IN THE HIGH COURT OF JUSTICE **CLAIM NO: QB-2020-003669**
QUEEN'S BENCH DIVISION
Before Senior Master FONTAINE
BETWEEN

MR HAMAD AL-HAROUN **Claimant**

-and-

1. DR MATTHEW THOMAS PARISH
2. MR STOYAN BAUMEYER
3. CY4OR LEGAL LIMITED
4. AFENTIS FORENSICS
5. FORENSIC SCIENCE INVESTIGATIONS LIMITED t/a EMMERSON ASSOCIATES

Defendants

ORDER

UPON the Claimant's application dated 18 May 2021 for permission to amend the Claim Form and Particulars of Claim, made pursuant to the Order of 27th April 2021 ("the Application")

AND on notice to the Defendants

AND without a hearing pursuant to CPR 23.8

AND having received written submissions by email from the First, Third, Fourth and Fifth Defendants setting out their reasons for opposing the Claimant's application

AND UPON the Court being notified that the Second Defendant consents to the application

IT IS ORDERED that:

1. The application is granted in respect of the claim against the Second Defendant, by consent.

2. The application is dismissed in respect of the claims against the First, Third Fourth and Fifth Defendants.

3. The claims against the First, Third, Fourth and Fifth Defendants are struck out under CPR 3.4(2) (a) for the reasons set out in the Schedule to this Order.

4. The Claimant do amend the Claim Form and Particulars of Claim to remove all claims against the First, Third, Fourth and Fifth Defendants, and file and serve the amended Claim Form and amended Particulars of Claim by 30 June 2021 or further order.

5. The Second Defendants is to serve his amended defence, or defence, (if a defence has not yet been filed or served), to the amended Claim Form and amended Particulars of Claim within 28 days of service of the same or further order.

6. The Claimant shall pay the Second Defendants' costs of and occasioned by the application and the amendments in any event.

7. The Claimant shall pay the First, Third, Fourth and Fifth Defendants' costs of the application and of the action to be summarily assessed at the next convenient hearing if not agreed.

8. This order is made under CPR 23.8 and 23APD para. 11.2, save for those paragraphs or parts of paragraphs which relate to the order striking out the claims against the First, Third, Fourth and Fifth Defendants. Any party may apply under CPR 3.3(5) to set aside, vary or stay this order within 7 days of service.

Dated 15 June 2021

SCHEDULE

1. The Claimant's application is made following the dismissal of his application to set aside my order of 26 November 2020, recorded in the order dated 27 April 2021.
2. The test to be applied to applications for amendment is whether the claim has a real prospect of success: see authorities mentioned at Notes 17.3.5 – 17.3.6 of the White Book 2021 Vol I. It is also apparent that the test may be differently applied in different contexts (*ibid*). Because I do not have the usual evidence that would be before the court on a summary judgment application (where the test of real prospect of success is most commonly applied) and because the issues in this particular application relate primarily to pleading issues, the test I have applied is whether the draft amended Claim Form and Particulars of Claim comply with CPR 16.2 and 16.4, and whether the claim shows any reasonable grounds for being made, i.e. the threshold for strike out of the Claim Form and/or Particulars of Claim under CPR 3.4 (2)(a), which is a lower threshold than that for establishing a real prospect of success. But if a claim shows no reasonable grounds for being made, then it will also have no real prospect of success.
3. The reference to Paragraph numbers in this Schedule is to paragraph numbers in the draft Amended Particulars of Claim (save where the reference is clearly to paragraphs in this Schedule).

THE CLAIM AGAINST THE FIRST DEFENDANT

4. The claims against the First Defendant are difficult to discern, but appear to be:

   (i) a claim in contract: Paragraphs 8, 9, 13, 14, 30, 51-52 and 54;

   (ii) the suggestion in Paragraphs 14 and 51, of a claim in negligence, by the assertion of a duty of care owed to the Claimant/Trekell;

   (iii) a claim of dishonesty in some form, the overarching claim being to adopt the allegations of the Swiss Public Prosecutor in the criminal prosecutions in Switzerland, said to be instigated by or on behalf of certain Kuwaiti politicians, and including a claim of collusion/conspiracy with the Third, Fourth and Fifth Defendants: Paragraphs 35-41, 48 and 50;

   (iv) a claim of unjust enrichment: Paragraph 53.
5. With regard to the claim in contract, almost none of the ingredients for a claim in contract are present:

   (i) None of the requirement in 16PD paras. 7.2 – 7.5 are included;

   (ii) The terms of the alleged contract are not identified;

(iii) The claim made is not specified, i.e. whether there is a claim for breach of contract or some other contractual claim, and if a claim of breach, what term or terms have been breached and how;

(iv) The claim that there was a total failure of consideration, in Paragraph 52, does not identify what the consideration was from each party to each of the unidentified contracts.

6. The allegation that the First Defendant owed a duty of care to the Claimant and/or Trekell in Paragraphs 14 and 51 is not explained, but I assume is connected to the alleged contract. This is entirely inadequate for a claim for breach of a duty of care, although no such claim has been properly identified, which brings into question why it is stated that a duty of care is owed.
7. The claim of some form of dishonesty is made primarily by way of adopting the allegations of the Swiss Public Prosecutor in the criminal prosecutions in Switzerland, but without setting out what those allegations are. It is trite law that allegations of dishonesty in whatever form must be particularised. Such allegations are extremely serious, and a defendant must know exactly what is alleged so that they may answer such allegations. The only indication is the reference to alleged infringement of the Forgery and Infringement Act 1981, and of the Swiss Criminal Code 1937, Article 251, "*by creating a false document, namely the arbitral award, with the intention that it be accepted as genuine by others..* ." (Paragraph 50) which is an express allegation of forgery, but without further details. It is not even identified what has been forged. The First Defendant is a defendant in those criminal proceedings, so is of course aware what allegations are made. He has explained in his written submissions to the court that the allegations are in substance allegations of forgery. However, the First Defendant is entitled to see how such a claim is advanced under English law in civil proceedings, as is the court. The Claimant is bound to confirm any such allegations with a statement of truth, which would be inconsistent with what is said in Paragraphs 35 - 37, summarised as: "*The Claimant is unable to reach any settled conclusion as to whether the allegations themselves are true or not, but if true, he is entitled to the relief sought.*" (Paragraph 37). It appears that the Claimant is saying is - I don't know whether the prosecution of the First Defendant in Switzerland will succeed, but if it does the First Defendant must have been guilty of forgery. Paragraph 38 is also entirely inappropriate as it is inconsistent with the court's requirements for statements of case to be verified by a statement of truth, in my judgment.
8. In addition to the unparticularised claim of forgery, there are allegations of collusion with the Third to Fifth Defendants to produce untrue expert reports and conspiracy to do harm at

Paragraphs 39 – 41 and 54, and an allegation, in effect, of collusion with the Second Defendant at Paragraph 48. These are also allegations of dishonesty, also not properly particularised.

9. These allegations are inconsistent with the assertion in Paragraph 55 that: "…*it is not a necessary part of the Claimant's case – and he does not advance it – that the Defendants engaged in the wrongful actions averred above for financial gain i.e. for dishonest and fraudulent purposes.*" Leaving aside the problem that the alleged "*wrongful actions*" are insufficiently particularised, the allegations are clearly of dishonest conduct.
10. The final claim, of unjust enrichment at Paragraph 53, is again not properly particularised. It does not even identify the payments alleged to have been received by each Defendant.
11. I accept the submissions of the First Defendant that no claims are coherently pleaded against him and it is impossible for him to respond to the Particulars of Claim or draft amended Particulars of Claim.
12. I also note (although this is a potential defence rather than a point of pleading) that some or all of the claims may be time barred as the events relied upon occurred more than six years before issue of the claim.
13. Accordingly there is no real prospect of such claims succeeding so permission to amend the Claim Form and Particulars of Claim is refused in respect of the claims against the First Defendant. There are also no reasonable grounds shown for the claims made against the First Defendant and they will be struck out under CPR 3.4 (2)(a).

THE CLAIM AGAINST THE THIRD, FOURTH AND FIFTH DEFENDANTS

14. The claims against these Defendants, all companies offering expert witness services in the fields of IT and forensics, are set out at Paragraphs 19 to 27, 42 to 43 and 47, 51 to 58, with additional claims made against the Third and Fourth Defendants at Paragraphs 44 to 45. The claims at Paragraphs 51 to 58 are made against all Defendants.
15. Paragraphs 19 to 22 confirm that instructions to these Defendants to provide expert reports for use in the Swiss arbitration was given "*through the First Defendant by the Sheikh and/or by the Second Defendant*" which is vague and unsatisfactory, and I note there is no mention of solicitors Holman Fenwick & Willan, who these Defendants say provided the instructions to them. In any event this pleading does not state that either Trekell or the Claimant gave such instructions. There is no basis pleaded for a claim for breach of contract, if such is alleged, which again is wholly

unclear. See my comments at paragraph 4 above which equally apply to the contractual claims against these Defendants.

16. In any event if any breach of contract claim could be formulated it would be likely to be time barred as the reports produced were dated from 29 April 2014 to 28 May 2014 and the claim was not issued until 19 October 2020, more than 6 years after the reports relied upon.
17. There is an alternative plea of reliance on the Contracts (Rights of Third Parties) Act 1999, at Paragraphs 23 and 52, but no identification as to how claims are formulated under this statute against these Defendants.
18. For the claim of "*total failure of consideration*" in Paragraph 52, see my comments at Paragraph 4(iv) above.
19. Paragraph 20 relies on "representations" by each of these Defendants "*that it was competent to carry out the instructions of the First and Second Defendants*.", stating of these Defendants "*Each knew in making those representations that they would be communicated through the First and/or Second Defendant to Trekell, as the claimant in the arbitration. Further each knew that Trekell would be likely to rely on these representations….*" It is not alleged that the representations were not true, or that they were made knowing them to be false, nor identified how it is said that the alleged representations were in fact false, if this is allged. This is not a proper plea of a claim in misrepresentation, if that is what is intended, which is unclear. If it is intended it fails to comply with CPR 16PD para. 8.2 (3).
20. Paragraph 22 contains an allegation that each of these Defendants owed a duty of care to Trekell, but it is not identified how this arose.
21. Paragraphs 24 to 27 set out the instructions given to these Defendants, in very brief terms, and extracts from the expert reports produced by each of these Defendants. There is no identification of how it is said that the conclusions reached were wrong, not credible, unsupported by contemporary expert knowledge or opinion.
22. Paragraphs 41-42 allege collusion with either or both of the other Defendants, presumably (although not expressly stated) "…*to produce[d] their reports in the form and with the conclusions required by the First and/or Second Defendants without carrying out any, or any sufficient or reasonable, analysis of the covert recordings and the digital audio and video files*." (Paragraph 42). That assumes that such conclusions were wrong/not credible/ unsupported by contemporary expert knowledge or opinion, but without identifying in any way how this was the case. It is also an allegation of dishonesty, without any particulars whatsoever. Such allegations are not supported by the pleaded facts, nor can inferences of dishonesty be drawn from the pleaded facts. This renders such a pleading liable to be struck out. It is a very serious matter to make an allegation of dishonesty against anyone, let alone

professional expert witnesses, without proper particulars so that they can properly respond to them. This is made clear in CPR 16PD para. 8.2 (1) and (2) and by numerous authorities.

23. With regard to Paragraph 53, alleging unjust enrichment, this is addressed in paragraph 9 above.
24. Paragraph 54 alleges combination and a conspiracy to cause harm to Trekell and the Claimant, and Paragraph 56, which alleges "*unlawful acts*" by these Defendants without identifying what such acts are, contain allegations imputing dishonesty without proper particulars being provided, without attempting to distinguish one Defendant from another and the same comments apply.
25. Even if some basis for these Defendants or any of them owing a duty of care to Trekell and/or the Claimant could be pleaded, there is no identification as to what is complained of beyond the most general bare assertions. This is one of the most significant failures in the pleading of the claims against these Defendants. It has long been established that allegations of professional negligence must be properly pleaded, and usually the only way to do that is to take advice from another exert in the same discipline so that they can identify what want of care or duty has been breached: see *Pantelli Associates Ltd v Corporation City Developments Ltd* [2010] EWHC 3189 (TCC). There are simply no proper particulars of negligence given and no possibility of these Defendants being able to plead defences to such generalised allegations.
26. I accept the written submissions of Mr Patel representing the Fourth Defendant, equally applicable to the claims against the Third and Fifth Defendants, that the claims pleaded are incomprehensible and it is impossible for them to respond adequately to the Particulars of Claim or draft amended Particulars of Claim.
27. There is no real prospect of such claims succeeding so permission to amend the Claim Form and Particulars of Claim is refused in respect of the claims against these Defendants. There are also no reasonable grounds shown for the claims made against these Defendants and they will be struck out under CPR 3.4 (2)(a).

RELEVANT TO THE CLAIMS AGAINST THE FIRST, THIRD FOURTH AND FIFTH DEFENDANTS

28. I have considered whether another opportunity to amend should be given. As the Claimant has now had two opportunities to re-plead his claims under the orders of 26 November 2020 and 27 April 2021 and has at all times been professionally represented I do not consider that this is appropriate.