TRANSCRIPT OF PROCEEDINGS

Ref. BL-2021-002158

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES

The Rolls Building
7 Rolls Buildings
Fetter Lane
London

[2022] EWHC 918 (Ch)

Before THE HONOURABLE MR JUSTICE MICHAEL GREEN

IN THE MATTER OF

ARENA TELEVISION LTD (In administration)
ARENA HOLDINGS LTD (In administration)
ARENA AVIATION LTD **(Claimants)**

-v-

RICHARD A YEOWART
ROBERT DAVID HARRY HOPKINSON **(Defendants)**

MR S MILLS & MR A KINGSTON-SPLATT appeared on behalf of the Claimants
THE DEFENDANTS did not attend and were not represented

JUDGMENT
26th JANUARY 2022,
(FOR APPROVAL)

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MR JUSTICE MICHAEL GREEN:

1. This is predominantly an application for summary judgment unusually before any acknowledgment of service or defence has been filed by the defendants, but it is in respect of an alleged serious fraud and conspiracy practised on the claimant companies by the defendants who are the owners/directors and previously the controllers of the companies. They have not responded to these proceedings at all and that includes responding to freezing orders that were made against them last November and they appear to have absconded from the jurisdiction presumably so as to try and evade enforcement of any orders and judgments of this court.

2. I will come on to deal with the details of the case in the various applications that have been made to me by Mr Simon Mills of counsel appearing with Mr Alexander Kingston-Splatt. they appear for the administrators of the claimant companies. I have read what Mr Mills suggested. I pre-read in particular the amended particulars of claim and the affidavits in support of the applications, one by a Mr Benjamin Wiles, and two by a Mr Robert Armstrong together with some of the exhibits, and Mr Mills has taken me through some of the more important pieces of evidence this morning and I am grateful to him for his helpful submissions. Mr Wiles and Mr Armstrong are the joint administrators of the claimant companies having been appointed on the 12th and 18th of November 2021.

3. By way of short background, the claimant companies are Arena Television Limited, Arena Holdings Limited and Arena Aviation Limited. As I have said each company is part of a group of companies which entered into administration last November.

4. Arena Television Limited and Arena Aviation Limited provided equipment, operators and other production services to various TV and film events. Arena Holdings was the parent company of all the companies in the group other than Arena Digital which is not a party to this claim.

5. The company's business was, as I have said, to provide broadcasters such as the BBC and Sky with location and studio-based production and transmission services. This required much equipment, predominantly broadcast vehicles and cameras and the provision of operational staff to cover events such as the FA Cup, Wimbledon, the Commonwealth Games and rugby internationals. It was the equipment necessary for their business that provided the vehicle for the commission of the fraud that has been demonstrated to me in this case.

6. The first defendant, Mr Richard Andrew Yeowart founded Arena Television Limited in 1988. He was appointed as a director of each Group company upon its incorporation. He is the registered holder of 5.099 million shares out of the 5.1 million shares in Arena Holdings Limited. The second defendant, Mr Robert David Harry Hopkinson was appointed as a director of each Group company in 2003. Both defendants were employed by Arena Television Limited and the defendants are life partners and live together when in the UK at Chilling Street Cottage, Chilling Street, Sharpthorne, West Sussex.

7. Shortly after their appointment the administrators discovered that a large scale fraudulent conspiracy between the defendants had been carried out whereby they caused the claimant companies to incur hundreds of millions pounds of indebtedness under purported hire purchase agreements (**HP agreements**) with asset based lenders (**ABLs**) in respect of equipment that did not actually exist or which had already been purchased by another ABL and hired to the claimants. The equipment, if it existed, was basically recycled again and again each time through ABLs that would lend money on the strength of the equipment that

they had bought from what they thought was a third party but was actually an intermediary between the claimants and the ABLs. These intermediaries apparently sold the equipment to the ABLs but the proceeds of sale went back to the claimant companies, because they had apparently sold the equipment in the first place to the intermediary. The ABLs did not know about the involvement of the claimants in the sourcing of the equipment that they had bought to hire back to the claimant companies.

8. Ever increasing sums were incurred in respect of the monthly rentals on those HP agreements and those sums could only be met by purportedly selling the non-existent equipment to the intermediaries for onward sale to the ABLs. Mr Mills described this in his skeleton argument as a classic Ponzi scheme in which new frauds have to be committed to pay the rentals on the previous frauds.

9. This was said to have started in 2011 but it all came to a head in November last year when one of the ABLs, AIB Group (UK) Plc started making inquiries about an audit and valuation of its assets. From this they discovered that the cameras which AIB had rented to the claimant companies did not exist, that AIB had overpaid by £20,000 for each such camera and the serial numbers were not apparently genuine.

10. Realising that the game was up the first defendant sent an email at 2.37 am on the 10th of November 2021 to certain individuals within the claimant companies saying that the claimant companies were out of money and had to cease trading. He also said that people would be after him and that he would have "...to remain at arm's length for the immediate future," and he also said that he would have to pull his email account to avoid the inevitable abuse that would follow.

11. The defendants then fled the jurisdiction and according to media reports they could be near Le Touquet in France where they own a property.

12. The administrators discovered a self-contained locked office at the claimants' premises, which only the first defendant could apparently enter. Inside this office they found label making machines and various stickers with different serial numbers ready to be affixed to equipment to denote that they were the property of Lloyds Bank Plc, say, one of the ABLs. They also found cameras containing photos of equipment showing the serial numbers. This was substantial evidence that fraud was being carried out on an industrial scale.

13. The administrators had also been told that Arena TV banked with Nat West. There were 10 accounts with Nat West recorded in the claimant companies' Sage accounting software which information was used to prepare their annual accounts. However, the administrators discovered that there were actually 14 other undisclosed bank accounts with other banks and financial institutions and that those accounts were used to perpetrate the fraud.

14. One such account with Bank of Scotland had a total of £569 million passed through it since the 1st of January 2018, £537 million of which came from just one of the intermediary companies, a company called Sentinel. In total, as Mr Mills pointed out to me, from 2010 it seems that nearly £1 billion was received through Sentinel apparently selling equipment onto the ABLs and then funnelled back to the claimant companies.

15. The monthly rentals on the HP agreements that had been entered into by the claimant companies was over £13 million in September 2021 alone, whereas the Group's annual

turnover was between £24 million and £31 million during the last seven years. So one can see that there is a huge disparity there.

16. According to the valuers employed by the administrators there were some 8,206 assets on a list of HP agreements that had been financed by the ABLs. However, on inspection there were only 67 of those 8,206 assets that were identified by the administrators as actually existing. This means that thousands of the assets either do not exist or have been presented to numerous ABLs with forged serial numbers so as to use the same asset for multiple financing.

17. I have already mentioned the intermediaries and there were a number of those that were used and which appear to be possibly linked to the defendants, although Mr Mills was not putting forward any such case. They were each involved in many millions of pounds being funnelled to the claimants through the secret bank accounts. These were all off-the-books transactions, not recorded in Sage and therefore not reflected in the statutory accounts. I have seen the accounts and the way the business was recorded in them. They appear to bear no relation to the actual figures of money coming in to the companies through the secret bank accounts from the sales of equipment. Therefore the accounts appear to be wholly false in that respect. All the transactions with the intermediaries were off-book and so not visible to the outside world and in particular not visible to the ABLs.

18. One company that was involved was called Sports Online Limited which was registered in Hong Kong but it appears that the first defendant operated its bank account with HSBC. This was simply used, it seems, in furtherance of the fraud.

19. There was also the curious involvement of the second defendant's mother using her maiden name of Marilyn Hopkinson. She has told the administrators that she was persuaded by the first defendant to sign sensitive documents using her maiden name and she was sent stamped and self-addressed envelopes to send them to the ABLs. In fact she was purportedly witnessing the first defendant's signatures. She was also provided with a printer and laptop to help facilitate the defendants' fraud although she may have been unwittingly caught up in it.

20. The finance manager of the group Mr Nicholas Cousins knew that off-book transactions were taking place that the auditors did not know about. All in all it seems to me that from what the administrators have discovered there is very clearly a dishonest and fraudulent conspiracy carried out by the defendants.

21. I should explain a little of the procedural history before turning to the applications that are actually before me. Based on their preliminary findings the claimants obtained worldwide freezing injunctions and proprietary injunction and disclosure orders against the defendants. That freezing injunction was made by His Honour Judge Davis-White QC sitting as a deputy High Court judge on the 26th of November 2021 (the **first freezing order**). That freezing order was continued by His Honour Judge Davis-White QC on the 3rd of December together with an updated disclosure order requiring the defendants to provide information and documents by the 10th of December 2021 (the **second freezing order**).

22. The claimants served the claim form on the defendants on the 3rd of December and the particulars of claim on the 16th of December. The defendants have to this date offered no response to any correspondence or to the orders. They have not filed an acknowledgment of

service nor have they complied with their disclosure obligations under the second freezing order.

23. So what the claimants seek are as follows;

(1) permission to amend the particulars of claim.
(2) permission pursuant to CPR 24.4(1) to apply for summary judgment and for time for service to be abridged.
(3) summary judgment on the claim for damages arising out of an unlawful means conspiracy, alternatively summary judgment on liability, alternatively judgment in default of acknowledgment of service.
(4) declaratory relief.
(5) the worldwide freezing orders to be continued post judgment.
(6) permission to use the information and documents obtained in the proceedings for the purpose of enforcement proceedings and proceedings against additional defendants or third parties.
(7) they were seeking for the hearing to be in private but that was no longer pursued.
(8) this was in relation to the affidavit of Mr Wiles but is also no longer pursued.
(9)for the defendants to be pay the claimants costs on the indemnity basis.

24. The claimants filed a draft judgment in respect of the summary judgment points and a draft order in respect of all the other applications. The claimants have also offered various draft undertakings to accompany the draft order including an undertaking to provide up to £10 million in compensation by way of cross-undertaking to the defendants.

25. Turning to the first application which was the application to amend. There are only minor amendments that are sought to be made to the particulars of claim.

(1) To identify the third party conspirators as third parties rather than persons unknown and to identify Arena TV and Arena Holdings as the companies that agreed to pay commissions to the intermediaries.
(2) To correct details concerning the Sage accounts and the undisclosed accounts and to correct figures relating to the losses; and
(3) To include a plea that the misappropriation of monies in 2019 took place when the claimants were insolvent.

These are straightforward amendments and do not cause the defendants any prejudice and I therefore give permission to amend.

26. In relation to the abridgement of time for service, under CPR 24.4(3) the respondent to a summary judgment application must be given at least 14 days' notice of (a) the date fixed for the hearing and (b) the issues which it is proposed that the court will decide at the hearing. This is one of a number of procedural safeguards that are aimed at ensuring that the overall procedure is fair. Nonetheless where appropriate the court is entitled to abridge time for service of the application and to give summary judgment without 14 days' notice, and Mr Mills referred in his skeleton argument to the cases of *Watson v Applegarth Dene Limited & Hatton* [2019] EWHC 349 and *James -v- Evans* [2000] 3 EGLR page 1.

27. There was some confusion over the actual timings for service and the amount of short service that has actually happened in this case. This was explained in a witness statement dated yesterday from a Mr Bracko and it appears from that that the application, this

application for summary judgment and the other matters, was posted to the various addresses that the claimants have for the defendants on the 14th of January this year. It was deemed therefore to have been served on the 18th of January and the required 14 days' notice will not have been given until now the 1st of February 2021. So the claimants seek an abridgement of some seven days to the requisite 14 days' notice.

28. In fact what actually happened was that the matter was brought first before Falk J last Friday on the 21st of January in the interim applications list. This, as Mr Mills accepted, was not the right place to have gone and she could not hear it then but she certified it as urgent and directed that it be heard today with the defendants being given notice of the adjourned hearing. She was clearly satisfied, as am I, that there is good reason to abridge time for service even though this was not expressly said in the order and was not considered by her but it was obviously considered that it was appropriate that urgent relief should be considered for the administrators of the claimant companies so that they can take effective steps to secure assets for the benefit of the creditors of the claimants as a whole.

29. It seems to me there is no injustice in giving the defendants less than the requisite notice because they have chosen not to engage with these proceedings at all and there is no evidence that they intend to do so. On the contrary they have absconded and are seeking to avoid their creditors and avoid dealing with any proceedings that have been brought against them in this jurisdiction. They did not attend the hearing of the application before Falk J on the 21st of January. They have not so far defended any of the claims brought by individual ABLs, and I will come on to describe one of those in a moment. They have ignored the orders for disclosure made in the first and second freezing orders. It is plain that the defendants would not have responded to this application even if they had been given the full 14 days' notice.

30. The urgency that I have referred to arises from the fact that there is a race to enforce against known assets in the jurisdiction and possibly out of the jurisdiction and any delay is likely seriously to prejudice the claimants and through them the large body of creditors that are not looking to their own interests.

31. One of the ABLs is United Trust Bank Limited (UTB) and it is already enforcing judgment against the first defendant and has obtained interim charging orders over his shares in a company called BA Yeowart Holdings Limited which are valued at £93,750 and Delnabo Estate Limited valued at £183,334. They are also seeking charging orders over the home that he shares with the second defendant at Chilling Street and a third party debt order.

32. The applications for final charging orders are all to be heard in the Liverpool County Court I believe on the 8th of February 2022. At that hearing the question whether the interim orders should be made final will be one for the discretion of the court and the court will or must have regard to the interests of all parties involved including other creditors.

33. UTB has reportedly informed the Sunday Times that it is seeking to protect its interests. In making its applications without notice UTB relied upon information that had been obtained by the claimants and at their expense as was set out in the freezing orders and it also did not disclose to the court either the amount of the claimants' claim or the existence of any other creditors. It stated that the amount of the administrators' claim was unknown. I understand that the claimants will be opposing the making of final orders on various grounds including that UTB breached its duty of full and frank disclosure and fair presentation,

however, the court at that hearing will be in a much better position to do justice to all the parties and not just UTB if the claimants have a judgment on the merits by that time.

34. The claimants must file and serve written grounds of objection not less than seven days before the hearing on the 8th of February and then the claimants will oppose as judgment creditors on the grounds that there are 55 ABLs who are creditors of the first defendant and that their interests are being served through the insolvency regime that provides for the orderly collection and realisation of assets and the distribution of those assets among creditors in accordance with the statutory scheme of distribution rather than a free-for-all that may take place if individual claims are pursued by different creditors.

35. It seems to me that the purpose of the administration will be undermined if actions are taken by individual creditors rather than the administrators acting in the best interests of the creditors as a whole. It is therefore important for this court to support the administrators in ensuring an orderly collection and distribution of assets.

36. The claimants also seek to take steps to enforce overseas against known assets before they are dissipated and for the benefit of the general body of creditors. There is also a real concern that other ABLs will seek to commence claims against the intermediaries against whom they might consider they have a claim. In the circumstances I am wholly satisfied that the matter is urgent and that the defendants are not prejudiced by me abridging time for service of the application and I will so do.

37. Turning to permission to bring the application, CPR 24.4(1) provides that a claimant may not apply for summary judgment until the defendant against whom the applications are made has filed (a), an acknowledgment of service or (b) a defence unless (i) the court gives permission or (ii) a practice direction provides otherwise.

38. The application for permission can be included within the application notice for the summary judgment and for that application for permission to be made and argued as part and parcel of a single hearing which the summary judgment application may be considered on its merits. That is what has happened in this case. No acknowledgement of service or defence has been filed on time in accordance with CPR 18.3(1)(a), that is 14 days after service of the particulars of claim, which should have been by the 30th of December 2021. The claimants could have entered judgment in default but they seek summary judgment, being a judgment on the merits, rather than the mechanical court process of entering a judgment in default because a judgment on the merits will be easier to enforce against overseas assets as explained in Mr Wiles' witness statement.

39. It is perfectly clear that the defendants do not have any intention to defend this claim or to return to the jurisdiction any time soon. In my view the claimants are entitled to seek a proper judicial determination of the claim where it may assist in relation to enforcement even where the claim is not opposed and that the claimant would otherwise be entitled to a default judgment.

40. So I turn then to the summary judgment application. The principles in relation to the grant of summary judgment are well known. Under CPR 24.2 where the defendant has no real prospect of successfully defending the claim and there is no other compelling reason why the case should be disposed of at a trial summary judgment can be given.

41. Mr Mills referred in his skeleton argument to the helpful comments of Lewison J (as he then was) in *Easyair -v- Opal Telecom* [2009] EWHC 339 (Ch), which has since been approved by the Court of Appeal. I do not need to set them out. The critical point is that the defendants must have a real, not fanciful, chance of successfully defending the claim at a trial if they are to avoid a summary judgment.

42. In this case there is no evidence from or any suggestion of what the defendants' defence might be. This is a case of unlawful conspiracy and breach of fiduciary duty. Even though it is a case of fraud and dishonesty and therefore requires clear proof, such claims are susceptible to summary judgment in appropriate cases.

43. I take into account that the court should be cautious before depriving a party of the opportunity of defending themselves against dishonesty allegations but in this case it is fairly clear that they have no intention of doing so and the evidence obtained to date by the administrators is fairly overwhelming.

44. Mr Mills took me through some of the basic principles in his skeleton argument in relation to unlawful means conspiracy, in particular referring me to the *Kuwait Oil Tanker -v- Al Badar* case [2000] 2 All ER (Comm) page 271 in which the Court of Appeal said, "A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him by unlawful means whether or not it is the predominant purpose of the defendant to do so." There are thus four elements to the tort: (1) a combination or agreement between the defendant and another person or persons; (2) an intention to injure the claimant; (3) unlawful acts carried out pursuant to the combination or agreement as a means of injuring the claimant; and (4) loss suffered by the claimant as a result.

45. Taking those elements in turn and first combination or agreement. The evidence that the defendants have combined together to cause the claimants to enter into HP agreements in respect of which the equipment did not exist or which was already subject to finance is overwhelming.

(1) they were the only statutory directors and have used for many years undisclosed accounts for the purposes of transactions involving intermediaries which were not recorded in the claimants' Sage accounting software for the purposes of the claimants' statutory accounts.
(2) the defendants are life partners. After AIB sought to conduct a physical inspection of the equipment, as statutory directors they caused the claimants to cease trading. They have since absconded and are hiding overseas. They have also failed to engage with these proceedings or to comply with the freezing orders.
(3) the mail boxes in the email accounts of the defendants and Mr Cousins were all deleted. The second defendant was its marketing director and there is no evidence that he sought to find out why his mailbox has been deleted.
(4) the second defendant must have known that his mother's maiden name was being used to present documents to ABLs bearing his signatures as if they had been properly attested by her when in fact they had not.
(5) the second defendant signed some of the relevant HP agreements and a few corporate guarantees in respect of the HP agreements.

(6) the second defendant had access to Arena's undisclosed accounts with Lloyds, Bank of Scotland and Santander. He is listed as the account contact for the Arena Aviation account and is a signatory to the Arena TV account.
(7) in May 2021 the second defendant informed HSBC that he could provide Arena Holdings' draft management accounts.
(8) as late as the 3rd of November and 4th of November 2021 the second defendant and the first defendant applied for business current accounts on behalf of Arena Aviation and Arena TV when there could have been no justifiable business reason for doing so.

46. So I am therefore satisfied as to the involvement of both defendants and that they have combined together to commit this fraud.

47. In relation to intention to injure, the claimants rely on the unlawful acts themselves to establish intention to injure. The reality is that they must have intended to injure the claimants as they caused Arena TV and Arena Holdings to assume liabilities under HP agreements in respect of which they received no consideration or consideration of such low monetary value that it bore no relation to the liabilities that had been assumed.

48. The liabilities as shown to me by Mr Mills now to the ABLs amount to some £282 million of which £276.8 million is owed by Arena TV and some £5.28 million by Arena Holdings. The cost of servicing that debt was in excess of £13 million per month. That dramatic figure is to be contrasted with the management information of the Group for the half year to the 30th of June 2021 which recorded the following:

(1) consolidated annual turnover in 2020 was only £31.4 million.
(2) the group had total fixed assets of £73.8 million of which £65 million were said to be Arena TV's plant and machinery.
(3) the aggregate of Arena TV's short and long-term loans and hire purchase obligations was only £32.3 million.
(4) the total sales revenues for Arena Group in the months July to October 2021 range between £3.58 million to £3.76 million.
(5) the existing hire purchase repayments for each of the months July to October range between £1.09 million and £1.13 million.

49. From this it follows that the actual liability for monthly rentals was some 13 times greater than the amount recorded in the Group's financial records. This is compelling evidence that the defendants have orchestrated a dishonest scheme in which further frauds needed to be carried out to keep the claimant companies afloat and to enable them to satisfy their monthly rental commitments.

50. The unlawful acts that are relied upon are numerous and are fully set out in the amended particulars of claim at paragraph 19. I will run through those quickly.

(1) First, arranging for the financing under the HP agreements of equipment which either did not exist or was in the possession of Arena but which was already the subject of an HP agreement or was incapable of being accurately identified.
(2) the first defendant removing genuine serial numbers from equipment in the possession of Arena and replacing them with forged labels with full serial numbers to be provided to an ABL for the purpose of identification in an HP agreement.

(3) the first defendant arranging for the wrongful sale of equipment by Arena TV and/or Arena Holdings and/or Sports Online to an intermediary company for the purpose of onward sale to an ABL which would then be the subject of an HP agreement thereby concealing the fact that the equipment did not exist or was already the subject of an HP agreement and had not been supplied by a third party supplier in the ordinary course of business.
(4) the first defendant dictating to the intermediary the price for which they were to raise an invoice to Arena TV or Arena Holdings or Sports Online for the sale of the equipment which was a price substantially in excess of the market price.
(5) Arena TV and Arena Holdings through the first defendant agreeing to pay the intermediary a commission for taking part in the fraudulent scheme or schemes.
(6) the first defendant providing to the intermediary the full serial numbers for the equipment for onward transmission by the intermediary in its own invoice to an ABL.
(7) the intermediaries making the express and/or implied representation to the ABLs that they would obtain an unencumbered title to the equipment and/or the equipment would be capable of being identified such representations being false.
(8) the intermediaries making the implied representation to the ABLs that the price stipulated in their invoices was a market price and/or which had been agreed following an arm's length negotiation with a third party supplier such representation being false.
(9) the first defendant sending to the ABLs photographs of the equipment with false serial numbers thereby dishonestly representing that the equipment had been or was about to be purchased and was unencumbered for the purposes of the proposed HP agreement and that the ABL had or would acquire title when it purchased the same such representation being false.
(10) the first defendant delivering to the ABL signed certificates of acceptance as required pursuant to the HP agreements thereby dishonestly representing that Arena TV or Arena Holdings had taken delivery of the equipment and/or that the same was satisfactory for Arena's purposes, such representations being false.
(11) the defendants causing Arena TV and Arena Holdings to enter into HP agreements with ABLs in respect of the equipment and personally executing the same.
(12) the defendants executing corporate guarantees in respect of the HP agreements.
(13) the defendants procuring that the proceeds of sale in respect of equipment were paid into bank accounts the contents of which were not recorded in Arena's Sage accounting software and/or its books and records used for the preparation of Arena's statutory accounts.
(14) the first defendant agreeing that Arena TV and Arena Holdings should accept payment from the intermediaries of a sum less than received by the intermediaries thereby paying the intermediary a commission of one percent of the price paid by the ABLs.
(15) the first defendant causing Arena TV and Arena Holdings to pay to the ABLs the monthly rentals due under the HP agreements from monies held in the undisclosed accounts thereby concealing the existence of the majority of the liabilities of the Arena Group under the HP agreements.
(16) Arena TV and Arena Holdings filing statutory accounts which contained false financial statements contrary to the scheme set out in the Companies Act 2006. In particular the accounts gave a grossly misleading understatement of the company's liabilities under HP agreements and did not disclose the balances of the undisclosed accounts as current assets.
(17) Arena TV and Arena Holdings filing statutory accounts which contained false statements by the board of directors, that as far as they were aware there was no relevant audit information of which the Group's auditors were unaware and that each

director had taken all steps to establish that the auditors were aware of all relevant audit information.
(18) the business of Arena TV and Arena Holdings being carried on to effect the fraudulent scheme or schemes contrary to s.213 and 214 of The Insolvency Act 1986, that necessarily follows from the fraud.
(19) the defendants providing to ABLs copies of the statutory accounts and management information of Arena TV and Arena Holdings containing false information and the first and second defendants as directors each breaching their duties as directors that they owed to the claimant companies.

51. In my view that clearly establishes the use of unlawful means to effect this conspiracy.

52. Turning to loss, this is where I had a little difficulty and had a debate with Mr Mills as to the appropriate thing to do. The claimants are suggesting in their application and indeed in the particulars of claim that they wish to limit their claim to the specific sum of £250 million on the basis that the indebtedness to the ABLs certainly exceeds that by some £32 million, (that indebtedness was £282 million-odd). There will obviously be some realisations that will reduce those liabilities and the estimated outcome statement shows that there will be approximately £10 million worth of net realisations. But it seems to me that on a summary judgment application and based on the cause of action that is relied upon, the conspiracy claim, that it is quite important that the actual loss must be proved.

53. So the outcome of the discussion that I had with Mr Mills is that I would prefer to go with the alternative formulation as set out in the draft judgment and order that there be judgment on liability in relation to the conspiracy claim and for the damages to be assessed in due course at a remedies hearing but there be an interim payment on account of those damages in the sum of £100 million. Mr Mills was content with adopting that formulation in the judgment and that is what I propose to do.

54. Turning to breach of fiduciary duty, it inevitably follows from those findings in relation to conspiracy that the defendants were in breach of their fiduciary duties. The claimants say that in addition they caused the claimants to trade whilst insolvent and they point to certain specific misappropriations that they say were made by the defendants in breach of their fiduciary duties to the company.

55. In particular they seek a declaration that the defendants jointly hold the property in Sitges Barcelona on trust for Arena Aviation. The plea at paragraph 23(5) of the amended particulars of claim is that between the 25th of November 2019 and the 26th of November 2019 the defendants wrongfully caused Arena Aviation to pay at least Euros 1.814 million to the client account of Eshkeri and Grau which they used to jointly purchase the Sitges property at a time when the claimant companies were insolvent. The evidence is that those payments were all misappropriated at a time when Arena Aviation was indeed insolvent. The claimants say that the payments and now the Sitges property are therefore held by the defendants on trust for the claimants as company property. Further the payments could not have been made for a proper purpose. The defendants could not possibly have considered in good faith that they would promote the success of the company for the benefit of its members as a whole and the defendants did not act faithfully in the interests of the claimants but they acted for their own interests in breach of s.175 of the Companies Act 2006 and their duty of fidelity. I am satisfied that these were indeed misappropriations for which the defendants are liable as acting in breach of their fiduciary duties to the company.

56. In relation to the Sitges property Mr Mills seeks a specific declaration that that property is held on trust and it seems to me that the evidence is sufficient for me to make such a declaration.

57. In relation to the other payments relied upon in paragraph 23(5), that is a sum of money that on the 22nd of September 2019 was transferred into a cryptocurrency account with Luno Money and that is a total of Euros 275,280 and £480,500. Those were monies that were owned by Arena Holdings and/or Arena TV and were wrongly transferred into that cryptocurrency account for the defendants' own benefit. In relation to two other transfers made on the 4th and 5th of January 2021 from the Arena Holdings Nat West account in the sum of £750,000 and £200,000 to an account in the first defendant's own name, those payments are the basis for the judgment on liability in relation to breach of fiduciary duty but they will not yet be subject to any sort of declaration that the respective accounts or the monies in those accounts are held on trust. That will be for the administrators to consider further and decide what they want to do about it, but in any event the judgment on liability is there. So I am satisfied in that respect and I will make the declaration in relation to the Sitges property.

58. I need to consider the continuation of the freezing order post-judgment. In my view in the circumstances of this case it is entirely appropriate, it seems to me, to continue the freezing order post-judgment to try to preserve whatever assets there are for the general body of creditors. Mr Mills has explained to me the undertakings that are being offered, in particular the cross-undertaking and the amendments from the original pre-judgment freezing orders. In particular there will be included within the undertakings an undertaking that, "The applicants will not without the permission of the court seek to enforce paragraphs 8 and 10 of this order in any country outside England and Wales or seek an order of a similar nature including orders conferring a charge or other security against the respondent or the respondent's assets."

59. In relation to the Sitges property there already has been now a declaration by me and that can be enforced by the claimants abroad should they so wish and should that be possible to do, but in relation to any other assets located outside England and Wales they will need to come back to court and get the permission of this court if they seek to take enforcement measures in the location of those assets.

60. The final matter is costs and Mr Mills seeks costs on the indemnity basis on the basis that this is a fraud, that the defendants have failed to comply with any orders and more particularly they have not co-operated as they are obliged to do as directors of the companies with the administrators of the companies. That has meant that a considerable amount of extra work has had to be done by the administrators in order to investigate this fraud and to bring these proceedings and in my view the behaviour of the defendants and their conduct, not in relation to the proceedings themselves although that has been unhelpful, but based on the underlying fraud and their non-co-operation with the administrators does take it out of the norm and does mean that an order for indemnity costs is justified in this case and that is the order that I will make.

This transcript has been approved by the Judge