Neutral Citation Number: [2024] EWHC 2980 (Ch)

Case Numbers: CH-2024-000060 and CH-2024-000101

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
APPEALS (ChD)

ON APPEAL FROM THE BUSINESS AND PROPERTY COURTS ORDERS OF MASTER MCQUAIL DATED 9 FEBRUARY 2024 AND 26 MARCH 2024 IN PT-2021-000277

7 Rolls Building
Fetter Lane, London,
EC4A 1NL

Date: 22 November 2024

Before:

The Honourable Mr Justice Thompsell

Between:

(1) SNEHAL DATTANI	**Appellants**
(2) JITESH PATEL	
- and –	
MESSRS FERNS SOLICITORS	**Respondent**

Mr Adrian Davies (instructed by **Amphlett Lissimore Solicitors**) for the **Appellants**
Ms Cecily Crampin (instructed by **Ferns Solicitors**) for the **Respondents**

Hearing date: 30 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 22 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

Mr Justice Thompsell:

1. INTRODUCTION

1. This is the appeal of two orders made by Master McQuail. The first was made on 9 February 2024 (but sealed on 20 February 2024). Through this Order, in response to the Third Defendant's application for strike-out or reverse summary judgement, Master McQuail struck out elements of the claim made by the Claimants against the Third Defendant (which I will refer to as "**Ferns**") based on a constructive trust argument. I will refer to this as the "**Constructive Trust Strikeout Order**". The second is an order dated 26 March 2024, sealed on 27 March 2024 when Master McQuail struck out the remaining element of the claim against Ferns based on a dishonest assistance argument. I will refer to this as the "**Dishonest Assistance Strikeout Order**".

2. These orders were made in accordance with Master McQuail's (unreported) judgment dated 9 February 2024 following hearings on 30 January and 9 February 2024 (the "**McQuail Judgment**").

3. The background to the claim is well summarised in paragraphs 2 to 13 in the McQuail Judgment and I will not seek to set this out again, except to highlight the causes of action that the Claimants are pursuing against Ferns. They can be stated very briefly.

4. Ferns was acting as conveyancing solicitors to the First and Second Defendants, Mr and Mrs Rasheed, in relation to the sale of their property in Croydon. Mr and Mrs Rasheed were no longer married but were the joint legal owners of the property. Acting on instructions from Mr Rasheed, Ferns transferred the net proceeds of sale (after discharging registered charges) to Mrs Rasheed. The Claimants complain that they should not have done this when they were on notice, by means of a restriction noted on the Office Copy Register of Title (in a form known as a Form K restriction), recording that there was an interim charging order ("**ICO**") over the beneficial interest of Mr Rasheed in the property. The Claimants' case against Ferns was, in summary, that:

    i) by paying the whole of the proceeds of sale to Mrs Rasheed knowing of the existence of the ICO, Ferns assisted Mr Rasheed in dealing with monies over which he did not have a right of free disposal and so frustrated the intended effect of the court order;

    ii) in doing so Ferns were acting in a commercially dishonest manner; and

    iii) Equity will enforce an equitable interest, such as that arising under the ICO against Ferns by holding Ferns to account for dealing inconsistently with these monies since the conscience of the solicitor handling this matter (Mr Narayan) within Ferns was ought to have been affected by having notice of the Claimant's' equitable interest.

5. Master McQuail correctly identified this as comprising two legal causes of action: first a claim based on breach of a constructive trust and secondly a dishonest assistance claim.

6. The Claimants have set out their Grounds of Appeal in a formal document running to some four pages. I would summarise these grounds as follows:

   i) the Master was not trying a preliminary issue of law on assumed or admitted facts, but rather an application to strike out or for reverse summary judgment in relation to the points of claim made against Ferns. This was not appropriate in an area of developing jurisprudence, since, in such areas, decisions as to novel points of law should be based on actual findings of fact.

   ii) The cases relied upon by the Master, in particular *Williams-Ashman v Price and Williams* [1942] Ch. 219 ("***Williams-Ashman***") and *Clydesdale Bank plc v Workman* [2016] EWCA Civ 73; [2016] P.N.L.R. 18 ("***Workman***"), were decided on the facts rather than illustrating any proposition of law relating to dishonesty.

   iii) It must have been apparent to Mr Narayan (had he not averted his eyes from the facts) that he was assisting his clients in rendering an order of the court nugatory and the court should not countenance such behaviour by one of its own officers.

7. These arguments were expanded upon in the Claimants' skeleton argument and orally at the hearing.

8. Permission to appeal was denied by Master McQuail but was granted by Roth J in respect of both Orders on the basis that he considered that an appeal had a real prospect of success. He considered that it was "well arguable" that knowledge of the Form K restriction was sufficient to give knowledge or at least put Ferns on well-grounded enquiry as to the existence of the charging order, contrary to the conclusion of the Master in her judgment at [49]. In these circumstances, Roth J considered, there was a real prospect that the Appellants case is not bad in law, but depending on the facts to be established at trial could fall within the principles established in *Carl Zeiss Stiftung v Herbert Smith & Co* [1969] 2 (Ch) 276 ("***Carl Zeiss***"). Further the knowledge of Ferns was a matter for trial. Accordingly, there was a real prospect of establishing that this case should go to trial and should not have been struck summarily.

2. THE TEST FOR STRIKING OUT AND FOR SUMMARY JUDGMENT

9. Master McQuail correctly summarised in her judgment the test for striking out a statement of case under CPR 3.4(2)(a) (i.e. on the basis that is that the statement of case discloses no reasonable grounds for bringing or defending the claim) and accurately stated the test for summary judgment under CPR 24.2, which provides that the court may give summary judgment against a claimant or defendant on the whole of the claim or on a particular issue if:

> "(a) it considers -
>
> (i) the claimant has no real prospect of succeeding on the claim or issue; … and

> (b) there is no other compelling reason why the case or issue should be disposed of at trial."

10. Claims for striking out and for summary judgment are typically brought together as claims in the alternative. Where an application is being made for a summary judgment it is common for the parties and the judge to make reference to the principles summarised in by Lewison J (as he then was) in *Easyair Limited (trading as Openair) v Opal Telecom Limited* [2009] EWHC 339 (Ch) [at 15] and may be further summarised as follows:

    i) The Court must consider whether the respondent to the application has a "realistic" as opposed to a "fanciful" prospect of success i.e. one that carries some degree of conviction - a claim that is more than merely arguable.

    ii) The Court must not conduct a "mini-trial". This does not mean that the Court must take at face value and without analysis everything that a respondent to the application says in his statements before the Court.

    iii) The Court must take into account not only the evidence actually placed before it upon the application, but also the evidence that can be reasonably expected to be available at trial.

    iv) Although a case may turn out at trial not to be complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus, the Court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where 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.

    v) On the other hand, it is not uncommon for an application under CPR Part 24 to give rise to a short point of law or construction and, if the Court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should "grasp the nettle" and decide it. If the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be.

11. As summary judgment and striking out applications overlap, are routinely made together, and routinely turn on the same alleged facts, courts will often not seek to point out differences between these two heads of claim – see for example *The High Commissioner for Pakistan in the United Kingdom v National Westminster Bank Plc and Others* [2016] EWHC 1465 (Ch); [2016] 6 WLUK 486 where Henderson J noted at [17], apparently with approval, that:

> "nobody submitted to me that there is any material difference between the test of "no real prospect" of success in Part 24 and "discloses no reasonable grounds for bringing or defending the claim" in rule 3.4(2)(a)"

(although the learned judge did the go on to consider the important distinction that the power to strike out under CPR rule 3.4 also extends to cases of abuse of process, as set out in ground (b) thereof).

12. However, there are distinctions between the two tests, as was pointed out by Master Marsh (sitting in retirement) in *MF TEL SARL v Visa Europe Limited* [2023]1336 (Ch) he pointed out at [34(3)] that:

> "The test for striking out as it has been interpreted leaves no scope for the statement of case showing a claim that has some prospect of success. The claim must be unwinnable or bound to fail. Under CPR rule 24.2 it is not good enough for a point to be merely arguable, it must have a real prospect of success. An application to strike out might fail whereas the same application for summary judgment might succeed."

13. A further difference (noted at [10(1)] in the same judgment) is that for the purposes of the application under CPR rule 3.4(2)(a) the court will usually proceed on the basis that the pleaded facts are true, whereas evidence, and in particular, witness statements may have a greater bearing on an application under CPR rule 24.2 as on such applications the court may be required to exercise a judgment about the quality of the evidence.

3. THE CONSTRUCTIVE TRUST CLAIM

14. I will begin by considering the claim relating to breach of a constructive trust.

15. It became clear during the hearing that the constructive trust claim was being advanced on two bases that may be summarised as follows:

    i) **Argument 1**: that Ferns (in the person of Mr Narayan) was informed by the terms of the restriction that it was receiving monies that were impressed with an equitable charge, with the result that any dealing by Ferns with that money in a manner that was incompatible with that charge was of itself a breach of a constructive trust irrespective of whether or not any finding of dishonesty could be established against Ferns; and

    ii) **Argument 2**: that, with the knowledge that Mr Narayan had of the ICO, Ferns' dealings were dishonest and as such gave rise to Ferns' involvement in a breach of the constructive trust.

16. Ms Crampin, on behalf of Ferns, put up a strong defence against Argument 1. She referred the court to *Williams-Ashman* and to *Carl Zeiss* to show that there were established principles adopted by the court in dealing with an allegation that an agent holding monies on behalf of a principal who himself was a trustee that restricted the circumstances where the agent will himself be regarded as in breach of a constructive trust.

17. In *Williams-Ashman,* a central question considered by the court was whether solicitors who knew that trust monies were subject to a trust were thereby saddled with the responsibilities of a trustee. The question was put:

> "Does the knowledge of that fact give rise in equity to a duty to the persons beneficially interested in the trust money?"

18. Bennett J found that an agent in possession of money which he knows to be trust money, so long as he acts honestly, is not accountable to the beneficiaries interested in the trust money unless he intermeddles in the trust by doing acts characteristic of a trustee and outside the duties of an agent. The remedy of the beneficiaries was against the real trustees. As the court found that the defendants had acted honestly, the court found in their favour.

19. In *Carl Zeiss* (starting at H on page 30) Edmund Davies LJ (one of the three judges of the Court of Appeal, all of whom found for the defendant in the claim) approved a distillation of the authorities on this matter as follows:

> "(A). A solicitor or other agent who receives money from his principal which belongs at law or in equity to a third party is not accountable as a constructive trustee to that third party unless he has been guilty of some wrongful act in relation to that money. (B). To act "wrongfully" he must be guilty of (i) knowingly participating in a breach of trust by his principal; or (ii) intermeddling with the trust property otherwise than merely as an agent and thereby becomes a trustee de son tort; or (iii) receiving or dealing with the money knowing that his principal has no right to pay it over or to instruct him or to deal with it in the manner indicated; or (iv) some dishonest act relating to the money.

20. From the further comments made by the court, it is fair to say that the "knowing" elements of the above test would encompass blind-eye knowledge (as is discussed further below).

21. Whilst Mr Davies, representing the Claimants in the current case, has sought to dismiss this case as not being applicable as it turned on its own facts, and those facts were substantially different to the facts in the current case, this is no reason to dismiss the well-argued principles set out by Edmund Davies LJ and reproduced above.

22. Mr Davies has invited me to rely instead on *Buhr v Barclays Bank PLC* [2001] EWCA Civ 1223 ("***Buhr***"). In this case the bank (as mortgagee in relation to a mortgage that had not been registered but nevertheless was found to be effective as against the borrower) sued the solicitors who were acting for the borrower in selling the property, and had not paid the proceeds to the bank. Those solicitors had conceded that, if the bank had a proprietary interest in the proceeds of sale, then they held those proceeds as constructive trustee. The argument before the court was limited to whether or not there was a proprietary interest. There is no discussion in the judgment as to whether the solicitors were correct in making this concession. Mr Davies, pointing to the eminence of the barrister who had made this concession on behalf of the solicitors firm in that case and to the acceptance of the concession by the Court, suggests that Master McQuail should have preferred this more up-to-date authority to *Williams-Ashton* and to *Carl Zeiss.*

23. I do not agree. Whereas the enunciation of principles by Edmund Davies LJ in *Carl Zeiss* was based on a lengthy and reasoned consideration of precedent, the acceptance of the concession in *Buhr* was not discussed at all and does not in my view provide any reason to accept that the law has moved on from that enunciated in *Carl Zeiss*. I therefore reject Argument 1 and find that Ferns would be regarded as involved in a breach of a constructive trust only if it can be shown to have committed a wrongful act within the principles enunciated by Edmund Davies LJ as reproduced at [19] above.

24. The claim for breach of constructive trust might nevertheless succeed on the basis of Argument 2 if dishonesty can be shown within the principles enunciated by Edmund Davies LJ as reproduced at [19] above. However, on the basis of the pleadings before the court, the only wrongful act alleged is that discussed below in relation to the dishonest assistance claim, and it was acknowledged on both sides that as a result, given that Ferns is no longer holding any of the relevant monies for anybody, considerations of a constructive trust in the hands of Ferns will add little or nothing to the dishonest assistance claim.

4. THE DISHONEST ASSISTANCE CLAIM

25. The elements of a claim for dishonest assistance in relation to a breach of trust are neatly summarised in the Court of Appeal's judgment in *Group 7 Ltd and another v Nasir and others* [2019] EWCA Civ 614 ("***Nasir***") at [29]:

> "in order to find the person liable of a breach of trust, it is necessary to establish that (a) there was a trust in existence at the material time; (b) the trustee committed a breach of that trust; (c) the defendant assisted the trustee to commit that breach of trust; and (d) the defendant's assistance was dishonest."

26. Without determining this matter, for the purposes of the strike-out/reverse summary judgment application I consider that it is appropriate to assume that, or at least there is a good arguable case for finding that:

i) The ICO put Mr Rasheed in the position of a constructive trustee of his share (whatever it was) of the proceeds of sale of the property as the Claimants were to be regarded as having an equitable interest in this share under s.3(4) of the Charging Orders Act 1979 This provides as follows:

> "Subject to the provisions of this Act, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand."

ii) In instructing Mr Narayan to transfer the entire proceeds of the sale to Mrs Rasheed, Mr Rasheed was committing a breach of that trust; and

iii) in complying with those instructions Ferns, was assisting in the breach of that trust.

27. As might thought to be relevant to point (i), I note that the ICO had in fact by the time in question been superseded by a Final Charging Order in the same terms. However, as was agreed by counsel on both sides, nothing turns on this. As noted in *Charging Orders on Land: Law, Practice and Precedents* (second edition) at 3.117:

> "Because the final order is confirmatory of the interim order, the charge relates back to, and takes effect from, the date of the interim order. Therefore, subject to appropriate registration, any intervening dispositions or proceedings (other than insolvency) cannot affect it."

28. On the basis of the facts assumed for the purposes of this hearing above, the question regarding the strike-out/reverse summary judgment application will, therefore, turn on whether this assistance was dishonest.

29. The legal test of dishonesty is discussed in detail by reference to the prior case law at paragraphs [33] to [58] of *Nazir*, with a further discussion of the effect of "blind-eye knowledge" at paragraphs [59] to [61].

30. The court found that the modern law which sees dishonesty as an essential ingredient of accessory liability for breach of trust stems from the seminal judgment of the Privy Council in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378 ("***Tan***"). As to the meaning of dishonesty in this context, this was discussed by Lord Nicholls in *Tan* (at page 389) as follows:

> "in the context of the accessory liability principle acting dishonesty, or with a lack of probity, which is synonymous, means simply not acting as an honest person would in the circumstances. This is an objective standard. At first sight this may seem surprising. Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety. However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour."

31. Lord Nicholls added at page 390 of *Tan*:

> "Acting in reckless disregard others' rights or possible rights can be a tell-tale sign of dishonesty. An honest person would have regard to the circumstances known to him, including the nature and importance of the proposed transaction, the nature and importance of his role, the ordinary course of business, the degree of doubt, the practicability of the trustee or the third party proceeding otherwise and the seriousness of the adverse consequences to the beneficiaries. The circumstances will dictate which one or more of the possible causes should be taken by an honest person… Ultimately, in most cases, an honest person should have little difficulty in knowing whether a proposed transaction, or his participation in it, would offend the normally accepted standards of honest conduct.
>
> Likewise, when called upon to decide whether a person was acting honestly, a court will look at all the circumstances known to the third party at the time. The court will also have regard to personal attributes of the third party, such as his experience and intelligence, and the reason why he acted as he did."

32. The court in *Nasir* discussed the question of "blind-eye knowledge" at paragraphs [59] to [61], saying at [59] that:

> "In the context of dishonest assistance for breach of trust or fiduciary duty, it was common ground before us, and we consider it correct in principle, to equate blind eye knowledge with actual knowledge for the purposes of the first stage of the test laid down in *Tan*"

and that blind-eye knowledge occurs if a person:

> "deliberately abstains from enquiry to in order to avoid certain knowledge of what he already suspects expects to be the case."

33. However, mere suspicion is not enough:

> "The imputation of blind-eye knowledge requires two conditions to be satisfied. The first is the existence of a suspicion that certain facts may exist, and the second is a conscious decision to refrain from taking any step to confirm their existence."

34. At [61], the court noted that suspicions which fall short of constituting blind-eye knowledge may nevertheless be relevant to the question whether an alleged accessory has acted dishonestly:

> "The first stage of the test, as it is now understood, requires the court to ascertain all the relevant facts, including the knowledge and beliefs of the defendant. Even though knowledge, in this context, must now be taken to be confined to actual and blind eye knowledge, we see no reason in principle why a person's beliefs may not include suspicions which he harbours, but which in and of themselves fall short of constituting blind-eye knowledge. The existence of such suspicions, and the weight (if any) to be attributed to them, are then matters to be taken into account at the objective second stage of the test."

35. One of the complications in this case (and one which may have influenced Master McQuail) is that there is no actual pleading of dishonesty against Ferns within the original Claim Form. The entire case against Ferns in the Claim Form is as follows:

> "The Claimants have a proprietary interest in part of the net proceeds of sale. In disregard of the Claimants' rights the First and/or Second Defendants have wrongfully appropriated/ retained the funds payable to the Claimants and/or have applied them to assets into which the funds have been diverted. The Third Defendant by remitting the whole of the net proceeds of sale to the Second Defendant in like disregard of the Claimants' rights, and with full knowledge thereof, has allowed and facilitated such appropriation/retention. The Claimants assert that the Defendants and each of them hold or have held the funds as constructive trustees for the Claimants, and must account for them or provide equitable compensation."

36. However, once we get to the Claimants' Points of Claim there is a clear allegation of dishonesty with the central allegation against Ferns, taking together paragraphs 23 and 24:

> "23. … By paying over the whole (and not merely one-half) of the proceeds of sale to the Second Defendant with actual knowledge of the ICO, well knowing of the Claimants' interest or else suspecting and deliberately choosing not to confirm their suspicions by enquiring of the Claimant's solicitors, the Third Defendants assisted the First Defendant in dealing with monies over which the First Defendant did not have a right of free disposal and by do [*sic*] doing frustrated the intended effect of an order of the Court of which Mr Narayan is an officer.
>
> 24. In so doing, the Third Defendants were acting in a commercially dishonest manner."

37. Master McQuail noted (at [50] in the McQuail Judgment), following *Three Rivers District Council v Bank of England* [2001] UK HL 16 that a pleading of dishonesty must give be sufficiently particularised as the defendant is entitled to know the primary facts which will be relied upon at trial to justify the inference of dishonesty.

38. In my view dishonesty is sufficiently pleaded within the Points of Claim for the Claimants' case to be clear as regards the claim of dishonest assistance. The Claimants are saying that the circumstances of the Form K notice were sufficient to put an honest solicitor on notice that there was an ICO. The Claimants rely on the implications that it may, therefore, be presumed that a judgment debt had been charged against Mr Rasheed's beneficial interest. Ferns, through Mr Narayan, had knowledge, or had blind-eye knowledge of this debt, or had a suspicion not amounting to blind-eye knowledge, but which was still sufficient to make the conduct dishonest.

39. The grounds on which Master McQuail struck out the dishonest assistance case are set out in the McQuail Judgment at [49] in the following terms:

> "The dishonest assistance case relies for dishonesty solely on the premise that the Form K restriction gave the third defendant actual knowledge or blind-eye knowledge of the existence of the charging order. The actual knowledge route can be discounted, for reasons already explained. The blind-eye knowledge route requires that there be a firmly grounded suspicion of the existence of facts and a conscious decision to refrain from enquiring. Knowledge of the Form K restriction is not enough alone to lead to the conclusion that what the third defendant did was objectively dishonest. In my judgment, it does not, without more, give a firmly grounded suspicion of the existence of specific or certain facts or enable it to be concluded that there was a deliberate choice not to confirm such suspicions."

40. The first two sentences of this passage, if taken literally, seem to be incorrect. It is clear that the Form K restriction did provide Mr Narayan with actual knowledge of the ICO having been ordered. What it did not provide him with, however, was knowledge whether the ICO was still in force, the amount of the debt that it secured, or whether Mr Rasheed had any beneficial interest in the proceeds of sale. I consider that Master McQuail was referring to these matters (which were argued before her as is recorded at [23] in the McQuail Judgment) as matters on which Mr Narayan had no actual knowledge.

41. Master McQuail considered that knowledge of the existence of the ICO by itself did not amount or give rise to any knowledge or any firmly grounded suspicion of the existence of specific or certain facts, or enable it to be concluded that there was a deliberate choice not to confirm such submissions. As no dishonesty (other than knowledge of the existence of the ICO) was pleaded, it was understandable that she dismissed the dishonest assistance claim.

42. In finding this, I consider she may have been overly influenced by the Third Defendant's reference to *Carl Zeiss* where the court found that a solicitor was not dishonest in receiving money from a client merely because it knew that a third party was claiming ownership of such monies against his client.

43. I agree with the Claimants that this decision was decided on its facts and those facts were very different to those now before the court.

44. In *Carl Zeiss* the knowledge of the solicitors was that a party other than their client had a claim, but the solicitors did not know whether that claim was well-founded.

45. In the matter currently before the court, the knowledge that Ferns had was that there was a restriction on the Register relating to an ICO. There therefore must have been a court order giving rise to an ICO. This is stronger grounds for a suspicion that another party had an ownership interest in the monies than the mere fact of a claim.

46. It is true that this knowledge falls short of certainty in that the equitable interest was still in existence, as the debt may have been repaid or the ICO might otherwise have been discharged, or it might be the case that Mr Rasheed had no equitable interest in the property to which the ICO could attach. Nevertheless, the knowledge of the ICO may on further examination be sufficient for the court to conclude that Mr Narayan, faced with this knowledge, did form a reasonable suspicion that another party did have an interest in part of the proceeds of sale such that he possessed either blind-eye knowledge or something short of blind-eye knowledge that nevertheless would create an argument that proceeding without checking further is not something that an honest person would have done. Conversely, it may be that Mr Narayan's understanding of the facts was such that he did not form any such suspicion. The matter turns on Mr Narayan's beliefs at the time, and those beliefs need to be tested at trial.

47. In this regard the facts are very similar to those considered in *Clydesdale Bank v Workman* [2016] EWCA Civ 73 ("***Workman***"). In that case, the Court of Appeal was considering the judgment of His Honour Judge Pelling QC (now KC) where he had held that solicitors dealing with proceeds of sale of a mortgaged property had had sufficient knowledge of their principal's dishonesty from a certain date only, so as to make them liable for dishonest assistance thereafter. The Court of Appeal reversed the decision on the facts as to knowledge and concluded that the solicitors never had sufficient relevant knowledge to be liable. The matter turned on the knowledge and beliefs of the solicitors in that case and I consider that it will also in this case.

48. In my view Master McQuail was acting prematurely in accepting the argument that knowledge of the existence of the ICO by itself did not demonstrate any knowledge or blind-eye knowledge. It will remain a matter for evidence of the circumstances, knowledge and beliefs of Mr Narayan as to whether his knowledge of the Form K restriction caused him to have formed any suspicions and to have ignored those suspicions in proceeding to deal with the monies as directed by Mr Rasheed so as to amount to dishonesty on his part (within the meaning I have explained above).

49. The Claimants' appeal as regards the Dishonest Assistance Strikeout Order is founded on the proposition that this question of dishonesty was an arguable case, requiring evidence as to the knowledge and state of mind of Mr Narayan and should not have been struck out. I agree. I will therefore grant the appeal as regards the Dishonest Assistance Strikeout Order.

5. CONCLUSION

50. As will be apparent from the discussion above, the appeal succeeds as regards the Dishonest Assistance Strikeout Order. The question of dishonest assistance should go

to trial.

51. As regards the Constructive Trust Strikeout Order, this judgment should be taken as having a determined as a preliminary question that what I have described as "Argument 1" fails. The Claimants have no argument that Ferns in dealing with monies which were impressed with an equitable charge, in a manner that was incompatible with that charge was of itself a breach of a constructive trust irrespective of any finding of dishonesty. Ferns will only be responsible if the conduct of Mr Narayan complained of in the Points of Claim can be shown to amount to dishonesty.

52. I have not resolved the question whether the proceedings against Ferns should be heard alongside the proceedings against the other Defendants and I have not considered the question of costs. I will ask the parties for further submissions about whether these matters can be resolved on paper or whether a further hearing is necessary to deal with them.