agreed that Mr SH will drop all claims without remuneration of any kind. He has asked if you can prepare the necessary documents as a full and final settlement." 15. Mr Robertson confirmed at paragraph 11 of his affidavit that the conversations prior to this email were between himself and Mr Holmes, rather than Mr Holmes speaking to Mr Lingard. This is accepted by Mr Holmes and Mr Lingard. 16. Also on 3 rd July, 2015, a draft of my security for costs judgment was released for comments, which comments were to be dealt with by me after 31st July, 2015. 17. Mr Holmes responded with comments on the settlement agreement sent by Advocate Taylor earlier that day by an email at 16:30. It appears that Mr Holmes added a new clause (vi) seeking the setting aside of previous judgments issued by the Royal Court. 18. In an email sent to Advocate Taylor at 11:17 on 7th July, 2015, Mr Holmes explained what he was seeking was that while judgments were presently a matter of public record "their setting aside would remove them from the public register effectively wiping the slate clean. It would be entirely counterproductive for the parties if judgments which are superseded by

the settlement and therefore worthless are allowed to remain on record forever." 19. Mr Holmes then continued "we are indeed writing to the Royal Court to withdraw and discontinue proceedings but we will not disclosing the terms of the settlement (it is not necessary to do so in any event). The terms may stay confidential between the parties." (emphasis added). 20. Advocate Taylor replied indicating that there was no point including a request to remove judgments because there was no facility to do so. He stated "the judgments remain as a matter of record but the fact is a conclusion is reached by signing this agreement so between the respective parties the judgments are nothing more than a historical record and that is the same for all matters that have been conducted in open Court." 21. In his reply sent at 11:46 Mr Holmes stated "it is not a case of removing judgments from the public domain. Rather it is a case of setting aside the judgments with the Court so they no longer appear on the Jersey law records/register. The setting aside of judgments is a routine exercise. This is not therefore a cause for doubt, not least because the settlement agreement is the overriding agreement which must supercede the judgments in any event." 22. I observe that I do not understand on the one hand Mr Holmes' observation that this was not a case of removing judgments from the public domain but on the other his statement that the setting aside of judgments meant that they no longer appeared on the record. Setting aside judgments in the manner proposed by Mr Holmes appears to be an attempt to remove judgments from the public domain. 23. By an email sent at 11:57 on 7 th July, 2015, Advocate Taylor maintained his position that it was not possible to set aside judgments and indicated that, if terms could not be agreed by close of business that day, then his clients would proceed with the case. 24. Mr Holmes replied by an email sent at 12:59 where he stated "the setting aside of matters are matters subsequent so there is little point in delaying conclusion of the settlement at this point. The parties can look to tidy up the Court file register at a later date Telling relevant people that the dispute is concluded is accepted and understood but, the terms of the settlement may remain confidential between the parties. On the basis I would be obliged if you would engross the settlement ready for signing ." (emphasis added). 25. By an email sent at 15:51 also on 7 th July, 2015, Mr Holmes stated "I have delivered the signed agreement could you please provide me with a copy of the signed agreement. After that the parties may deal with the letter to the Court." 26. The relevant part of the agreement signed by the parties on 7 th July, 2015, states as follows:- "The following terms reflect a global settlement agreement between: 1. The Plaintiff Parties i Shane Michael Holmes of 20 Beaulieu Apartments, St Saviour; ii Home Farm Developments Limited of JP Morgan House, St Helier; and iii Strata Development Limited (currently struck off). 2. The Defendant Parties i Harry James Lingard of Affaric, La Route Orange, St Brelade; ii HJL Holdings Limited of the same address. The global settlement agreement is in respect of the actions which comprise of the following: i All matters currently pleaded in court file 2014/095 including both the claim and the counterclaim and referred to in the affidavits filed in that action; ii All and any additional matters arising between the Plaintiff Parties and Defendant Parties in connection with the building projects at Le Tour Hotel in St Aubin, the Home Farm site in Grouville and any other contractual or other agreement or arrangement which has

happened in respect of any other building project or proposal in Jersey (clause 1 and ii shall be referred to as "the Actions"). 3. The Plaintiff Parties agree with the Defendant Parties as follows: i The matter currently before the Royal Court numbered 2014/095 (which includes the claim and counterclaim) shall be withdrawn and discontinued forthwith and a letter shall be signed by all parties to that action and sent to the Court to that effect. Iii The Plaintiff Parties and Defendant Parties will each bear their own costs. Iii Any existing Costs Orders in respect of Court file 2014/095 shall not be enforced against the other party save for the provision at clause v below. iv The Actions are settled on a full and final basis by the terms of this agreement. v The balance of funds held by Bedell Cristin subject to the terms of a consent agreement dated 25 June 2015 in matter 2013/046 and 2013/341 shall be applied against the legal costs incurred by the Defendant Parties. vi The Parties agree that the terms of this settlement agreement are confidential but may relay the fact that a settlement has been achieved to relevant third parties. Mr Harry Lingard signed on behalf of himself, HJL Holdings Limited and Angel Fish Holdings Limited. Mr Shane Holmes signed on behalf of himself, Home Farm Developments Limited and Strata Developments Limited. 27. Although this agreement was said to be confidential between the parties, because a dispute has now arisen between the parties as to whether or not the present action has settled, it is necessary to refer to the terms of the settlement and to record them in this judgment. The confidentiality provision in the written document has been overridden by the dispute that has subsequently arisen as to whether or not the parties have settled. It is not possible to rule on whether or not there is a settlement and to maintain the principle of open justice without setting out the relevant terms which are now in dispute. 28. The agreement of 7 th July, 2015, was not seen by the Court on 7 th July, 2015, and a copy was only provided by Mr Lingard to the Court on 5 th and 20 th August, 2015. 29. On 7 th July, 2015, Bedell Cristin produced a consent letter for discontinuance for Mr Holmes' proceedings which provides as follows:- "7 July 2015 Master of the Royal Court Royal Court House Royal Square St Helier Jersey JE1 1JG Dear Sir Re: Mr Shane Michael Holmes v. Harry James Lingard, HJL Holdings Limited and Angel Fish Limited We request that the Master issue an Order that the above action court file 2014/095 (which for the avoidance of doubt includes the claim and counterclaim) shall be withdrawn and discontinued forthwith on terms that have been agreed between the parties. We would be grateful if the Master would issue an Order to this effect. Advocate Mark Taylor on behalf of Mr Shane Michael Holmes the Defendants Letter of consent was not signed by either party." 30. The Court was also orally notified of the settlement by Advocate Taylor. The fact of this oral notification was confirmed by Advocate Taylor in an email to Mr Holmes dated 8 th July, 2015, sent at 09:32. Mr Holmes did not object to the notification to the Court that had occurred. 31. On 8 th July, 2015, Mr Holmes also sent a text to Mr Robertson where he stated "morning Andy can you please confirm that Harry has signed and sent back because I need to collect a final copy so we can arrange a letter to Court to confirm settlement has been reached thanks." (emphasis added). 32. On 11 th July, 2015, Mr Holmes, Mr Lingard and Mr Robertson met. The purpose of this meeting is disputed. 33. Mr Holmes contends

as noted above that prior to signing the settlement agreement, he had agreed through Mr Robertson that Mr Holmes would receive a deal worth £100,000 from Mr Lingard. The purpose of the meeting on 11 th July, 2015, was to sort out the £100,000 deal. 34. According to Mr Lingard the purpose of this meeting was for Mr Holmes to apologise to Mr Lingard for his conduct of the litigation and secondly for Mr Holmes to explain he had certain documents which might be of interest to Mr Lingard. His account of the meeting is set out at paragraph 11 of his third affidavit which states as follows:- "Much to my frustration, the plaintiff was over 10 minutes late to the meeting. As he arrived, I had already stood up to leave. In the brief exchange of words that followed, I asked if he had any money because and told him that in my mind he still owed me £100,000. He said he was broke, but that if I gave him an opportunity to earn some money he would pay me back, to which I replied, "you cannot be trusted". At which point I asked for that the file of his dealings with Hartigans on my behalf, be returned to me. Mr Robertson had previously requested the same from the plaintiff on my behalf, as Hartigans were wanting to charge me £600 to copy the same. From what I recall, the plaintiff then said he had some information that would be of benefit to me in bringing a claim against both Advocate Franckel and Hartigans and that he would be able to assist me in so doing, but that he didn't really relish the prospect of getting involved in any further litigation. This I found somewhat amusing, as I know that Mr Holmes is involved in litigation on many different fronts. At which point, I repeated that he could not be trusted and said that if he wants people to have mercy on him, then he has to stop all litigation against Jamie Le Sueur, Daniel Young and others and admit the error of his ways. Further, I asked him to return the logbook to a car of mine that he was holding. The meeting then ended and I have not met him since." 35. Mr Robertson's recollection of this meeting is set out at paragraphs 13 to 15 of his affidavit which I set out in full as follows:- "13. With all issues resolved, Mr Holmes asked if I could arrange a meeting for he and I to meet with Mr Lingard as he wanted to apologise and then ask Harry if he could help him get back up on his feet. 14. On approaching Mr Lingard he agreed but only on the basis that Holmes first admitted that he had had money off Mr Lingard and that Mr Lingard owed him nothing. This Holmes agreed to and a meeting was set for 11am Saturday 11th July, 2015 at Costa Café in St Aubins. 15. Mr Holmes was late to the meeting and that frustrated Mr Lingard who had another appointment to attend. Mr Lingard asked had Mr Holmes got any money, to which Holmes replied "No". He asked Holmes if he had a file of papers, which belonged to Mr Lingard and related to the instructions to a third party firm of engineers called Hartigans. Mr Lingard believed that the firm had been negligent and he said that if Holmes were to give him the file, together they could look to pursue a claim, as Mr Lingard thought that Mr Holmes would be able to assist in his bringing the action as a litigant in person. Mr Lingard believed the amount of damages would be in the region of £300,000 and that if he were to be successful he would afford Mr Holmes a share. However, this figure or any other figure was not discussed at the meeting and I think that was just a discussion with Mr Lingard and I sometime before or after the meeting. Mr Lingard being out of time left the meeting, it was after this meeting that Mr Holmes said I should go back to Mr Lingard and suggest

his fee should be in the region of £100,000. However, I wish to emphasise that this had nothing to do with the existing proceedings and that time all the parties believed such to have been settled." 36. Mr Holmes' evidence in relation to this meeting is found at paragraph 26 of his first affidavit which provides as follows:- "26. Mr Robertson telephoned/text me on the 7 and 8 July to make arrangements for the meeting with Mr. Lingard to sort out the £100K Deal. Because of other pre-scheduled commitments I agreed with Mr. Robertson to meet Lingard at Costa Coffee, St Aubin's at 11:00am on Saturday, 10 July. Mr Robertson attended the meeting also. At the meeting I found Mr. Lingard mildly hostile, but I put this down to the freshness of the proceedings and that it was our first meeting. The meeting only lasted 15 or 20 minutes, as Mr. Lingard had another appointment and we discussed the past proceedings to start with. By the end of the meeting it wasn't clear to me what the 3100K Deal was. Mr Lingard suggested something along the line that there were various parties that he wanted to sue who were involved on La Tour and that I could help him recover in the region of £300K in damages. I confirmed that I would not wish to get involved. Mr. Lingard had to end the meeting for this other appointment and I left the meeting a little hazy and not knowing what the £100K Deal was." 37. At paragraph 17 of his second affidavit Mr. Holmes stated as follows:- "17. Mr. Lingard is also fully aware that his £100K Deal, which emerged at our meeting of 11 July and the weeks that followed, was rejected by me because, inter alia, it emerged it was intangible, indeterminable and depended on the outcome of Mr. Lingard's proposed law suits against Messrs Hartigans, Gödel Architects, Franckel Law, Hanson Renouf and others (see SH1, p20, image 9-11), and (SH1, p8-19)." 38. I consider later the significance of this meeting. 39. On 17 th July, 2015, Mr Robertson texted Mr Holmes and stated as follows "Hi Shane, have you made any progress with Harry Lingard. If you have U want to meet him tomorrow at Coopers on Water Front!." No such meeting took place. 40. On 25 th July, 2015, Mr Robertson texted Mr Holmes and stated as follows "explained to H your thoughts with further litigation etc totally understands and H has asked for file on Hartigans and he will pursue himself!" This suggests that Mr Holmes and Mr Robertson had had a further conversation but there is no evidence from either of them what was discussed. The wording used reads as if Mr Holmes did not want to get involved in any dispute with Hartigans or to help Mr Lingard in any such litigation. 41. Mr Holmes on 27 th July, 2015, replied as follows by text "morning Andy I should have a copy of very soon and will post it to Harry. If Harry needs assistance with matters other than claims he wishes to pursue then I will try and assist". Again this appears to show a reluctance on the part of Mr Holmes to become involved in litigation. 42. Mr Robertson replied "thanks Shane that would be great if the log book comes through quickly. "Harry just needs the original paperwork that he has paid from when you were dealing with them on Harry's behalf." 43. On 3 rd August, 2015, Mr Holmes texted Mr Robertson and stated "evening Andy are meeting Harry tomorrow if so what time? I need to pass you the letter for the Court for signing and pass them back. What time can I pass to you tomorrow?" (emphasis added). 44. Mr Robertson replied "seeing Harry around 12 noon just spoke to him he asks for all Hartigan's correspondence is on email. Instead of printing for him just to forward to either

myself or direct to Harry. Your cooperation on this matter will be very much appreciated." A meeting for Mr Holmes to hand over to Mr Robertson his draft consent order was arranged for 11:30 4 th August in Gas Place. 45. Mr Holmes replied "I will forward emails no problem". 46. In parallel on 3 rd August, 2015, I circulated to Mr Holmes and Advocate Taylor a revised judgment. Part of my email stated:- "Firstly, subject to seeing a signed consent order, I am delighted that you have resolved matters between you. Secondly, having reread the judgment, the draft judgment I produced, subject to correcting various typographical errors I am minded to publish the judgment as I believe it contains matters of general interest in relation to applications of this kind. However, I would not want to do so if this would compromise the settlement that you had reached." 47. Mr Holmes replied to me by email dated 4 th August, 2015, and stated:- "Thank you for your email. Please note I am of the view that publication of the judgment would indeed compromise the desired effect of the settlement . The parties desire to wipe the slate clean as far as reasonably practicable and consent to set existing judgments aside rather than have further judgment's published. I am dealing with the consent order today and hope to conclude it this week ." (emphasis added). 48. The consent order he referred to in the email to me is the draft consent order given by Mr Robertson for Mr Lingard to sign when Mr Holmes and Mr Robertson met on 4 th August, 2015. 49. On 4 th August, 2015, at 09:58 I replied to Mr Holmes "Thank you for your email. I understand your position and am sympathetic to it. However, before reaching a final decision, I wish to see a consent order which I trust I will receive before the end of the week given that settlement in principle appears to have been agreed early last month." 50. On 5 th August, 2015, a number of communications took place which I set out in chronological order to put them in their proper context. Some of these were by text and some by email. 51. At 09:03 Mr Holmes texted Mr Robertson stating:- "If Harry wants I can meet him with his lawyer today to discuss the consent order for court and Hartigans" (emphasis added). 52. At 10:44 Mr Robertson replied forwarding a message from Mr Lingard the material part of which is as follows:- "Message just received. No want all my papers first tell him if he does not hand over papers he will no longer mediate"..... 53. The first sentence was written by Mr Robertson and the second sentence onwards (the remainder of which I do not need to cite) by Mr Lingard. 54. Mr Holmes responded by texting "no consent order then". He was therefore asking in response to the text sent at 10:44 whether or not there was a consent order. 55. At 15:22 Mr Robertson attempted to call Mr Holmes and then sent a text "Hi met with Harry can you call when free". 56. Mr Holmes deposed in the affidavit which was not disputed that he called Mr Robertson at 15:29 who was with Mr Lingard and Mr Holmes spoke to Mr Lingard. The relevant part of paragraph 16.3 of Mr Holmes affidavit states as follows:- "I reiterated the Confidential Agreement was confidential between the parties but when I started to reiterate my position on the consent order and Hartigans Mr Lingard said had to let his dog out and passed the phone back to Mr Robertson. I thanked Mr Robertson we ended the call. The call lasted CA 13 minutes." 57. At 15:48 Mr Holmes was copied into an email from Mr Lingard to Advocate Gardner of Bedell Cristin (who was covering for Advocate Taylor who was on holiday) which stated "Shane Holmes is refusing to sign and return the

letter, he wants the attached to be signed and returned instead setting aside the number of existing judgments. In principle I have no objection to this provided it does not impact on existing costs orders that have allowed me to claim the money that was held in escrow by Hanson Renouf or otherwise affect me in anyway." 58. This consent order drafted by Mr Holmes and signed by him was then provided to me by Mr Holmes under cover of an email sent at 15:52, i.e. immediately following his call to Mr Lingard and Mr Lingard's email. Again I was informed that Mr Holmes was consulting with the defendants and hoped to respond by the end of the week. The terms of that consent order provide as follows:- "4 August 2015 Master of the Royal Court Royal Court House Royal Square St Helier Jersey JE1 1JG Dear Sir Court File No. 2014/095: Mr Shane Michael Holmes v Harry James Lingard, HJL Holdings Limited and Angel Fish Limited. The parties request that the Master issue an Order that the above action 2014/95 (which for the avoidance of doubt includes the claim and counterclaim) shall be withdrawn and discontinued forthwith on the terms which have been agreed between the parties, and on condition that the following draft and/or final judgment's which have become redundant by virtue of the said terms, shall simultaneously be set aside: Present draft judgment of the Master, issued to the parties by email on 3 July 2015, in respect of the Defendants' application for security for costs in matter 2014/95.

Judgment

[2015] JRC 141 , in respect of the Defendants' application to lift injunctions in matter 2014/95.

Judgment

[2014] JRC 209 , in respect of the Plaintiffs' costs appeal in underlying matters 2013/46 and 2013/341.

Judgment

[2013] JRC 160 , in respect of the Defendants' application for leave to appeal in underlying matter 2013/46. The parties would be grateful if the Master would issue an Order to this effect. Mr Harry Lingard on behalf of Mr Shane Michael Holmes The Defendants Only Mr Shane Holmes signed this letter of consent. 59. At 16:36 Mr Holmes email Advocate Gardner and stated "I attach an email which I have just sent the Master which encloses a copy of a draft consent order which I have signed and passed to Mr Lingard for signature". 60. At 17:02 Mr Lingard emailed Mr Holmes "let see what he says, can you find me the emails or letter I need for my solicitor who is here today to deal with Hartigans I need to know what was said about getting permission from houses about". 61. In response to Mr Holmes email sent at 15:52, by an email sent at 17:06, I indicated as follows:- "Thank you for your email. It is right to observe however while the present proceedings can be withdrawn, I cannot make an order to undo what had already had been decided by the Royal Court. These decisions are now matters of public record

and therefore must stand." 62. At 19:53 Mr Holmes replied to Mr Lingard's email sent at 17:02 and stated "agreed, will you understand that I am conflicted from engaging in any of the matters until the court has officially withdrawn and discontinued case 2014/095. Hopefully that will happen this week and then I will contact you " [emphasis added). 63. Mr Lingard replied at 20:29 "you keep the file I will pay Hartigans for photocopies". 64. At this point I was finalising my judgment on security for costs a further copy of which had been sent to the parties the previous day with a view to it being formally handed down on 13 th August, 2015. 65. In response to my email sent at 17.06 Mr Holmes asked for a short stay to take advice on whether or not judgments could be set aside. I gave Mr Holmes until 13 th August, 2015, to agree matters and take advice. At this point Mr Holmes was awarded legal aid. 66. The award of legal aid led to a letter dated 12 th August, 2015, from Hanson Renouf. Hanson Renouf's letter focused on whether or not I should publish the judgment on security for costs. No arguments were advanced as to whether or not I or the Royal Court could set aside previous judgments of the Royal Court or remove them from the public record. 67. At the hearing on 13 th August, 2015, to hand down my judgment on security for costs, Mr Holmes and Advocate Taylor appeared. Advocate Taylor's position was that there was a settlement which was not conditional upon whether or not the judgment was published. Rather it was a matter for Mr Holmes as to whether or not he could persuade the Court not to publish the security for costs judgment if that was what he wanted. However, it did not affect the settlement. 68. Mr Holmes' position was that the settlement was conditional upon the parties agreeing that publication should not take place. This was the only issue he raised. 69. I therefore decided to adjourn handing down of the judgment by one week to enable the parties to consider their position further and to take advice. 70. On 18 th August, 2015, Mr Holmes met with Mr Robertson. What happened at this meeting is contentious and I therefore deal with it later in this judgment save to note that Mr Holmes, as a result of this meeting, contends that Mr Robertson confirmed that Mr Holmes was to receive a deal or sweetener worth £100,000 for withdrawing the present action and it was on this basis that Mr Holmes signed the agreement dated 7 th July, 2015. 71. When matters came back before me on 20 th August, 2015, just before sitting I had received from Mr Fitton a copy of the consent order drafted by Mr Holmes and signed by Mr Lingard. 72. At this hearing I confirmed that I was of the view that I could not remove matters already on the public record. As far as the draft security for costs judgment was concerned I accepted that I had a discretion whether or not to publish and, if I was minded to publish, whether or not to do so on a redacted basis. 73. Mr Holmes then raised for the first time that the settlement should be set aside on a different basis, namely that he had reached an agreement which was not recorded in the document signed on 7 th July and was to the effect that he would receive some form of financial compensation. 74. Ultimately I resolved in respect of this issue that I could adjudicate on whether or not a settlement had been reached. If it was clear that a settlement had been reached then I could strike out the plaintiff's claim. I therefore gave directions for Mr Holmes to file an affidavit setting out all grounds relied upon as to why a settlement had not been reached and then allowing the defendants 7 days to respond and

adjourning matters to 9 th September, 2015. I also released and published the security for costs judgment but with certain parts anonymised. 75. On 9 th September, 2015, Mr Holmes asked for an adjournment because he had not produced his skeleton argument. By this time he had also filed a second affidavit in response to the affidavit filed by Mr Lingard on 20 th August, 2015. 76. I therefore adjourned the issue of whether or not there was a settlement to 1 st October, 2015, (which was then adjourned to 5 th October, 2015, for reasons not relevant to this decision) and gave the defendants liberty to file an affidavit evidence in reply to Mr Holmes' second affidavit along with various other directions. 77. One of the directions I gave required the defendants to produce a disc containing recording of the meeting between Mr Holmes and Mr Robertson on 18 th August. I address this recording later in this

judgment.

78. Also on 9 th September, 2015, I indicated that the basis on which I could strike out was pursuant to the powers vested in the Court pursuant to Rule 6/26(8) of the Royal Court Rules 2004 , as mended ("the Rules"), Rule 6/26(8) provides as follows:- "6/26 Summons for directions (8) Without prejudice to the generality of paragraph (12), if the Court on any hearing of the summons for directions requires a party to the action or that party's advocate or solicitor to give any information or produce any document and that information or document is not given or produced, the Court may - (a) record the facts in its act with a view to such order, if any, as to costs as may be just being made at the trial; or (b) if it appears to the Court to be just to do so, order that the whole or any part of the pleadings of the party concerned be struck out, or order that the action or counterclaim be dismissed on such terms as may be just." The Law in relation to strike out 79. Notwithstanding the fact that the power to strike out I consider I am entitled to exercise is under Rule 6/26(8), in my judgment the case is no different from any other case where matters can be struck out on the basis of the claim being vexatious or an abuse of process because a settlement has taken place. 80. In *Home Farm Developments & Ors v Le Sueur*

[2014] JRC 079 , I concluded that, if a binding settlement has been reached between parties, that to allow such proceedings to continue would be both vexatious and an abuse of process because the Court would be asked to adjudicate on a matter that had been resolved by agreement (see paragraph 31). This decision was upheld by the Royal Court which adopted the same approach (*Home Farm Developments & Ors v Le Sueur*

[2015] JRC 110). 81. I have also reminded myself of the relevant test on the strike out which I considered in *Lapidus v Le Blancq & Ors*

[2013] 2 JLR 308 . In particular, I reminded myself that an action should only be struck out in plain and obvious cases. 82. Also, as I noted in *Haden-Taylor v Canopus & Ors*

- [2014] JRC 221 , for an action to be struck out as an abuse of process it had to be obviously and incontestably bad (see paragraph 110). 83. Finally, I considered that I could only construe an agreement if it was a straightforward question of construction and only depended on a few documents. By contrast if the question of construction would take hours or even days and was in reality an attempt to obtain an immediate trial of the action, then the issue was one for the Royal Court to determine. I reached this view by analogy with the approach I had taken in *Corefocus Consultancy Limited v Cronk*
- [2013] JRC 194 at paragraph 15 and *Hard Rock Limited & Anor v HRCKY Limited*
- [2013] JRC 244B at paragraph 14. I therefore made it clear to the parties at the outset of the hearing that if there were disputed issues of fact which had to be determined in order to conclude whether or not the parties had reached a settlement, only the Royal Court could determine such dispute. My jurisdiction was therefore limited to whether or not I was satisfied on a straightforward point of construction that Mr Holmes' assertions were plainly unsustainable. If they were not plainly unsustainable then I could not strike out the proceedings on the basis that a settlement had been reached. The contentions 84. Mr Lingard in arguing there was a settlement submitted as follows:- (i) He only ever dealt with Bedell Cristin and disputed giving Mr Robertson authority to put forward any offers on his behalf; (ii) Any suggested deal of £100,000 did not make sense because Mr Lingard was not even prepared to share the escrow account in negotiations prior to the discussions that led to the settlement on 7 th July, 2015; (iii) The matter was settled by the agreement on 7 th July, 2015 which was clear; (iv) There was no documentary evidence showing any agreement to pay a deal or sweetener of £100,000; (v) If Mr Holmes felt there was an agreement obliging Mr Lingard to pay him £100,000 then Mr Holmes could pursue Mr Lingard for this sum but the present case had been settled. Likewise it was up to Mr Holmes as to whether he wished to pursue Mr Robertson arising out of anything Mr Robertson is alleged to have said or promised; (vi) Any such alleged promise (which was denied by Mr Lingard) was in any event so vague and uncertain it did not mean anything; (vii) At the meeting on 11 th July, 2015, Mr Holmes clearly understood that what Mr Lingard wanted which was the return of papers i.e. there was no deal or sweetener discussed or to be discussed; (viii) By a reference to an affidavit filed by a Mr McArthur, Mr Lingard also disputed the accuracy of the transcript produced by Mr Holmes of his conversation with Mr Robertson on 18 th August. Mr Lingard saw this transcript as Mr Holmes trying to construct evidence to use against Mr Lingard; (ix) Ultimately Mr Lingard agreed to sign the consent order that Mr Holmes wanted on 5 th August, 2015, which confirmed what had been agreed on 7 th July, 2015; (x) Mr Holmes' concern, according to Mr Lingard up to the handing down of judgment on 20 th August, 2015, following the signing of the settlement agreement on 7 th July, 2015, was all about getting earlier judgments set aside. There is no mention of a payment of £100,000 in any contemporaneous documentation; (xi) Mr Lingard saw withdrawal of the claim as a formality; (xii) The papers Mr Lingard wanted from Mr Holmes were from Mr Holmes dealings with Hartigans; Mr Lingard was looking to avoid paying coping costs of £600 to

Hartigans. This bore no relation to a deal or sweetener of £100,000. 85. Mr Holmes contended that the agreement he signed on 7 th July, 2015, was dependent on receiving a deal or sweetener. He relied on the transcripts and conversation with Mr Robertson to that effect on 18 th August and therefore contended that I could not conclude that matters had been settled. This was the reference to the other matter in Mr Robertson's text of 29 th June, 2015, (see paragraph 10 above). By reference to the transcript, Mr Holmes relied on the fact that Mr Robertson had admitted that anything he said to Mr Holmes came directly from Mr Lingard (see paragraph 38 of the transcript), and that Mr Robertson mentioned £100,000 (see paragraph 33 above). Mr Holmes then referred me to the extract at paragraphs 61 to 69 of the transcript as follows:- "61 AR: That's down to exactly the time that, ... if you had met, ...after the agreement was signed, and in the Costa Coffee and you said, right Harry, what do you want me to do, ...right Ill get that file for you, ill do that, ...he was going to go, next day, Monday, with that information, check it off against the information he's got, and start the ball rolling. So the 3 month statement would have been given, how lawyers work, right, and things like that. So...

62. SH: There's no way that it was going to be, ...if you trying to suggest that there was some kind of, ...from what I understood now, from what your telling me, he had law suits of about £300k, and he was suggesting that he was going to give me part of the recovery ...
63. AR: Yeah, that's it ... 64: SH: ... That's never going to happen though is it, you know, if I was told the 100K is part of law suits that Harry wanted to pursue, right, and the £100K was measured against the compensation that he was trying to recover, I would have said its just talking nonsense.
65. AR: I get what your saying there.
66. SH: And as you know, I did make it quite clear, I do not want to get involved in any further law suits.
67. AR: Yeah, yeah ... 68: SH But when I said that, it was never mentioned to me, ...well that's part of your deal.
69. AR: It wasn't part of the deal - it was the deal!!" 86. Mr Holmes contended that it was only on 18 th August, 2015, that he appreciated that he only deal or sweetener was £100,000 to come out of the proceeds of any litigation and that he did not appreciate this situation prior to speaking to Mr Robertson and Mr Lingard although a deal was offered on 11 th July (see paragraph 26 of Mr Holmes first affidavit and paragraph 17 of his second affidavit. The text message sent at 09:03 on 5 th August, 2015, by Mr Robertson to Mr Holmes (see paragraph 49 above) cut across the idea that Mr Robertson had no relationship with Mr Lingard and was not speaking with Mr Lingard's authority. 87. Mr Holmes agreed the chronology of events I have set out above in respect of events on 5 th August, 2015. What Mr Holmes contended however was that he was expecting the consent order to be returned to him, once signed by Mr Lingard. Then there would be a discussion between them to agree the deal or sweetener. The order would be only be filed with the Court once the deal of £100,000 had been sorted

out. It was therefore an abuse of process for Mr Lingard on 20 th August, 2015, to file the consent order previously drafted and signed by Mr Holmes. 88. The offer of a deal or sweetener of £100,000 deal was in addition to the matters referred to in the agreement of 7 th July, 2015. What Mr Holmes wanted was £100,000 plus escrow monies, whereas Mr Lingard would not offer the escrow monies. 89. He wanted to cross-examine Mr Robertson on his affidavit which was Mr Holmes' right by reference to *Pacific Investments Limited v Christensen*

[1997] JLR 170 . Decision 90. In deciding whether or not there is a clear agreement that the parties have settled their differences, I start by reference to the written agreement signed on 7 th July, 2015. On its face the terms of the agreement are clear that the present proceedings should be withdrawn and discontinued immediately with a letter to be signed by all parties to be sent to the Court to that effect. 91. In relation to this written agreement, its terms that are clear that the present proceedings had to be withdrawn and discontinued. The agreement to write to the Court was therefore an administrative act, and in my judgment simply notifies the Court of the fact that the parties had agreed to resolve their differences. The obligation to notify the Court was not therefore a condition of any settlement as recorded by the written terms. 92. The challenge to these terms, which are clear on their face, is that Mr Holmes says that part of the settlement involved an oral agreement that he would receive a deal worth £100,000. In support of this assertion Mr Holmes relies on his transcript of the meeting with Mr Robertson on 18 th August, 2015. Mr Holmes contends that it was only on 18 th August, 2015, that he appreciated that the only deal being offered to him was a share in the proceeds of the litigation that Mr Lingard might bring against Hartigans. 93. I should make it clear in relation to this transcript that its accuracy is disputed by an affidavit from an expert witness, Mr Iain McArthur, dated 25 th September, 2015, filed by Mr Lingard. Mr Lingard on the basis of this evidence disputes that the recording was complete and suggest it has been edited. Therefore he complains that he has not received the entirety of the recording as I ordered. 94. As I made clear to the parties I do not have jurisdiction to resolve such a disagreement. This is a matter that only the Royal Court can determine at a trial or other hearing to resolve disputed evidence. I can only consider the written documents to see whether or not matters have been resolved by a clear agreement or whether there are issues that it is appropriate for the Royal Court to determine. 95. I therefore have to proceed on the assumption that, prior to Mr Holmes signing the 7 th July agreement, Mr Robertson, on Mr Lingard's behalf, did make some form of statement as alleged by Mr Holmes offering a £100,000 deal or sweetener, even though this is disputed by Mr Robertson and Mr Lingard and the accuracy of the transcript produced by Mr Holmes is also disputed by Mr Lingard. Accordingly as at 7 th July, 2015, it is arguable that the written agreement signed by the parties was predicated on the basis of an oral statement made by Mr Robertson with Mr Lingard's authority, that Mr Holmes would receive some form of deal or sweetener. 96. I next consider the legal effect of the statement I have assumed in Mr Holmes' favour was made by Mr Robertson, as set out in the preceding paragraph. Firstly, as Mr Holmes

himself recognised, the statement was vague. He did not know what the deal was or what he might receive or what he would have to do to receive it. I therefore consider that any such assurance is too uncertain to amount to a contractual term. It is also too uncertain to amount to a collateral contract because its terms were not sufficiently clear. (See *Flynn v Reid*

[2012] (1) JLR 370 paragraphs 19 to 21 and *Selby v Romeril*

[1996] JLR 210 where the Royal Court concluded that the alleged collateral contract was too uncertain for a contract to have been created). 97. However, for the purposes of this application I am of the view that, as at 7 th July, 2015, on the basis of what Mr Holmes states he was told by Mr Robertson, Mr Holmes had an arguable case to set aside the agreement of 7 th July, 2015, on the basis he entered into this agreement by mistake or more accurately an "erreur". Erreur is a well-known basis upon which contracts may be set aside. Different categories of erreur which may lead to a contract being set aside were considered by the Court of Appeal in *Marett v Marett*

[2008] JLR 384 . It is most likely the mistake that Mr Holmes was invoking would be categorised as an "erreur sur l'existence de la cause" i.e. a mistake as to the basis or purpose of his agreement with Mr Lingard. 98. However, matters do not end there because the parties and Mr Robertson met on 11 th July, 2015. While what led to that meeting is disputed, taking Mr Holmes' account of that meeting, by reference to paragraphs 26 of his first affidavit and 17 of his second affidavit, at that meeting he was offered a deal of £100,000 being a share in the proceeds of litigation. In his first affidavit at paragraph 26 he indicated "he did not want to get involved with any such deal" and in his second affidavit he described this deal as "intangible" and "indeterminable". There were no more meetings between Mr Holmes and Mr Lingard after 11 th July. Mr Holmes did not ask for another meeting to discuss either the deal he alleges was offered on 11 th July, 2015, which he was not interested in or any other deal or sweetener. I observe that he did ask for a meeting on 5 th August, 2015, to discuss the terms of the consent order he later drafted and what was required in respect of Hartigans (see paragraph 51 above). 99. Mr Holmes' argument was that he was still awaiting details of the deal and sweetener on 5 th August, 2015, and it was only on 18 th August, 2015, that he appreciated what was being offered namely a share of proceeds of litigation which he was not interested in. It was for this reason he contended that the consent order that he had drafted to discontinue the proceedings was simply to be signed by Mr Lingard and then returned to Mr Holmes and only filed with the Court once there was agreement in relation to the deal or sweetener. 100. To evaluate this contention I need to deal with the events of 5 th August, 2015. By this time Mr Holmes had produced the consent order to discontinue proceedings he wished Mr Lingard to sign (see paragraph 58 above). That draft had been signed by Mr Holmes. 101. Mr Holmes' draft was also sent to me on 5 th August, 2015, (see paragraph 58 above). Mr Holmes on 5 th August was still contending that publication of my judgment on security for costs would compromise the desired effect of the settlement. He also stated he was dealing with a

consent order that day and hoped to conclude it that week (again see paragraph 58 above) repeating what Mr Holmes had said to me the previous day (see paragraph 47 above). Mr Holmes at no time sought to qualify what I was being told to say there were still other matters to be resolved before proceedings could be withdrawn or discontinued. 102. Mr Holmes argued that he could not give such a qualification because that would be referring to without prejudice correspondence or discussions. I do not accept that argument. It is perfectly proper for parties to say that other steps need to be taken or agreed before the Court can discontinue proceedings without revealing what those steps are. 103. The position of Mr Holmes is also inconsistent with an email from Mr Lingard to his advocate sent at 15.48pm on 5 th August copied to Mr Holmes as set out in paragraph 57 of this judgment. By this email, Mr Holmes was aware that Mr Lingard had agreed his consent order. Immediately after this communication Mr Holmes sent the consent order that he had drafted and signed to the Court and stating, without qualification that he hoped to conclude the consent order that week. 104. Mr Holmes further confirmed to Advocate Gardner at 16:36 (see paragraph 57 above) that the consent order had been sent to the Court. This sequence of events is entirely inconsistent with Mr Holmes' suggestion that everything was still conditional upon a further agreement being reached with Mr Lingard. That was not what was said by Mr Holmes either to the Court on 4 th August or on 5 th August at 15.52 or to Mr Lingard's lawyer at 16:36. 105. Following the release of an earlier draft of this judgment, Mr Holmes raised an argument that the email sent by Mr. Lingard of 17:02 of 5 th August, 2015, to Mr Holmes which stated "let see what he says" in response to the email sent at 16:36 by Mr Holmes was a reference to what Mr Lingard's lawyer, Advocate Gardner, would say. I do not consider that the email sent at 17:02 is capable of such a construction. The email sent at 17:02 immediately follows the email sent at 16:36 which attaches an email sent to me. The only sense that can be made of the words "let what he says" is let see what I was going to say in respect of draft consent order sent to me. The remainder of the email sent at 17:02 also asks for emails to be sent to Advocate Gardner who was clearly not the "he" referred to in the first part of the email sent at 17:02. 106. In addition what happened immediately after this email is not consistent with the construction Mr Holmes raised about the email of 17:02. By 17:06 that day Mr Holmes was aware that I was not able to make an order to remove previous decisions of the Royal Court which were matters of public record. Yet that same evening at 19.53 Mr Holmes in response to an email from Mr Lingard (see paragraphs 60 and 61 above) stated that only once the case was withdrawn and discontinued which Mr Holmes hoped would happen that week would Mr Holmes then contact Mr Lingard. This email is therefore also inconsistent with the position Mr Holmes now adopts. On the day that Mr Holmes signed the consent order asking the Court to discontinue proceedings that Mr Lingard had agreed that day, Mr Holmes stated to Mr Lingard that he was only going to contact him once the Court had withdrawn and discontinued proceedings, which was the next step in the process. 107. In my judgment there is no doubt this was the position that Mr Holmes and Mr Lingard had arrived at by the end of 5 th August. Mr Holmes in his final email on 5 th August did not say to Mr Lingard that he wanted to talk to him before the Court

withdrew proceedings. He did not ask for a meeting in that email. He also did not ask to meet Mr Lingard after 5 th August, 2015. Assuming in Mr Holmes' favour that he believed that some form of deal was still forthcoming, by the end of 5 th August, 2015, Mr Holmes in his own email accepted and agreed that the Court was going to withdraw proceedings on the basis of the consent order he had drafted and signed asking the Court to do so and which Mr Lingard had agreed. He was not waiting by the time of that email for any further response from Advocate Gardner. He was waiting for me to withdraw and discontinue the case. 108. By the time of his email sent at 19.53, Mr Holmes was also aware of the view expressed by me 17:06 that I would not remove previous judgments of the Royal Court. This issue was in any event an issue subsequent to withdrawal (see paragraphs 24 and 25 above) and so does not assist Mr Holmes. The fact that the part of the consent order drafted and signed by Mr Holmes seeking to "set aside" earlier Court decisions was not effective does not matter. Mr Holmes was aware of my position before he indicated to Mr Lingard that the next stage of the process was the withdrawal of the proceedings and then he would contact Mr Lingard after that had occurred. Indeed having signed the written agreement on 7 th July, he accepted that persuading the Court to set aside its earlier decisions was a matter subsequent. He cannot now resile from that position, and to be fair to him did not seek to do so. He also did not pursue this point when he came before me on 13 th August when the sole issue was publication of the security for costs judgment. 109. Finally, the conclusion I have reached is consistent with the statements made by Mr Holmes that the proceedings were settled which I have recorded at paragraphs 19, 24, 31, 43, 47, 51, 58 and 62 of this judgment. 110. While this judgment is lengthy to explain what had led to the events of 5 th August, ultimately the chain of events on 5 th August is not complex, requires me only to consider a few documents and leads only to one inevitable conclusion. That conclusion is that, whatever arguments Mr Holmes might have had to challenge the written agreement signed on 7 th July, by the end of 5 th August there was clear agreement to withdraw the present action, and that this agreement did not depend on any further meeting or discussion between Mr Lingard and Mr Holmes. The view I have reached I also consider falls within the approach set out in the Corefocus and Hard Rock decisions referred to at paragraph 83 above. 111. The conversation between Mr Holmes and Mr Robertson on 18 th August, 2015, does not affect the conclusion I have reached. This conversation goes to whether or not some form of deal or sweetener was offered prior to the settlement agreement signed on 7 th July, 2015, and a claim based on *erreur* as noted above. However the conversation on 18 th August does not provide an answer to the clear statement made by Mr Holmes to Mr Lingard on 5 th August, 2015, at 19:53 that the next stage in the process was withdrawal and discontinuance of the present action and only then would he contact Mr Lingard. Whether or not Mr Holmes, who is an experienced businessman, was still operating under some form of mistake about what was agreed on 7 th July, does not affect the conclusion I have reached namely there was clear agreement to withdraw the present action by the end of 5 th August, 2015. 112. The effect of the conversation of 18 th August, 2015, is therefore a matter for Mr Holmes to consider to evaluate whether he wishes to claim against Mr Lingard and/or Mr Robertson

because no such deal or sweetener worth £100,000 has been forthcoming. Whether he does so is a matter for him. In my judgment any such claim is a separate issue from whether or not the present proceedings have been settled. The parties were at one by the end of 5 th August, 2015, on the present proceedings being withdrawn and discontinued. It is therefore vexatious and an abuse of process for a party to agree in unequivocal terms that proceedings are to be withdrawn and then to seek to withdraw from such an agreement. 113. I therefore rule that the present proceedings brought by Mr Holmes against all the defendants have been withdrawn by a combination of the written settlement agreement dated 7 th July, 2015, and the agreed consent order drafted and signed by Mr Holmes and agreed by Mr Lingard on 5 th August discontinuing proceedings, the effect of which was confirmed by Mr Holmes in his email sent at 19:53 also on 5 th August. Accordingly I strike out Mr Holmes' claim and order that the present action is withdrawn and discontinued. Authorities Holmes v Lingard

[2015] JRC 172 . Royal Court Rules 2004. Home Farm Developments & Ors v Le Sueur

[2014] JRC 079 . Home Farm Developments & Ors v Le Sueur

[2015] JRC 110 . Lapidus v Le Blancq & Ors

[2013] 2 JLR 308 . Hayden-Taylor v Canopius & Ors

[2014] JRC 221 . Corefocus Consultancy Limited v Cronk

[2013] JRC 194 . Hard Rock Limited & Anor v HRCKY Limited

[2013] JRC 244B . Pacific Investments Limited v Christensen

[1997] JLR 170 . Flynn v Reid

[2012] (1) JLR 370. Selby v Romeril

[1996] JLR 210 . Marett v Marett

[2008] JLR 384 . Page Last Updated: 27 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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