Neutral Citation Number: [2020] EWCA Civ 1563

Case No: A4/2020/0443

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE, BUSINESS AND PROPERTY COURTS, COMMERCIAL COURT (QUEEN'S BENCH DIVISION)
Teare J
[2020] EWHC 94 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 November 2020

Before :

LORD JUSTICE HENDERSON
LORD JUSTICE PETER JACKSON
and
LORD JUSTICE ARNOLD

- -

Between :

PAUL BELL	**Appellant**
- and -	
IVY TECHNOLOGY LIMITED	**Respondent**

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- -

Adam Solomon QC and **David Lascelles** (instructed by **Hill Dickinson LLP**) for the **Appellant**
Edward Levey QC (instructed by **Malvern Law Ltd**) for the **Respondent**

Hearing date : 12 November 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10:30am on 19 November 2020

Lord Justice Arnold:

Introduction

1. This is an appeal by the Second Defendant ("Mr Bell") against an order of Teare J dated 28 January 2020 giving the Claimant ("Ivy") permission to amend its Particulars of Claim to advance a claim against Mr Bell for breach of warranties contained in an agreement dated 4 April 2019 ("the SPA") by which Ivy agreed to purchase the shares ("the Shares") in five companies which carried on an online gambling business under the name 21Bet ("the Business"). On its face Mr Bell is not a party to the SPA. Ivy contends that the First Defendant ("Mr Martin") entered into the SPA both as principal in respect of his own 50% beneficial interest in the Shares and as agent for Mr Bell in respect of Mr Bell's 50% beneficial interest in the Shares. The judge concluded, for the reasons given in his judgment dated 23 January 2020 [2020] EWHC 54 (Comm), that Ivy had a real prospect of succeeding in its contention that Mr Bell was liable for breach of the SPA, and therefore granted Ivy permission to make the amendments. Mr Bell appeals against that conclusion, with permission granted by Lewison LJ, on three grounds: first, that the express terms of the SPA exclude any liability of Mr Bell; secondly, that Ivy and Mr Martin expressly contracted in the SPA on the basis that Mr Martin was the sole beneficial owner of the shares, and therefore Ivy is estopped from contending to the contrary; and thirdly, that Ivy irrevocably elected to bring its claim for breach of the SPA against Mr Martin to the exclusion of Mr Bell when it commenced the proceedings.

Factual background

2. For the purposes of the appeal, the background to the matter can be briefly summarised as follows. It is not in dispute that, prior to the SPA, the Shares were legally owned by Richard Hogg, who is not a party to the proceedings, but were beneficially owned 50/50 by Mr Martin and Mr Bell. Nor is it in dispute that these facts were disclosed to Ivy prior to execution of the SPA in a response to a due diligence questionnaire in July 2018. It is also common ground that both Ivy and Mr Martin were legally represented during the negotiations over the SPA, and that the SPA was professionally drafted. Mr Bell has admitted that Mr Martin "kept [him] up-to-date on the sale of the Business to [Ivy] at a high level" and that "as a 50% shareholder, [he] expected to receive [his] share of the balance of the sale proceeds" after repayment of creditors.

3. The initial consideration payable by Ivy upon completion was £3 million, with further consideration payable in respect of three one-year earn-out periods based on the performance of the Business. There is a dispute between the parties as to whether or not completion has taken place. It is common ground, however, that on 5 April 2019 Ivy paid the sum of £2.95 million to Mr Martin by way of a pre-payment pending completion.

4. Ivy's case is that it was the victim of a fraud. Ivy says that, during the course of the negotiations leading to the SPA, Mr Martin fraudulently misrepresented the EBITDA and financial performance of the Business, including at a meeting attended by Mr Martin and Mr Bell in Prague in October 2018. Ivy was told at that meeting that the Business was profitable, but following entry into the SPA Ivy soon discovered that the

Business had a large number of liabilities which Ivy says had been concealed from it, and that the Business was in fact a loss-making and worthless enterprise.

5. As well as claims for fraudulent misrepresentation, Ivy also advances claims against Mr Martin under the SPA for breach of warranty, and a claim in restitution for the return of the £2.95 million pre-payment. There are also claims relating to the Third Defendant ("Premier"), a competing business which Ivy says was set up by Mr Martin in breach of non-compete provisions contained in the SPA.

6. As for Mr Bell, the claims originally pleaded against him were for the torts of unlawful means conspiracy and inducing breach of contract. Ivy alleges that the misrepresentations as to the EBITDA and profitability of the Business were made as part of a conspiracy between Mr Bell and Mr Martin and that Mr Bell induced Mr Martin to breach the SPA.

7. On 29 July 2019 Ivy applied without notice for, and obtained, a freezing order against all three Defendants. Ivy's affidavit evidence in support of the application stated that the SPA was made between Ivy and Mr Martin, and did not suggest that Mr Bell was party to, or liable under, the SPA. Ivy issued its claim form outlining the causes of action summarised above the following day. The freezing order was subsequently set aside as against Mr Bell on the ground that Ivy had failed to demonstrate a real risk of Mr Bell dissipating his assets, but it continues against Mr Martin and Premier.

8. On 23 August 2019 Ivy sought the Defendants' consent to amend its claim form to advance claims for breach of the SPA against Mr Bell. On 30 August 2019 Ivy served its Particulars of Claim. On 11 November 2019 Ivy issued an application for permission to amend the claim form and Particulars of Claim. This application came before the judge on 17 January 2020.

The SPA

9. The key provisions of the SPA for present purposes are as follows.

10. The SPA is expressed to be made between Ivy, defined as "the Purchaser", Mr Martin, defined as "the Shareholder" and five companies, each of which is defined as a "Company". The SPA includes seven recitals, the first of which is that "the Shareholder is the beneficial owner of the entire share capital of" four of the Companies, and the second of which is that one of those four, "Aureate", "holds the entire share capital of" the fifth Company, "Alibaba". The third recital states that the Shareholder "holds all beneficial rights, title and interest in and to" the individually held Shares, and the fourth recital states that Aureate "holds all beneficial rights, title and interest in and to" the Alibaba Shares. The fifth recital states that "no Person other than the Shareholder is entitled to any right in and to" the four Companies, and the sixth recital states that "no Person other than Aureate is entitled to any right in and to Alibaba".

11. Clause 1.1.33 defines "Party" as meaning "the Shareholder, the Companies and the Purchaser". Clause 1.2 provides that the recitals "are an integral part of this Agreement".

12. Clause 2.1 provides that, subject to the terms and conditions of the SPA, "the Purchaser agrees to purchase from the Shareholder and the Shareholder agrees to sell, transfer, assign and deliver to the Purchaser … all right, title and interest in and to all of the Shares".

13. Clause 7 contains various warranties by the Shareholder, including in clause 7.3 a warranty that "[t]he Shareholder is the true, lawful, sole and exclusive owners [*sic*] of all of the Shares (save for the Alibaba Shares, where Aureate is the true, lawful, sole and exclusive owner …".

14. Clause 9.6 contains covenants by the Shareholder, in summary, (i) not to compete with the Business, (ii) not to interfere with any relationship between any of the Companies or the Purchaser and their clients, customers or suppliers and (iii) not to solicit any employee of the Companies or the Purchaser.

15. Clause 15.1 provides, so far as relevant:

> "This Agreement constitutes the full and entire understanding and agreement between the Parties with respect to the subject hereof and supersedes, nullifies and terminates all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof."

16. Clause 15.12 provides:

> "Nothing in this Agreement, express or implied, is intended to confer upon any third parties other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement."

<u>First ground of appeal</u>

17. As explained above, the case which Ivy wishes to advance by the amendments is that Mr Martin entered into the SPA as agent for Mr Bell with respect to Mr Bell's 50% beneficial interest, and therefore Mr Bell is liable for breach of warranties contained in the SPA. The advantage of this from Ivy's perspective is that it enables Ivy to claim a contractual measure of damages against Mr Bell, whereas it can only claim a tortious measure for its existing claims. There is no dispute that Ivy has a real prospect of success on its claim that the warranties were breached. Mr Bell opposes the application to amend on the ground that Ivy has no real prospect of success on its claim that Mr Bell is liable for such breaches.

18. As counsel for Mr Bell pointed out, Ivy's evidence in support of the application to amend characterised Mr Bell as an undisclosed principal of Mr Martin. As the judge pointed out to the parties during the course of the hearing before him, however, it seems odd to treat the case being advanced as one of an undisclosed principal when Mr Bell's 50% beneficial interest in the Shares was known to Ivy prior to the SPA. Accordingly, the judge proceeded in his judgment on the basis that the case was more

accurately characterised as one of a disclosed principal. In my view he was correct to do so.

19. It is common ground that, where an agent enters into a contract on behalf of a principal, the terms of the contract may, expressly or by implication, exclude the principal's right to sue and his liability to be sued. The correct approach to this question in the case of a disclosed principal has recently been considered by this Court in *Filatona Trading Ltd v Navigator Equities Ltd* [2020] EWCA Civ 109, [2020] 2 All ER (Comm) 851. Coincidentally, that was another appeal from Teare J in a case with considerable similarities to the present one. In that case the appeal was from Teare J's judgment following the trial. Although the appeal was argued prior to Teare J's decision in this case, the judgments were only handed down afterwards.

20. In *Filatona* FTL and Oleg Deripaska entered into a shareholder agreement (referred to as "the SHA") with Lolita Danilina and NEL. The judge found as a fact on the evidence that Ms Danilina had entered into the SHA as agent for her partner Vladimir Chernukhin, who was a disclosed principal. He also found that the reason for this arrangement was that Mr Chernukhin needed to be discreet in relation to such an investment at the time because of his position as Deputy Minister of Finance in Russia and Chairman of Vneshekonombank. Accordingly, the judge held that Mr Chernukhin was entitled to enforce the SHA although he was not named as a party to it. FTL and Mr Deripaska contended that the terms of the SHA excluded Mr Chernukhin from being able to sue, or be sued, on the SHA. Both the judge and this Court rejected that contention.

21. Simon LJ stated:

> "63. In my view the Judge was right to ask himself whether there were clear and unambiguous words or indications of an intent to exclude the known and identified principal. The expression 'very clear' used by the Judge may bring an emphasis to the exercise, where the principal is *disclosed*, but does not add very much to what is a general principle of construction that clear and unambiguous language is necessary before a court will hold that a contract has removed rights or remedies which one of the parties to it would have at common law.
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> …
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> 101. Whether a contract 'unequivocally and exhaustively' defines the parties or whether the rights of a disclosed and identified principal have been 'clearly excluded by the terms of the contract', may be regarded as two ways of asking the same question; either way there is a heavy burden of persuasion on a party who seeks to argue that a known and identified principal is to be excluded from a contract. Like the Judge, I would accept that there are indications in the contractual provisions that the political importance of not referring to Mr Chernukhin as a party gives weight to the appellants' arguments; but like the Judge, I am satisfied that there is nothing in the background or the contractual terms sufficient to demonstrate a clear intent

to exclude him from exercising his rights or incurring obligations under the SHA. To put it another way, the parties were not unequivocally and exhaustively defined by the terms of the SHA."

22. Males LJ stated:

"122. While the cases concerned with undisclosed principals provide a convenient starting point, the situation with which they deal is very different from the present case of a disclosed and identified principal. When an agent acts for an undisclosed principal, the counterparty has no knowledge at the time of making the contract that there is an undisclosed principal who is entitled to intervene to enforce the contract purportedly made between the counterparty and the agent. However, the law will assume (the 'beneficial assumption' as Lord Lloyd described it) that the counterparty 'is willing to treat as a party to the contract anyone on whose behalf the agent may have been authorised to contract' unless the terms of the contract or background circumstances expressly or impliedly exclude that possibility (see the *Teheran-Europe* and *Siu Yin Kwan* cases (above)).

123. In the case of a principal whose existence and identity are known to the counterparty, however, there is no need to resort to any such assumption. All parties know the true position and can be taken to agree with it. If the counterparty did not agree to contract with the principal, he would say so.

124. On the facts found by the judge here, the counterparty (Mr Deripaska) knew that Ms Danilina was entering into the contract as the nominee or agent for a disclosed and identified principal (Mr Chernukhin); he always regarded Mr Chernukhin as the real party with whom he was contracting; it was in his interests, because only Mr Chernukhin and not Ms Danilina was in a position to provide the necessary finance, that this should be so; and he never said anything to indicate that he did not agree.

125. It was common ground between the parties that, in such a case, it would in theory be possible for the contract to provide that, notwithstanding the existence of the disclosed and identified principal, the contract should after all take effect as a contract between the counterparty and the agent. But that would be an odd agreement to make, at any rate on facts such as those found by the judge here. I do not find it surprising that the parties were unable to cite any case where a contract was concluded by an agent known to be acting on behalf of an identified principal, but where the contract contained language making it clear that it was the agent and not the principal who was to be bound.

> 126. I agree, therefore, that there is a heavy burden of persuasion on a party who seeks to argue that a known and identified principal is to be excluded from a contract, and that any such intention must appear clearly and unequivocally from the terms of the parties' contract. I agree also that no such intention appears in this case, for the reasons given by Simon LJ."

23. Turning to the present case, counsel for Mr Bell accepted that, having regard to the facts set out in paragraph 2 above, Ivy had a real prospect of establishing that Mr Martin entered into the SPA as agent for Mr Bell with respect to Mr Bell's 50% beneficial interest in the Shares and that Ivy was aware of this arrangement and willing to proceed on that basis. He argued, however, that the terms of the SPA clearly and unequivocally excluded any liability of Mr Bell. In this regard he relied most strongly upon clause 15.12, but he also relied upon the recitals, clause 7.3, clause 9.6 and clause 15.1.

24. The judge rejected this argument for reasons he expressed as follows:

> "17. I consider that at trial there can reasonably be expected to be evidence explaining why the parties chose to contract with each other on terms which did not accord with the reality as known to the parties. Such evidence, along with the terms of the agreement, would be part of the 'the evidential mix' which would be relevant to a determination of the question whether the ability of Ivy to sue Mr. Bell (and indeed the ability of Mr. Bell to sue Ivy in the event of non-payment) was excluded by the terms of the Agreement.
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> 18. I therefore consider that it is appropriate for the court to decline to resolve the question now when reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.
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> 19. In case this approach (based upon my understanding of Green LJ's reference [in *Kaefer Aislamientos SA de CV v AMS Drilling Mexico* [2019] EWCA Civ 10, [2019] 1 WLR 3514] to the 'evidential mix') is wrong and the matter is a pure question of construction I have also considered whether it is appropriate to 'grasp the nettle and decide it'. I have concluded that that would not be appropriate. The question of construction must be determined in the light of the factual matrix or background known to both parties. That factual matrix or background would include the reason why the parties chose to contract in the terms they did. For the reasons which I have already given it is likely that there were discussions which 'crossed the line', knowledge of which would or might put the terms agreed in 'another light'.
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> …

> 22. I accept that the recitals, warranty [in clause 7.3] and clause 15.12 are cogent, indeed very cogent, indications that third parties were not intended to have any rights or liabilities under the agreement. However, in circumstances where it is likely that there was some reason, known to Ivy, Mr. Martin and Mr. Bell, why Mr. Bell's interest in the shares being sold was not mentioned on the face of the agreement, it is possible that the proper construction of the agreement in the light of that reason would not be such as to prevent Mr. Bell, as the disclosed beneficial owner of 50% of the shares, from having rights or liabilities under the agreement. It may prove to be unrealistic to describe Mr. Bell as a third party within the meaning of clause 15.12 of the agreement, notwithstanding the recitals which were an integral part of the agreement."

25. Counsel for Mr Bell contended that the judge had fallen into error in three main respects. First, he submitted that the judge had failed to give effect to the principle that the burden lay on Ivy to plead and prove any background facts which it relied upon as affecting the interpretation of the SPA: see *Hallman Holding Ltd v Webster* [2016] UKPC 3 at [11] (Lord Hodge). Although Ivy had pleaded in the Amended Particulars of Claim that Mr Martin had entered into the SPA as agent for Mr Bell, it had not pleaded or suggested in its evidence any reason why the SPA had been structured in that way. Accordingly, the judge was wrong to conclude that further evidence was necessary before construing the SPA. Secondly, counsel submitted that, even if such evidence existed, it would be inadmissible as being subjective evidence of the parties' intentions or part of the pre-contractual negotiations: see *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] AC 1101 at [32]-[41] (Lord Hoffmann). Thirdly, he submitted that, whatever might be revealed by a fuller investigation of the facts, clause 15.12 was crystal clear and its effect was to exclude any liability of Mr Bell. As he pointed out, there was no counterpart to clause 15.12 in *Filatona*.

26. I do not accept these submissions. So far as the first is concerned, the stark discrepancy between the facts known to the parties concerning the beneficial ownership of the Shares and the terms of the SPA cries out for an explanation. It is an obvious inference that Mr Bell did not want to be named in the SPA. I agree with the judge that it is relevant to inquire why the parties were prepared to contract on that basis. Furthermore, this is not a case of Micawberism: it is inherently probable that there is an explanation. Furthermore, I am unimpressed by the fact that Ivy did not adduce any evidence as to what the explanation is. (In saying this, I should make it clear that I agree with counsel for Mr Bell that what Ivy has subsequently pleaded in its Reply must be disregarded since it was not before the judge and there is no application by Ivy to adduce further evidence on the appeal.) While Ivy must have been willing to proceed on the basis that Mr Bell was not named in the SPA, it does not necessarily follow that Ivy was aware of Mr Bell's reason(s) for not wanting to be named. That is a matter which disclosure and evidence from Mr Bell and/or Mr Martin can reasonably be expected to shed light upon. In saying this, I do not overlook the point that, in order to be admissible with respect to the construction of the SPA, factual background material must have been known, or reasonably available, to all the contracting parties. Ivy may find it difficult to establish that there is material

which both explains the reasons why the SPA is structured in the way that it is and was available to all parties, but I do not think it should be precluded from trying to do so.

27. Turning to the second submission, although evidence of what was said during pre-contractual negotiations or of the subjective intentions of the parties is inadmissible to show what a particular contractual provision means, evidence as to the "genesis and aim of the transaction" is admissible: see *Merthyr (South Wales) Ltd v Merthyr Tydfil County Borough Council* [2019] EWCA Civ 526, [2019] JPL 989 at [52]-[55] (Leggatt LJ). Given the approach taken by this Court in *Filatona*, it is at least arguable that evidence as to the reason why Mr Bell was not named as a party to the SPA falls on the right side of the line.

28. As to the third submission, I agree with the judge that Mr Bell has a very cogent case that clause 15.12 in particular excludes his liability, but that there is nevertheless a real prospect that, when construed in the light of the relevant and admissible factual matrix, the court will conclude that it does not do so. For the reasons explained in *Filatona*, the burden on Mr Bell is a heavy one to discharge. Although clause 15.12 says that "[n]othing in this Agreement … is intended to confer upon any third party other than the Parties hereto …. any liabilities under or by reason of this Agreement", and Mr Bell is not a Party, the clause does not in terms exclude liability arising by virtue of Mr Bell being the principal of a Party who has entered into the SPA as his agent. Moreover, if that had been the intention, it would have been easy for the SPA to have said so: see *Filatona* at [90].

29. If clause 15.12 does not get Mr Bell home, then the other provisions relied upon are unlikely to do so. In this regard I should record that counsel for Ivy accepted that clause 9.6 only bound Mr Martin, because the obligations were ones which were personal to Mr Martin. As he submitted, however, given that Mr Martin contracted as principal with respect to his own 50% beneficial interest, that is not necessarily inconsistent with Mr Martin contracting as agent for Mr Bell with respect to Mr Bell's 50% beneficial interest.

Second ground of appeal

30. In *Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd* [2006] EWCA Civ 386, [2006] 2 Lloyd's Rep. 511 Moore-Bick LJ (with whom Chadwick LJ and Lawrence Collins J agreed) held at [56]:

> "There is no reason in principle why parties to a contract should not agree that a certain state of affairs should form the basis for the transaction, whether it be the case or not. For example, it may be desirable to settle a disagreement as to an existing state of affairs in order to establish a clear basis for the contract itself and its subsequent performance. Where parties express an agreement of that kind in a contractual document neither can subsequently deny the existence of the facts and matters upon which they have agreed, at least so far as concerns those aspects of their relationship to which the agreement was directed. The contract itself gives rise to an estoppel …"

31. Similarly, in *Richards v Wood* [2014] EWCA Civ 327 at [16] Lewison LJ (with whom McFarlane and Aikens LJJ agreed) held that parties to an agreement were bound by an agreed statement in a recital as to the basis on which parties were contracting, whether or not that represented the truth, by virtue of a contractual estoppel.

32. On this basis counsel for Mr Bell argued that Ivy was clearly estopped from disputing what was set out in the recitals to the SPA. The judge rejected this argument for the same reason as he rejected Mr Bell's case that the SPA excluded his liability, namely that it was necessary to investigate the facts before reaching a conclusion as to the meaning and effect of the recitals, and hence as to whether Ivy was estopped. Although counsel for Mr Bell disputed this, I agree with the judge.

Third ground of appeal

33. In *Playboy Club London Ltd v Banca Nazionale del Lavoro SP* [2018] UKSC 43, [2018] 1 WLR 4041 Lord Sumption (with whom the other members of the panel agreed) stated at [12] that "the third party must irrevocably elect whether to sue the agent or the undisclosed principal".

34. Counsel for Mr Bell argued that Ivy had irrevocably elected to sue Mr Martin for breach of the SPA by (i) commencing proceedings against Mr Martin for breach of the SPA and not Mr Bell, (ii) filing evidence saying that Mr Martin was party to the SPA and not alleging that Mr Bell was and (iii) obtaining a freezing order on those bases.

35. The judge rejected this argument for the following reasons:

> "27. …. as has been observed by the editors of *Bowstead on Agency* at paragraph 8-120 there are few cases where the defence has succeeded and, where it has, the success is explicable on the grounds of estoppel.
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> 28. What is clear from the decision and reasoning of the Court of Appeal in *Clarkson Booker Ltd v Andjel* [[1964] 2 QB 775] is that whilst the institution of proceedings against an agent is at least strong evidence of an election, that evidence may be rebutted. The question is one of fact and it must be shown that the decision to institute proceedings against the agent was a 'truly unequivocal act', which 'involves looking closely at the context in which the decision was taken, for any conclusion must be based on a review of all the relevant circumstances' (see pp. 791-3 per Willmer LJ. Russell LJ at p. 795 said that what must be shown is that 'the plaintiff has settled to a choice involving abandonment of his option to enforce his right against one party').
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> 29. … the argument based upon election had not been articulated before it appeared in counsel's skeleton argument and in those circumstances Ivy had not had the opportunity to adduce evidence on the issue. It is likely that Ivy would have some

> evidence to adduce on the question …. It must be remembered that this is a case where on any view Mr. Martin was party to the agreement in his own right by reason of his 50% beneficial ownership of the shares in question. The question of election must therefore be resolved at trial."

36. Counsel for Mr Bell submitted that the judge had erred because election was an objective question and there was no relevant and admissible evidence which Ivy could adduce. Moreover, Ivy had been pressed in correspondence to explain its change of position with respect to Mr Bell, but had failed to do so.

37. I do not accept this submission. As the judge rightly observed, election is a question of fact: see *Evans v Bartlam* [1937] AC 473 at 485 (Lord Wright). As such, I agree with the judge that the matter was not fit for summary determination, particularly given that suing Mr Martin for breach of the SPA was not necessarily unequivocal given that he was in any event a principal in respect of his own 50% beneficial interest. But I would go further, because it is not clear beyond argument that the third party is required to elect between suing the agent and suing the principal. Lord Sumption's statement in *Playboy* was obiter and made without reference to authority, although there are dicta which support it. As the editors of *Bowstead & Reynolds on Agency* (21st ed) explain at 8-120, in considering the cases in this area one has to put aside decisions which are explicable on other bases, notably estoppel and merger. More fundamentally, a requirement of election only makes sense if the liabilities of agent and principal are alternative, as opposed to joint and several, but that is open to doubt (see also *Taylor v Van Dutch Marine Holding Ltd* [2020] EWCA Civ 353, [2020] Bus LR 1486 at [58]).

Conclusion

38. For the reasons given above, despite the attractive submissions of counsel for Mr Bell, I would dismiss this appeal.

Lord Justice Peter Jackson:

39. I agree.

Lord Justice Henderson:

40. I also agree.