Neutral citation number [2024] EWHC 75 (Ch)

IN THE HIGH COURT OF JUSTICE **CASE NOS: BL-2022-001453 AND BL-2022-001438**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CHD)
Royal Courts of Justice, Rolls Building
Fetter Lane, London EC4A 1NL
24 January 2024
B E T W E E N:

(1) ASTUTE CAPITAL PLC
(2) ASTUTE CAPITAL ADVISORS LIMITED

Claimants

-and-

(1) COUNTRYLARGE 444 LIMITED
(2) FINLAW PROPERTY LIMITED (NO. SC570539)
(3) MS LILY MARGARET LAWSON
(4) MS SANDRA SHELLEY COX
(5) MR TIMOTHY JOHN SMITH

Defendants

Before Mr Peter Knox KC
(Sitting as a Deputy Judge of the High Court)

MR ADAM CHICHESTER CLARK and RICHARD BOWLES (instructed by **Roots Law Limited**) appeared on behalf of the Claimants

MR KISHORE SHARMA and MR JAYESH JOTANGIA (instructed by **the Brooke Consultancy LLP**) appeared on behalf of the Second, Third and Fourth Defendants

Written submissions received on 7 September, 14 September 2023,10 November 2023, 20 November 2023, 22 December 2023 and 29 December 2023

APPROVED JUDGMENT ON CONSEQUENTIAL MATTERS TO JUDGMENT OF 23 JULY 2023, ON APPLICATION MADE ON 9 OCTOBER 2023 AND REQUEST FOR FURTHER INFORMATION MADE ON 13 NOVEMBER 2023

This judgment was handed down remotely at 10.30 am on 24 January 2024 by circulation to the parties' representatives by email and by release to the National Archives

Introduction

The consequential issues arising out of the judgment

1. In this judgment, I shall use the same abbreviations as in my judgment handed down on 19 July 2023. Pursuant to that judgment, I made an order on 28 July 2023 on a number of applications made variously by the Claimants and the Finlaw Defendants. In summary:

    (1) I granted the Claimants relief from sanctions and extended the time for filing and serving a Reply and Defence to counterclaim, and dismissed the Finlaw Defendants' application for summary judgment on their counterclaim and their "First Strike Out" application (that is to say, to strike out the Claimants' claim on the basis that there was no defence to the counterclaim).

    (2) I dismissed Finlaw's application for summary judgment and its "Second Strike Out" application (that is to say, to strike out the Claimants' claim on the basis it disclosed no reasonable cause of action), and the Third and Fourth Defendants' related "Fourth Strike Out" application, to strike out the claim for the same reasons.

    (3) I dismissed Finlaw's "Third Strike Out" application (that is to say, its application to strike out what they said was a separate claim pursuant to which the First Defendant ("ARE") gave to ACA an undertaking not to dispose of the sum of £750,000 until final resolution of the dispute).

    (4) I held that ACA was entitled to an order against Finlaw and ARE continuing the four undertakings it had already given to the Court on 20 December 2022, but expanded so as to include other flats at 1F Seely Road, Tooting ("the Property") that had been sold since then, along with the proceeds of sale of any flats there. However, I invited submissions on the precise terms of the order and on the question of the undertaking in damages (the Claimants first, the Defendants in response).

    (5) I ordered that submissions should be made on costs by the parties by the same dates. I also ordered that at the same time submissions should be made on whether Finlaw's Third Strike Out application should be marked "totally without merit".

2. After the order, the Claimants settled their claim against ARE and Mr Smith on 8 September 2023, and accordingly, as has been confirmed to me by those parties, there is no need for me to resolve any of the outstanding questions as to costs or the terms of the order as between them. Accordingly, the three consequential issues arising from the judgment (the terms of the injunction, costs and the totally without merit issue) need to be resolved only as between the Claimants and the Finlaw Defendants. I received submissions on those issues (the "consequential submissions") as ordered, on 7 and 14

September 2023 (I gave the parties some time for these submissions because of their holiday and other commitments).

The Claimants' further applications

3. Before I handed down judgment on the consequential matters, the Claimants found out, they say, from an email to which they were copied in, and sent on 21 September 2023 by the Finlaw Defendants' conveyancing solicitors (Burgess Okoh Saunders) to ARE and Mr Smith's solicitors, that all the flats at the Property had now been sold, without any of the information required by the Court's 22 December 2022 order having been provided to them, and notwithstanding the provisions of my order on 28 July 2023.

4. Accordingly, after making enquiries of the Finlaw Defendants which, they say, were not properly answered, the Claimants issued a further application on 9 October 2023, seeking an order for information about the sales of all the flats at the Property. This application was referred to me by Chancery Listing, and by email of 18 October 2023 I proposed that I should deal with this application together with the existing consequential issues, to which the parties did not object. The application did not identify the rule pursuant to which it was made, but the Claimants' subsequent submissions have made it clear that it was it pursuant to CPR 25.1(1)(g).

5. In response to this application, Finlaw provided some further information in a witness statement by the Third Defendant, Ms Lawson, made on 26 October 2023 (her third in these proceedings). This prompted a request for further information on 8 November 2023 made under CPR rule 18, in response to which Ms Lawson provided a further witness statement on 17 November 2023 answering some but not all of the questions asked. So the question on this is, should I order Finlaw to answer the remaining questions in the 8 November 2023 request for further information?

6. In the meantime, the Claimants had been granted permission by Master Shuman on 28 September 2023 to file and serve a re-re-amended particulars of claim to reflect the settlement of their claim against ARE and Mr Smith, to be served by 14 November 2023. However, in the light of their 9 October 2023 application for further information from Finlaw, the Claimants on 13 November 2023 sought an order extending the time for service of the re-re-amended particulars until after Finlaw provided that further information, so they could take that information into account in the re-re-amendment. The Finlaw Defendants resist this.

7. Pursuant to directions I gave on 18 October 2023, the Claimants provided written submissions on these further two issues on 10 November 2023, and the Finlaw Defendants on 20 November 2023. On reviewing these submissions, it was not clear to me whether in fact the Claimants were still pursuing their claim for an injunction, and what, if anything, they had to say about recently drawn accounts brought to my attention in Finlaw's submissions on the question of the undertaking in damages. Pursuant to further directions, the Claimants provided written submissions on this question, with evidence in response, on 22 December 2023, and Finlaw provided submissions in reply on 29 December 2023.

8. Accordingly, the following issues arise:

(1) What are the terms of the injunction I should order, and what undertaking in damages should I require?

(2) Should I mark the Third Strike Out application "totally without merit"?

(3) What costs orders should I make on the applications decided in the 23 July 2023 judgment?

(4) Should I order the Finlaw Defendants to provide the further information sought in the Claimants' 8 November 2023 request for further information, and if so, in what respects?

(5) Should I grant an extension of time for the Claimants to serve their re-re-amended particulars of claim until after the provision of such further information as I order?

The first issue: the terms of the injunction and undertaking

The terms of the injunction

9. The Claimants set out the main terms of the interim injunction which they seek until trial against Finlaw in paragraph 6 of their consequential submissions, and paragraph 4 of the draft order attached to them, that is to say (in summary):

(1) Finlaw must identify to ACA the prices achieved for the flats (a) on exchange, (b) on completion, (c) when an offer is made before exchange;

(2) Finlaw must provide ACA with information relating to Finlaw's indebtedness to the current senior lender, Aspen;

(3) Finlaw must give ACA seven days notice of any proposed exchange or completion;

(4) Finlaw must not deal with the proceeds of any sums paid to them, the other Finlaw Defendants, ARE or Mr Smith *"(whether arising by way of any refinance, or the sale of the Property or the Flats, or any other means)"* in satisfaction of the charge in ARE's name dated 27 June 2019 and registered at H.M. Land Registry on 23 July 2019, or any asset which derives from the same. These sums are *"the Charged sums"*.

10. In their consequential submissions, Finlaw, in my view correctly, accepts that these terms are appropriate, and so I comment no further on them. Accordingly, I shall order the injunction to be in the terms set out in paragraph 6 of the Claimants' consequential submissions and paragraph 4 of the draft order attached, subject to a rider which I mention below in my discussion about the undertaking in damages.

11. However, there is an issue as to the carve out for business expenses in paragraph 8 of the Claimant's draft. The Claimants provide for the usual provision, that Finlaw be permitted to discharge its reasonable costs of business from the charged sums, but

Finlaw seeks to add a provision that it is entitled to use the *"Charged Sums"* up to a maximum of £60,000 *"in order to complete the communal gardens, which works are under way and estimated to be completed by about 11 August 2023"*.

12. However, I am not prepared to add this proviso. First, it is not clear to me what has happened on this aspect of the development either before or after 11 August 2023 (the Finlaw Defendants have not provided any further information about it). Second, I am not prepared to make what would be a retrospective grant of permission so to use the sums, if they have been so used, when my 28 July 2023 order provided in terms that Finlaw had specific liberty to apply in writing to me on short notice, supported by evidence, in relation to the expenditure which they wished to spend in completing the communal gardens at the Property for confirmation that it constituted a reasonable cost of their business. I shall therefore provide instead that paragraph 8 of my previous order shall continue to apply.

13. Next, Finlaw seeks an order that ACA's consent to payments being made for business expenses should not only not be unreasonably withheld (which is common ground), but that it must be provided within 24 hours, in writing, with time of the essence, with a full justification for refusal.

14. I am not minded to make such an order, as I have not been provided with any evidence to show that it is either necessary or reasonable. Further, I can well see that this could well lead to further arguments, especially given the Finlaw Defendants' track record in this case of taking unmeritorious technical points, as set out in my judgment. Of course, ACA must not unreasonably delay in giving its consent, if appropriate, but if it does, then that would amount to an unreasonable withholding of consent. So I am not prepared to add any further wording on this issue.

15. Finally, in the draft paragraph 8(2), which provides for Finlaw to provide evidence of the requirements *"including vouchers"* when seeking consent to spend from the charged sums, Finlaw wants this to be limited to the provision of *"the invoice or pro forma invoice"* for payment. However, I am not prepared so to limit what is required, because it may be that, for whatever reason, an invoice or pro forma invoice may not be available, or at least that it is unsatisfactory evidence. I propose instead to leave the draft paragraph 8(2) as proposed by the Claimants, but with the addition, after the phrase *"including vouchers"*, of the further phrase *"or invoices or pro forma invoices"*. As to the final part of the sentence, it should continue to read, as before *"until such evidence is provided"*, without Finlaw's proposed alteration.

16. I should add one point. It would appear from paragraphs 8, 10, 11 and 14 of Ms Lawson's third witness statement, and paragraph 5(1) of her fourth witness statement that (a) Finlaw had in fact already sold all eight flats by 30 January 2023, that is to say well before the hearing before me in May 2023, for a total of £4,355,000, (b) £2,505,960 of the proceeds of their sales were paid to *"BOS"*, that is to say Burgess Okoh Saunders, who were acting as Finlaw's conveyancing solicitors (it is not clear what happened to the rest of the proceeds), (c) Burgess Okoh Saunders then paid £457,258.16 of these sums to Finlaw (it is not clear what happened to the rest), and (d) Finlaw then used these sums *"for Project completion and costs"*, as set out in paragraph 14, that is to say, by making payments to Octopus, ARE, Aspen, and various suppliers and professionals for project completion. In the event, Ms Lawson says in paragraph

13 of her third witness statement, Finlaw itself has not retained any sums from the sales, nor (or so it would seem) have Burgess Okoh Saunders.

17. If this is right (and the position is not as clear as it should be) then it might be said that much of the order which the parties have agreed is pointless, because there are no flats left to sell or proceeds to distribute: all that is left, it would seem, is the freehold to the property itself (I presume that the flats themselves were sold on long leases), and the communal gardens, which appear not to have been sold by way of lease, although presumably rights of access have been given to them in some form. However, because the position is not clear, I shall make the order in any event, but give the Claimants liberty to apply to me to reword it, if so advised, in order to make its wording more appropriate to the current situation. I should add that when the Claimants proposed the order in their consequential submissions, they say that they had not been told that all eight flats had already been sold, and indeed sold before the May 2023 hearing: this emerged only gradually, from Burgess Okoh Saunders' 21 September 2023 email and then from Ms Lawson's third and fourth witness statements, and even now, as I have said, the position is not clear as it should be.

The terms of the undertaking

18. In paragraph 78 of my judgment, I held that the undertaking in damages for the injunction should be given by Astute Capital as well as by ACA, and in the subsequent order I directed submissions to be made on the adequacy of the Claimants' proposed undertaking. In the Claimants' consequential submissions, they relied on paragraph 86(5) of Mr Korenkov's witness statement in support of the application for an injunction, in which he said that he was informed by Mr Symonds that Astute Capital would support ACA to meet an undertaking in damages, and if necessary would give a guarantee to fortify ACA's undertaking. (It appears to be implicit in this that ACA on its own is not in a position to provide a satisfactory undertaking.) Astute Capital's assets were said to be at their lowest £6 million; and it was said that it had recently been valued by PKF Littlejohn LLP at $38.6 million as at 31 March 2023.

19. However, in the Finlaw Defendants' 20 November 2023 submissions, they pointed out that Astute Capital's recently filed accounts for the year end 31 March 2023, signed on 1 November 2023, show that its assets had now fallen to £677,000 after a further loss in that year end of £1.6 million, and that the solvency of the company appears to be in doubt. Thus, at page 7 Astute Capital's directors say:

> *"The Company incurred a loss of £1,599,738 in the year and based on forecasted cash inflows resulting from repayments, the management expect that the company will continue as a going concern for the next 12 months. However, the Board acknowledges that there is a material uncertainty which could give rise to a significant doubt over the Company's ability to continue as a going concern as the timing of these cash receipts is uncertain."*

20. At page 9 of the same accounts, the company's auditors, MacIntyre Hudson LLP, say much the same thing, noting that the company was expecting cash receipts from loan repayments, which were *"key to the business operation for the foregoing period"*, but that their timing was uncertain.

21. Accordingly, Mr Sharma for Finlaw suggested that the Claimants' undertaking should be fortified by a payment into court of £200,000.

22. As I have said in the introduction, on reading this new material I invited further submissions from the parties, in response to which the Claimants served an executive summary of a report prepared by PKF Littlejohn LLP dated 13 December 2023, which valued Astute Capital in a range between £33 million to £68 million, based on information provided by the company's management, including profit and cashflow forecasts for the eight years up to 31 March 2031. Further, the Claimants submitted that the Finlaw Defendants had not taken into account the conservative methods used in compiling IFRS audited accounts such as were used in Astute Capital's accounts to 31 March 2023, which meant that its loan book was recorded as an asset only to the extent that repayments are absolutely certain.

23. The Finlaw Defendants objected to this new evidence, on the basis that (a) the PKF Littlejohn valuation was highly subjective and based on a number of assumptions about the current financial standing and future prospects (as the executive summary recognised), (b) no evaluation appears to have been undertaken by PKF Littlejohn of Astute Capital's asset position, (c) it was in effect expert evidence, which did not comply with the safeguards required by CPR rule 35, and (d) all that was produced was the executive summary itself, which ran to just two pages without any details. They also objected that the submission about conservative accounting methods was a mere submission by counsel without expert evidence to support it.

24. In my judgment, these objections are all well-founded, and therefore I do not attach any weight to the PKF Littlejohn executive summary, or to the submission that the 31 March 2023 accounts were prepared on a conservative basis. What particularly concerns me is that neither the executive summary, nor the submission, is a sufficient ground for ignoring the concerns expressed about Astute Capital's ability to continue as a going concern beyond 12 months expressed in the 31 March 2023 accounts mentioned above. In particular, neither justifies ignoring the point made in the second paragraph of paragraph 1.3 of the notes to the accounts that:

> *"The current position of the review of the existing loan book confirms [that] the reason for multiple loans becoming litigious and, in some cases, severely or totally impaired was predominantly the mismanagement. Whilst an enormous amount of work has gone into this review to date, this is still ongoing, due to the comprehensive and complex nature of these loans."*

25. However, despite these concerns, I do not propose to order the undertaking to be fortified by a payment into court, for the following reasons, which reflect those advanced by Mr Bowles in his 22 December 2022 submissions.

    (1) First, as I have said, it would appear, at least on the Finlaw Defendants' evidence, that not only all eight flats have been sold, but also all the proceeds have already been paid away. If that is right, then on the Finlaw Defendants' own evidence the injunction in relation to the flats and their proceeds will not cause them any loss at all. And if their evidence on this point is untrue, then I see no reason to give them any protection by way of an undertaking in damages, because they must know it is untrue.

(2) Second, it follows that the only assets which will be bound by the injunction would appear to be, as I have said above, the freehold to the Property and the communal gardens. But there is no evidence before me that either the freehold or the communal garden has any real saleable value, or that either of them yields to Finlaw any substantial rental income.

(3) Third, even if there is any further money to come into Finlaw, the injunction allows it to incur business expenses in the usual way, subject to the Claimants' consent not to be unreasonably withheld.

(4) Fourth, Finlaw is a single purpose vehicle which does not appear to have any trading life other than to develop the Property, and so the only real effect of the injunction is that, to the extent that Finlaw receives money which it does not need to spend on the Property, it is not entitled to distribute the same by way of dividends to its shareholders.

26. Mr Sharma, in his 29 December 2023 submissions, objects that Finlaw can be taken to have suffered losses because of the prohibition against disposing of the proceeds of sale of any of the flats. Indeed, he says that the prohibition has killed its business. But as I have said, the Finlaw Defendants' evidence is, or at least appears to be, that Finlaw has already disposed of both the flats and, to the extent it received them, the proceeds of sale. And anyway, there is no evidence that any of them has suffered any loss so far, nor am I prepared to infer this without evidence.

27. All this said, I can see that there is a possibility that Finlaw might at some point in the future wish to dispose of the freehold or to use such sums if any as are received from the Property other than for the purposes of its business. If so, it should have the ability to apply to the Court to do so on, say, fourteen days notice, and to apply for an order that if the Claimants wish to prevent such sale, or disposal of the proceeds, they must provide a fortified undertaking, in an amount appropriate to take into account the value of what is proposed to be disposed of. Accordingly, I propose that there should be added a provision to this effect, as a rider to the orders I have directed above. The parties may make submissions to me on the precise terms of this rider at the same time as any further submissions on costs.

The second issue: was the Third Strike Out application totally without merit?

28. In my judgment, for the reasons given in paragraphs 83 to 85 of my judgment, this application was totally without merit, that is to say (a) it was obvious that the application notice stamped with the court number "001438" was made in support of the relief sought in the claim form which was stamped with the number "001453"; (b) it sought to set aside the undertaking given by ARE, when not even ARE itself sought to set it aside, and so Finlaw had no locus to set it aside; (c) even if Finlaw had been put to cost by the application pursuant to which the injunction was given, that sounded in costs, not setting aside; and (d) there was nothing in Finlaw's allegations of material non-disclosure.

29. Mr Sharma, correctly, points out that the test is whether *"some rational argument could be raised in support of [the application]"* (see the White Book 2023 volume 1 at paragraph 3.4.25, and *R(Wasif) v. Secretary of State for the Home Department* [2016]

EWCA Civ 82), but in my judgment there was simply none for the reasons I have given. In particular, there was nothing in the argument based on *Fourie v. Le Roux* [2007] 1 WLR 320,relied on particularly by Mr Sharma in his consequentials submissions, because the Claimants were not seeking an injunction without having formulated a substantive claim (that claim was clear from previous correspondence); and although CPR rule 40.9 allows a non-party to set aside orders by which it is directly affected, there was no rational basis for saying that Finlaw was directly affected by ARE's undertaking (no basis was identified); and further, there was no rational basis for saying that there was any material non-disclosure. I should add that the Claimants did expressly take the point, in paragraph 88 of their skeleton for the May 2023 hearing, that this application was totally without merit.

The third issue: costs

Liability

30. The Finlaw Defendants accept that the Claimants are entitled to their costs on all the applications save for (a) the injunction application and (b) the summary judgment application.

The injunction application

31. As to these, I accept that on the face of it, the proper order in relation to the injunction application which was before me (namely, the application issued by the Claimants on 15 December 2022, the hearing of which was adjourned to the May 2023 hearing by Mr Justice Meade's order on 20 December 2022) should be costs reserved, for the reasons summarised in the 2023 White Book at paragraph 44.2.15.1, and the cases there referred to (in particular *Richards von Desquenne et Giral UK Ltd* [1999] C.P.L.R. 744 and *Wingfield Digby v. Melford Capital Partners (Holdings) LLP* [2020] EWCA Civ 1647). This is because the underlying reason for granting the injunction was the balance of convenience, and the underlying merits of the Claimants' case will have to be revisited and decided at trial, at which the court might find against them.

32. In their submissions, the Claimants say that before the 15 December 2022 application was made the Finlaw Defendants' behaviour in refusing to give undertakings was unreasonable and aggressive, and that they eventually gave them only at the hearing before Mr Justice Meade on 20 December 2022.

33. However, in my judgment that is not sufficient to justify departing from the general principle that costs should be reserved in such cases. If Finlaw does establish its defence, then it follows that it will establish, albeit retrospectively, that it should not have been required in the first place to give an undertaking or ordered to be subject to an interim injunction. Further, the mere fact that the Finlaw Defendants repeatedly refused to give the requested undertakings does not alter this. Were it otherwise, a claimant could always claim the costs of an interim injunction or undertaking eventually awarded or given on the balance of convenience, simply by making a number of requests for it.

34. Further, I would be reluctant to penalise a defendant in costs who makes a pragmatic concession only at an interlocutory hearing rather than earlier, because that would operate as a disincentive generally to defendants to make such concessions at all. Of

course, if the Claimants eventually lose, it may be that one could take the alleged unreasonable and aggressive behaviour into account on the eventual costs order made after trial, or on the detailed assessment. But that is a matter for then, not now.

35. Finally, as I said in paragraph 75 of my judgment, there was some justification at first sight for Mr Sharma's submission that order which the Claimants initially sought and which they continued to seek up to the May 2023 hearing, was drafted too broadly and intrusively; and after my judgment, the Claimants in large part rowed back from the width of the order. This is a yet further reason for reserving the costs of the application.

36. I should add that I appreciate that Finlaw may well be open to criticism, in that it did not reveal to the Claimants or to the Court at the May 2023 hearing that it had already sold all eight flats and disposed of all the proceeds (the understanding I received from the papers and the submissions was that only four had been sold: hence there was an issue about the terms of the injunction which envisaged that they not been sold). But even if Finlaw had revealed this, the application would no doubt have gone ahead with similar arguments because, for the reasons I have given, there was still something to injunct. In my judgment, therefore, the failure to reveal the true position at the May 2023 hearing is a matter which more appropriately goes to the costs that should be made on the Claimants' 8 October 2023 application for further information and its November 2023 request for further information.

The summary judgment application

37. As to the summary judgment application, the Finlaw Defendants say that this merely provided a mechanism for the court to dispose of the case entirely if it held that the injunction application raised no triable issue; and that it added no extra time or costs to the hearing. Therefore, so the argument goes, the costs of the summary judgment application should likewise be reserved.

38. However, in my judgment this argument proves too much, and one could just as well turn the argument around and say that as the Claimants succeeded in the summary judgment application so as to entitle them to the costs thereof, so too they must have all the costs of the injunction application because it added nothing to the costs incurred on the summary judgment application.

39. Further, and more importantly, the two applications did not necessarily stand and fall together. It would have been perfectly possible for the Claimants' injunction application to fail, whether because they could not establish a proprietary claim or on the balance of convenience, but for their claim in debt to be allowed to continue as having a real prospect of success.

40. Accordingly, I shall order Finlaw to pay the costs of the summary judgment application. The question of precisely how the overlap of these costs, and the costs of the injunction application, are to be dealt with will have to be a matter for detailed assessment.

The basis of liability

The Relief/Extension application, the default judgment application, and the First Strike Out application

41. I shall also order that the Finlaw Defendants pay the costs of the Relief/Extension application and the default judgment and First Strike Out application on the indemnity basis. For the reasons set out in paragraph 48, the Finlaw Defendants' conduct in suddenly revoking their consent to the extended deadline for service of the Reply and Defence just one hour 19 minutes before the original deadline, when all that was left for the Claimants to do was to countersign the consent order and send it to the court, was wholly unreasonable and opportunistic; and as I there said, I find it difficult to see how the Finlaw Defendants, or at least their solicitors, could have thought it proper in the circumstances to do what they did.

42. Further, the Finlaw Defendants' attempt to take advantage of this and their continued refusal to agree to relief from sanctions was also opportunistic, especially as the breach was trivial and technical, and caused them no prejudice. In particular, as I said in paragraph 50, the justification advanced by the Finlaw Defendants for the last minute revocation was groundless speculation and was disproved by the terms of the Reply and Defence to Counterclaim when it was later served.

43. Taken in the round, therefore, this seems to me to be just sort of conduct which the Court of Appeal had in mind in paragraph 43 of *Denton v. White* [2014] 1 WLR 3926, where it held that heavy costs sanctions should be imposed on parties who unreasonably refuse to agree extensions or unreasonably oppose applications for relief from sanctions, including orders for costs to be assessed on the indemnity basis. Put another way, such conduct was not only unreasonable and inappropriate, but also outside *"the norm"*, which merits an award on this basis.

44. Further, the consequential relief which the Finlaw Defendants sought on the back of their withdrawal of consent and refusal to agree to relief from sanctions, namely the striking out of the whole of the Claimants' claims, was hopeless in any event, for the reasons set out in paragraph 51(2) of my judgment. Even if this might not have been a sufficient reason on its own, it is a yet further factor which tilts the balance firmly in favour of an award of indemnity costs.

45. I should add that this applies to all four of the applications, because they were all related to each other, and founded upon the original unreasonable withdrawal of consent and refusal to agree to relief from sanctions.

The Third Strike Out application

46. On this application too I shall order the costs to be paid on the indemnity basis, in this case by Finlaw alone, because only Finlaw made the application. Although, as I have indicated above, an order for indemnity costs should not be made unless the paying party's conduct is outside *"the norm"*, making an application which is totally without merit is just such conduct.

The other applications

47. As I understand it, the Claimants do not seek an order that the costs on the summary judgment application be assessed on the indemnity basis (and anyway I would not have been prepared so to order); and in the light of my judgment above, the question of what basis to award costs on does not arise on the interim injunction application.

Summary assessment or payments on account?

48. The day before the May 2023 hearing, the Claimants served a statement of their costs which said that it was their

> *" Statement of Costs for the hearing on 15 May 2023*
>
> *Costs of dealing with Applications from 3 January 2023"*

49. This provided for a global total of £101,339.13 (without VAT, but no VAT was claimed) for all the applications heard in May 2023, without identifying what costs were incurred on what application. And as can be seen from the dates above, it did not include anything for the hearing before Mr Justice Meade on 20 December 2022, or indeed for anything before 3 January 2023.

50. However, when serving their costs submissions on 7 September 2023 the Claimants served five separate statements, this time dated 21 July 2023, which was two days after the judgment, (a) for the re-amendment and relief from sanctions application, in the sum of £14,315; (b) for the default judgment and First Strike Out Application, in the sum of £25,805; (c) for the Summary Judgment and Second Strike Out application, in the sum of £25,805; (d) for the Third Strike Out application, in the sum of £25,805; and (e) for the injunction application, in the sum of £51,817.50 including (unlike the previous global statement) the costs incurred on the 20 December 2022 injunction hearing. These statements total £143,547, that is to say, an extra £42,000 or so.

51. In other words, in the July 2023 statements (a) the Claimants sought to divide up the time spent on each of the hearing applications heard in May 2023, (b) they added a claim for the injunction hearing on 20 December 2022, and (c) the total claimed was increased by £42,000 odd. Further, it was in support of these statements, not the previous global statement, that the Claimants made their submissions on costs.

52. In their reply to these submissions, the Finlaw Defendants objected to the Claimants reliance on the July 2023 statements, and pointed out that they had not explained the divergence from the May 2023 statements. Further, CPR PD 44 paragraph 9.5(4)(b) (read together 9.2(b) and 9.5(2)) requires a statement of costs for a hearing which lasts for a day or less to be filed at court and served on the other side at least 24 hours before the time fixed before the hearing, but the July 2023 statements self-evidently do not satisfy this requirement, and there was no application to file and to serve them in place of the original May 2023 statement.

53. Although this point was made in Mr Sharma's 14 September 2023 submissions, and although there have been further submissions since, the Claimants have not, as they could have done, sought permission to put in a short response to these points.

54. In such circumstances, I am not prepared to carry out a summary assessment of the September 2023 statements. Nor am I prepared to carry out a summary assessment of the May 2023 global statement, because the Claimants do not now seek a summary assessment of it, and anyway, it is not clear to me, just looking at that global assessment, what is the proper division between the various applications.

55. Mr Sharma adds that in the circumstances, I should not award even an interim payment pursuant to CPR 44.2(8), which provides:

> "Where the court orders a party to pay costs subject to a detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

56. In my judgment, the mere facts that there is a divergence in the May and September 2023 statements of costs, and that the Claimants in the post hearing submissions have sought to rely only upon the July 2023 statements without asking for permission to do so, is not a *"good reason"* for not ordering Finlaw or the Finlaw Defendants to pay a reasonable sum on account of costs on the applications on which the Claimants have succeeded.

57. In particular, it seems that I can safely take as my starting point that if I were to go by the July 2023 statements I would have to deduct, for the purposes of an interim award on account, the sum of £51,817.50, so as to make a provisional starting point, on those statements, of about £91,500 odd for the costs of the other applications on which I have held the Claimants to be entitled to their costs. Further, and erring on the side of caution, I am prepared to reduce this starting point to £80,000, because it is not clear to me why, of the £101,339.13 May 2023 statement, more than this should have been incurred on the issues on which the Claimants have been awarded their costs.

58. The Claimants have contended that if only a payment on account is to be awarded, then it should be for 50% of the costs on the applications on which they succeed. The Finlaw Defendants have contended that it should be just 20%.

59. I have no hesitation in agreeing with the Claimants on this, because 50% would not be unusual, and anyway on all the relevant applications, save for the summary judgment application, I have awarded such costs on the indemnity basis.

60. Accordingly, I shall make an award on account of £40,000 against Finlaw, that is to say 50% x £80,000, because it was the unsuccessful party on each application on which I have awarded the Claimants their costs.

61. As for the other Finlaw Defendants, Ms Lawson and Ms Cox, they were unsuccessful parties to (a) the reamendment/relief from sanctions applications, (b) the default judgment/first Strike Out Applications, and (c) the summary judgment/Second Strike Out application: on which, according to the Claimants' July 2023 statements, the costs incurred were £14,315, £25,805, and £25,805 respectively, a total of £65,925. Given the lack of explanation of the breakdown of these figures and how they relate to the figures in the May 2023 statements, I shall take £57,500 as the starting point, and make an award against Ms Cox and Ms Lawon of £27,750, concurrent but not in addition to the award against Finlaw.

62. I should add that, standing back and looking at the matter in the round, I am entirely confident that in each case the Claimants will obtain awards of at least these amounts respectively against Finlaw and Ms Cox and Ms Lawson on the detailed assessments.

The fourth issue: the Claimants' application for further information

63. As I have said above in paragraph 16, it now appears from Ms Lawson's third witness statement (made in response to the Claimants' 8 October 2023 application), and her fourth witness statement (made in response to the Claimants' 8 November 2023 request for further information) that all eight flats at the Property were sold and their proceeds disposed of by the end of January 2023. There is no suggestion that this information was provided beforehand, and it was not provided to the Court at the May 2023 hearing.

64. As a result of Ms Lawson's witness statements, nine requests for further information in the Claimants' November 2023 request are now outstanding. These ask for further information of the matters set out in paragraphs 11 to 17 of Ms Lawson's third statement.

General points

First general point: the effect of CPR 25.1(f) and (g)

65. As I initially understood Mr Sharma's submissions (and as reflected in my draft judgment) the Finlaw Defendants took the point that November 2023 request for further information could not be justified under CPR 25.1(g), because this rule does not apply to "freezing injunctions".

66. However, in his comments on the draft judgment, Mr Sharma points out that this is a misreading of his submissions. He was merely saying that it was ironic that in paragraph 72(1) of my judgment I had said that Mr Symondson's evidence in support of the second injunction application for an injunction, in December 2022, did not have to be by way of affidavit because it was not in support of a "freezing injunction", whereas now the Claimants were positively asserting the opposite, because they were seeking to rely upon CPR 25.1(g) for their application, on the footing that it was indeed a "freezing order" within CPR 25.1(g). His criticism, therefore, was directed to what I had said in my first judgment in reliance on the Claimants' submissions: he was not seeking to say that CPR 25.1(g) does not apply to proprietary freezing orders. (I said what I did in my first judgment because the application was on notice and was not for a "Mareva" type freezing order, and anyway the affidavit/witness statement point made no difference.)

67. For good measure, however, I am satisfied that CPR rule 25.1(1)(f) and (g) do allow for a proprietary restraining (or "freezing") order to be made.

68. CPR rule 25.1(1)(f) and (g) provide:

> "The court may grant the following interim remedies –
>
> ….
>
> (f) an order (referred to as a 'freezing injunction') –
>
> (i) restraining a party from removing from the jurisdiction assets located there; or
>
> (ii) restraining a party from dealing with any assets whether located with the jurisdiction or not;

(g) an order directing a party to provide information about the location of relevant property or asset which are or may be the subject of an application for a freezing injunction."

69. Accordingly, the Claimants in my judgment are entitled in principle to seek further information under CPR 25.1(1)(g) in support of the interim order I have made.

70. I should add that although the November 2023 request for further information said it was served under CPR Part 18, the Claimants on the following day in their 10 November 2023 submissions made it plain in paragraph 29.1 that they were relying on CPR 25.1(1)(g), so by the time Ms Lawson made her fourth witness statement in response to that request, on 17 November 2023, it was clear enough that it was on this rule as well, or alternatively, that the Claimants were relying. Indeed, Mr Sharma's 20 November 2023 submissions quite properly approach the requests as ones made both under CPR Part 18 and CPR 25.1(1)(g). Therefore, the fact that the outstanding requests were purportedly made under CPR Part 18 is of no significance.

Second general point: the ambit of what is an allowable request

71. The second general point Mr Sharma takes is that the Claimants' November 2023 request for further information of Ms Lawson's third witness statement under CPR Part 18 does not ask questions about the "proceeds" of sale of the flats, but only about other sums received by Finlaw in connection with the development. Two things follow from this, he says.

    (1) The requests are not permissible under CPR 25.1(1)(g); and

    (2) In any event, even if in principle they might have been permissible, they go outside the ambit of the original October 2023 application, which was limited to requests for information about what had happened to the flats and their proceeds of sale.

72. As for the first point, I disagree, because the order to which the Finlaw Defendants agreed in their 14 September 2023 submissions (and the order which I am accordingly making) included a provision that:

> *"Until final disposal of the Claim or further order of the Court Finlaw must not remove from England and Wales or in any way dispose of, deal with or diminish: (i) any sum representing or comprising sums paid to the Respondents (whether arising by way of any refinance, or the sale of the Property or the Flats, or any other means) in satisfaction of [the purported ARE charge] (**"the Charged Sums"**); (ii) any asset which, in part or in whole, represents or derives from the Charged Sums, save for the purposes of giving effect to this order."* [Emphasis in underlining added.]

73. As is clear from the underlined words, the order is not limited to proceeds of sale of the flats. It also covers (a) any other part of the Property, and (b) more importantly, sums paid to any of the Respondents *"whether arising by way of refinance, or the sale of the Property or the Flat, or any other means"*. Therefore, by part (i) of this provision, Finlaw must not apply any such sums, whether paid to itself, Ms Cox or Ms Lilly, or indeed ARE and Mr Smith, in satisfaction of the purported ARE charge; and by part

(ii) it must not deal in any other way with any asset which represents or derives from these sums (that is to say, *"the Charged Sums"*).

74. It follows, therefore, that, subject to Mr Sharma's second point, the Claimants are in principle entitled to be provided, in support of the interim order, with information about *"the location"* (to use the language of CPR 25.1(1)(g)) not only of the proceeds of sale received by Finlaw (as Mr Sharma accepts), but also of sums received by Finlaw *"by way of refinance .. or by other means"*. I accept that these sums must have been received in connection with the Property or the flats, and not for some different purpose, but if they were so received, then they are "Charged Sums" which Finlaw is not entitled to dispose of, and about whose location the Claimants can ask to know.

75. As for Mr Sharma's second objection, namely the November 2023 request for further information about Ms Lawson's third witness statement goes outside the information sought in the original 9 October 2023 application notice, I accept that this is largely correct as a matter of fact, as will become apparent from the requests, which are set out below.

76. However, this is not a conclusive objection, because the request arises out of fundamentally important information in that witness statement which had not been made clear before (namely, the flats had apparently all been sold back in January 2023, and all the proceeds distributed). This understandably gives rise to considerable concern as to what has happened to all the other parts of the "Charged Sums" which are supposed to be subject to the restraining order I have made. Indeed, Finlaw appears to be saying that even if the Claimants do have a second charge (as they allege) there are no sums at all which are subject to it. And it would seem to follow from this that Finlaw is saying it has no money at all, and so the proceedings are pointless.

77. I should add that I do not see that any serious objection can be taken to the fact that the November 2023 request was made simply by way of request for further information, instead of by way of yet further application asking exactly the same questions as in that request.

Third general point

78. In making the orders I do below, I take into account that the Finlaw Defendants do not appear to have told the Claimants, or indeed the court at the May 2023 hearing, that all the flats had been sold and the proceeds disposed of until this was eventually flushed out afterwards in Ms Lawson's third and fourth witness statements. Further, they appear to be saying that Finlaw has no money at all, without actually saying this outright. I take the view, therefore, that it is important that the requests which I am prepared to order are not phrased in such a way that they could be subject to Finlaw's own subjective interpretation on any point of possible ambiguity.

79. In his comments on the draft judgment Mr Sharma pointed out that in making this observation, I had not taken into account the Finlaw Defendants' solicitors' letter to the Claimants' solicitors of 4 January 2023, in which (in summary) (a) they gave notice of the intended exchange of contracts on units 1 and 5 *"on or after 11 January 2023"* for £660,000 and £640,000 respectively, and on unit 8 for £660,000 *"on 5 January 2023"*, with completion (in the case of each of the three units) on or after seven days thereafter,

depending on the terms of the contract; and (b) they gave notice of the intended completion on unit 4 (which had already exchanged before Mr Justice Meade's order) on 4 January 2023, the same day as the letter. Therefore, the Claimants should have realised that the last four flats had indeed been sold by the date of the hearing.

80. However, this does not alter my view on this point, for three reasons.

    (1) First, although the Claimants asked further questions about these proposed sales by their solicitors' 6 January 2023 letter, and indeed complained about a failure to comply with the undertakings, at no point did Finlaw answer those questions or tell the Claimants later that the proposed exchanges or sales had indeed taken place.

    (2) Second, the Claimants' skeleton argument (in paragraph 95) and their draft order for the May 2023 hearing proceeded on the premise that the four flats had not been sold, and at no point did Finlaw contradict this or inform the court that in fact they had been sold, and further that the proceeds had been disposed of. Indeed, it resisted the terms of the draft order about the flats, when, on its own case, the whole matter was academic.

    (3) As a result, the premise of the hearing for an injunction was that there was some continuing purpose to the application for an injunction in relation to the sales of the flats and their proceeds, when in fact, had Finlaw explained to the Claimants and to the court what had actually happened, there was apparently none.

81. Of course, it may be that what Finlaw told the Claimants' solicitors on 4 January 2023 was sufficient to amount to compliance with the undertakings it had given to Mr Justice Meade. That, however, is a different point on which I express no view. But what I do find to be troubling is that it did not properly inform the Claimants or the court of facts which were obviously relevant to the issues which the Claimants had to meet and which the court had to decide at the May 2023 hearing.

The individual requests

82. Paragraphs 11 and 13 of Ms Lawson's third witness statement say that the *"total sum received by Finlaw's conveyancing solicitor (Burgess Okoh Saunders) from all sales was £2,505,960. The sums that were received from them by Finlaw out of those proceeds …[totalled] £457,258.16. No sums were received by myself or Ms Cox personally. These funds were utilised for Project completion and costs"*.

    And:

    "None of these sums have been retained by Finlaw (as indicated above, neither myself or Ms Cox received any of these monies."

83. The Claimants make three requests of this.

Requests 3 and 4

84. It is convenient to take Requests 3 and 4 together.

85. Request 3 asks:

> "Please state when Burgess Okoh Saunders are alleged to have been instructed on behalf of Finlaw."

86. Request 4 asks:

> "Please provide an account of all sums paid into and out of Burgess Okoh Saunders's accounts in respect of the development, the flats or their proceeds for the period from 1 July 2022 to date."

87. It is evident that what these requests are driving at is what relevant sums have been paid into Burgess Okoh Saunders's accounts from the time when that firm started acting for Finlaw. However, Mr Sharma objects that they are not about the proceeds of sale, that they are a "fishing expedition", and that they are an attempt at pre-emptive cross-examination.

88. However, in my judgment:

    (1) Request 3 is a proper request, because it will serve to identify the time as from which sums received by Burgess Okoh Saunders can properly be identified as sums received on behalf of Finlaw, such that, at least arguably, they were charged to the Claimants. Further, I cannot see what possible difficulty there is in supplying the answer to this request.

    (2) Request 4 is in principle a proper request, because, for the reasons above, Finlaw has been restrained from dealing with sums it received by way of refinancing or by other means in connection with the Property, and so the Claimants are entitled to know what has happened to such sums in order to police the interim order which they have been given. The caveat, however, is that the request should be reduced in scope so as to ask something along the following lines: *"Please provide an account of (a) all refinancing sums (b) all proceeds of sale and (c) all income from the Property (including the Flats) paid into ~~and out of~~ Burgess Okoh Saunders's accounts while they were acting for Finlaw in respect of the development of the Property (including in particular the flats)~~ or~~ ~~their proceeds~~ for the period from 1 July 2022 to date"*. (Deletions indicate those parts of the request taken out, and underlining suggests the revised wording.)

89. I have reduced these requests so as to limit them to refinancing sums, proceeds of sale and income from the Property, because otherwise the request is oppressive, as it could cover any sums which were paid into the Burgess Okoh Saunders's account even if they could not conceivably have been caught by the Claimants' alleged charge. These requests, as reduced, will enable the Claimants to identify the sums paid to Finlaw which constitute the *"Charged Sums"* under the order, so that (a) they can ensure that these sums or their proceeds will not be disposed of, or at least (b) they can find out what has happened to them if they have been disposed of, with a view to making further applications if (and I emphasise "if") appropriate. This is not a mere "fishing expedition" or a pre-emptive order for cross-examination: it is an order for information made to give better effect to the interim injunction.

90. It will be seen that I have taken out the provision for information about the payments out, because that is dealt with in other requests which I suggest below, and also because the request as made was too involved.

Request 5

90. Request 5 reads:

> "Please provide particulars of any sum paid, in the period from 1 July 2022 to date, by or on behalf of Finlaw to:
>
> a. ARE;
>
> b. Ms Cox;
>
> c. Ms Lawson;
>
> d. Mr Smith.
>
> The said particulars should include the amount of each payment, the name and account number of the bank account from which it was made, its date, alleged purpose and recipient. Where such information is recorded in an electronic or hard copy ledger(s) of account or other company records, provide printouts or hard copies of the same."

91. Finlaw objects to this request on the basis that it is beyond the scope of CPR 25.1(1)(g), and that, so far as it concerns ARE and Mr Smith, the Claimants have settled their claim against them. However in my judgment it is a legitimate request.

92. First, the request is within CPR 25.1(1)(g), because its purpose is to obtain information about *"the location"* of refinancing sums, proceeds of sale or income from the Property, that is to say, what has happened to the sums that were (on the Claimants' case) charged to them. I accept that the request is not in terms limited to asking about whether the refinancing sums, proceeds, and income were paid to these four persons, but a request so framed would leave too much to the interpretation of the Finlaw Defendants of what was the source of the sums so paid to them. In my judgment, therefore, the Claimants are entitled to a request along these lines in order to obtain information that may reasonably assist them to work out whether sums from such sources are indeed likely to have been paid to these four persons.

93. Second, although the Claimants have settled their claim against ARE and Mr Smith, this does not disentitle them to an order for this information to be provided to them. I do not know the terms of the settlement, and it is perfectly possible that if it turns out that further sums which (on the Claimants' case) were charged to them were paid out to ARE and to Mr Smith, which have not so far been revealed, then the Claimants would be entitled to relief in respect of those further sums from ARE or Mr Smith. Further, if they were wrongly paid out by Finlaw to ARE or to Mr Smith, in breach of the Claimants' rights under their alleged charge, I do not see why that information should not be made known to the court now under CPR Part 18.1, on the footing that this would clarify *"any matter which is in dispute in the proceedings"*, namely, what sums should Finlaw account for to the Claimants by reason of their alleged charge.

Requests 6 and 7

94. Paragraph 14 of Ms Lawson's third witness statement says:

"Finlaw sent these sums to:

…..

VARIOUS SUPPLIERS, PROFESSIONAL FEES AND BUSINESS FEES FOR PROJECT COMPLETION".

95. The sums in question of which this question is asked are the sums totalling £457,258.16 received by Finlaw out of the proceeds of sale.

96. Requests 6 and 7 ask:

> "6. Please explain why Finlaw appears to be paying sums to suppliers, professionals and business after the date of completion of the sale of the Flats.
>
> 7. Please identify and provide invoices and/or other supporting documentation evidencing the purpose of such payments. In addition, please provide a statement of account recording all payments to the Brook Consultancy LLP, Barnes Design, JGL Projects Limited, Green Dawn Build and Flexiform Business."

97. I shall order an answer to request 7 but not to request 6.

98. As to request 7, Mr Sharma objects that it is blatant "fishing". I disagree. It simply asks, please provide invoices which support Finlaw's assertion that the monies in question, which on the Claimants' case would otherwise be charged to them, were indeed paid to suppliers. If the documents show that they were so paid, then there is unlikely to be an issue in the case, but if they don't, or no such documents exist, then the Claimants would be entitled to make further inquiries, in support of their interim injunction, as to precisely what has happened to these sums.

99. As for request 6, the mere fact, if this is so, that sums said to have been paid to suppliers were paid after rather than before the date of completion of the sale of the flats is on the face of it of little significance. If on the provision of documents which I have ordered under request 7 there is real reason to suppose that the payments are not genuine, the fact, if it be so, that they were made after completion may be a matter for a further application. But I am not prepared to order an answer at this stage.

Requests 8 and 9

100. In paragraphs 15 and 16 of her third witness statement, Ms Lawson says (in summary) that the amount of the sums transferred to ARE by Burgess Okoh Saunders were £889,812.84 and £139,812; and that payments were made on 31 January 2023 and 5 April 2023.

101. Request 8 asks for particulars of any sum transferred to ARE or Mr Smith from 1 July 2022 to date, with supporting documents. However, I have already ordered this information above, so there is no need to order it again under this request.

102. Request 9 asks whether it is the Finlaw Defendants' case that the sums paid to ARE are the only sums paid by Finlaw or Burgess Okoh Saunders on Finlaw's behalf from the proceeds of sale and refinancing of the Property; and if not, particulars are sought of any other payment made from the proceeds and the refinancing.

103. Finlaw opposes this request on the same bases as it opposes the other requests, but adds that it appears to be lining up a new *in personam* claim against them. However, in my judgment, the request is legitimate. First, it is simply asking in its first part, what is Finlaw's case on the point (in particular, on the question of the use of refinancing monies, which it has not yet dealt with in Ms Lawson's witness statements). There cannot be any objection to that. Second, if Finlaw did make payments to other parties from the proceeds or the refinancing, then on the face of it these need to be justified (and of course they may very well be entirely justified), but the Claimants are entitled to know what they were, so that if they were not justified they can take steps if appropriate against such other parties to protect their rights over the sums paid away now rather than later, just as they were entitled to an interim order in respect of the proceeds of sale of the flats. And further, this information would clarify *"any matter which is in dispute in the proceedings"*, under CPR Part 18.1, namely, what sums should Finlaw account for to the Claimants by reason of their alleged charge.

Requests 10 and 11

104. In paragraph 17 of her third statement, Ms Lawson says that all the documentation *"can confirm"* that Finlaw has been transparent in providing information in these proceedings.

105. Perhaps not surprisingly, given the evident failure (on current evidence) to mention the sales of the last four flats or the disposal of the proceeds back in January 2023 until Ms Lawson's October 2023 witness statement, the Claimants have asked Finlaw in request 10 to identify what documents *"confirm"* this. In request 11 they go on to ask Finlaw to explain whether it is the Defendants' case that they provided advance notice of the exchange of contracts and sales of the last four flats in early 2023, as required by their undertaking given to Mr Justice Meade on 22 December 2022; or that they informed the court at the hearing before me in May 2023 of the sales or disposal of the proceeds.

106. However, I am not prepared to order answers to these requests for three reasons. First, they are unnecessary, because all relevant documents will have to be disclosed, and it is likely to be obvious from them whether or not the Finlaw Defendants have been transparent and provided the relevant information. Second, the Finlaw Defendants have not actually asserted that it is their case that they have provided the relevant information (indeed, they have refused to answer the question in their submissions). Third, I am anxious that the real purpose of this question is simply to strengthen a potential application to commit the Finlaw Defendants for contempt of court by reason of an alleged breach of the undertaking given to Mr Justice Meade on 20 December 2022, which the Claimants have flagged as a possibility in their submissions. In my judgment, this being so, it would not be appropriate to make an order for the provision of this information in these proceedings, rather than, if appropriate, in an application to commit for contempt of court.

107. Accordingly, I make no order on requests 10 and 11.

The fifth issue: the Extension Application

108. As said above, on 28 September 2023, Master Shuman gave permission to the Claimants to re-re-amend their particulars of claim to take into account the effect of the settlement of their claim against ARE and Mr Smith; and on 13 November 2023, the day before the re-re-amended claim was to be served, the Claimants sought an extension of time for doing so until after the Finlaw Defendants' provision of the further information sought in the Claimants 9 October 2023 application. The reason for this was so that instead of having two rounds of amendments, the first to take into account the settlement, the second to take into the further information, there would be just one round of amendments.

109. In my judgment, seeking to avoid two rounds of amendments was a sensible and proportionate way of going about things, and I reject the Finlaw Defendants' arguments to the contrary. As to these, in summary:

(1) For the reasons given above, the information to which the Claimants were entitled was not properly provided in Ms Lawson's third witness statement, and the Claimants were entitled to pursue their requests for further information issued on 9 November 2023 for the reasons given above.

(2) The request for further information was not a "fishing expedition", again for the reasons given.

(3) The grant of an extension to serve one single amendment, rather than having a process which involves two rounds of amendments, will not cause any lengthening in the trial timetable, because in all probability the one single set of amendments will take place at more or less the same time as the second round of amendments would have done. Further, I do not see what particular advantage would have been gained by requiring the settlement amendment to be served earlier, because by clause 5 of Master Shuman's order this amendment was simply *"to reflect the settlement"* and nothing else. Nor is the requirement for one single round of amendments, including further points arising out of the Finlaw Defendants' further information, likely to jeopardise the overall trial timetable. It may possibly require some extension to steps currently provided for in the trial timetable, such as disclosure and witness statements, but the trial window is 18 November 2024 to 18 March 2025, and I do not see why the amendments should put that in jeopardy at all.

(4) Given the apparent disposal of all the flats and their proceeds, and the absence of any evidence that Finlaw intends to sell the Property, and the absence of any threat to the trial window, it is quite unclear what prejudice could be caused to the Finlaw Defendants by having the interim injunction hanging over the heads in the meantime. The problems which Astute Capital appears to be facing, according to its filed accounts for the year ended March 2023, are irrelevant on the question of the undertaking, for the reasons I have given above.

110. Accordingly, I shall order Finlaw to provide the further information I have ordered above within 28 days from the hand down of this judgment, for the Claimants

to file and serve a re-re-amended particulars of claim within 21 days thereafter, the Finlaw Defendants a re-amended defence within 21 days of that, with a reply from the Claimants if so advised 14 days after that. That will take the close of pleadings till about early April 2024, which will leave enough time so as to ensure that the existing timetable is not materially prejudiced.

Conclusions

111. For these reasons:

(1) (a) The terms of the interim injunction shall be in the form set out in paragraph 4 of the Claimants' draft order attached to their consequential submissions. For the reasons set out in paragraphs 11 to 15 of this judgment I shall not add the alterations sought by Finlaw, save in the minor respect set out in paragraph 15 of the judgment about invoices and pro forma invoices. I shall, however, give the Claimants liberty to apply, if so advised, to reword it in the light of the information that has now come out from Ms Lawson's third and fourth witness statements (see paragraph 17).

(b) As to the undertaking in damages, I shall order both Claimants to provide one, but I shall not order fortification by a payment into court or otherwise (see paragraphs 18 to 26). I shall order, however, that if Finlaw wishes to sell the Property or any part thereof, and the Claimants wish to prevent this, then Finlaw may apply on, say, 14 days notice to sell, and to apply for an order that the Claimants do fortify the injunction is such sale is to be prevented (see paragraph 27).

(2) I shall mark the Third Strike Out application totally without merit (paragraphs 28 to 29).

(3) As to costs:

(a) As to the incidence of costs, those of the injunction application are to be costs reserved, but on all the other applications the Claimants are entitled to their costs from the Finlaw Defendants, save that the Third Strike Out Application they are entitled to them only against Finlaw, and not Ms Cox or Ms Lawson (see paragraphs 30 to 40);

(b) As to the basis of liability, the Claimants are entitled to their costs on the indemnity basis on (i) the Relief/Extension application, the default judgment application and the First Strike Out application and (ii) on the Third Strike Out application, but otherwise on the standard basis (see paragraphs 41 to 47);

(c) As to quantum, I have not carried out a summary assessment, but I shall instead order that Finlaw must make a payment on account of costs in the sum of £40,000; and Ms Lawson and Ms Cox must make a payment on account (concurrently and not in addition to that to be made by Finlaw) of £27,750 (see paragraphs 48 to 61).

(4) As to the Claimants' November 2023 request for further information:

(a) I shall order that requests 3 and 4 are answered, subject to the alterations I have suggested (see paragraphs 84 to 90);

(b) I shall order that request 5 is answered (see paragraph 93);

(c) I shall order that request 7, but not request 6, is answered (see paragraphs 94 to 99);

(d) I shall order that request 9, but not request 8, is answered (see paragraphs 100 to 103);

(e) I shall not order requests 10 and 11 to be answered (see paragraphs 104 to 107).

(5) As to the Claimants' Extension Application, I shall grant an extension of time until 21 days after the Finlaw Defendants' provision of the further information I have ordered, and thereafter I propose the consequential directions set out in paragraph 110 (see paragraphs 108 to 110).

112. The parties may make further brief submissions to me on (a) the notice period which Finlaw must give if it wishes to sell part of the Property, (b) the forms of the requests where I have made suggested alterations, (c) the proposed revised timetable resulting from the Extension Application, and (d) on the question of costs of the Claimants' October 2023 application and November 2023 request for further information, and of their Extension Application. In the first instance, I invite the parties to address me in writing on whether this should be at a short oral hearing, or by written submissions.