

Neutral Citation Number: [2021] EWHC 1183 (QB)

Case No: QB-2019-002437

IN THE HIGH COURT OF JUSTICE

**QUEEN'S BENCH DIVISION**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 06/05/2021

**Before** :

SENIOR MASTER FONTAINE

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**Between :**

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|  | **Imran Arif** | Claimant |
|  | **- and -** |  |
|  | **Dalbir Singh Sanger** | Defendant |

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**Rachel Sleeman and Zachary Kell** (instructed by **James Chan & Co**) for the **Claimant**

**Geoffrey Zelin** (instructed by **Stradbrooks Solicitors**) for the **Defendant**

Hearing date: 14 January 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SENIOR MASTER FONTAINE

**. Senior Master Fontaine:**

1. This was the hearing of the Defendant’s application dated 14 October 2020 for summary judgment. The application was supported by the witness statement of Randeep Jandu dated 14 October 2020 (“Jandu 1”), opposed by the witness statement of the Claimant dated 18 December 2020 (“Arif 1”) and replied to by the witness statement of the Defendant dated 5 January 2021 (“Sanger 1”). In this judgment I largely adopt the glossary of terms provided by the Claimant’s counsel, set out in Annex 1 to this judgment. Documents referred to in this judgment are referenced by the number in the electronic hearing bundle 1 as follows [HB/number]. (There has been no need to refer to documents in hearing bundle 2). Authorities mentioned are referenced by the number in the electronic joint authorities bundle as follows [AB/number]. As those authorities are numerous a list of authorities with references to each is attached as Annex 2, and the references are not cited in this judgment.
2. It was common ground between the parties that the Defendant’s application would largely focus on issues of law, specifically the operation of sections 14A and 32 of the Limitation Act 1980 (“the 1980 Act”). The application has been made notwithstanding that the parties had previously agreed that the limitation defence was likely to be suitable to be tried as a preliminary issue, subject to the court's approval. If the application does not succeed, both parties seek directions for a trial of a preliminary issue as previously agreed.

**The Factual Background**

1. The following summary is based on the statements of case and the evidence filed. The Claimant and the Defendant entered into a joint venture (“the joint venture”) with a third party investor for the purchase and development of a piece of land adjoining the Widow’s Son public house in Devons Road, Bow, being an area of land used as a beer garden. A company was incorporated for that purpose, Bow Properties Developments Ltd. on 14 February 2012, with the Claimant, Defendant and a third investor (Mr Singh) being directors and shareholders in the following proportions: Claimant 35%, Defendant 40%, Mr Singh 25%. Contracts were exchanged on 23 February 2012 and the purchase was completed on 15 March 2012. The Claimant made a contribution to the deposit of £12,250 on 14 February 2012 prior to exchange, and paid the remaining balance of his share on 15 March 2012, a week before completion. On 28February 2012 Mr Singh pulled out of the venture and he was replaced as director and shareholder of Bow by the Defendant’s brother, Sarbjit, although the Claimant says that he was unaware of this until about March 2014 (Arif 1 para.16.2) [HB/30]. On 1 May 2012 the Defendant resigned as a director of Bow, but the Claimant says that he was also unaware of this. (Arif 1 para. 28) [HB/34].
2. On 25 September 2012 the Defendant had a pre-application meeting with the local authority, Tower Hamlets, of which the Claimant says he was unaware (RAPOC para.30) [HB/74]. On 8 October 2012 Tower Hamlets sent a letter to Bow (“the 08.10.12 letter”) [HB/242] addressed to a trading address used by the Defendant at 400 Roding Lane South Woodford Green, Essex IG8 8EY (“400 Roding Lane South”) rather than to the registered office of Bow (RAPOC para.31) [HB/74]. The letter summarised the planning proposal and identified key planning considerations, in particular raising a number of significant concerns about the proposed planning application. It is in dispute between the parties as to when the Claimant saw that letter. A planning application was made by Bow to Tower Hamlets on 20 March 2013, with the address of Bow being given as 400 Roding Lane South and not the registered office of Bow (RAPOC paras. 33-34) [HB/75-76]. On 15 May 2013 Tower Hamlets refused planning permission for development of the site by the building of residential properties (Arif 1 para.30) [HB/34] (RAPOC para. 360) [HB/76]. The Claimant says that he was informed of this in a telephone conversation with the Defendant in late July 2013 (RAPOC para. 39) [HB/78].
3. On 1 April 2014 the Claimant was removed as a director of Bow, he says without his knowledge, and did not discover this until September 2018 (Arif para.33) [HB/35-36].
4. Following further planning fees being incurred, conditional permission for development was granted by Tower Hamlets on 9 August 2018 (“the conditional planning permission”) (RAPOC para. 47) [HB/79]. Following discussions between the Claimant and the Defendant with regard to the building costs, a board meeting of Bow was held on 7 December 2018 at which the Claimant was not present and says he received no notice of the meeting. At that meeting the sole director, Sarbjit, passed a purported shareholder special resolution to appoint an agent and put the land up for auction.
5. The facts as to the Claimant’s knowledge are in dispute, but the Defendant’s position is that for the purposes of this application, made on grounds only relating to whether the claim is statute barred, that need not concern the court.

**Summary of the claim**

1. The claim was issued on 5 July 2019. The RAPOC pleads three causes of action:
   1. fraudulent misrepresentation/deceit;
   2. misrepresentation under the Misrepresentation Act 1967 (“the 1967 Act”);
   3. negligent misrepresentation.
2. The Claimant claims that he was induced to enter into the joint venture by a number of representations by the Defendant which the Claimant says were false. The Claimant seeks damages totalling £417,679, comprising sums spent for the purpose of development on the land, and consequential loss of net profit plus interest of between £77,653.11 and £103,635.45 up to the date of issue. The Re-Amended Defence denies the claim, and it is pleaded that the Claimant cannot claim the benefit of either section 14A or section 32 of the 1980 Act. The Amended Reply denies that the claim is statute barred or that the Claimant is unable to claim the benefit of sections 14A or 32 of the 1980 Act.
3. The alleged representations (“the Representations”) are set out at paragraphs 11 to 16B of the RAPOC [HB/68-71], and to put the application into context I summarise these as follows:
   1. It would be easily achievable to develop a block of 7- 8 flats on the Land;
   2. The members of the joint venture would easily make a profit with a significant enough return to make it worthwhile for the Claimant to invest;
   3. The purchase price of the Land was £350,000, and that the price had been quoted or otherwise set at arm’s length with a third party with whom the Defendant had no previous interest;
   4. The Claimant had to “*act fast”* so that the Defendant could negotiate the purchase of the land quickly with the selling agent or *“the deal would be off the table”* and that the Defendant was acting only on behalf of the joint venture company and the transaction was otherwise at arms length;
   5. The Claimant, the Defendant and Mr Singh or Billy would all be parties to joint venture for the purposes of developing on the land;
   6. The stakes in the joint venture would be divided as to 35% for the Claimant, 40% for the Defendant and 25% for Billy/Mr Singh;
   7. The owner of the Widow’s Son was not, nor would not be, the Defendant or any corporate entity in which he was an office holder;
   8. Sandhu & Shah would be acting only for the joint venture company in the purchase and would not also be the solicitors acting for the sellers;
   9. The joint venture arrangement was in relation to the purchase of the Land and was not linked to the other purchase of any other property including the Widow’s Son;
   10. The Defendant would act in accordance with his duties as a director of the joint venture company pursuant to the Companies Act 2006 and the Articles of Association of the company; with four separately pleaded particulars in relation to this alleged representation.
4. The allegations of falsity are set out at paragraph 55 of the RAPOC [HB/81-84] and I summarise these as follows, referring to the same numbered subparagraphs as in paragraph 10 above:
   1. The site was a difficult one and development of the type represented would be extremely difficult if not impossible, because:
      1. The Land abutted the Widow’s Son which is a Grade II\* listed building
      2. The Land was tied to the Widow’s Son by a restrictive covenant.
   2. For the same reasons, the overheads would be too costly for the joint venture partners to make a significant profit from the development.
   3. The purchase price was not set by a third party at arm’s length: the Land and the Widow’s Son were in fact being bought from Punch by Dalco (a company controlled by the Defendant) for £450,000 and the price of £350,000 for the sale of the Land to Bow was set by the Defendant personally or as director and shareholder of Dalco.
   4. There was no need to negotiate the sale quickly as the only urgency came about as a result of the Defendant acting on behalf of Dalco seeking to buy the whole site, both the Land and the Widow’s Son from Punch which required exchange by 19 February 2012.
   5. It was never intended that Mr Singh would be part of the joint venture.
   6. The Defendant never intended the parties to share the stakes in the joint venture, and accordingly the Land; this is clear from the sudden changes in the corporate structure of Bow and the discrepancies over the price of the Widow’s Son and the Land.
   7. The Defendant was negotiating with Punch for the purchase of the Widow’s Son on behalf of Dalco.
   8. Sandhu & Shah, solicitors, were also acting for Dalco/the Defendant personally in the purchase of the Land and the Widow’s Son from Punch as well as for Bow in the purchase of the Land.
   9. The joint-venture acquisition of the Land was inextricably linked to the purchase of the Widow’s Son by Dalco.
   10. The Defendant’s interest in Dalco created an undisclosed conflict of interest between him and Bow, contrary to the Defendant’s duties under sections 172 and 177 of the Companies Act 2006 and under article 14 of the articles of association of Bow.
5. Particulars of the Defendant’s knowledge are set out at paragraph 56, 56A and 56B of the RAPOC [HB/84-87], and the reasons why it is said that the Defendant ought to have known of the facts pleaded in such paragraphs, at paragraph 57 [HB/87-88]. Further or in the alternative it is pleaded that the Defendant was reckless as to the truth or falsity of the representations was particulars at paragraph 58 [HB/88-89]. Further in the alternative, at paragraph 64 the Claimant sets out particulars of why it is alleged that the Defendant is liable to the Claimant in negligent misrepresentation under section 2 (1) of the 1967 Act [HB/89-90].

**Issues in the application**

1. Under s. 2 of the 1980 Act actions based on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued. However, the limitation period is postponed under s. 32(1)(a) and/or s.32(1)(b) of the 1980 Act in cases of fraud or deliberate concealment in which case the period of limitation shall not run until a claimant has discovered the fraud or concealment, or could with reasonable diligence have discovered it. Alternatively, in so far as the claim is pleaded in negligent representation, the s.2 limitation period does not apply to cases which fall within s.14A of the 1980 Act, where facts relevant to the cause of action were not known at the date on which the cause of action accrued.
2. Although the Amended Reply at paragraph 4C [HB/196] denies that the claim is statute barred under s. 2 of the 1980 Act, it is also pleaded that the Claimant would be able to claim the benefit of ss. 14A or 32 of the 1980 Act. In a letter before action dated 16 April 2019 the Claimant’s solicitors acknowledged that time would start to run for the purposes of s.2 of the 1980 Act on 14 March 2012 [HB/438-445]. I accept submissions on behalf of the Defendant that either the date of incorporation of Bow, on 14 February 2012 or the date of completion of the purchase of the Land, 22 March 2012, is the latest possible date for the causes of action to be complete, which is more than six years before the claim was issued on 5 July 2019, so that the Claimant has no real prospect of success in relying on s. 2 of the 1980 Act. Thus the issues in the application are confined to whether the Claimant has a real prospect of success in being able to rely on one or other of sections 14A or 32 of the 1980 Act.
3. I accept the Claimant’s submissions that I cannot determine on a summary basis the disputed factual issues as to when the Claimant had the requisite knowledge required to bring his claims. Accordingly, the issues for determination in the application are whether the Claimant has any real success in being able to establish that:
   1. the Claimant could not have discovered with reasonable diligence the facts necessary for his claim in fraudulent misrepresentation until on or after 5 July 2013, for the purposes of s.32(1)(a) of the 1980 Act; or
   2. the Claimant could not have discovered with reasonable diligence the facts necessary for his claim in negligent misrepresentation and under the section 2(1) of the 1967 until on or after 5 July 2013, for the purposes of s.32(1)(b) of the 1980 Act; or
   3. Alternatively, the Claimant did not have both the knowledge required for bringing an action in negligent misrepresentation for damages in respect of the relevant damage and a right to bring such an action until on or after 5 July 2016, for the purposes of section 14A of the 1980 Act.

**Summary of the Defendant’s submissions on section 32 (1) (a) and (b) of the 1980 Act**

1. The Claimant’s fellow joint venturers were relative strangers, not people with whom he had any established business relationship. As a substantial investor and shareholder his own self-interest meant that he could reasonably have asked questions and made sure he got answers from another sources if he did not get information from the Defendant.
2. The Claimant’s position as a director of Bow is relevant. He was not just a sleeping investor as the corporate arrangement, whereby he became not just a shareholder but a director, provided the means for him to manage his investment. Bow was a special purpose company with only one project. As a director it was his duty to know what was going on in the company. The Companies Act 2006 (“the 2006 Act”) sets out a number of general duties in sections 171-177, including a statutory duty to exercise reasonable care skill and diligence (s.174).
3. The Defendant relies on a number of authorities in this regard.
   1. In *Re Westmid Packing Services Ltd (No 3)* the Court of Appeal held that the collegiate or collective responsibility of the board of directors of a company had to be based on individual responsibility. Lord Woolf MR stated at 130A [AB/261]:

“Each individual director owes duties to the company to inform himself about its affairs and to join with his co-directors in supervising and controlling them. ”

A proper degree of delegation and division of responsibility is of course permissible, and often necessary, but total abrogation of responsibility is not. A board of directors must not permit one individual to dominate them and use them, as Mr Griffiths plainly did in this case. [Counsel for the claimant] commented that the appellants' contention (in their affidavits) that Mr Griffiths was the person who must carry the whole blame was itself a depressing failure, even then, to acknowledge the nature of a director's responsibility. There is a good deal of force in that point.”

And at 131E [AB/263]:

“It is of the greatest importance that any individual who undertakes the statutory and fiduciary obligations of being a company director should realise that these are inescapable personal responsibilities.”

* 1. This reflected the position before the 2006 Act: see *Drincqbier v Wood* at 406, [AB/27] cited with approval in *Re Majestic Recording Studios Ltd* at 522 [AB/61], where it was held that a director, in consenting to be a director, has assumed a position involving duties which cannot be shirked by leaving everything to others.
  2. In *Re Barings plc (No 5*) at p.489 [AB/366] Jonathan Parker J.(as he then was) set out general propositions derived from English and overseas authorities:

“ (i) Directors have, both collectively and individually, a continuing duty to acquire and maintain a sufficient knowledge and understanding of the company's business to enable them properly to discharge their duties as directors.”

(ii) Whilst directors are entitled (subject to the articles of association of the company) to delegate particular functions … the exercise of the power of delegation does not absolve a director from the duty to supervise the discharge of the delegated functions.

(iii) No rule of universal application can be formulated as to the duty referred to in (ii) above. The extent of the duty, and the question whether it has been discharged, must depend on the facts of each particular case, including the director's role in the management of the company.”

* 1. In Re Brampton Manor (Leisure) Ltd at [58.2] [AB/102], HHJ Behrens, sitting as a judge of the High Court, cited with approval the following extract from the judgment of Judge Cooke in Secretary of State for Trade and Industry v Earley (unrep) at p. 18:

“Where a director simply fails to undertake, whether through lack of knowledge, incompetence or whatever, those duties which he ought to undertake, he is as guilty as those who do positive wrong, and, if anything, probably even more dangerous.”

1. It is submitted that it is no answer to say that the Defendant had agreed to undertake the tasks of dealing with solicitors on the acquisition, or of making the planning applications and dealing with planning matters. Directors have an unavoidable duty to supervise each other, which involves making sure that others were carrying out their functions and knowing what steps they were or had taken in performing the functions that had been delegated to them. The Claimant did not take any steps to monitor the progress of the transaction. He did not ask to see any report on title, the draft contract or the transfer documents. If he had done so a refusal to provide information would have rung alarm bells and led to further enquiry. He did not check whether contracts were exchanged or that the purchase had been completed.
2. By 17 September 2012, some six months after the purchase had been completed, the Claimant had received no information on the progress and he asked whether there were any developments on the planning permission. He was told on the same day that the plans had been submitted and that the Defendant was waiting for a date for a meeting with the planning authorities. The Claimant does not appear at any time after he made his investment to have asked for a copy of the plans or to have asked for a meeting to discuss what planning proposals were going to be put forward.
3. The pre-application meeting had taken place on 25 September 2012 and the Defendant then received the 08.10.12 letter [HB 242]. The Defendant’s position is that this letter had been made available to the Claimant when it was received (Re-Amended Defence para. 21.1.2) [HB/139] but this is denied by the Claimant (Amended Reply para 24(iv)) [HB/209]. The Claimant does not provide any evidence as to where he got a copy of that letter and why it could not have been obtained in late 2012/early 2013. The Claimant says that he “reached out” to Tower Hamlets in July 2013, when he says that he was first told the planning application had been refused (Arif 1 para. 30) [HB/34], but it is noteworthy that the evidence shows that when the Claimant eventually contacted Tower Hamlets on 31 July 2013, he sent an email to Alison Hoskin, the author of the 08.10.12 letter [HB/263].
4. It is submitted that the Claimant could have made the following enquiries:
   1. asking for a copy of the report on title which would have revealed the existence of the covenant tying the use of the Land to the Widow’s Son;
   2. contacting Sandhu & Shah would have revealed that they were also acting for Dalco;
   3. insisting on site plans for the proposed development would by the end of September 2012 have revealed that the proposal involved the building of only five flats on the land, at least two fewer than had been represented;
   4. following up on the pre-application meeting would have revealed the letter of 08.10.12, which made plain that:
      1. the Land was not a site on which a block of 7-8 flats would be easily achievable;
      2. the proposals was for five flats on the Land;
      3. the development site included the Widow’s Son which should have led to enquiries about the involvement of the owner of the pub in the proposals;
      4. the Widow’s Son was a Grade II\* listed building and the planning policies required the protection of heritage assets; was a director of a neighbouring only would have been concerned to ensure that any development of the pub would not adversely affect any plans or proposals from the Land;
      5. development of more than a two-storey building would not be acceptable;
      6. the proposal presented difficulties for the amenity of neighbouring properties to the future residents of the flats.
   5. Insisting on sight of the planning application or periodically checking the planning portal to check progress; he could and would have then seen from 13 March 2013 (if provided with the planning application) or from 26 March 2013 onwards (if he was dependent on the portal) that an application had been made for a new flat above the existing public house and two four bedroom houses on the adjacent land; this indicated that the application had been made in conjunction with the owner of the pub, which raised issues as to ownership which should have been followed up (see Mr Freegard’s advice on 6 August 2013 after the application being refused [HB/266]);
   6. By making enquiries of the planning authority between 15 May 2013 and 5 July 2013 when he would have learnt that the planning application had been refused;
   7. investigating ownership of the site at the Land Registry would have shown that:
      1. both sites were registered in the names of new owners on the same date, 16 April 2012;
      2. on that date the Widow’s Son had been registered in the name of Dalco, and the Land in the name of Bow;
      3. the purchase of both properties had been completed on the same day, 22 March 2012;
      4. the Land was subject to the covenant tying its use to the pub;
      5. the transfer document for title number EGL421011, encompassing both the Land and the Widow’s Son, (Bundle of Documents referred to in RAPOC) [HB 238] would have shown that both sites had been bought by Dalco from Punch for £450,000;
      6. the price paid by Dalco for both the Widow’s Son and the Land was £450,000, and the price paid by Bow for the Land was £350,000, valuing the Widow’s Son at just £100,000;
   8. An online search of Dalco at Companies House website would have revealed the Defendant’s involvement in Dalco;
   9. if the Claimant had spoken to Mr Singh about the joint venture project, which would not have been unreasonable, given the delays and lack of information from the Defendant, or to call for a board meeting to discuss progress, he would have discovered that Mr Singh had withdrawn from the joint venture project and been replaced by the Defendant’s brother Sarbjit, and that all this had happened before the completion of the purchase.
5. It is submitted that as a director of a property development company the Claimant cannot reasonably claim ignorance of the planning portal, but in any event if he had made any enquiries of the planning authority they would have been likely to advise him of the existence of the portal.
6. It is clear from the evidence that this was the train of enquiry eventually followed by the Claimant, but he could reasonably have taken all those steps before 6 July 2013. Thus the Claimant could reasonably have discovered that he had invested in a property that did not have the planning potential that he had been led to believe, and that the Land had in fact been sub sold by the Defendant, or a company in which he was interested, and that the Defendant had effectively managed to purchase the Widow’s Son with its valuable income stream for just £100,000, and that the Defendant had not disclosed that conflict of interest.
7. It is submitted that a reasonable man of moderate intelligence, involved as a director in property development business, who would have wanted to discover that there had been a fraud or concealment, who had adequate resources and was motivated by a reasonable excessive want of urgency, could reasonably have discovered all the essential elements of the alleged fraud or concealment more than six years before the claim was issued. The Defendant relies on the judgment of Stuart Smith J. in *Forbes v Wandsworth Health Authority* at 412, also applied by HHJ Bowsher QC in *Birmingham Midshires*.

**Summary of the Claimant’s submissions on section 32 (1) (a) and (b) of the 1980 Act**

1. In order for the Claimant to have knowledge of the fraud or deliberate concealment such that time starts to run, he would need to know all the facts that establish the constituent elements of his cause of action. His unchallenged evidence (Arif 1 paras 16.1, 29 to 30 and 38 – 46) [ HB/30, 34, 38-39] is that he had not known until 19 February 2019:
   1. the nature of the sale between Punch and Dalco;
   2. the setting of the purchase price between Punch and Dalco and the inflation of the sale price of the Land to Bow;
   3. the fact that the Defendant, Sandhu & Shah and Dalco had been dealing with the sale on the basis of a conflict of interest between the seller, Dalco and the purchaser, Bow.
2. Until the Claimant knew these facts he would not have known that the representations were false, that the Defendant knew they were false or otherwise reckless as to their truth or falsity, and that he had been caused loss by reason of these falsehoods. Accordingly it is submitted that the only proper form to challenge this evidence is at trial under cross examination, and that it is inappropriate to attempt to obtain summary judgement on the basis that the Claimant had as a matter of fact discovered the Defendant’s fraud before 5 July 2013.
3. Thus the focus must be on whether the Claimant has no real prospect of success in establishing that he could not with reasonable diligence have discovered the Defendant’s fraud before 5 July 2013 in order to rely upon s.32(1)(a). Accordingly the court must determine whether the available evidence shows that in the period from 8 February 2012 (when the Claimant says that the first representation was made) to 5 July 2013, the Claimant has no real prospect of being able to show that there was no trigger for an investigation which with reasonable diligence would have led to the Claimant discovering the Defendant’s alleged fraud. It is noteworthy that the Defendant has not produced any email or other documentary evidence which suggests that the Claimant should have been alerted to the Defendant’s alleged fraud.
4. The Claimant’s evidence is that he did not receive the 08.10.12 letter or the pre-application report and plans until after 5 July 2013 so there was no trigger for an investigation. His evidence is that he had no reason to make enquiries of Tower Hamlets planning department because he believed that his money had been applied to a legitimate business investment. The Defendant had told him on 17 September 2012 that he had submitted the plans and was waiting for the meeting with Tower Hamlets, and the Claimant believed that the Defendant would be true to what he had represented. As soon as the Claimant did not get the information that he had requested from the Defendant in July 2013 he sought planning information directly from Tower Hamlets, albeit the information obtained was insufficient for him to discover the full extent of the Defendant’s alleged fraud.
5. The Claimant’s evidence is that at the time he was unfamiliar with the Tower Hamlets planning portal service because he had no experience in property development (Arif 1 paras 56-57) [HB/42-43]. The Defendant, who knew of the Claimant’s lack of experience, never notified him of the existence of the portal, or provided him with the planning application reference. In addition the Claimant believed that the Defendant was progressing the application in accordance with what had been represented to him and that he would provide him with any relevant documentation in due course, so there was no need for the Claimant to access the planning portal.
6. It is submitted that consideration should be given to the fact that the Claimant was not an experienced company director or property developer and he had gone into the joint venture as a simple investor. The only reason he was a director of Bow was because he relied on the manner in which the Defendant had arranged the joint venture project. The Claimant had placed reliance on the Defendant and the parties had agreed that the Defendant would take total control of the project due to his particular expertise. It is submitted that if the court failed to take account of these factors, it would mean that anyone investing in a building project should automatically be put on enquiry and to suspect that everything their co-investor is telling them may be untrue. This would negate any responsibility that someone in the position of the Defendant would have, to ensure that the representations they make to fellow investors are true, because the co-investor should automatically suspect that what they are being told what is being done is not as being represented to them.
7. It is submitted that simply by virtue of his position as a director it cannot be that the Claimant was required to continually check Bow’s company records to ensure that the directors had not changed. There is no general duty to “understand what was going on”. The Defendant’s submissions ignore his own duties not to mislead his fellow directors, not to act in conflict of interest and to declare any such conflict to his fellow directors. It is submitted that this is distinguishable from the position in *Hussain* [AB/1267] because in this case the Claimant has been preyed upon by an individual who has expert knowledge to his advantage. In other words there is such an inequality of arms that the Claimant’s inexperience is key to understanding the necessary context in which a reasonable person in the very same scenario could have with reasonable diligence discovered the relevant facts to plead their case.
8. It is submitted that there was nothing to alert the Claimant to make the further investigations identified by the Defendant for the following reasons:
   1. The Claimant was a hands off investor and had no reason to believe he was being misled by the Defendant or that he needed to undertake further investigations (Arif 1 para. 52.1 [HB/41]. There was nothing to put him on enquiry to ask questions of Sandhu & Shah. When he did eventually make enquiry they responded by letter dated 25 March 2019 providing no further information, stating that they did not even consider the Claimant to be a director of Bow, but merely a shareholder (Documents annexed to RAPOC) [HB/432- 433].
   2. Even if the Claimant had attempted to find out more information from Sandhu & Shah thereafter, Sandhu & Shah would have been unlikely to provide the Claimant with any information about the sale between Punch and Dalco because their client in that transaction was Dalco. Even if it had become apparent that there was a sale to Dalco, the Claimant would still have to had to work out that the Defendant was involved in Dalco. He would also have had to make further investigations to find out how the price had been apportioned between the Land and the Widow’s Son. Even if the Claimant was able to get Sandhu & Shah to provide him with documentation from the conveyancing file as a director of Bow, it was unlikely that the Claimant would immediately have been able to work out what the Defendant had done. Even if the information provided had been sufficient to put the Claimant on enquiry, there would still need to be a reasonable time for the Claimant to uncover the necessary elements of the Defendant’s fraud so that the cause of action accrued.
   3. The Claimant did not know of Mr Singh’s resignation until about March 2014 when Sarbjit raised the point at meetings between David Kemp and the Claimant (Arif para. 16.2) [HB/30]. Before then there was no reason for him to convene a meeting with, or contact Mr Singh (Arif para. 59) [HB 44]. An investor does not have any duty to contact their co-investors to ensure that what they are being told by another co-investor is true.
   4. The Claimant’s evidence is that as he had no experience in property development and he knew nothing about the listed status of buildings and how that might affect the obtaining of planning permission (Arif para. 58.3) [HB/44]. Even if he had been able to find out that it was listed, he had no knowledge of how much effect that would be likely to have on the joint venture or that Tower Hamlets would be likely to reject any planning application in a large part because of this, as they did on 15 May 2013.
9. It is submitted that the alternative, if the court does not find in favour of the Claimant’s primary position, is that the cause of action did not accrue until 19 February 2019, as the only alternative possible earlier trigger points are:
   1. when the Defendant threatened to auction the Land leading to the Claimant’s email to Hanspal on 25 October 2018 (Arif para.16.3) [HB 30];
   2. when Mr Patel asked the Claimant to draft various letters in the statement on his behalf between April 2015 to April 2016 (Arif para. 43) [HB/38];
   3. a period of time following Mr Freegard’s email of 6 August 2013 raising a point about the ownership of the land (Arif para. 16.4) [HB/30];

if any of those were to apply than the Claimant is still in time.

1. Knowledge of an agent of the Claimant, such as Mr Freegard, does not count as the knowledge of the Claimant, nor does it count as a trigger for reasonable diligence (*Allison v Horner* [AB/1232]). In terms of the Claimant’s communications with Mr Freegard the trigger would be what knowledge the Claimant obtained from his own reading and understanding of Mr Freegard’s emails.
2. For claims in negligent misrepresentation and under s.2(1) of the 1967 Act, it is submitted that s.32(1)(b) applies, as the Defendant deliberately concealed the relevant facts without which the Claimant’s causes of action would be incomplete: see *The Kriti Palm* [AB/756]. The Claimant’s submissions on requisite knowledge and reasonable diligence apply equally in respect of his claims in negligent misrepresentation and under s.2(1) of the 1967 Act.
3. The Defendant’s concealment comes from the active decision not to inform the Claimant of the true position but instead make the allegedly false representations. Further, or in the alternative, the Defendant’s concealment comes about from a series of omissions which he knew he should have corrected including, but not limited to:
   1. The Claimant’s question as to whether the landlord of the Widow’s Son could object to the planning application (Documents annexed to RAPOC) [HB 235];
   2. Mr Singh’s leaving of Bow (Arif para. 27) [HB 34];
   3. The fact that the Defendant through Dalco was setting the purchase price for the Land in terms of the sale to Bow (Exhibit) [HB 228-229, 234-235, 238-240].
4. The Defendant’s failure to inform the Claimant of these material facts was caused by his intention of concealing them. The reason for this was to keep the Claimant in the dark as to the actions of the joint venture. It is submitted that this is clearly an issue for trial which would require cross-examination of the Defendant on the question of his intention, and that to adjudge this matter without the Claimant having an opportunity to shine a light on the Defendant’s mind in the witness box would lead to an unjust result. This is a therefore a matter which is plainly unsuitable for summary judgment.
5. The Claimant throughout the material time acted as a reasonable investor in the context of this venture. He placed his reliance in the Defendant who held himself out as an expert in property development and the obtaining of planning permission. Those reasons the Claimant has real prospect of successfully establishing that his claims in fraudulent misrepresentation, negligent misrepresentation and under s. 2 (1) of the 1967 Act are not time-barred.

**Other grounds for summary judgment**

1. The Defendant also relies on additional grounds in respect of certain of the alleged representations namely:
   1. The First, Second, Fifth, Sixth, Eighth and Tenth Representations are all representations about the future. A statement about the future cannot found a claim in deceit or misrepresentation.
   2. The Fourth Representation was true, or at least the Defendant had reasonable grounds for believing it was true. The property was being offered on the basis that Punch required exchange of contracts by February 2012 (Exhibit IA 1) [HB/534].The representation cannot be said to have been made dishonestly or negligentlyas **t**he Defendant also says he had another investor who would have invested if the Claimant did not (Re-Amended Defence para. 10A.9) [HB/134].

**Discussion**

**The Relevant Law**

**Summary Judgment**

1. There was no dispute between the parties on the principles applicable to summary judgment applications, helpfully set out in the decision in *Easy Air* [AB/998]*.* I summarise these as follows:
   1. The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success;
   2. A "realistic" claim is one that carries some degree of conviction. i.e. it is more than merely arguable;
   3. In reaching its conclusion the court must not conduct a "mini-trial”;
   4. This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made;
   5. However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;
   6. Although a case may turn out at trial not to be really 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; and
   7. On the other hand, it is not uncommon for an application under 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.

**Sections 32 (1) (a) and (b) action based upon fraud or deliberate concealment**

1. The relevant parts of sections 32(1) and (2) of the 1980 Act provide:

“(1)…, where in the case of any action for which a period of limitation is prescribed by this Act, either—

(a) the action is based upon the fraud of the defendant; or

(b) any fact relevant to the plaintiff’s right of action has been deliberately concealed from him by the defendant; or

(c) the action is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

References in this subsection to the defendant include references to the defendant’s agent and to any person through whom the defendant claims and his agent.

(2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in the breach of duty.” [AB/11]

1. Both parties relied on a number of authorities in their submissions (see Annex 2). I summarise the relevant principles as follows.

Section 32 (1) (a) – action based upon fraud

1. In order to rely on s. 32 (1) (a) a claimant must show that his action is “based upon the fraud of the defendant”. In other words, fraud must be an essential element of the claimant’s claim: *Civil Fraud, Law Practice and Procedure*, 1st Ed. 25-039 [AB/1456].
2. The question is not whether a claimant shouldhave discovered the fraud sooner but whether they could with reasonable diligence have done so. The burden of proof is on a claimant to establish that they could not have discovered the fraud without exceptional measures which they could not reasonably have been expected to take. The test was how a person carrying on a business of the relevant kind would act if they had adequate but not unlimited staff and resources and were motivated by a reasonable but not excessive sense of urgency: *Paragon Finance* at pp. 412, 418 per Millett LJ [AB/285] cited in *Birmingham Midshires* at [47] [AB 301].
3. The correct date when a claimant has sufficient information for this purpose is when they know their “*essential case*”, and for the purposes of the question whether reasonable diligence was exercised in bringing the claim, the court should look at the pleaded case: *Biggs* at [62] to [63] per Arden LJ, Aldous and Robert Walker LJJ agreeing [AB/590].
4. The tort of fraudulent misrepresentation is capable of triggering s.32(1)(a) and the fact that a claim has been pleaded in the alternative is immaterial: *Regent Leisuretime* at [100]) [AB/626].

Section 32 (1) (b) – deliberate concealment

1. A fact is “relevant to the claimant’s right of action” if it is a fact without which the cause of action would be incomplete and means any fact which a party has to prove to establish a prima facie case. A fact which, if known, would merely improve prospects of success are not facts relevant to the claimant’s right of action. The interpretation is a narrow one: *Johnson v Chief Constable of Surrey* CA (unrep) at pp.2-4, [AB/86-87]; *The Kriti Palm*at [323] per Rix LJ [AB/ 849]; *Arcadia Group* at [49] per Sir Terence Etherton C (as he then was) [AB/ 1257].
2. The expression “concealed”, must bear in its normal meaning, which is that something was actually hidden from view: *Giles v Rhind* at [36] per Arden LJ [AB/990].
3. Section 32(1)(b) applies where the defendant (i) “*takes active steps to conceal his own breach of duty after he has become aware of it; and (ii) where he is guilty of deliberate wrongdoing and conceals or fails to disclose it in circumstances where it is unlikely to be discovered for some time*”: *Cave v Robinson Jarvis and Rolf* at [25] per Lord Millett, with whom Lords Mackay and Hobhouse agreed [AB/565]; *Civil Fraud*, 25-041 [AB/1456]
4. The fact which the defendant decides not to disclose either must be one which it was their duty to disclose, or must at least be one which they would ordinarily have disclosed in the normal course of their relationship with the claimant, but in the case of which they consciously decided to depart from what they would normally have done and to keep quiet about it: *Williams v Fanshaw Porter & Hazelhurst* at [14] per Park J. [AB/702].
5. The terms of this subsection are wide enough to cover both the case where the concealment is contemporaneous with the accrual of the cause of action in the case or where it occurs at some later time: *Sheldon v RHM Outhwaite* at 140G per Lord Keith of Kinkel [AB/174].

Sections 32 (1) (a) and (b) – discovery of the fraud or concealment

1. Mere suspicion that a defendant has behaved dishonestly does not trigger the commencement of the limitation period because “*the subsection contemplates limitation period running when the claimant obtains knowledge of the fraud*”: *Barnstaple Boat Co Ltd* per Waller LJ at [34] [AB/945].
2. Knowledge on the part of the claimant’s agent will not be ascribed to the claimant for the purposes of determining the date of discovery: *Peco Arts* per Webster J at 1325 [A B 39]; *Allison v Horner* at [15] per Aikens LJ [AB/1230]

Sections 32 (1) (a) and (b) – reasonable diligence

1. The burden of proof is on the claimant to satisfy the test of reasonable diligence: *Paragon* at 418B to D [AB/285] (and see paragraph 59 above); *Allison v Horner* at [16] per Aikens LJ [AB/1230].
2. Itis inherent in s. 32 (1) of the 1980 Act that there must be an assumption that the claimant desires to discover whether or not there has been a fraud, and the concept of “reasonable diligence” carries with it the notion of a desire to know, and to investigate: *Law Society v Sephton* at [116] per Neuberger LJ (as he then was) [AB/745]. In *Gresport Finance* Henderson LJ commented at [49] [AB/1301]:

“Another way to make the same point […] might be that the 'assumption' referred to by Neuberger LJ is an assumption on the part of the draftsman of section 32(1), because the concept of reasonable diligence only makes sense if there has been something to put the claimant on notice of the need to investigate whether there has been a fraud, concealment or mistake (as the case may be).”

1. The issue of whether there must be something to put the claimant on notice was also considered in *Granville Technology Group* where Foxton J. considered *Gresport Finance* and made a number of observations at [45] – [48] [AB/1318], including that it was consistent with the authorities that there must be a “*relevant trigger for investigation*” but that the issue of whether there was something to put the claimant on notice must be determined on an objective basis. The observations of Foxton J in those paragraphs were expressly accepted by Sir Geoffrey Vos C. in *DSG Retail Ltd* at [65] – [66] [AB/1371-1372].
2. The context and the circumstances of the fraud/concealment are relevant: see *Peco Arts Inc* at 1323 per Webster J. [AB/39] (“…*the claimant is not required to do everything possible but only to do what an ordinary prudent person would do having regard to all the circumstances*.)” *UCB Home Loans* at[20] – [21], [AB/541]and *JD Wetherspoon* at [42], where Lewison J. noted that in *Paragon Finance* the claim arose out of mortgage fraud, and that the statement in the judgment of Millett LJ in *Paragon Finance* at p.418B-D should be read in context [AB/960]. The editors of *Civil Fraud* at 25-053 [AB/1451] suggest that in a later decision, *Barnstaple Boat Co. Ltd*, a more lenient approach to the question of reasonable diligence can be detected, and that “*In reality the concept of reasonable diligence is vitally dependent on the context*.” relying on decisions in *Peco Arts* and *Collins v Brebner* per Tuckey LJat [40] –[46] [AB/531-532]*.* an observation referred to by Arden LJ in *Biggs v Sotniks* at [52].
3. Once a claimant knows a fact they cannot rely on any subsequent attempt at concealment: *Sheldon v RHM Outhwaite* at 144; *Ezekiel v Lehrer* at [32] [AB/ 603].
4. As the test is an objective one, characteristics such as naiveté and inexperience in financial matters are not factors which can properly be relevant to whether a claimant could with reasonable diligence have discovered the relevant facts: *Hussain v Mukhtar* at [43] per Martin Chamberlain QC sitting as a Deputy High Court Judge [AB/1277]. Nevertheless, a lack of specialist knowledge may be a relevant consideration in particular circumstances: *D.W. Moore & Co. Ltd v Ferrier* [AB/43]; *McGee* at 20.006 [AB/1472].

**Section 32(1) (a) of the 1980 Act – Reasonable Diligence**

1. I accept submissions on behalf of the Claimant that in a summary judgment application it is not appropriate to test the Claimant’s evidence that he did not discover the relevant facts to formulate his claim until 19 February 2019 (Arif 1 Paras. 16.1, 16.4, 16.5) [HB/30-31]. Accordingly this judgment will deal only with whether the Claimant could have discovered with reasonable diligence the facts necessary for his claim.
2. I accept for the most part the Defendant’s submissions on the standard to which the Claimant is to be judged, and consider this to be by the standard of a reasonable man of moderate intelligence who would want to discover that there had been a fraud, who has adequate resources and was motivated by a reasonable but not excessive sense of urgency. The test is an objective one (*Paragon Finance* at 418 [AB/285]) and Webster J. in *Peco Arts* at 1323 [AB/39]; (see Paragraph 58 above). Consideration of all the circumstances includes that the Claimant had worked in business for 14 years prior to the joint venture agreement, had been involved at the same time in a buy-to-let business, and was involved for the first time in a property development business (Arif 1 paras. 19-21) [EB/32]. But naïveté and experience in financial matters are not factors that can be properly relevant: *Hussain* at [43] [AB/1277]
3. I accept the Defendant’s submissions that the Claimant’s position as a director is relevant. This provided a means for him to manage his investment in a company which was a special purpose vehicle with one project. As a director he had general duties under ss. 171 to 177 of the Companies Act 2006, including:
   1. to promote the success of the company (s. 172);
   2. to exercise independent judgment (s. 173);
   3. to exercise reasonable care skill and diligence (s.174).

S.170(4) provides that those statutory duties are to be interpreted and applied in the same way as common law rules or equitable principles and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties.

1. The authorities relied upon by the Defendant in this regard (see paragraph 18 above) make it clear that a director’s duties cannot be satisfied by simply leaving things to others. If the Claimant was unfamiliar with the duties of a director it would have been reasonable for him to enquire of the Defendant and/or obtain information before agreeing to the role. The Claimant would have been able to find information online, as someone in with a background in IT. (When I entered the question: “What are a director’s duties under UK law?” into a search engine one of the first links produced was to ss. 170-177 of the 2006 Act).
2. The Claimant’s evidence is sketchy as to what investigations or enquiries he undertook following the initial contact from the Defendant. He does not say whether he visited the site. Although the Re-Amended Defence at para 10 says that there was a visit in February 2012 by the Claimant, the Defendant, Mr Singh and Billy [HB/132] this is denied in the Amended Reply para. 12 and it is denied that he ever visited the site [HB/2014]. He does not say whether he asked to see the Land Registry title documents relating to the site or asked for any written business plan or profit projections. He says that he did some “*crude calculations following the assurances given …by the Defendant*” which suggest that the information given was oral in the telephone conversation on or about 9 February 2012 (Arif 1 para. 25) [HB/33]. On 14 February 2012 he sent an email to the Defendant asking, “*If the landlord of the pub objects to the build can that damage the planning permission for the development*?” (RJ3) [HB/450] but says that this was not answered (Arif 1 para 26) [HB/34]. It does not appear from his evidence that he followed this up. Within about a month from the Defendant first contacting him, the Claimant had paid over the deposit to Sandhu & Shah (RAPOC para 9) [HB/67]; (Arif 1 para 22) [HB/32]. There is a conflict of evidence with regard to how well he knew his joint venture partners which I cannot resolve. It appears that the Claimant did not take any steps to monitor the progress of the transaction, or ask for copy documents, such as the report on title, the contract or transfer form. He therefore had no independent verification that contracts had been exchanged or that the purchase had completed
3. The Claimant does not say what documents he received, if any, following the incorporation of Bow on 14 February 2012, in particular showing that he was a director and shareholder. There is no evidence as to whether he asked for or received documents relating to the incorporation of Bow, his appointment as a director or his share certificate (although these documents are in a bundle attached to the RAPOC it is not said whether they were obtained at the time they were created or by his solicitors at a later date).
4. It seems apparent that from the commencement of the joint venture the Claimant took an unusually “hands off” approach to an investment of substantial funds. From the evidence it is apparent that this approach continued throughout the progress of the property transaction. It appears that he made no enquiries nor asked for any documents until 17 September 2012 (Arif 1 para. 29) [HB/34]. .
5. Following the conversation with the Defendant on 17 September 2012, and an email of the same date (RJ3) [HB/451], when the Claimant asked if there had been any developments in the obtaining of planning permission, he was told that a date was awaited for a planning meeting with Tower Hamlets. The Claimant’s evidence is that, despite his request “*the Defendant failed to keep me in the loop, receiving (unbeknownst to me at the time) the correspondence with Tower Hamlets directly at his 400 Roding Lane South address (which was not the registered office of Bow)*” In the Defendant’s email to the Claimant of 17 September 2012 he states “*Waiting for a date for the meeting plans already in*.”(RJ3) [HB 451]. Despite that, the Claimant did not ask for a copy of the plans submitted, had no further conversations with the Defendant, made no further enquiries, did not ask for the date of the planning meeting or ask to attend, ask for a report of the planning meeting, until in or around early 2013, when he was told that Tower Hamlets was dealing with the planning application. Again, he did not ask to see the planning application. It was not until 26 July 2013, when the Defendant told him in a telephone conversation that the planning application had been rejected, that he started to become concerned, and for the first time asked for copies of the relevant documentation. (Arif 1 paras. 29-30) [HB/34]. It appears that he had received no documents, nor had asked for any, until then.
6. This seems, in my view, an extraordinarily lax approach to both a substantial personal investment and duties as a director, and I conclude that the Claimant did not act with reasonable diligence to the appropriate standard up to this date. However, it may not necessarily follow that had the Claimant made the enquiries that someone in his circumstances would undertake, if exercising reasonable diligence, he would have discovered something to put him on notice of the need to investigate that would have led him to discover facts of his “*essential case*” in respect of the alleged fraud or concealment: see *Biggs* [62]-[63] [AB/590].
7. The steps that could have been taken and which in my view would have been taken by someone exercising reasonable diligence, and which would be expected to reveal relevant information, would have been:
   1. To have asked Sandhu & Shah:
      1. what was the pressure to exchange contracts quickly;
      2. to copy him in to all correspondence with Bow;
      3. to send him copies of documents relating to the property purchase, in particular the report on title, the draft contract, the final contract, the transfer form TR1 and the completion statement;

The Claimant would have known that these documents were required in every conveyancing transaction from his experience as a buy to let landlord. The report on title would have revealed the existence of the restrictive covenant and the correspondence would have been likely to reveal that Sandhu & Shah were also acting for Dalco. Sandhu & Shah would have been obliged to provide copies of all of these documents to a director of the purchasing company, and refusal to do so would have raised concerns; the Claimant’s reliance on Sandhu & Shah’s refusal to provide information in March 2019 when he was no longer a director is not to the point (Arif 1 para. 52.2) [HB/41]. I consider that the answer to the question about the pressure to exchange quickly would not necessarily have assisted him, as the answer would have been that there were other potential purchasers, one of whose offer might be accepted and the joint venture would then lose out.

* 1. To ask the Defendant or Sandhu & Shah, for contact details for Mr Singh, who was to be his fellow director; he would either have found out that Sarbjit was to be a director and not Mr Singh, or a refusal would have prompted enquiries. However, this would not necessarily have raised concerns. It is unclear from the statements of case and the evidence how well the Claimant knew Mr Singh. If he did know Mr Singh before entering into the joint venture it would have been reasonable to have some contact with him during the progress of the project, and even if he did not, maintaining contact with Mr Singh would have been consistent with his duties as a director.
  2. To ask the Defendant for copies of the plans for the proposed development before they were submitted. This would have revealed by the end of September 2012 that the proposal involved the building of only 5 flats on the Land. If the Defendant had refused or failed to provide copies that would have raised concerns.
  3. If the Claimant had followed up on the pre-application planning meeting with the Defendant, or if he had failed to provide information, directly with Tower Hamlets, he could have obtained a copy of the letter of 08.10.12, which made it clear that:
     1. the Land was not a site on which a block of 7-8 flats would be easily achievable;
     2. the proposal was for 5 flats on the Land;
     3. the development site included the Widow’s Son;
     4. the Widows’ Son was a Grade II\* listed building, and the planning policies required the protection of heritage assets;
     5. the development of any more than a two storey building would not be acceptable;
     6. the planning proposal presented difficulties for the amenity of neighbouring properties and for the future residents of the flats.

At least some of these issues would have been likely to suggest further enquiries, including enquiries about the involvement of the owner of the Widow’s Son in the planning proposal, and would have indicated that Bow needed to take professional planning advice about what development could be achieved on the Land. If the Defendant had refused to agree the Claimant could have taken his own advice (as he did in August 2013 when he contacted Mr Freegard). Further, receipt of the 08.10.12 letter would have indicated that a Board meeting of Bow should be called to discuss the next steps, which could have been done by the Claimant if the Defendant had refused.

* 1. The Claimant could have requested a copy of the planning application, and if the Defendant failed to provide it when asked, he could have contacted the planning authority for a copy, when he would have been informed about the ability to access the planning portal. The Claimant would then have seen from about 26 March 2013 (Jandu 1 para. 34) [HB/19] that an application had been made on 13 March 2013 for development of a 5 bedroom flat above the Widow’s Son and for two 4 bedroom houses on the Land. That would have indicated that the application had been made in conjunction with the owner of the Widow’s Son, which would again have raised issues as to its ownership which could have been followed up by demanding an explanation from the Defendant and/or Sandhu & Shah. Mr Jandu provides a snapshot of the documents that were available on the portal from 26 March 2013 to 10 April 2013 (Jandu 1 para. 35) [HB 20]. At this stage also a Board meeting should have been called so that an explanation could have been provided, and there could have been consideration and discussion of the difference this might make to the likely profit on the development.
  2. If the Claimant had made any enquiry of the planning authority or accessed the portal between 29 May 2013 and 5 July 2013 he would have seen that planning permission had been refused on 15 May 2013, which would have led him to seek advice independently, as he did in August 2013
  3. The Claimant did not request a copy of the planning decision until sometime in July 2013 (Arif 1 para. 16.40 [30] which he then obtained on 31 July 2013, sent to Mr Freegard on 1 August 2013 and received a preliminary letter on 6 August 2013 [ (Exhibit IA1) [HB/266]. This revealed that the application was made in conjunction with the owner of the Widow’s Son, information that would also have been available had he previously asked for a copy of the planning application. The Claimant accepts that this letter gave him “*an indication that the Defendant had been dealing with the owner of the Widow’s Son”* although he did not appreciate that the Defendant was in reality the owner, through the medium of Dalco (Arif 1 para. 16.5) [31]. If the planning application had been requested previously this would have been likely to have led to the ability to obtain the same advice and information that Mr Freegard provided in his letter of 6 August 2013, which could then have been followed up to obtain information about the ownership of the Widow’s Son, instruct a planning consultant to prepare amended plans for submission to the planning authority, and/or obtain advice about the costs of a revised development, so that the potential profit could be calculated.

1. None of these individual pieces of information on their own would have been a “trigger”, in my view, but the combination of all the information which he would have obtained would at some point have led a person acting with reasonable diligence to instigate further enquiries. The information that Sandhu & Shah could have provided in March 2012 would been likely to have led to explanations being sought from either Sandhu & Shah or the Defendant about the role of Dalco, for whom Sandhu & Shah were also acting. The fact that Sandhu & Shah were acting for both vendor and purchaser should have suggested to the Claimant that questions need to be asked why this was the case, and from whom they were receiving instructions, as he had sufficient experience in property purchase to have known that this was unusual, and would only occur when there was no conflict of interest between the parties to the transaction. Refusal or evasion by Sandhu & Shah in response to questions about this should have raised some concern.
2. The report on title, the contract and the transfer Form TR1 would have shown that Dalco was the seller of the land, not Punch. The Claimant could then have carried out a company search of Dalco, from which the Defendant’s involvement, and hence conflict of interest, would have become known. However I accept the Claimant’s submissions that someone acting with reasonable diligence may not have thought it necessary to carry out a company search when solicitors are acting, and also the Claimant’s evidence is that [HB/45] he had no experience in inspecting Companies House records, and that public online access to records was not available until 22 June 2015 (Arif 1 para. 59.5) [HB/45]. However I also note that the name “Dalco” might have been sufficient to arouse suspicions that the Defendant was involved in that company, had the Claimant been aware of it, as in all emails between the parties and others the Defendant is referred to as “Dal” a shortened version of his first name.
3. A copy of the report on title would have revealed information about the Widow’s Son, in particular the existence of the restrictive covenants (although this document does not appear in the evidence). However, I note that in a letter from Sandhu & Shah to the directors of Bow dated 28 February 2020 (Documents attached to the Re-amended Defence) [HB/378] there is a reference to advice having been given to the directors about the enforceability of the restrictive covenant at the time of the purchase. If the Claimant had asked to be copied in to correspondence he would presumably have seen that advice, but the letter states that Sandhu & Shah had advised at the time of purchase that “*it was highly unlikely that this restrictive covenant could now be enforced*”, so that even if he had seen that advice, the existence of the restrictive covenant tying any sale of the Land to the pub would not necessarily have caused him concern.
4. When the Claimant saw the planning application, which he would have been able to obtain by the end of March 2013, he would have seen that this was not in the form that had been represented to him, and this should have led to a demand for explanations from the Defendant.
5. If the Claimant had been aware of the planning application he could have enquired as to the decision reached on that application directly with the planning authority. I cannot resolve the conflict of evidence about when the Claimant received the letter of 08.10.12. I note that when the Claimant finally contacted the planning authority shortly after 29 July 2013 the rejection letter dated 15 May 2013 was sent to him by the planning officer promptly on 31 July 2013 (Arif 1 para 30) [HB/34] [HB/258]. That letter should have led to a demand for explanations from the Defendant, and if these were unsatisfactory, the Claimant would have been able to seek expert advice as to whether the alleged representations as to the development potential of the Land were so wholly unrealistic so as to suggest that there had been fraud or deliberate concealment. He should also at that point, acting with reasonable diligence, have asked the Defendant to call a Board meeting, or called one himself if the Defendant failed to do so, so that the directors could consider how to proceed. This would have been likely to reveal that Mr Singh was not a director. Although the Defendant might have been able to provide a plausible explanation for Mr Singh dropping out and being replaced as an investor by Sarbjit, the knowledge that he had been misled about that would have been one more issue of concern for the Claimant about the Defendant’s lack of candour about issues affecting the investment.
6. The Claimant would have seen the refusal of planning permission on 15 May 2013, by at least 26 May 2013 if he had tracked its progress via the planning portal. I have concluded that if he had followed the steps outlined above he would either have become aware of the planning portal earlier than 15 May 2013, through enquiries of Tower Hamlets (I make reference to his evidence at Arif 1 para. 57 [HB/43] in this regard, where he says that he was unfamiliar with the planning portal). Alternatively, having seen the information that he would otherwise have obtained prior to this date, if he had acted with reasonable diligence, he would have at least contacted Tower Hamlets to find a way of tracking the progress of the planning application, and that would have led him to the portal. Allowing time to seek expert advice from a planning consultant that would have given him sufficient information to enable him to have knowledge of a number of the relevant facts to formulate his claim before 5 July 2013.
7. I note the Claimant’s evidence that he was a “hands off” investor and he had no reason to believe that the Defendant would mislead him, which is why he left everything to the Defendant to arrange. But the steps outlined above would be expected even of a “hands off” investor who had a substantial stake in a property with expectations of profit from property development, who was acting with reasonable diligence, in my judgment. Where the investor is also a director of the company managing the project there is less excuse for such an approach because of the statutory duties imposed on directors. In any event it is clear from the judgment of Martin Chamberlain QC (sitting as a Deputy High Court Judge) in *Hussain* at [43] that this is not the correct approach to s. 32 (1), and would involve “..*a departure from the objective standard on which the English authorities insist*.” I am likewise bound by Millett LJ’s test in *Paragon Finance v Thakerar* and Neuberger LJ’s judgment in *Law Society v Sephton* (see also *Hussain* at [72] – [73]).
8. In any event, as well as being a director, with the non-delegable duties which that entails, the Claimant was a buy to let investor of some experience and an IT consultant so familiar with obtaining on-line access to information. No other staff or resources would have been required to obtain the information necessary to discover what has been outlined. Many ordinary people process residential planning applications either on their own or with appropriate advice from planning consultants.
9. By the time of the refusal of planning permission, obtainable by at least the end of May 2013, the Claimant, had he acted with reasonable diligence, would have known that (following the order of the Representations):
   1. The planning application had not been for 7-8 flats, the Land abutted the Widow’s Son and was tied to the Widow’s Son by a restrictive covenant. However this would have been subject to Sandhu & Shah’s advice about whether this could be enforced (see paragraph 73 above), so may not have been a cause for concern.
   2. There was a substantial risk that the joint venture might not make a significant return on investment because the planning authorities had identified a number of problem areas with the proposed development plan, that the development as proposed by the Defendant had not been included in the planning application, and that even that modified planning application had been refused. Alternatively the Claimant would have had sufficient information to seek expert advice as to the chances of obtaining planning permission for any development or in what form the planning authorities would have been likely to grant permission for development, in order to calculate at least approximately the likely return on his investment to the extent that he would know whether it was likely to be significantly different from his expectations when he invested in the joint venture.
   3. Mr Singh/Billy did not have a 25% interest or any interest in the joint venture.
   4. Sandhu & Shah were also acting for the seller, Dalco, as well as for Bow in the purchase of the Land, and the seller was not Punch.
10. But I am not convinced to the summary judgment standard that the Claimant would have known by 5 July 2013 that:
    1. The only urgency in purchasing the land was as a result of the purchase of the whole site by Dalco from Punch (if this was in fact the case; the Defendant’s case is that there was urgency because of other competing investors: Re-Amended Defence para. 10A.9 [HB/134]).
    2. The acquisition of the Land by Bow was linked to the purchase of the Widow’s Son by Dalco.
    3. The Defendant was the owner and controller of Dalco.
    4. The Defendant’s interest in Dalco created an undisclosed conflict of interest between him and Bow, contrary to the Defendant’s duties under sections 172 and 177 of the Companies Act 2006 and under Article 14 of the articles of association of Bow.
    5. Dalco, having purchased both the Land and the Widow’s Son from Punch for £450,000, had set the sale price of the Land to Bow of £350,000 and the purchase of the Land was not an arm’s length transaction.
11. This information could only have been obtained from the Land Registry and the Companies Registry, (or possibly some of it from the report on title, which has not been disclosed). The evidence shows that this information was on the transfer document (Form TR1) dated 22 March 2012 of the transfer from Punch to Dalco of both the Land and the Widow’s Son for £450,000 (RJ3) [HB 441and 238]. But there is no evidence as to whether this is a document which was provided to the directors of Bow by Sandhu & Shah, as Bow was not a party to that transaction. I am not convinced to the summary judgment standard that a person acting with reasonable diligence would be required to independently investigate ownership of the Land being purchased and of the Widow’s Son at the Land Registry. It would be reasonable, in my view, to rely on solicitors and their report on title. I accept submissions on behalf of the Claimant that a person acting with reasonable diligence would not be expected to search Dalco’s filings and records at the Companies Registry, and would be entitled to rely on Bow’s solicitors.
12. It is also not possible to conclude, to the summary judgment standard, that Sandhu & Shah would have necessarily provided any information about the sale between Punch and Dalco to the Claimant, as their client in that transaction was Dalco. Even if that information had been provided, the Claimant would still have had to investigate Dalco to discover the Defendant’s involvement with that company, and how the apportionment of the price between the Land and the Widow’s Son had been set. Again I cannot conclude to the summary judgment application that a person acting with reasonable diligence could have discovered this before 5 July 2013.
13. Even if the Claimant had obtained advice from Mr Freegard earlier, for example in late May or early June 2013, that initial advice did not explain the link between the Defendant and Dalco. The Claimant’s evidence is that:

“It was not until Mr Freegard’s email that I was given any kind of indication that the defendant had been dealing with the owner of the Widow’s Son (not realising until, as I have explained above, much later that he was the owner through Dalco).” (Arif 1 para.16.5) [EB/31].

1. The Claimant does not provide any evidence as to what he did after receiving Mr Freegard’s email (Arif 1 para 30) [HB/34-35]. However, I cannot conclude to the summary judgment standard that even if the Claimant had obtained this information earlier and followed matters up with Mr Freegard, he would have had sufficient time to discover the facts relating to the link between the Defendant and Dalco before 5 July 2013.
2. These facts were crucial for the completion of the information required for the Claimant’s claim, as it was not until the facts about the Defendant’s role in Dalco was known that his conduct could have been shown to have been dishonest, even if the Claimant had acted with reasonable diligence. I have concluded that the Claimant’s “essential case” (see *Biggs* at [62] – 63] and paragraph 62 above) was not complete without the information about the involvement of Dalco and the Defendant’s role as controller of Dalco.
3. Accordingly, notwithstanding my conclusions that the Claimant would have been in possession of much of the information relating to the Representations had he acted with reasonable diligence, I am therefore not satisfied that even a person acting with reasonable diligence could have discovered the crucial information about Dalco’s role, and the Defendant’s conflict of interest before 5 July 2013. I consider also that these issues will require oral evidence at trial. I have therefore concluded that, although the Claimant is in some obvious difficulties in demonstrating that he acted throughout with reasonable diligence, he nonetheless has a real prospect of success in demonstrating that he could not have discovered with reasonable diligence “*the facts without which the cause of action would have been incomplete*” by 5 July 2013. There is also a compelling reason for this issue to proceed to trial, namely so that oral evidence can be heard to assist the court in reaching a final determination as to whether the Claimant is able to rely on s. 32(1)(a) of the 1980 Act in his claim for fraudulent misrepresentation/deceit.

**Section 32(1) (b) of the 1980 Act – Deliberate Concealment**

1. I have concluded from the statements of case and the evidence, as outlined in detail above, that the issue of whether the Claimant can rely ons. 32(1) (b) of the 1980 Act in respect of his claims in negligent misrepresentation and under s.2(1) of the 1967 Act cannot be resolved on a summary judgment application because oral evidence is required so that the Defendant can be cross-examined on his intentions. I consider on the basis of the evidence before me, as outlined above, that the Claimant has a real prospect of success in establishing that there was deliberate concealment by the Defendant of a number of relevant facts; in particular, but not limited to:
   1. that he was the controller of Dalco;
   2. that Dalco had purchased the Land and the Widow’s Son from Punch;
   3. that the Defendant through Dalco had set the purchase price for the sale of the Land to Bow;
   4. that Mr Singh was no longer an investor in the joint venture or a director of Bow;
   5. that the Claimant had been removed as a director of Bow;
   6. that the planning applications had been made in conjunction with the owner of the Widow’s Son.
2. I have therefore concluded that the Claimant has a real prospect of success in demonstrating that his claim in negligent misrepresentation and misrepresentation under the 1967 Act are not time barred because he will be able to rely on s. 32(1)(b) of the 1980 Act, and or that there is some other compelling reason for that issue to proceed to trial, namely, the requirement for oral evidence before a determination can be made.

**Section 14A of the 1980 Act**

1. As a result of my findings in respect of s.32(1)(b) it is not necessary for me to consider whether the claim in negligent misrepresentation is statute barred under s.14A. However, as the issue has been fully argued before me, and whether the claim proceeds further either by way of appeal and/or to trial, I consider it would be preferable for my decision on that issue to be included in this judgment. Further, s. 32(5) provides that if s. 32(1)(b) applies then s. 14A shall not apply and in any case to which it would otherwise apply, the applicable period of limitation is that under s. 2.

**Summary of the Defendant’s submissions on section 14A**

1. The effect of s. 14A(10) means that the Claimant is taken to have all knowledge he might reasonably have been expected to acquire from facts observable or ascertainable by him either himself or with the help of advice which it is reasonable for him to seek.
2. The test is whether it would have been reasonable for the Claimant to seek advice, not whether it was reasonable for him not to do so. The dictum in  *Forbes* applies [AB/220 at 230].
3. The submissions in relation to s. 32 apply. In addition:
   1. The Claimant accepts that he knew in July 2013 that the planning application had been refused, and that he was sent the decision notice on 31 July 2013 [HB/264].
   2. The schedule to the decision notice [HB/259]provided reference details of the application and planstold him that theplanning application had been for a 5 bedroom flat above the existing Grade II\* listed Widow’s Son Public House and two 4 bedroom houses on the Land, not for 7-8 flats. It also set out the reasons for the refusal.
   3. On 6 August 2013 [HB/266] Mr Freegard advised the Claimant that the application that had been refused had been made in conjunction with the owner of the Widow’s Son and asked for clarification of ownership. Having been asked for clarity on the ownership it would have been reasonable for the Claimant to investigate title, if necessary with professional help.
   4. The Claimant involved himself in the planning process from (at the latest) 06.01.14 [HB/499]when the email from Mr Kemp of DRK Planning was received, and was aware from at least then that there would be difficulties in obtaining planning consent and that the Land was not a site on which it would be easy to achieve a development of a block of 7-8 flats.
   5. It would have been reasonable by that point for the Claimant to have sought a meeting or made contact with the others involved in the joint venture, including Mr Singh if he thought he was still involved.
   6. In June 2014 the Claimant was receiving invoices for planning advice [HB/504]: so two years after he had made his investment must have realised that he had invested in land that was not a good development prospect
   7. In early 2014 the Claimant invested in a company called Royston Developments (London) Ltd (“Royston”) in which he understood the Defendant was involved as the Defendant had introduced him to the opportunity, relating to a site at 50-52 High Street, Royston. The building also included 10a Angel Pavement. One of the other investors was Altaf Ismail (also known as Patel).
      1. In April 2015 Mr Patel asked the Claimant to draft a letter to the Defendant raising a number of concerns (Exhibit IA 1) [HB/508-509].
      2. In May 2015 Mr Patel asked the Claimant to draft a statement alleging that 10a Angel Pavement had not been included in the acquisition by Royston, and that 10a Angel Pavement had been acquired by the Defendant or one of his companies for himself (Exhibit IA 1) [HB/510-516]. The similarities between Mr Patel’s allegation and the allegations now being made are obvious, the more so given what would have been revealed if the Claimant had examined the title documents to the Widow’s Son and the Land as he could reasonably have done following receipt of Mr Freegard’s advice.
4. There is nothing to suggest that the Claimant can claim the benefit of the provisions to sub-section (10). In any event the information was all available from publicly available sources which could be searched in a matter of a few days.
5. The Claimant is therefore taken to have known that the Defendant had induced him to invest in the acquisition of a property that would not produce the sort of returns he had been led to expect, that the Defendant had acquired the property next door for £450,000 and sub-sold the Land to the joint venture for £350,000. He knew that the Defendant had not told him that the pub was listed, had not told him of the covenant and had led him to believe, or not told him, of his conflict of interest, or that Mr Singh was no longer involved.

**Summary of the Claimant’s submissions on section 14A**

1. It is accepted by the Claimant that s.14A does not apply to the claim under s.2(1) of the 1967 Act and the reference to that claim at Para. 4C.10 of the Amended Reply is a mistake.
2. It is submitted that if the court does not find that there is a real prospect of the Claimant demonstrating that s. 32(1)(b) applies, there is a real prospect that s. 14A applies in the alternative. However no consideration of s. 14A is required if the Claimant can satisfy the requirements of s. 32(1)(b).
3. In order for the Claimant to be able to have the requisite knowledge to bring his claim he would have to know, *inter alia*:
   1. the material facts about the damage caused by virtue of the Defendant’s negligence; and
   2. that the damage was attributable in whole or in part to the act or omission which is alleged to constitute the Defendant’s negligence.
4. The requirements of s. 14A(4) of these two criteria are fulfilled on the later of:
   1. six years from the date on which the cause of action accrued: s. 14A(4) (a); or
   2. under s. 14A(4) (b), three years from the starting date defined by s. 14A(5), i.e. “*the earliest date on which the plaintiff ….. first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action*.”
5. The Claimant’s evidence is that he did not know the relevant facts until 19 February 2019. On that date the Claimant saw for the first time the relevant transfer form TR1 which showed that the price of the transfer from Punch to Dalco of both the Widow’s Son and the Land and the relevant Land Registry documents showing the existence of the restrictive covenants (Arif 1 para. 16.1) [HB/29-30]. Receipt of these documents were such as to make the Claimant set about investigating the possibility that something was amiss with his joint venture investment and the Claimant did not know that he had suffered loss as a result of the Defendant’s acts and omissions, and would not have known, until then.
6. If, contrary to the Claimant’s primary position that the cause of action did not commence for the purposes of s. 14A until 19 February 2019, the only possible alternative date where it might be said that the Claimant might consider something was amiss before then, was on or around 25 October 2018, when the Claimant wrote to Hanspal on that date (Documents attached to the Amended Reply) [HB/430] following the Defendant’s threats to auction off the land without any regard to the Claimant’s views or his investment in the joint venture (Arif 1 para. 16.3) [HB/30].
7. The discovery that Mr. Singh was no longer part of the joint venture or a director in Bow in or around March 2014 would not have been sufficient to show something was amiss. As set out in the Claimant’s evidence (Arif 1 para. 16.2) [HB/30] this discovery was in the context of Sarbjit starting to attend planning meetings with the Claimant and Mr. Kemp and the Claimant being told that Sarbjit had brought Mr. Singh’s shares, which as a matter of commercial reality could occur without any cause for suspecting something is amiss. Similarly, an enquiry as to the extent of the land owned by the joint venture on 6 August 2013 (Arif 1 para. 16.4) [HB/30]would not have been sufficient to justify further investigation.
8. If the Claimant only acquired the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action on 19 February 2019, or alternatively on or around 25 October 2018, the Claim Form was issued within 3 years of these dates. Therefore, the Claimant also has by reason of s.14A a real prospect of successfully establishing his claim in negligent misrepresentation is not time-barred on this alternative basis.

**Discussion**

1. In order to satisfy the requirements of s.14A the Claimant must establish that he could not have obtained “*the knowledge required to bring an action for damages in respect of the relevant damage*”, before 5 July 2016. This means:

Under s. 14A (6) (a) and (b):

“knowledge both -

(a) of the material facts about the damage in respect of which damages are claimed; and

(b) of the other facts relevant to the current action mentioned in subsection (8) below.”

S. 14A (7) provides:

“for the purposes of subsection (6) (a) above, the material facts about the damage while such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.”

s. 14A (8) provides that;

“The other facts referred to in subsection (6) (b) above are:

(a) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence; and

(b) the identity of the defendant; and

(c) [not relevant].”

S. 14A (10) provides that:

“For the purposes of this section a person’s knowledge includes knowledge which he might reasonably have been expected to acquire—

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek; but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.”

1. In order to come within the provisions of s. 14A of the 1980 Act the Claimant must be able to demonstrate that he did not have both the knowledge required for bringing an action in negligent misrepresentation for damages in respect of the relevant damage and a right to bring such an action until on or after 5 July 2016.
2. I have already reached conclusions as to the extent of the information which the Claimant could have obtained by 5 July 2013. The question therefore is when he would have been able to obtain the additional knowledge required about the role of Dalco and the Defendant’s position as controller of Dalco, before 5 July 2016.
3. The other relevant matters addressed in the evidence occurring after 5 July 2013 are as follows.

Removal of the Claimant as a Director of Bow

1. The Claimant was unaware of his removal as a director of Bow on 1 April 2014 until September 2018, and notes that Gusharan Kaur on behalf of the Defendant asked him to sign a form to open a bank account for Bow on 17 May 2016 (Arif 1 paras. 33-34) [HB/35-36]. This issue is relevant to the Claimant’s duties as a director of Bow. The termination of a directorshiprequires notice to have been given to that director and, subject to the provisions of the Articles of Association of Bow,a resolution passed of either or both of the board of directors and/or the shareholders, the resolution to be minuted and the appropriate filings made. It is difficult to envisage a situation where the Claimant would have been unaware of his removal if he had properlyinvolved himself as a director.  If the Defendant had refused or failed to comply with his obligations to convene meetings, report to the Board and pass resolutions and carry out the required filings at the Companies Registry, that would have rung some alarm bells about the way in which Bow was managed, and the Defendant’s conduct. But this would not necessarily have led to the information about the Defendant’s involvement with Dalco and Dalco’s purchase of the Widow’s Son.

Advice from Mr Freegard

1. The advice provided by Mr Freegard in his email of 6 August 2013 [HB/266] revealed that the planning application that was refused was done in conjunction with the pub owner. The letter explains why it might not be possible to build another floor above the pub and that new houses might have to be restricted to the pub height, and that any other approach may have to be done in conjunction with the pub owner. That would have caused the Claimant to ask questions of the Defendant as to why he had not informed the Claimant about the involvement of the pub owner, nor that the application had been made in conjunction with the pub owner. It is possible that the Defendant may have been able to explain this plausibly to the Claimant without revealing that he was the controller of Dalco, the owner of the pub.
2. The Claimant does not provide any evidence as to what he did after receiving Mr Freegard’s email (Arif 1 para 30) [HB/34-35], although he goes to some lengths to explain that a viability report was obtained from Davies Coffer Lyons on 12 June 2014. This was presumably commissioned by the Defendant, and the Claimant exhibits an earlier email from David Kemp of DRK Planning dated 6 January 2014 addressed to a Ron Newton and the Defendant and copied to the Claimant which provides some advice about the planning problems and attaches a heritage statement and draft planning statement for comment (Arif 1 para. 31) [EB/35] (IA1) [EB/499]. The Claimant does not provide the context in which this was done nor state whether it was the case that he did not pursue matters with Mr Freegard because the Defendant was taking advice about the planning position from DRK Planning and Davies Coffer Lyons. From this email, and the commissioning of the viability report in June 2014 (which the Defendant confirms was sent to the Claimant) it appears that the Defendant was exploring what could be done to enable a successful planning application to be made as the Defendant’s evidence states (Sanger 1 para. 21) [EB/55]. The viability report from Davies Coffer Lyons does not appear to have been included in the evidence, and neither party addresses what that report concluded or what happened after it was received in June 2014.

Information received from Mr Patel about the Royston Project

1. The Claimant gives evidence about his involvement with another project run by the Defendant, relating to a site in Royston, Hertfordshire, owned by Royston, which commenced in January 2014. Information was provided to him by Mr Altaf Patel (aka Altaf Ismael), a director of Royston, about the Defendant’s alleged conduct. Mr Patel expressed concerns about the Defendant’s honesty in the Royston transaction (Arif 1 paras. 36-43 [HB/36-38]:
   1. In about April 2015 Mr Patel asked the Claimant to draft a letter to the Defendant asking questions about profits, sales commission and charges that have been incurred on the project. In about 7 May 2015 Mr Patel asked the Claimant to produce a draft statement in relation to his complaint raising the following issues:
      1. the Defendant being unwilling to answer questions about the progress of development;
      2. the Defendant having purchased two properties, and splitting the price so that Royston paid considerably more for the property it purchased (50-52 High Street) than the other property (10a Angel Pavement) which the Defendant kept, although 10a Angel payment was a valuable property because it already had planning permission for the development of a residential flat;
   2. On about 29 May 2015 Mr Patel asked the Claimant to draft another letter to the Defendant on his behalf expressing Mr Patel’s frustration at the Defendant’s apparent inflation of costs on the development, the lack of an open and transparent process, and questions with regard to sales commission and VAT refund.
   3. On about 27th of April 2016 Mr Patel again approached the Claimant to draft a letter to the Defendant, copying in the Royston shareholders and another director, Kuldip Singh Sanger, the Defendant’s brother. Mr Patel raised other complaints such as:
      1. attempting to remove Mr Patel as a director of Royston without convening a meeting of the board/shareholders;
      2. taking the sum of £7,000 out of Royston unnecessarily;
      3. exaggerating the build costs of the Royston project;
      4. making shareholders sign a document stating that they knew of the facts leading up to the purchase of the properties by the Defendant, and his retaining the more profitable property at 10a Angel Pavement, when this was not the case.

Threat to Auction the Land

1. The Defendant threatened to auction the Land without reference to the Claimant’s views, which led to the Claimant sending an email to Hanspal on 25 October 2018, in which he stated that he had been alerted to “*illicit goings on*”. The Claimant accepts that this might be said to be a trigger point when a reasonably diligent period of investigation might take place to try and discover the fraudulent concealment (Arif 1 para. 6.3) [HB/30]. However he does not state what he means by his reference to “*illicit goings on*”, namely what he had discovered and what he did about it.
2. The test under s. 14A is differently worded to that under s. 32, but the effect in practice is likely to be similar. The date when time starts to run depends upon when a claimant has knowledge of “*the material facts about the damage while such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages …………..*” and it could be said that the Claimant did not know what damage he had suffered until the time when the Land was put up for auction or threatened to be put up for auction. However the authorities make it clear that issues should be approached in a common sense way and that “*knowledge*” does not mean “*know for certain and beyond the possibility of contradiction*” but “*know with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence.*”: *Spencer-Ward v Humberts; Halford v Brookes*.
3. I reached the conclusion in relation to section 32 that the Claimant would have been able to take advice as to the likely profitability of any development project on the basis of the information gained from the rejection of the previous planning applications by about late May 2013. However, as it appears from the evidence that the Defendant was pursuing the possibility of a further revised planning application being submitted, and as the advice contained in the email from DRK Planning is dated 6 January 2014 [EB/499], presumably they were instructed in late 2013. I consider it would have been reasonable to wait until at least the viability report from Davies Coffer Lyons was received before embarking on proceedings, as if a successful planning application could be made, and the project got underway, it might be the case that the project would still produce a profit, and even if not as much as the Claimant had anticipated, the difference might not be sufficient for a person acting reasonably to justify embarking on litigation.
4. The Defendant’s evidence in relation to this is that the Claimant was involved and kept fully informed of the planning process and the difficulties that were being faced, and also the fact that the proposals being discussed included the Widow's Son, and that he was sent the viability report in June 2014 (Sanger 1 para 21) [EB/55]. I cannot resolve the conflict of evidence between the parties as to whether the Claimant knew by this stage that the Defendant was the owner of the Widow’s Son, but the long and detailed email from DRK Planning supports the position that either the Claimant knew that at this point, or that he would have had a reasonable suspicion that that was the case. The email discusses the position of the pub in some detail and makes it clear that any further planning application would have to be made in conjunction with the pub, particularly with regard to objections that have been received from the local community. Mr Freegard had already made the point that the ownership of the pub needed to be investigated. By this point, a reasonable person would have asked the Defendant what his interest was in the Widow’s Son or if the Defendant had refused to answer the Claimant could have addressed that question to DRK Planning or would have made other enquiries to inform themselves about the ownership of the Widow’s Son.
5. I consider that “reasonable suspicion” that the Representations were likely to be untrue and made negligently would have started with the information that would have been available to a person acting reasonably some time after the email from DRK Planning in January 2014. I am unable to be more precise because of the lack of evidence. That of course does not amount to “knowledge” as defined in s. 14A.
6. Under ss.14A(10), a claimant’s knowledge includes both facts observable or ascertainable by him; or

“from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek; but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.”

1. Mr Patel’s communications in or about 15 May 2015 and continuing to 27 April 2016, made complaints about the Defendant’s conduct in the Royston project that were remarkably similar to issues identified in the Bow joint venture. They would have been likely to confirm such suspicions, where a person in the position of the Claimant discovers that that fellow director and joint venture partner has failed to disclose relevant and significant information about his ownership, through a corporate vehicle, of the Widow’s Son, for a period of some 2/3 years.
2. Mr Patel had complained to the Claimant in April 2015 and informed him that there were unsatisfactory explanations for a number of expenses incurred on the Royston project, [EB/509], and in May 2015 that the Defendant was not properly responding to questions about the progress of the project, and that, effectively, the Defendant had manipulated the purchase price of 52 High Street Royston in his favour (Arif 1 para. 41) [EB/37]. The statement of Mr Patel [EB/511], drafted by the Claimant, specifically refers to the Defendant’s alleged misrepresentation about the Royston project.
3. The Defendant addresses the Claimant’s evidence about the Royston project at Sanger 1 paras. 22 – 26 [EB/56 – 57]. The Defendant’s evidence about the Claimant’s involvement with the Royston project is informative, (Sanger 1 para. 23) [EB/56] although the Claimant’s evidence suggests his involvement was more limited. It is apparent that the Defendant’s involvement in Royston was also through the medium of Dalco, and that the Claimant would have known of this from Mr Patel, if not the Defendant, as the statement of Mr Patel refers to Dalco. The only other person involved in the project, other than Mr Patel and the Claimant, was the Defendant, whose first name is Dalbir, and who is addressed in all emails as “Dal”. If the Claimant had asked for the conveyancing documents in relation to the purchase of the Land he would have known that the seller of the Land to Bow was also Dalco.
4. Thus, I consider that by the end of May 2015 the Claimant would have had sufficient information, when combined with his knowledge of the unsatisfactory progress of the development project in Bow, the information he could have obtained about the purchase and the planning applications and reasons for refusal, (as addressed above in relation to s. 32), the information obtained from Mr Freegard, from DRK Planning’s email of 6 January 2014 [EB/499] and Davies Coffer Lyons’ viability report in June 2014, which would have led a reasonable person to take further independent advice from planning experts and then solicitors, who would have investigated the title of both the Widow’s Son and the Land at the Land Registry, and carried out a company search of Dalco. I concur with the dictum of Stuart Smith J. in *Forbes* at 412 that the Claimant cannot in those circumstances, having failed to take what would have been a reasonable course at that juncture, seek to rely on s. 14A. The advice would have revealed the additional information needed for the knowledge required to bring a claim, which would have been complete well before 5 July 2016.
5. I have concluded, at Paragraph 88 above, that the Claimant has a real prospect of establishing that the claim in negligent misrepresentation is not statute barred due to concealment (s.32(1)(b)), but if I am wrong in that conclusion, I have concluded that the Claimant has no real prospect of successfully relying on s.14A for the reasons set out in Paragraphs 89-120 above.

**Other grounds relied on for summary judgment**

1. The other grounds relied on by the Defendant in his application are that the First, Second, Fifth, Sixth, Eighth and Tenth Representations are all representations about the future, which cannot found a claim in deceit or misrepresentation, and that the Fourth Representation was true, or that the Defendant had reasonable grounds for believing it to be true.
2. This submission was not expanded upon in oral submissions. It is likely that only some of the Representations, if found to be made and relied upon, and found to be false, would sound in damages. The Third, Seventh and Ninth Representations form the crux of the claim, and are not statements in respect of the future. The Fourth Representation cannot be determined without oral evidence and is not suitable for summary determination
3. In my judgment, the trial judge will be best placed to determine whether the Claimant can substantiate his claim in respect of any particular Representation. Given my conclusion that the Claimant has a real prospect of success in defeating the limitation defence, so that the proceedings will progress to trial (subject to any determination adverse to the Claimant on any preliminary issue trial on limitation), it would not be of assistance to strike out particular Representations at this stage. Consideration of each Representation will not add to the length or complexity of trial. There is therefore a compelling reason for these issues to proceed to trial under CPR 24.2 (b).

**Conclusion**

1. Accordingly, the Defendant’s application for summary judgment will be dismissed.

**ANNEX 1**

**GLOSSARY OF TERMS REFERRED TO IN THE JUDGMENT**

**10a Angel Pavement** High Street, Royston, part of the Royston venture

**50-52 High Street** Royston, part of the Royston venture

**Billy** Mr Singh’s son, Mandeep Singh, also known as Billy; Mandeep Singh Ahluwalia

**Bow** Bow Properties Developments Limited (no. 07949099, incorporated 14.2.12)

**Restrictive Covenants** Restrictive covenants against title to the Land for its use as a pub garden

**Dalco** Dalco Developments Limited (no. 07622861, incorporated 5.5.11)

**Mr Freegard** Jonathan Freegard, architect, contacted by C for assistance

**Hanspal** Gurcharn Hanspal, D’s bookkeeper and accountant

**Land** The land at the side of the ‘Widows Son’, Devons Road, Poplar (EGL159382)

**Mr Patel** Mr Altaf Patel, director of Royston

**Punch** Punch Partnerships (PTL) Limited, seller of the Widow’s Son and the Land

**RAPOC** Re-Amended Particulars of Claim dated 19.8.20

**Representations** The representations made by D to C which found part of C’s claim.

**Royston** Royston Developments (London) Ltd (no. 08866478, incorporated 29.1.14)

**Sandhu & Shah** D/Dalco’s solicitors at the material time

**Sarbjit** Sarbjit Sanger, D’s brother, 25% shareholder in Dalco

**Mr Singh** Gursharan Singh, aka Gursharan Singh Ajeeb/Ahluwalia, director of Marvel

**Tower Hamlets** The London Borough of Tower Hamlets, the relevant planning authority

**Widow’s Son** The Widow’s Son, 75 Devons Road, London E3 3PJ, a pub (EGL421011)

**ANNEX 2**

**LIST OF AUTHORITIES REFERRED TO IN THE JUDGMENT**

Statutes

Misrepresentation Act 1967

Limitation Act 1980

Companies Act 2006

Case law

*Drincqbier v Wood* [1899] 1 Ch 393

*Peco Arts Inc v Hazlitt Gallery* [1983] 1 WLR 1315

*D.W. Moore & Co. Ltd v Ferrier* [1988] 1 WLR 1315

*Re Majestic Recording Studios Ltd* (1988) 4 BCC 519

*Halford v Brookes* [1991] 1 W.L.R. 428

*Johnson v Chief Constable of Surrey* 1992 WL 895624

*Nash v Eli Lilly* [1993] 1 WLR 782 (CA)

*Spencer-Ward v Humberts* [1995] 1 E.G.L.R 123

*Sheldon v RHM Outhwaite* [1996] AC 102, 155

*Crocker v British Coal* [1996] 29 BMLR 159

*Forbes v Wandsworth Area Health Authority* [1997] QB 402

*Re Westmid Packing Services Ltd (No 3)* [1998] 2 All ER 124*B v Ministry of Defence* [2012] UKSC 9

*Paragon Finance v Thakerar* [1999] 1 All E.R. 400

*Birmingham Midshires Building Society v Infields (A Firm)* (1999) 66 Con. L.R. 20

*Re Barings plc (No 5*) [1999] 1 BCLC 433

*Re Barings plc (No 5*) [2000] 1 BCLC 523 (CA)

*Collins v Brebner* [2000] (CA) unrep.

*Biggs v Sotniks* [2002] EWCA Civ 272

*UCB Home Loans v Carr* 2000 WL 98954

*Cave v Robinson Jarvis and Rolf (A Firm)* [2002] UKHL 18

*Regent Leisuretime Ltd v NatWest Finance Ltd* [2003] EWCA Civ 391

*Williams v Fanshaw Porter & Hazelhurst* [2004] EWCA Civ 157

*Law Society v Sephton & Co* [2005] QB 1013

*The Kriti Palm* [2007] 2 C.L.C. 223

*Barnstaple Boat Co Ltd v Jones* [2007] EWCA Civ 727

*Giles v Rhind* [2008] EWCA Civ 118

*Easyair Ltd v Opal Telecom Ltd* [2009]EWHC 339 (Ch)

*Re Brampton Manor (Leisure) Ltd* [2009] EWHC 1796 (Ch)

*Allison v Horner* [2014] EWCA Civ 117

*Arcadia Group Brands Ltd v Visa Inc* [2015] EWCA Civ 883

*Hussain v Mukhtar* [2016] EWHC 424 (QB)

*Gresport Finance Ltd v Battaglia* [2018] EWCA Civ 540

*Granville Technology Group* Ltd v Infineon Technologies AG [2020] EWHC 415(Comm)

*DSG Retail Ltd v Mastercard Inc* [2020] EWCA Civ 671

Textbooks

*Civil Fraud, Law Practice and Procedure*, *1st Ed*.

*McGee Limitation Periods, 8th Ed.*

*Clerk & Lindsell on Torts, 23rd Ed.*