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CR-2023-006896

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
INSOLVENCY AND COMPANIES LIST (CH D)

29 May 2026

Before:

MR JUSTICE LEECH

**IN THE MATTER OF MIRROR TRADING INTERNATIONAL (PTY) LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

B E T W E E N:

- (1) ~~ADRIAAN WILLEM VAN ROOYEN~~**
(2) CHRISTOPHER JAMES ROOS
(3) CHAVONNES BADENHORST ST CLAIR COOPER
(4) HERMAN BESTER
(5) DEIRDRE BASSON
(6) JACOLIEN FRIDA BARNARD
(7) DANIEL SANDILE NDLOVU
(8) KEVIN TITUS

(in their capacity as liquidators of Mirror Trading International (Pty) Ltd)

Claimants

-and-

THE RESPONDENTS LISTED IN THE SCHEDULE OF RESPONDENTS

Respondents

MS CHARLOTTE COOKE and MR RABIN KOK (instructed by Farrer & Co LLP) appeared on behalf of the Claimants

MR EUGENE PIENAAR, the Fifty-Fourth Respondent, appeared in person

The First to Fifty Third Respondents did not appear

Hearing date: 19 May 2026

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30 am on 29 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Leech:**I. Introduction****A. The Applications***(1) The Strike Out Application*

1. By Application Notice dated 23 March 2026 (the “**Strike Out Application**”) Mr Eugene Pienaar, the Fifty Fourth Respondent, applied to strike out the claims of the Claimants (the “**Joint Liquidators**”) to set aside dispositions of bitcoin made by Mirror Trading International (Pty) Ltd (“**MTI**”) and for orders delivering up the relevant bitcoin *in specie* or to pay a sum of money representing their value. I set out the relevant procedural history of these claims in section C.
2. Mr Pienaar applied to strike the claims out on the basis that the originating Application Notice dated 27 January 2025 (the “**Pienaar Application**”) and the Points of Claim dated 29 November 2024 (the “**Points of Claim**” or “**POC**”) disclose no reasonable cause of action because the claims have been extinguished by prescription under the law of Republic of South Africa (“**South Africa**”). He also applied to strike out the claims on the basis that they were an abuse of process and in doing so he focussed on statements which the Joint Liquidators’ solicitors, Farrer & Co LLP (“**Farrer**”), had made to the English Court and to the High Court in South Africa. Finally, Mr Pienaar applied to strike out the claims on the basis that the Joint Liquidators had failed to comply with the Order of ICC Judge Mullen dated 23 October 2025 (the “**CMC Order**”) which required them to provide extended disclosure by 6 February 2026 (later extended until 6 March 2026 by consent).
3. Mr Pienaar, who is qualified as an attorney in South Africa and also as a solicitor in England and Wales (although he is non-practising in both jurisdictions), made five witness statements in support of the Strike Out Application dated 23 March 2026 (“**Pienaar 1**”), 21 April 2026 (“**Pienaar 2**”), 24 April 2026 (“**Pienaar 3**”), 25 April 2026 (“**Pienaar 4**”) and 8 May 2026 (“**Pienaar 5**”). Mr Jolyon Connell, who is a solicitor of the Supreme Court of England & Wales, and a partner in Farrer, made his tenth witness statement dated 24 April 2026 (“**Connell 10**”) and eleventh witness statement dated 13 May 2026 (“**Connell 11**”). In answer to the application and Mr Pienaar made his sixth witness statement dated 10 May 2026 (“**Pienaar 6**”).

(2) The Directions Application

4. The trial of the claims is currently listed for ten days commencing on 9 November 2026 and the PTR is currently listed for hearing on 7 October 2026. Both dates were fixed on 3 November 2025. By Application Notice dated 6 March 2026 (the “**Directions Application**”) the Joint Liquidators sought further directions. In particular, they asked for a further extension of time for complying with the existing directions and permission to call two further experts one dealing with blockchain analysis and the other a forensic accountant. They also applied to vacate the PTR and trial dates and fix the trial for hearing from 7 May 2027 onwards with the PTR to be fixed two to three weeks before.

5. Mr Connell made two witness statements in support of the Directions Application dated 6 March 2026 (“**Connell 8**”) and 17 March 2026 (“**Connell 9**”). Mr Pienaar made two witness statements in answer to the Directions Application dated 10 March 2026 (“**Pienaar D1**”) and dated 20 March 2026 (“**Pienaar D2**”) opposing the vacation of the trial date and further expert evidence. There was some overlap between the arguments which Mr Pienaar advanced in both applications. On both applications he relied on the Joint Liquidators’ failure to comply with the order for extended disclosure made by ICC Judge Mullen in the CMC Order. He also submitted that no new facts or circumstances had arisen to justify the additional expert evidence and that it was misleading for the Joint Liquidators to suggest that new circumstances had arisen.

(3) *The Expert Evidence Application*

6. In support of the Strike Out Application Mr Pienaar initially relied on a report dated 19 November 2025 and addressed to the Court by Mr William Thyne, Mr Pienaar’s attorney in South Africa, who also acts for a number of creditors of MTI (“**Thyne 1**”). By Application Notice dated 6 May 2026 (the “**Expert Evidence Application**”) the Joint Liquidators also applied for permission under CPR Part 35.4 to rely on the expert report of Mr Japie Vorster dated 30 April 2026 (“**Vorster 1**”) in response to Thyne 1. Mr Pienaar did not oppose this application. Indeed, he told the Court that he accepted the accuracy of Vorster 1 (at least for the purposes of the hearing before me). I therefore grant the Expert Evidence Application and treat the contents of Vorster 1 as common ground for the purposes of the Strike Out and Directions Hearings.

B. Factual Background

(1) *The Ponzi Scheme*

7. I take the factual background primarily from the Points of Claim which I must accept as accurate for the purposes of the Strike Out Application. MTI is a company incorporated under the laws of South Africa under company registration no. 2019/205570/07 and on 30 April 2019 it commenced trading as an internet-based cryptocurrency investment platform and cryptocurrency fund. Its registered office and headquarters were in Stellenbosch in the Western Cape in South Africa and the Joint Liquidators allege that Mr Cornelius Johannes Steynberg was MTI’s sole *de jure* director, a *de facto* director and the controlling mind of the company.
8. The Joint Liquidators allege that MTI solicited and accepted deposits of bitcoin from the general public and entered into investment agreements with members of the public by promising unrealistic returns of 0.5% per day or 10% per month. They rely on the fact that in late 2020 the South African Financial Sector Conduct Authority (the “**FSCA**”) issued three press releases explaining that MTI was likely to be misleading investors and on 18 January 2021 the FSCA issued a report finding that MTI was engaged in a pyramid selling, ponzi scheme. In *Bester NNO v Mirror Trading International (Pty) Ltd* [2023] ZAWCHC 83 (2024) 1 SA 112 (WCC) De Wet AJ held that MTI’s business amounted to “an unlawful and fraudulent scheme”: see [100]. The judge also declared that the business model of MTI was an illegal and unlawful scheme and that: “All agreements concluded between MTI and its investors in respect of the trading/management/investment of bitcoin for the purported benefit of the investors, are declared unlawful and void ab initio”: see [141].

(2) *The Liquidation*

9. On 23 December 2020 Mr Anton Lee, a creditor of MTI, applied to the High Court of South Africa for an order winding up the company and on 20 January 2021 the Court appointed provisional liquidators over its business and assets. On 11 November 2021 the Master of the High Court of South Africa made an Order appointing the First to Sixth Claimants as Joint Liquidators of MTI and on 5 April 2023 the Master of the High Court certified the appointment of the Seventh and Eight Applicants as additional Joint Liquidators. By virtue of section 348 of the Companies Act 61 of 1973 (the “**SA Companies Act**”) MTI’s liquidation is deemed under South African law to have commenced on 20 December 2020 as the date on which the application to wind it up was made.

(3) *The Letters of Request*

10. On 13 February 2023 Ms Justice Cloete of the High Court of South Africa issued a letter of request to the English Court seeking recognition of the Joint Liquidators and by Order dated 19 December 2023 (the “**Recognition Order**”) ICC Judge Burton made an Order pursuant to S.426 that the appointment of the Joint Liquidators was recognised by the High Court of England and Wales. On 19 April 2024 Mr Justice Lekhuleni of the High Court issued a second Letter of Request requesting the following assistance from the English Court:

“13.1. authorising the Joint Liquidators in that capacity to institute, maintain, continue, proceed to final determination of and obtain relief in proceedings in the Courts of England & Wales seeking orders:

13.1.1. Under or relating to the Specified SA Provisions as defined below; and

13.1.2 Under or relating to the Specified UK Provisions as defined below, in each case, to recover any money, property, Bitcoin or other cryptocurrency for the benefit of the winding-up of MTI;

13.2 making orders pursuant to the Specified SA Provisions and/or the Specified UK Provisions, to the extent that the English High Court considers it just and appropriate to do so, whether following an examination of fact or otherwise by the English High Court;

13.3 applying South African statutory insolvency law in the United Kingdom in relation to the winding up of MTI, in particular to the extent necessary to give effect to the assistance sought in the preceding paragraphs; ...”

“13.6. Making any other order that appears to the English High Court to be just, convenient and appropriate, including where the need for such order becomes apparent after the date of this Second Letter.”

11. The “Specified SA Provisions” included section 26 (“**S.26**”), section 29 (“**S.29**”) and section 30 (“**S.30**”) of the Insolvency Act 24 of 1936 (the “**SA Insolvency Act**”). I will refer to these three sections as the “**SA Clawback Provisions**” and they enable the liquidators of a company which is being wound up under the SA Insolvency Act to recover property which were made pursuant to dispositions without value or to set aside

voidable or undue preferences. They provide as follows:

“26. Dispositions without value

(1) Every disposition of property not made for value may be set aside by the Court if such disposition was made by an insolvent— (a) more than two years before the sequestration of his estate, and it is proved that, immediately after the disposition was made, the liabilities of the insolvent exceeded his assets; (b) within two years of the sequestration of his estate, and the person claiming under or benefited by the disposition is unable to prove that, immediately after the disposition was made, the assets of the insolvent exceeded his liabilities: Provided that if it is proved that the liabilities of the insolvent at any time after the making of the disposition exceeded his assets by less than the value of the property disposed of, it may be set aside only to the extent of such excess.

(2) A disposition of property not made for value, which was set aside under subsection (1) or which was uncompleted by the insolvent, shall not give rise to any claim in competition with the creditors of the insolvent’s estate: Provided that in the case of a disposition of property not made for value, which was uncompleted by the insolvent, and which— (a) was made by way of suretyship, guarantee or indemnity; and (b) has not been set aside under subsection (1), the beneficiary concerned may compete with the creditors of the insolvent’s estate for an amount not exceeding the amount by which the value of the insolvent’s assets exceeding his liabilities immediately before the making of that disposition.”

“29. Voidable preferences

(1) Every disposition of his property made by a debtor not more than six months before the sequestration of his estate or, if he is deceased and his estate is insolvent, before his death, which has had the effect of preferring one of his creditors above another, may be set aside by the Court if immediately after the making of such disposition the liabilities of the debtor exceeded the value of his assets, unless the person in whose favour the disposition was made proves that the disposition was made in the ordinary course of business and that it was not intended thereby to prefer one creditor above another.”

“(3) Every disposition of property made under a power of attorney whether revocable or irrevocable, shall for the purposes of this section and of section 30 be deemed to be made at the time at which the transfer or delivery or mortgage of such property takes place.

(4) For the purposes of this section any period during which the provisions of subsection (1) of section 11 of the Farmers’ Assistance Act, 1935 (Act 48 of 1935), applied in respect of any debtor as an applicant in terms of the said act, shall not be taken into consideration in the calculation of any period of six months.

30. Undue preference to creditors

(1) If a debtor made a disposition of his property at a time when his liabilities exceeded his assets, with the intention of preferring one of his creditors above another, and his estate is thereafter sequestrated, the Court

may set aside the disposition.

(2) For the purposes of this section and of section 29 a surety for the debtor and a person in a position by law analogous to that of a surety shall be deemed to be a creditor of the debtor concerned.”

12. “The Specified UK Provisions” included sections 238 (“S.238”) and section 239 (“S.239”) of the Insolvency Act 1986 (the “IA 1986”). On 28 March 2025 ICC Judge Greenwood heard the Joint Liquidators application for an Order under section 426 (“S.426”) of the IA 1986 authorising the claims to be made in this jurisdiction. In his approved judgment he identified three conditions to be met: first, there must be a relevant request; secondly, the assistance which the English Court is required to give must fall within its insolvency jurisdiction; and, thirdly, the English Court must determine which system of law to apply. He held that the first two conditions were satisfied and, in relation to the third, he stated as follows at [30] to [35]:

“30. In particular, it seems to me that to accord it weight would tend to undermine the modified universalism that is embodied in the statute and which calls for a single system of distribution to the greatest extent consistent with justice and UK public policy. Indeed, in almost all cross-border cases, that approach is almost necessarily going to involve seeking various types of order against individuals and companies with no or very little connection to the jurisdiction of the requesting court - such as, for example, banks holding company assets, or data-server providers in far-flung jurisdictions. I agree with Ms Cooke that, in a sense, this is a factor in favour of exercising the power under section 426, rather than one which undermines that conclusion.

31. But in any event, in the present case, the investment agreements that were entered into between the company and its investors were governed by South African law. Investors therefore entered into a South African law contract with a South African company, so the complaint that it would be wrong to apply South African law to the clawback claims, it seems to me, is one without foundation; it is not obviously unfair or exorbitant. Those individuals, as I say, did have a connection with South Africa.

32. Whilst it is true that the joint liquidators would be unable to obtain the remedies they seek in the claims under South African law in South Africa itself, because the respondents are outside the jurisdiction, that limitation is not - as I have noted - a limitation of South African insolvency law itself. That has been confirmed in these proceedings, in a report from Judge Eberhard Bertelsmann, who is a former judge of the Gauteng Division of the South African High Court. And that report - an expert report - was adduced with the permission of Dr Baister, sitting as a deputy judge in the present proceedings, at a time when it was thought that this application might be opposed.

33. Moreover, as I have mentioned, the English court has for many years given relief not available to the officeholders in the country of their appointment, whether because of some substantive difference in the law, such as in *Dallhold*, or for reasons of the court’s personal jurisdiction, as in *Fourie v Le Roux*, which was actually a case strikingly similar to that

which is before me.

34. Finally, there are no reasons of public policy not to permit proceedings in this case to continue. Although the South African insolvency provisions are, in certain respects, more generous to officeholders, they are, as I have said, essentially designed to achieve the same ends of protecting the company's estate and creditors. Again as I have said, Parliament has specifically granted the relevant countries and territories, including South Africa, the privilege of assistance under section 426, because it has determined that their insolvency laws and legal systems share the same fundamental values as ours. That assessment, it seems to me, should not be lightly displaced.

35. In conclusion, it seems to me right to respect and accede to the request made by the South African court under section 426 and to authorise the claims to be made. That is not, of course, to say that they will succeed, and that further safeguard is another reason not to refuse assistance. So I will make that order.”

13. By Order also dated 28 March 2025 (the “**S.426 Order**”) ICC Judge Greenwood declared that no acts of the Joint Liquidators in either the Old Application or the Main Application (as I define them below) was to be a nullity because the Order had not been obtained before they were commenced. He also authorised the Joint Liquidators to bring proceedings against all of the Respondents (including Mr Pienaar) under both the SA Clawback Provisions and also under S.238 S.239. He also declared that:

“2. The Court hereby authorises the Applicants to exercise such of their powers and functions, either jointly or individually, as joint liquidators of the Company and without prejudice to the generality thereof that the Court do act in aid of and give the assistance specified in this Order.

3. Pursuant to the jurisdiction conferred by section 426(4)-(5) of the Insolvency Act 1986:

a. The Applicants shall be permitted to bring, institute, continue, defend or discontinue any action, claim, application or other legal proceedings in England and Wales pursuant to sections 26, 29 and 30 of the Insolvency Act 24 of 1936 (SA) (“RSA Insolvency Act”) and sections 238 and 239 of the Insolvency Act 1986.

b. Sections 26, 39 and 30 of the RSA Insolvency Act, as well as all provisions of that Act, the Companies Act 61 of 1973 (RSA) or of the general law of South Africa which are in each case ancillary to or necessary for the operation of the above-mentioned sections of the RSA Insolvency Act, shall apply in relation to all matters connected with the winding up of the Company.

c. Without prejudice to the generality of the foregoing paragraphs, the Applicants shall be permitted to continue, prosecute, discontinue, defend or stay the Main Application on such terms as they shall think fit, and shall be permitted to seek such orders as they think fit in the Main Application.”

14. I return to the additional directions which the judge also gave in the S.426 Order below in the context of the procedural background to the Strike Out and Directions Applications. I turn next to set out a brief procedural background to the Pienaar Application so far as it was relevant to the issues which I had to determine.

C. Procedural Background

(1) Pre-Action Correspondence

15. On 13 February 2024 Farrer sent a Letter of Claim to Mr Pienaar. I was not taken to the letter itself but Mr Pienaar referred to it in Pienaar 3 in setting out his own procedural chronology (and the Joint Liquidators did not challenge his account). By letter dated 11 March 2024 Mr Pienaar's then solicitors, 360 Law Services, wrote to Farrer on a "without prejudice save as to costs basis" and "subject to contract" basis making the following offer:

"We have now had an opportunity to take instructions from our client and in an attempt to save costs, we have been instructed make an offer to settle all your clients' claims against our client in relation to all our client's user ID's as detailed below, in the sum of £65,000 (the Offer).

The Offer is made subject to contract and is made in respect of the following user ID's:

1. User ID 1365304 – Lightning Trader;
2. User ID 7447230 – BitBella;
3. User ID 2063814 – BitColly;
4. User ID 4226958 – RevoMark;
5. User ID 54592798 – GunterT;
6. User ID 31563959 – Suzieh;
7. User ID 13511019 – Valsel; and
8. User ID 51686449 – val.

The above-mentioned accounts are referred to as the Designated Accounts."

"In making the Offer, our client has taken into account the 1.5 bitcoin that our client has retained in the fund which is an asset available to your clients which we understand is valued at approximately £15,972.92.

If the Offer is acceptable to your clients, we suggest that a short form settlement agreement is drawn up to confirm that the settlement amount of £65,000 is in full and final settlement of all your clients' claims against our client in this matter."

16. By letter dated 15 August 2024 Farrer replied stating that their clients were prepared to resolve the matter on the terms set out in Mr Pienaar's letter subject to those terms being formalised in a settlement agreement and they enclosed a draft. It is unclear to me why no settlement was achieved but neither party submitted that the claims against Mr Pienaar had been compromised. Mr Pienaar relied on this correspondence as showing that the

Joint Liquidators were fully aware of his identity and his designated accounts at least six months before the commencement of the Pienaar Application.

(2) *The Old Application*

17. On 9 April 2024 the Joint Liquidators issued an application against 56 Respondents seeking Orders under the SA Insolvency Act and the IA 1986. Mr Connell referred to this application as the “**Old Application**” in Connell 10 and I use the same description. By Order dated 2 October 2024 ICC Judge Barber gave directions including a direction for the hearing of a strike out application by the Tenth Respondent (who played no part in the Applications before me). On 8 November 2024 ICC Judge Barber heard that application, which was by then supported by all of the McGregor Respondents (as I define them below). She struck out the Old Application and ordered the Joint Liquidators to pay £22,000 in costs. I will refer to her Order as the “**Barber Strike Out Order**”.
18. Mr Chavonnes Cooper, the Third Claimant and one of the Joint Liquidators, made a witness statement dated 9 April 2024 (“**Cooper 2**”) in support of the Old Application in which he dealt with protective nature of the claims and the reason for its issue before the pre-action correspondence phase had been completed:

“39. Between 13 February 2024 and 8 April 2024, the Joint Liquidators sent Letters Before Action to around 33 of the 56 Respondents. These LBAs and their responses are exhibited at CC2/110-555.

40. Of these 33 LBAs, 11 were sent shortly before the date of filing of this witness statement, and the Joint Liquidators are preparing to send LBAs to the remaining 23 Respondents in the coming days. The Joint Liquidators were unable to ascertain the names and addresses of these 34 Respondents prior to this time, as the forensic and tracing agents engaged by the Joint Liquidators required time to investigate the position. As such, the Joint Liquidators are still awaiting responses to many of the LBAs that have been sent, or will be sent shortly.

41. At the same time, the Joint Liquidators have received South African legal advice (in which privilege is not waived) that the claims against the Respondents under the SA Insolvency Act risk being barred by prescription (the South African equivalent of limitation) if they are issued after 9 April 2024. The Joint Liquidators are also advised that the English Courts will apply South African, not English, rules of limitation in any trial of the SA Insolvency Act claims.

42. To be clear, the Joint Liquidators understand that this is a risk, and that there are good arguments that their claims are not barred by prescription. The Joint Liquidators will, therefore, robustly contest any defence based on prescription or limitation.

43. In view of these potential limitation difficulties, the Joint Liquidators have issued this Application protectively to ensure that the SA Insolvency Act claims do not become time-barred.”

(3) *The Main Application*

19. On the same day, 8 November 2024, the Joint Liquidators issued a new Application Notice claiming substantially the same relief against the Respondents listed in the Schedule. Mr Pienaar was not named as a Respondent. Ms Cooke and Mr Kok, who appeared for the Joint Liquidators, referred to the new Application Notice as the “**Main Application**” and again I adopt the same description. A number of the Respondents were represented by Macgregor Law Ltd (“**Macgregor Law**”) and I will refer to them as the “**Macgregor Defendants**”. Two of the Respondents were also represented by Barraaj Legal Barristers (“**Barraaj Legal**”) and I will refer to them as the “**Barraaj Defendants**”. On 29 November 2024 the Joint Liquidators served the Points of Claim.

(4) *The Pienaar Application*

20. On 27 January 2025 the Joint Liquidators issued the Pienaar Application claiming the same relief against Mr Pienaar. The Application Notice (and any supporting documents) were served by post at Mr Pienaar’s residential address in England. They were also served on him (or, at least sent to him) by email and he took me to the covering email dated 30 January 2025 which was addressed to him at lightningtrader69@gmail.com. This was the same email address shown on his “Back Office” profile (which I consider below).
21. On 27 January 2025 Mr Connell also made his fourth witness statement (“**Connell 4**”) in support of the Joint Liquidators’ application for urgent directions for the hearing of the application for the S.426 Order. In Connell 4, he explained that the reason why the Joint Liquidators had not applied to join Mr Pienaar to the Main Application was to preserve any limitation defence which might arise during the period 8 November 2024 to 27 January 2025:

“21. The Pienaar Application [JCM4/14] was issued on 27 January 2025. As the witness statement in support of the Application makes clear [JCM4/18], the Pienaar Application seeks identical relief to, and is based on the same facts as, the Re-Issued Main Application.

22. The Joint Liquidators accept that the usual course would ordinarily have been to apply to join Mr Pienaar to the Re-Issued Main Application. However, they concluded (without waiving privilege) that that course was inappropriate here.

23. This is because Mr Pienaar might have argued that joining him to the Re-Issued Main Application would deprive him of a (supposedly) arguable prescription (limitation) defence under the law of South Africa.

24. The Re-Issued Main Application was issued on 8 November 2024. However, there is an arguable limitation date falling on 11 November 2024 - the reasons for this are not presently material – albeit one that the Joint Liquidators will say is not applicable. If Mr Pienaar were joined to the Re-Issued Main Application, the date of the claim against him would be deemed to be 8 November 2024 by the operation of the ‘relation back’ rule in section 35 of the Limitation Act 1980. That section applies to foreign limitation periods by virtue of section 1(3) of the Foreign Limitation Periods Act 1984. The operation of the relation back rule might (it could

be argued) deprive Mr Pienaar of a limitation defence.”

22. By Order dated 10 February 2025 Dr Stephen Baister (sitting as an ICC Judge in retirement) consolidated the Main Application and the Pienaar Application and ordered that Mr Pienaar should be named as the Fifty-Fourth Respondent to the Main Application. By email dated 13 March 2025 Mr Connell wrote to the Joint Liquidators’ South African attorneys, Schabort Potgieter, setting out the strategy which Farrer proposed to adopt in the English proceedings. This was a privileged communication but it has been deployed by Mr Lee in the S.379 Proceedings (as I define them below) although it was unclear to me how it was disclosed to him. At any event, the Joint Liquidators did not apply to restrain its use and in that email Mr Connell stated as follows:

“We do not know yet precisely what Defence to the claim(s) these respondents will set out because their pleadings are not due for another few months. However, broadly speaking, these respondents have indicated that they might adopt several lines of defence:

First, that South African law ought not to apply. As you know, this line of defence has now been overcome - or, at least, we expect the remainder of this argument to succeed on the JLs’ behalf at the CMC barring an unexpected turn in Court.

Second, we anticipate that the respondents will seek to run a prescription /limitation argument and will probably try to have this point determined as a preliminary issue at a mini trial later this year. The initial advice that the JLs have shared with us from South African counsel regarding prescription — in particular, the opinions of Mr van Rooyen SC — suggest that the JLs should expect to succeed on this issue in England in due course (albeit with the usual caveat around litigation risk and unpredictability etc).

Third, if South African law applies and the claims are not prescribed, we expect the respondents to plead substantive defences. For instance, the respondents might plead some form of change of position or set-off defence. It is not clear yet what those defences might be or what merit (if any) they might possess.”

23. On 28 March 2025 ICC Judge Greenwood decided the S.426 application (and I have set out the relevant parts of his judgment above). He also directed that the Points of Claim in the Old Application should stand as the Points of Claim in the Main Application and gave directions for the service of Points of Defence, Points of Reply and disclosure. He also listed a further CMC for the first open date after 10 October 2025.
24. On 9 May 2025 Macgregor Law served Points of Defence (the “**Points of Defence**” or “**POD**”) on behalf of twenty four Respondents who, by this time, included Mr Pienaar. On the same day Barraj Legal served Points of Defence on behalf of the Barraj Respondents (who were the Fourth and Fifty-Seventh Respondents named in the schedule to the New Application). On 20 June 2025 the Joint Liquidators served their Consolidated Points of Reply (the “**Points of Reply**” or “**POR**”).

(5) *The CMC Order*

25. On 23 October 2025 the CMC took place and ICC Judge Mullen made the CMC Order. It recorded that the First Claimant, Mr van Rooyen, had sadly died and he was removed as a party. The judge approved the DRD in the form set out in Annex 1 to the CMC Order and he ordered that the Joint Liquidators, the Macgregor Defendants and the Barraaj Defendants should give extended disclosure in accordance with the DRD and CPR PD 57AD by 4 pm on 6 February 2026.
26. The judge also directed that exchange of witness statements should take place by 24 April 2026 and that the parties should have permission to call a South African law expert and a data expert. He set out the issues which each expert should address and fixed a timetable for exchange of expert reports on 5 June 2026, for the preparation of joint statements by 26 June 2026 and the service of supplemental reports by 24 July 2026. In particular, the CMC Order, paragraph 15 provided that the data expert's evidence should address the following issues:

“The Data Expert's evidence will address the following issues:

- a. the condition of MTI's data when recovered by the Joint Liquidators;
 - b. whether it was reasonably possible to identify individual respondents to the claim from this data, without the aid of bespoke or specialised software; and
 - c. the process of development and operation of software to analyse the said data to the end described above, and how quickly such software could reasonably have been developed to do so.”
27. The judge also gave directions for fixing the trial date and the date for the PTR and gave detailed directions for the trial itself. As I have stated, the PTR has been fixed for 7 October 2026 and the trial itself for 9 November 2026. Paragraph 29 of the CMC Order also provided as follows:

“Extension of time limits

29. The Applicants, Macgregor Respondents and Barraaj Respondents may agree to extend any time period to which the proceedings may be subject for a period or periods of up to 28 days in total without reference to the court, provided that this does not affect the date given for any pre-trial review or the date of the trial. The party seeking the extension shall notify the court in writing of the expiry date of any such extension.”

(6) *Notice of Change*

28. On 8 November 2025 Mr Pienaar served a Notice of Change of Solicitors giving notice to the Joint Liquidators that he would now be acting in person. Although I was not taken to the correspondence, it was common ground that the parties agreed to extend time for extended disclosure until 6 March 2026. On the same day, the Joint Liquidators issued the Directions Application asking the Court to extend time for disclosure until 10 July 2026. It was common ground that Mr Pienaar had given disclosure by 6 March 2026 although Ms Cooke stated in her oral submissions that the Joint Liquidators did not

consider that Mr Pienaar had fully complied with the Order and believed that there were gaps in his disclosure. Again, although I was not taken to the correspondence, Ms Cooke told me that the Macgregor and Barraj Respondents had not given disclosure by the agreed date and that they agreed to the extension of time and the revised directions.

(7) *The S.379 Proceedings*

29. On 10 December 2025 Mr Lee filed a Notice of Motion with the Registrar of the High Court, Western Cape Division, Cape Town seeking urgent interim relief to restrain the Joint Liquidators from taking any further steps or incurring any further costs in the present proceedings (i.e. the consolidated Main Application and the Pienaar Application). He also sought substantive relief removing the Joint Liquidators from office under section 379 of the SA Companies Act 61 (the “**S.379 Proceedings**”). It was common ground that the hearing of the Notice of Motion will take place on 1 June 2026 and I was asked by the parties to hand down judgment on the Applications before the hearing took place (as I have done).

(8) *The Farrer Letter*

30. By letter dated 11 December 2025 (the “**Farrer Letter**”) Farrer wrote to the Joint Liquidators stating that they had been provided with the evidence in support of the S.379 Proceedings by the Joint Liquidators. They identified that evidence and defined it as the “**Documents**” before continuing as follows:

“The Documents contain numerous factual and legal errors. The effect of these errors is to present to the Honourable High Court of South Africa a version of events in relation to the English Proceedings which is highly inaccurate. In the light of this, we have been asked by Schaborts to prepare this letter for you. We understand that you will share this letter with the Honourable High Court of South Africa and so this letter is prepared with a view to: (a) assisting the Master and the Honourable High Court of South Africa to understand the true position in England; and (b) correcting certain errors and mischaracterisations contained in The Documents.”

31. Although I was not taken to the evidence in support of the S.379 Proceedings, it is clear from the Farrer Letter itself that serious allegations had been made by Mr Lee and his legal representatives about the conduct of the English claims and, in particular, that the Joint Liquidators had conducted them in a “grossly negligent or reckless way”: see the Farrer Letter, ¶17. They then continued as follows:

“18.1 The value of the claims being pursued in the English Proceedings is 493.484 BTC, which is equivalent (at the date of this letter) to approximately £34m (ie ZAR 770m). The amount that might be gained from the pursuit of the English Proceedings is therefore very significant. The pursuit of these sums is not something from which the JLs can resile without proper justification. The pursuit of such claims necessarily incurs legal costs.

18.2 The procedural directions provided by the English Court are in standard form. They are not overly onerous, nor are they in any way exorbitant. In addition, and while the costs of the English Proceedings will

(like any litigation) be substantial, the JLs (and your representatives in England) are taking all necessary steps to reduce the scope of the litigation and the associated costs as far as possible. It is not correct for Mr Thyne to assert (paragraph 6.6 of the Thyne Affidavit) that the JLs have "significantly escalated the scale and complexity of the UK proceedings". The opposite is true: we and counsel have been seeking on your behalf to reduce the scale of the English Proceedings as far as possible, especially in respect of disclosure. In any event, the costs to be incurred are relatively small in comparison to the total amounts being pursued by the JLs by way of recovery for the insolvent estate of MTI. On the other hand, if the interdict sought were to be granted, that may involve the estate having to bear the costs (or some of the costs) of the other parties' to the English Proceedings.

18.3 Even if the Honourable High Court of South Africa was minded to grant the interdict sought, that would not cause the cessation of the English Proceedings. As to this:

18.3.1 The English Proceedings do not advance claims under South African statutory insolvency law alone – to the contrary, the JLs have pleaded claims in the English Proceedings under both South African statutory insolvency law, as well as under the UK Insolvency Act 1986 (the UK Insolvency Act). See the Points of Claim filed in the English Proceedings, paragraphs 74 to 83. The claims under the UK Insolvency Act are advanced under section 238 of the Act (transactions at an undervalue) and section 239 (preferences).

18.3.2 It is for the Honourable High Court of South Africa to decide whether to restrain the JLs from prosecuting one of or both of the South African law claims and UK Insolvency Act claims in presently asserted in the English Proceedings. However, if the English claims continued in the English courts despite the South African claims being restrained, the English Court would still have to decide and rule on a set of factual issues. That is because:

(a) The claims under the UK Insolvency Act are based on the same transactions in respect of MTI that give rise to the South African claims: see Points of Claim filed in the English Proceedings, paragraphs 75 to 78;

(b) The English Courts would not apply the South African law of prescription to the UK Insolvency Act claims, but would instead apply the UK Limitation Act 1980. See further below;

(c) Additionally, the English Court will not be bound by any finding of law on prescription made by the South African courts. The English court decides questions of foreign law based on the expert evidence placed before it. Therefore, when deciding an issue of foreign law it is open to the English Court to “diverge from even the highest authority... if on the evidence [it] can be satisfied that an authority, however eminent, does not represent the law”: see *Deutsche Bank AG London v Comune di Busto Arsizio*. As such, were the South African courts to find in the 'Van Stittert' [sic] action that the South African claims against Mr van Stittert [sic] had prescribed, the English Court would be free to depart from such findings

if it were justified on the expert evidence of foreign law and evidence of fact before it; and

(d) Even if the Honourable High Court of South Africa restrained the JLs from continuing the English Proceedings, that ruling would have no effect on the Respondents in the English Proceedings (who are different to those persons instructing Mr Thyne). Those Respondents could insist on the continuation of the English Proceedings, as they may not tolerate an extended delay. Failure to pursue the English Proceedings in those circumstances could lead to the JLs being debarred from continuing the English Proceedings; the effect of which would be that the JLs would likely be ordered to pay all of the Respondents' legal costs in England, which would diminish the insolvent estate of MTI unjustifiably.”

32. Farrer then went on to deal with the South African law of prescription and its relevance in the English proceedings. They dealt first with the extent to which the law of prescription was in issue in the English claims and then addressed the Joint Liquidators' factual case:

“20.1 Prescription (and the date on which time should start running) under South African law is an issue in dispute in the English Proceedings. It is entirely wrong to suggest that the English Court has been misled about this: the issue is front and centre within the English Proceedings. The JLs have set out their position; the Respondents in England adopt a different position. The English Court will be asked to determine the matter and each side will advance expert evidence in support of its case (in accordance with the aforementioned directions given by the English Court). That is the proper approach under English law. In contrast, the position adopted in The Documents is that the assertions of Messrs Lee and Thyne ought to be adopted as correct without any proper scrutiny or consideration of the JLs' position. That cannot be correct and would not be accepted by the English Court.

20.2 As you know, the JLs' position in England is that claims did not become prescribed until at the earliest May 2025, as the earliest date on which the JLs had sufficient knowledge with which to pursue the relevant claims was June 2022. This has been the JLs' consistent primary position in the English Proceedings and that remains the case. The JLs have also advanced an alternative (secondary) argument in England, which is that the claims did not become prescribed until 11 November 2024, being the final appointment of the JLs in South Africa. There is nothing unusual or inconsistent about adopting a primary and (alternative) secondary position in English proceedings and there can be no credible suggestion that the English Court is being misled by this. We understand that the alternative dates argument (i.e. 11 November 2024) is also a point which has been advanced in the South African proceedings and to which Hunter and Lee refer in The Documents. Again, there is nothing inconsistent or misleading about the JLs' approach in this respect.

20.3 In addition and in any event, under the Limitation Act 1980 in England, the claims under the UK Insolvency Act would not have been time-barred (in South African terms, prescribed) when the English

Proceedings were issued and are not even time-barred today, because the limitation period applicable to a section 238 or 239 claim is at least 6 years if the claim is analogous to the recovery of money, and is as long as 12 years if the claim is not one to recover money: see *Re Priory Garage Walthamstow Ltd*.

21. The assertion in The Documents is that the JLs should not be allowed to bring the South African statutory insolvency claims in the English Proceedings because it is said (inter alia) the South African proceedings have prescribed and the JLs are alleged to have taken a contrary position on prescription in South Africa to that taken in the UK.

22. However, even assuming Messrs Thyne and Lee are correct about this (and your position is that they are not correct), it is not certain that this would result in a dismissal of the South African claims being asserted in the English Proceedings. That is because the JLs have pleaded in the English Proceedings that the prescription periods in the Prescription Act 68 of 1969 do not, as a matter of English private international law rules, apply to the South African claims: see the JLs' Reply, [19.3.1].

23. The basis for this argument is that the South African claims can only be asserted in the UK by virtue of section 426(5) of the UK Insolvency Act (which allows the foreign statutory insolvency law of former countries in the British empire to be applied by the UK courts in certain circumstances). The JLs will argue at trial that the effect of section 426(5) is only to apply the foreign insolvency law but not any foreign provisions relating to prescription not contained in that law. This is because section 426 allows the English Court to apply the general body of English law, the insolvency law of England & Wales, and the insolvency law of the foreign country, but not the general body of the foreign law: *Hughes v Hannover Ruckversicherungs AG*.

24. We consider that this argument, while novel, has a reasonable prospect of success in England. The implication of the argument, if successful, is that the South African claims will not be defeated in any event by any applicable prescription period under the law of South Africa.

25. Furthermore, if (contrary to the above position) the South African law of prescription does apply, then the JLs will argue that the relevant prescription period ceases to run on the date the relevant claims in the English Proceedings were commenced (i.e. filed with the English Court, which took place on 8 November 2024) and not when they were served: see the JLs' Reply, [19.3.6]. In such case, even if the relevant prescription period commenced on 11 November 2021 (which Hunter and Lee acknowledge has been pleaded in South Africa, and which has also been pleaded in the alternative in England), the claims being asserted in the English Proceedings would not be prescribed.”

33. Finally, Farrer dealt with a number of issues raised in the Documents about the Barber Strike Out Order. They stated that the judge's decision was procedural only and did not address the merits of the claims. They also dealt with the costs and the effect of the Barker Strike Out Order on the Respondents' prescription defence:

“Costs

27.5 At paragraphs 14.7 of the Thyne Affidavit and 4.5.2 of the Thyne Letter, the assertion is made that the insolvent estate of MTI has been diminished as a consequence of Judge Barber ordering that the JLs pay the Respondents' costs of the strike out application (being the typical order following the outcome). As you know, that is not correct.

27.6 You will recall that, in the unusual circumstances, this firm and English counsel instructed by you agreed to provide legal work to the JLs without charge and to do so for an amount equivalent to the amount of the adverse costs ordered by Judge Barber. Consequently, and without waiver of any privileged communications regarding those costs, the insolvent estate of MTI suffered no diminution as a consequence of the costs order of Judge Barber.

Effect

27.7 Throughout The Documents, the authors seek to assert or imply that the order of Judge Barber dated 8 November 2024 – which ordered that the Main Application be struck out on technical procedural grounds, leading to it being replaced with an identical application in the form of the Further Main Application – has prejudiced the position of the JLs and the insolvent estate of MTI. This is not correct.

27.8 As set out above, the JLs' position as set out in the English Proceedings is that prescription of the claims could not have occurred before the end of May 2025. On the case accepted in The Documents, service of the Further Main Application was effected in England by no later than December 2024 – i.e. before the relevant prescription date. Consequently, based on the JLs' case on prescription in England, there has been no prejudice suffered by the JLs in England as a consequence of the order of Judge Barber.”

(9) The Affidavits

34. Mr Connell made three affidavits in answer to the Notice of Motion in the S.379 Proceedings which were sworn on 13 February 2026 (“**Connell A1**”), 12 March 2026 (“**Connell A2**”) and 25 March 2026 (“**Connell A3**”). In Connell A1, he explained how the Farrer Letter had come to be prepared and sent and exhibited a copy. He also stated that he understood that it had been put before the Court before continuing as follows:

“11. In the circumstances, I do not repeat the contents of the Farrer Letter in this affidavit. However, I confirm that I believe the contents of the Farrer Letter to be true, and I incorporate the relevant portions of the same into this affidavit and repeat them. I therefore request that the Honourable Court reads the Farrer Letter in conjunction with this affidavit and vice versa. That said, to the extent there is any inconsistency between the Farrer Letter and this affidavit, this affidavit should take precedence.

12. The focus of this affidavit is to set out and explain the ongoing and upcoming procedural timeline in the English Proceedings. I understand that this explanation will assist the South African court when considering

the Application. Where I consider it appropriate, I explain in greater detail certain of the procedural obligations by which the Joint Liquidators are bound in England and which they must take into account as they conduct the relevant procedural stages in the English Proceedings. I am not a South African qualified lawyer and I have very limited knowledge of South African law and procedure. However, from my discussions with Schaborts, I understand that the required approach to the conduct of constituent stages of litigation can differ between the jurisdictions of England and Wales versus South Africa. I therefore consider it helpful to explain the obligations on the Joint Liquidators in England to demonstrate that they are proceeding in as reasonable and proportionate a manner as possible, whilst abiding by their obligations.”

35. Mr Connell then proceeded to give an overview of the English proceedings and the upcoming procedural stages. Mr Pienaar did not take me to these explanations or criticise them. In Connell A2, Mr Connell also dealt specifically with the costs order which ICC Judge Barber had made in the Barber Strike Out Order and costs more generally:

“C. Costs Order

10. As explained in the Farrer Letter, on 8 November 2024, Judge Barber ordered the Joint Liquidators to pay the costs of certain of the Respondents in the English Proceedings following the hearing on 8 November 2024. Those costs were summarily assessed in the amount of £32,000+VAT. As stated at paragraphs 27.5 and 27.6 of the Farrer Letter, and without waiver of any privileged communications, my firm and English counsel agreed to write-off certain costs (i.e. provide legal work without charge) to the Joint Liquidators to ensure that the insolvent estate of MTI would not be diminished as a consequence of the adverse costs order of Judge Barber. Those costs which have been written off exceeded the £32,000+VAT of costs orders which the Joint Liquidators were ordered to pay (and did pay) to the relevant Respondents following the 8 November 2024 hearing.

11. In addition, two other Respondents in the English Proceedings — Messrs Borrell and Da Silva — are also seeking to recover adverse costs against the Joint Liquidators which they assert flow from the 8 November 2024 hearing. Without waiving privilege in the communications, discussions are ongoing regarding the quantum of any such costs. If required, I can address this point further in a subsequent affidavit after those discussions have been concluded.”

“E. Other costs

13. What paragraphs 27.7 and 27.8 of the Farrer Letter do not mean — and I do not consider that they could be fairly construed as meaning — is that the order of Judge Barber had no negative effect at all on the position of the Joint Liquidators and the insolvent estate of MTI. As is the case in any contested litigation, the court may make procedural or substantive rulings against a party (in this case the Joint Liquidators) which require corresponding actions to be taken. That has been the case with regards to the order of Judge Barber. As is made clear in the Farrer Letter, the legal position of the Joint Liquidators and the insolvent estate of MTI suffered

no prejudice as a consequence of the order of Judge Barber; and the same is true regarding the adverse costs liability.

14. However, while there has been no prejudice to the Joint Liquidators' legal position¹, the Joint Liquidators and the insolvent estate of MTI have obviously incurred (and will continue to incur) wider legal costs in pursuing the continuation of the English proceedings, including some of the costs of issuing and serving the Further Main Application and the costs of pursuing the litigation more generally. In this way, the Joint Liquidators are incurring costs in England on behalf of the insolvent estate of MTI which they might otherwise not have incurred. To that limited extent it could be said that the Joint Liquidators are suffering a degree of prejudice (or detriment), not in relation to their legal position but in respect of their costs (at least until such time as recoveries of their costs are made). I consider that position to be obvious and self-evident, but I confirm that position now for the sake of clarity.

¹ (If the Joint Liquidators' position on prescription is correct)»

36. In Connell A3, Mr Connell dealt with prescription as an issue in the English proceedings and addressed the evidence given by Mr Lee that South African law applied to the English claims:

“16. First, the Applicant claims at paragraph 12 of the Replying Affidavit that under paragraph 14 of the Order of ICC Judge Mullen dated 23 October (the CMC Order)', "South African law is to apply to the avoidance claims". That statement is wrong. Paragraph 14 of the CMC Order sets out the scope of evidence the parties to the English Proceedings are able to adduce on the matter of South African law — it makes no comment about the governing law of any claims pursued. For completeness, I note that the relevant order on this matter in the English Proceedings is the Order dated 28 March 2025 of ICC Judge Greenwood, which says (at paragraph 3) that the Joint Liquidators have permission to bring claims pursuant to both South African law (under the South African Insolvency Act 24 of 1936) and English law (under the English Insolvency Act 1986) [JMC3/22-27].

17. Although this Third Affidavit is not the appropriate place for detailed legal submission, it may assist the Honourable Court to explain briefly that the applicable legal framework which applies to claims brought before the English courts under provisions of foreign law is the Foreign Limitation Periods Act 1984 (the FLPA 1984). As pleaded in the Joint Liquidators' Points of Reply filed in the English Proceedings, the FLPA 1984 states that for certain matters (including what act determines when a claim has been sufficiently instituted for the purposes of calculating limitation dates) English law shall be determinative.

18. At paragraph 29 and 30 of the Replying Affidavit, the Applicant appears to assert that we have advised the Joint Liquidators on the relevant prescription date in England by confusing the provisions of English and South African law on limitation and prescription. We have not, and the various assertions made on this topic (including at paragraphs 30 and 33 of the Replying Affidavit) are incorrect. Indeed, that the Applicant refers

to things such as "an English 3-year limitation period" (which does not exist in this context or apply to claims like this) at paragraph 32, shows a general misunderstanding on the part of the Applicant and lack of knowledge about the relevant legal framework. I do not understand that the Applicant is English law qualified; as such, it is perhaps understandable that his conclusions on matters of English law are mistaken.

19. In this context, paragraphs 24 to 30 of the Replying Affidavit are similarly misconstrued. It is the Joint Liquidators' case, as pleaded before the English Court, that the claims they are pursuing in England (brought under both English and South African law, as explained in paragraph 18 of the Farrer Letter) are not subject to a valid limitation or prescription defence. Although the Respondents contest this, it is a matter in dispute in the English Proceedings, of which the English Court is fully apprised and will rule at trial in England. Until then, it cannot be asserted by either party that their view on limitation/prescription is correct; and it is wrong for them to do so (as the Applicant does repeatedly).

20. Relatedly, the Applicant has claimed repeatedly that the Farrer Letter sought to deliberately mislead the South African Court on the issue of limitation in the English Proceedings. This contention is without any merit and is denied by my firm.

21. At paragraph 14 of the Replying Affidavit, the Applicant asserts that the Farrer Letter contains a deliberate and misleading omission because it does not state that prescription constitutes a complete defence to the claims in England under South African law. This is wrong.”

37. Mr Connell then dealt with the privileged email dated 13 March 2025 and gave evidence that Mr Lee had misquoted the email and distorted its meaning. He then continued as follows:

“22. Similarly, the Applicant argues at paragraph 32 of the Replying Affidavit that the Joint Liquidators having filed their initial application in the English Proceedings on 9 April 2024 is somehow proof that they know they are pursuing time-barred claims. This is also wrong. The Joint Liquidators sought to file claims at this time precisely because they envisaged that certain Respondents might seek to run misconceived prescription arguments which suggest (wrongly) that the proper prescription date is 9 April 2024. Notwithstanding that the earliest correct prescription date under South African law is 1 June 2025² (at the earliest), the Joint Liquidators sought to avoid the wasted time and costs of defeating Respondents' arguments about earlier prescription dates by filing the original application in England on 9 April 2024. These are precisely the flawed arguments by the Respondents which the Joint Liquidators are now having to spend time defeating.”

38. Finally, Mr Connell addressed a complaint which had been made to the Solicitors Regulation Authority (the “SRA”) in which the complainant had alleged that he and others had deliberately misled the Court in the Farrer Letter. He stated as follows:

“The Applicant discusses at paragraphs 58 to 62 a complaint which has been filed with the English Solicitors Regulation Authority (the SRA) about this firm and named lawyers, including me (the SRA Complaint). The focus of the SRA Complaint appears to be that Farrer & Co has deliberately misled or deceived the English (and/or South African) Court. The purported 'concrete evidence' provided in support of the SRA Complaint mainly concerns the purported omission in the Farrer Letter (referenced at paragraph 21 above). For the reasons I have explained, there was no such omission, deliberate or otherwise. The SRA Complaint is, in my view, baseless and an attempted abuse of process.”

II. The Strike Out Application

D. The Statements of Case

(1) The Points of Claim

39. Sections A to C of the Points of Claim consist of background or context in which the Joint Liquidators set out the parties, the fraud perpetrated by MTI and the liquidation of MTI (including its recognition in England & Wales). In section D they pleaded the individual transactions between MTI and each of the Respondents as follows:

“32. Individuals resident in the UK, South Africa, Australia, the USA and other jurisdictions received bitcoin from MTI, either as a purported return on their deposits of bitcoin, or by way of referral fees paid by MTI.

33. The Joint Liquidators have appointed digital forensics specialists and tracing agents to determine the identity and address of all recipients of bitcoin from MTI. Through these investigations, the Joint Liquidators have established that there appear to be approximately 8624 individuals who resided in the United Kingdom at the time when they registered as investors in MTI ("UK Bitcoin Recipients").

34. The Joint Liquidators have presently resolved to pursue claims against the Respondents.

35. Each of the Respondents: 35.1. From time to time opened, controlled, transacted in and/or held accounts in MTI for his/her own benefit under various "User ID" numbers and account names; and 35.2. From time to time transferred bitcoin to MTI and received transfers of bitcoin from MTI (each transfer or receipt, a "Bitcoin Transaction").

36. Each Respondent's Bitcoin Transactions with MTI are set out chronologically in the Transaction Schedules appended to these Points of Claim. Each Transaction Schedule sets out an individual Respondent's Bitcoin Transactions with MTI.”

40. The Joint Liquidators then pleaded what each transaction schedule showed: see POC, ¶37 to ¶39. In broad terms columns 1 to 6 set out the transaction history and columns 8 to 11 contained the specific claims against each Respondent. The Joint Liquidators pleaded their effect as follows:

“39.8. Accordingly, the eighth column (labelled ‘section 26 claim’) reflects the amount of bitcoin (and its rand equivalent) transferred by MTI to a Respondent at a specific point in time over and above a positive running balance. Each of the amounts in this column constitutes a transfer of “Additional Bitcoin.” In other words, each transfer of Additional Bitcoin is a transfer of bitcoin to a Respondent that is in excess of a Respondent’s liability to MTI. For the reasons pleaded below, these amounts are recoverable under section 26 of the SA Insolvency Act.

39.9. For the purposes of calculating the amount owed under the section 26 claims, the table treats the Defendant’s running balance of bitcoin with MTI as having been ‘returned’ to zero bitcoin by the claim, before the next Bitcoin Transaction takes place.

39.10. In the ninth column (labelled section 29 claim less section 26):
39.10.1. In broad terms, the column reflects each Respondent’s liability under section 29 of the SA Insolvency Act, but reflects what the position would be if the Court finds that credit should be given for any concurrent section 26 claim.
39.10.2. The numbers in the column reflect the amount of bitcoin (and its rand equivalent) transferred by MTI to a Respondent at a specific point in time less so much of that transfer as constitutes a transfer of Additional Bitcoin in that particular Bitcoin Transaction (and which therefore forms the subject of a section 26 claim);
39.10.3. Only transactions that are below the bold horizontal line occurred within six months of the deemed date of MTI’s liquidation, and therefore only those transactions can give rise to a claim under section 29.

39.11. The tenth column (labelled ‘section 29 claim’) represents bitcoin transferred from MTI to a respondent within six months from the date of liquidation, but without giving credit for a section 26 claim by deducting the Additional Bitcoin for that particular Bitcoin Transaction.

39.12. The eleventh column (labelled ‘section 30 claim’) reflects the amount of every receipt of bitcoin by a Respondent from MTI, in rand and bitcoin.

40. The eighth, ninth, tenth and eleventh columns reflect the value of the Joint Liquidators’ South African and UK statutory insolvency claims against each Respondent, as further pleaded to below.”

41. Ms Cooke took me to Mr Pienaar’s transaction schedule and it set out particulars of each transaction in columns 1 to 6 and the running balance (as explained above) in column 7. It also set out the alleged value of the Joint Liquidators’ claims under S.26, S.29 and S.30 in columns 8 to 11 in both bitcoin and rand. The Joint Liquidators alleged that Mr Pienaar owed them R254,285.30 under S.26, R1,592,839.20 under S.29 and R1,592,839.20 under S.30.
42. In section E, the Joint Liquidators pleaded their entitlement to an Order under S.426 (which has now been made). In section F, they pleaded the SA Clawback Provisions, that as a matter of South African law, title to MTI’s movable property was governed by South African law and that bitcoin and other cryptocurrency tokens are “movable, intangible and fungible property” for the purposes of South African law and also “property” within the meaning of section 2 of the SA Insolvency Act: see the POC, ¶48 and ¶49. They also

pleaded that the effect of transfers of bitcoin was as follows:

“50. Under South African law, any Bitcoin deposited into MTI's wallets by its investors became the property of MTI by virtue of those investors' exercise of their right of disposal over their property, and/or by virtue of *commixtio* with other Bitcoin held by MTI.

51. Every transfer of bitcoin from MTI to each Respondent therefore constituted a "disposition" of MTI's bitcoin by MTI to each Respondent within section 2 of the SA Insolvency Act, and in any case under the common law of South Africa.”

43. The Joint Liquidators then pleaded the individual elements of each cause of action under S.26, S.29 and S.30 in detail: see the POC, ¶¶52 to ¶¶68. They also claimed an order for the delivery up of bitcoin held by the Respondents *in specie* or payment of the equivalent value: see the POC, ¶¶69 to ¶¶73. Subject to the question of prescription, Mr Pienaar did not argue that these claims were not reasonably arguable or that they were bound to fail. In particular, he did not challenge the contents of his transaction schedule or submit that the Joint Liquidators had failed to plead all of the elements of each cause of action under the SA Clawback Provisions or that those claims were bound to fail on the assumed facts.
44. In section F, the Joint Liquidators then pleaded alternative claims under S.238 and S.239 of the IA 1986. Because of their importance on both the Strike Out and Directions Applications, I set out the Joint Liquidators' case in full:

“(i) Transaction at an undervalue

75. Each disposition of bitcoin from MTI to each Respondent set out in the Transaction Schedules was made at a "relevant time" because: 75.1. Each such disposition was made in the two years prior to 23 December 2020, being the deemed date of commencement of MTI's liquidation: see paragraph 26 above. 75.2. Each such disposition was made when MTI was (at least) balance sheet insolvent, because MTI's liabilities exceeded its assets at all material times: see paragraph 27 above.

76. Each disposition of bitcoin MTI to each Respondent was made on terms that provided for MTI to receive no consideration, because these dispositions were made pursuant to the MTI Investment Agreements, which were void ab initio under their governing law, being South African law: see paragraph 20 above.

77. Alternatively, each disposition of Additional Bitcoin was made on terms that provided for MTI to receive no consideration, for the reasons pleaded to at paragraph 54 above.

78. Each disposition of bitcoin from MTI to the Respondent was made pursuant to an unlawful ponzi scheme, and was therefore made neither in good faith, nor for the purpose of MTI carrying on its business, nor for MTI's benefit.

79. In the premises, the Joint Liquidators ask that the Court order: 79.1. Each Respondent to return in specie to MTI the total amount of bitcoin set out in the eleventh column of each Transaction Schedule (section 30 claim), this also representing the total amount of bitcoin transferred to each

Respondent at an undervalue in the two-year period; 79.2. Alternatively, that each Respondent return in specie to MTI the total amount of Additional Bitcoin set out in the eighth column of each Transaction Schedule (section 26 claim); 79.3. Alternatively, that each Respondent pay MTI a sum of money to be assessed, representing the value of the bitcoin amounts pleaded in the preceding two paragraphs; or 79.4. Alternatively, such other order as the Court thinks fit.

(ii) Preference

80. Each disposition of bitcoin from MTI to each Respondent set out in tenth column of the Transaction Schedules and below the bold horizontal line were made at a "relevant time" because: 80.1. Each such disposition was made in the six months prior to 23 December 2020, being the deemed date of commencement of MTI's liquidation: see paragraph 26 above. 80.2. Each such disposition was made when MTI was (at least) balance sheet insolvent, because MTI's liabilities exceeded its assets at all material times: see paragraph 27 above.

81. MTI was influenced by a desire to prefer each Respondent when making each disposition of bitcoin set out in tenth column of the Transaction Schedules, for the reasons pleaded at paragraph 67.

82. Each disposition of bitcoin from MTI to each Respondent set out in tenth column of the Transaction Schedules was a preferential transaction because it had the effect of placing the relevant Respondent in a better position than they would have otherwise been in a hypothetical insolvent liquidation of MTI following the relevant disposition, for the reasons pleaded at paragraph 60 above.

83. In the premises, the Joint Liquidators ask that the Court order: 83.1. Each Respondent to return in specie to MTI the total amount of bitcoin set out in the tenth column of each Transaction Schedule (section 29 claim), this also representing the total amount of bitcoin transferred to each Respondent as a preference at a relevant time; 83.2. Alternatively, that each Respondent pay MTI a sum of money to be assessed, representing the value of the bitcoin amounts pleaded in the preceding paragraph; or 83.3. Alternatively, such other order as the Court thinks fit.”

45. The Joint Liquidators then pleaded a claim for interest and set out the Orders which they would be seeking in the prayer for relief. Again, subject to the question of prescription, Mr Pienaar did not submit that these claims were not reasonably arguable or that they were bound to fail. In particular, he did not submit that the Joint Liquidators had failed to plead all of the elements of each cause of action under S.238 or S.239 or that those claims were bound to fail on the assumed facts. His case was that if the claims under the SA Clawback Provisions failed, then the claims under the IA 1986 should also fail. I return to this argument below.

(2) The Points of Defence

46. The Macgregor Respondents divided up the POD into the same sections as the POC. In section A, the POD stated that they had been filed on behalf of Mr Pienaar and although he is no longer represented by Macgregor Law, he has never served separate Points of

Defence. The Macgregor Defendants also took the point that bitcoin deposited with MTI became its property:

“5. As for paragraphs 7 to 12, the Macgregor Respondents deny that: 5.1 bitcoin purportedly deposited with, or transferred to, MTI became the property of MTI as opposed to Mr Steynberg in his personal capacity; 5.2 bitcoin purportedly transferred from MTI to the Macgregor Respondents were transfers or dispositions from MTI, as opposed to Mr Steynberg in his personal capacity and accordingly, the Macgregor Respondents require the Joint Liquidators to prove that transfers of bitcoin from and to the Macgregor Respondents were to and from MTI and not Mr Steynberg in his personal capacity.”

47. In section B, the Macgregor Defendants did not deny that Mr Steynberg ran a ponzi scheme through MTI or that it was fraudulent or illegal although they positively averred that they believed that they would receive a return on their investments as represented by MTI: see POD, ¶6. In section C, they did not admit that MTI was insolvent and pointed out that in *Bester NO v MTI* (above), the judge declined to hold that the company was “factually insolvent”: see POD, ¶11. In section D, they put the Joint Liquidators to proof in relation to each transaction and raised a number of issues about individual transactions (although not in relation to the transactions pleaded in Mr Pienaar’s transaction schedule). In section E, they pleaded as follows:

“19. The Macgregor Respondents admit the Letters of Request referred to in paragraph 41. The interpretation and scope of the Letters of Request are matters for submissions but the Macgregor Respondents contend that it would neither be “just and appropriate” as that phrase is used in paragraph 13.2 of the Letter of Request dated 19 April 2024, nor permissible taking into account the applicable “rules of private international law”, as that phrase is used in section 426(5) IA 1986, for the Joint Liquidators to obtain relief under the UK Claims if the South African Claims fail. The Macgregor Respondents accordingly contend that the Joint Liquidators cannot claim relief under English law if the claims under South African law fail.”

48. In section F, the Macgregor Defendants admitted the relevant principles of South African law pleaded by the Joint Liquidators but denied POC, ¶50 and ¶51 (above) on the basis that the bitcoin tokens were not the property of MTI: see POD, ¶22. The principal defences which they took in relation to the claim under S.26 were, first, that the claim was prescribed under South African law and, secondly that transfers of bitcoin were not dispositions without value:

“24.2 The Joint Liquidators’ claim under section 26 has prescribed because:

24.2.1 the SA Prescription Act applies in these proceedings in terms of the Foreign Limitation Periods Act, 1984;

24.2.2 the Joint Liquidators’ claim under section 26 is a “debt” for the purposes of the SA Prescription Act and is accordingly subject to the three-year prescription period prescribed in section 11(d) of the SA Prescription

Act, which commenced to run from the date on which the debt became due;

24.2.3 the debt became due, and the three-year prescription period started to run, from when the Western Cape Division of the High Court of South Africa granted the Joint Liquidators' extended powers in terms of section 386(5) of the SA Companies Act 1973, including the power to institute legal proceedings, on 22 January 2021, alternatively when the Joint Liquidators were finally appointed on 11 November 2021, and the Joint Liquidators had knowledge of the identities of the Macgregor Respondents and the facts from which the debt arise, alternatively could have acquired such knowledge by exercising reasonable care, on or before either date;

24.2.4 the Application Notice was served on the Macgregor Respondents on 7 April 2025;

24.2.5 service of process on the Macgregor Respondents accordingly took place more than three years after the debts became due; and

24.2.6 the claim under section 26 has accordingly prescribed in terms of section 11(d) of the SA Prescription Act.

24.3 In the alternative to paragraph 24.2 above, and if, as the Joint Liquidators contend in, inter alia, paragraph 54.1, “[a]ll transfers of bitcoin by and to MTI” were made pursuant to agreement that were “void for illegality under South African law”, then:

24.3.1 South African law applies to all transfers, or purported transfers, of bitcoin from and to the Macgregor Respondents, and applies to the consequences of those transfers, including the consequences of those transfers being “void for illegality under South African law”;

24.3.2 under South African law, each Macgregor Respondent had a claim in unjustified enrichment against MTI in terms of the *condictio ob turpem vel iniustam causam*;

24.3.3 transfers of bitcoin to the Macgregor Respondents discharged, wholly or in part, each Macgregor Respondent's unjustified enrichment claim against MTI; and

24.3.4 transfers of bitcoin to the Macgregor Respondents were accordingly not dispositions without value because MTI received value in the form of whole or partial discharge of MTI's liability in unjustified enrichment to each Macgregor Respondent.”

49. In relation to the claims under S.29 and S.30 the Macgregor Defendants repeated their prescription defence: see POD, ¶27.2 and ¶29.2. They also denied that Mr Steynberg or MTI intended to prefer the Macgregor Defendants over other creditors of MTI: see the POD, ¶29.3. In relation to the English claims, they took the point again that the Joint Liquidators could not claim relief under English law if the South African claims failed: see the POD, ¶31.1. They also averred that the South African law of prescription applied to the English claims:

“As for paragraphs 74 to 83 generally, the Macgregor Respondents... 31.2 in the alternative to paragraph 31.1 above: 31.2.1 repeat paragraph 5 and 11 above; and 31.2.2 contend that the SA Prescription Act applies in these proceedings in terms of the Foreign Limitation Periods Act, 1984, and accordingly the UK Claims: 31.2.2.1 are “debts” for the purposes of the SA Prescription Act; 31.2.2.2 are subject to the three-year prescription period prescribed in section 11(d) of the SA Prescription Act; and 31.2.2.3 have prescribed because service of process on the Macgregor Respondents took place more than three years after the debts became due and, in this respect, the Macgregor Respondents repeat paragraph 24.2 above.”

50. In relation to the claim under S.238, the Macgregor Defendants took the same point as they had taken in relation to the claim under S.26 (above), namely, that the transfers of bitcoin were not transactions at an undervalue because they had mirror claims for unjust enrichment which they were entitled to set off. In relation to the claim under S.239, they denied again that Mr Steynberg or MTI were motivated by a desire to put them in a better position than other creditors or that Mr Steynberg’s dominant intention was to prefer them: see the POD, ¶33 to ¶36.

(3) *The Points of Reply*

51. The Joint Liquidators joined issue with the Macgregor Respondents on all of the pleaded issues which I have described above. Moreover, Mr Pienaar did not submit that the Court could resolve any of those issues on the Strike Out Application apart from the question of prescription. In relation to that issue, the Joint Liquidators pleaded as follows in reply to the S.26 claim (and repeated their pleaded case in relation to the S.29 and S.30 claims):

“19.3. As to paragraph 24.2:

19.3.1. Paragraph 24.2.1 is denied. The effect of ICC Judge Greenwood’s order dated 28 March 2025 under section 426(5) of the Insolvency Act 1986 was to apply sections 26, 29 and 30 of the SA Insolvency Act, but not the law of South Africa relating to prescription. Accordingly, section 1(a) of the Foreign Limitation Periods Act 1984 does not apply.

19.3.2. If, contrary to the above paragraph, the Prescription Act 68 of 1969 (“Prescription Act”) does apply in these proceedings, then the below sub-paragraphs plead to paragraph 24.2 and its sub-paragraphs in the alternative.

19.3.3. As to paragraph 24.2. of the Macgregor Defence and paragraph 8 of the Barraij Defence, it is denied that prescription commenced to run from the date on which the debt became due (as alleged in paragraph 24.2.2 of the Macgregor Defence). Prescription commenced to run from the dates set out in the next paragraph.

19.3.4. Paragraph 24.2.3 of the Macgregor Defence (as well as paragraphs 11-12 and the last sentence of paragraph 14 of the Barraij Defence) are denied. As a matter of South African law, the three-year prescription period started to run in respect of each Macgregor and Barraij Respondent:

19.3.4.1. In respect of each Macgregor and Barraij Respondent, from the dates on which the Joint Liquidators obtained actual knowledge of the

name and address of each Respondent from their forensic investigators, as set out in the table at Appendix A of this Reply. This is because, as a matter of South African law, prescription starts to run only when the creditor (here, the Joint Liquidators) obtains sufficient information for a process server to be able to identify the debtor by name and address.

19.3.4.2. Alternatively, in respect of each Macgregor and BarraJ Respondent, from the dates on which the joint liquidators obtained actual knowledge of the name of each Respondent, as set out in the table at Appendix A of this Reply. If (contrary to the above paragraph) prescription does not start to run under South African law when the creditor obtains knowledge of the name and address of the debtor, then prescription starts to run when the creditor (here, the Joint Liquidators) has knowledge of the minimum facts necessary to institute a claim, which includes at least the name of the debtor.

19.3.4.3. Alternatively, from (at the earliest) 1 June 2022. The Joint Liquidators could not have acquired knowledge of the identities of the Macgregor Respondents by exercising reasonable care prior to this date, as the Joint Liquidators were unable to meaningfully analyse or deduce the identities of any given Respondent from MTI's data without the aid of suitable and bespoke computer software. The necessary software, called MARS, was only technically capable of analysing MTI's data so as to deduce the identities of any given Respondent from some point in June 2022.

19.3.4.4. In the further alternative, from 11 November 2021, when the Joint Liquidators were finally appointed.

19.3.5. As to paragraph 24.2.4 of the Macgregor Defence and paragraph 14 of the BarraJ Defence, it is denied that the dates of service on the BarraJ and Macgregor Respondents were 19 December 2024 and 7 April 2025 respectively. Rather:

19.3.5.1. The BarraJ Respondents were served on 23 December 2024.

19.3.5.2. All the Macgregor Respondents (except Robin Miller and Elliot Heather) were served on 23 December 2024.

19.3.5.3. Robin Miller was served out of the jurisdiction in Scotland on 14 January 2025.

19.3.5.4. Elliot Heather was served on 19 February 2025.

19.3.6. Further as to paragraph 24.2.4 (as well as the first sentence of paragraph 14 of the BarraJ Defence), it is denied that the prescription period ceased to run on the date of service of process on the Macgregor Respondents:

19.3.6.1. On a proper construction, the effect of the Foreign Limitation Periods Act 1984 ("FLPA 1984") and in particular section 1(3) thereof is that prescription ceased to run on the date and at the time at which the Application Notice commencing these proceedings was CE-filed with the High Court, that is, 8 November 2024.

19.3.6.2. In any event, section 15(1) of the Prescription Act (which provides that prescription ceases to run upon service of process) is contrary to the public policy of England & Wales and/or would, if applied, cause undue hardship to the Joint Liquidators. Section 15(1) therefore falls to be disappplied by the operation of section 2(1) or (2) of the FLPA 1984.

19.4. Paragraphs 24.2.5 and 24.2.6 of the Macgregor Defence are denied.”

52. In the POR, Appendix A the Joint Liquidators pleaded the date on which their forensic investigators had provided Mr Pienaar’s name to them as 3 August 2022 and the date on which other forensic investigators had provided the address at which he was served to Farrer as 20 December 2023. It is important to note that Mr Pienaar did not seek to challenge the second of these dates for the purposes of the Strike Out Application and was prepared to accept that the Court should decide it on the basis that the Joint Liquidators only became aware of his address on that date. Finally, the Joint Liquidators denied that the SA Prescription Act applied to the English law claims:

“30.2.3. As to paragraph 31.2.2, it is denied that the SA Prescription Act or the Foreign Limitation Periods Act 1984 applies to or is relevant to the UK Claims. The English law of limitation applies to the UK Claims. Under that law the UK Claims were not time-barred on either the date of issue or the date on which they were served on the Macgregor Respondents.”

E. The Law

(1) English Law

53. CPR Part 3.4 is headed “Power to strike out a statement of case” and CPR Part 3.4(1) provides that references to a statement of case include references to part of a statement of case. CPR Part 3.4(2) then provides as follows (so far as relevant):

“(2) The court may strike out a statement of case if it appears to the court—
(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim; (b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings; (c) that there has been a failure to comply with a rule, practice direction or court order;...”

54. The editors of Civil Procedure (2026 ed) (the “**White Book**”) Vol 1 distinguish between the three separate grounds for striking out under CPR Part 3.4(2) at 3.4.1 in the following way:

“Grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence. This power can be exercised by a judge acting on their own initiative at the stage of issuing a claim (perhaps with a court officer referring the case to the judge under r 3.2) and thus defendants against whom an ill-founded action is sought to be brought will be spared needless expense in having to initiate “strike out” proceedings; see PD 3A (Striking out a Statement of Case)

para.2.1 (para. 3APD.2).

Ground (c) covers cases where the abuse lies not in the statement of case itself but in the way the claim or defence (as the case may be) has been conducted. The strike-out can be made even where there was nothing in the rule, practice direction or court order breached which specified that this might happen as a consequence of breach. In many circumstances such a strike-out would seem unduly harsh unless the party concerned was warned (possibly in writing by another party) of the risk of their statement of case being struck out if they did not comply with the rule, practice direction or court order in question.”

(i) CPR Part 3.4(2)(a)

55. Ms Cooke and Mr Kok relied on the decision of the Court of Appeal in *Allsop v Banner Jones Ltd* [2021] EWCA Civ 7, [2022] Ch 55 where Marcus Smith J (with whom Arnold and Lewison LJ agreed) stated as follows at [7]:

“In contrast with the applications under CPR r 3.4(2)(b), the applications under CPR rr 3.4(2)(a) and 24.2 are concerned with the merits of the claim, specifically whether the claim meets the (low) threshold of what I shall call “reasonable arguability”. Although it can be said that there is no material difference between the test applied by these two provisions, there is an important distinction between CPR r 3.4(2)(a) and CPR r 24.2, in that an application under CPR r 24.2 can be supported by evidence, whereas an application under CPR r 3.4(2)(a) should not involve evidence regarding the claims advanced in the statement of case.”

56. Quite apart from the question whether the statement of case surmounts the reasonable arguable threshold, it is important that I remind myself that an application under CPR Part 3.4(2)(a) is limited to an analysis of the statements of case without reference to the evidence. In *Lay v Independent Vetcare Ltd* [2025] EWHC 1098 (Comm) Philip Marshall KC (sitting as a judge of the High Court) stated as follows at [33] and [34]:

“33. An application can be made to strike out all or part of a statement of case on the grounds that it discloses no reasonable grounds for bringing or defending the claim (applying CPR rule 3.4(1) and (2)(a)). The correct approach to an application to strike out, based on this aspect of the CPR , was considered by Warby J in *HRH The Duchess of Sussex v Associated Newspapers* [2020] EWHC 1058 (Ch) where he stated at [33(2)]:

"An application under CPR 3.4(2)(a) calls for analysis of the statement of case, without reference to evidence. The primary facts alleged are assumed to be true. The Court should not be deterred from deciding a point of law; if it has all the necessary materials it should "grasp the nettle": *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725, But it should not strike out under this sub-rule unless it is "certain" that the statement of case, or the part under attack discloses no reasonable grounds of claim: *Richards (t/a Colin Richards & Co) v Hughes* [2004] EWCA Civ 266 [2004] PNLR 35 [22]. Even then, the Court has a discretion; it should consider whether the defect

might be cured by amendment; if so, it may refrain from striking out and give an opportunity to make such an amendment".

34. The passage referred to by Warby J in the Court of Appeal's judgment in *Richards v Hughes* is worth setting out in full in the context of the present case. There Peter Gibson LJ (with whom all other members of the court agreed) explained:

"22. I start by considering what is the correct approach on a summary application of the nature of Mr. Richards's application at this early stage in the action when the pleadings show significant disputes of fact between the parties going to the existence and scope of the alleged duty of care. The correct approach is not in doubt: the court must be certain that the claim is bound to fail. Unless it is certain, the case is inappropriate for striking out (see *Barrett v Enfield London Borough Council* [2001] 2 AC 550 at p. 557 per Lord Browne-Wilkinson). Lord Browne-Wilkinson went on to add:

"[I]n an area of the law which was uncertain and developing (such as the circumstances in which a person can be held liable in negligence for the exercise of a statutory duty or power) it is not normally appropriate to strike out. In my judgment it is of great importance that such development should be on the basis of actual facts found at trial not on hypothetical facts assumed (possibly wrongly) to be true for the purpose of the strike out."

57. Ms Cooke and Mr Kok submitted that the Court should approach the decision whether to summarily dispose of a claim based on disputed propositions of foreign law with caution and they cited a number of authorities to support this approach: see *Edgeworth Capital (Luxembourg) SARL v Maud* [2015] EWHC 2364 (Comm) at [18] to [25] (Leggatt J), *Massa v Formula One Management Ltd* [2025] EWHC 3064 (KB) (Jay J) and *Commercial Bank of Dubai PSC v Al Sari* [2024] EWHC 3304 (Comm) (Foxton J). In the last case Foxton J (as he then was) cited *Edgeworth* before stating as follows at [62]:

"Without the benefit of independent experts on both sides, a joint memorandum and the full exploration of the legal sources which only a trial of some kind could facilitate, I do not feel able fairly to resolve the issues of UAE law which are in dispute on a summary basis. UAE law is an unfamiliar system, and both the legal authorities and the court filings I was referred to are translated from Arabic. The court filings are themselves open to conflicting interpretations, and do not always appear to be internally consistent or reflect a consistent position on the part of each side. These difficulties enhance the caution which the court is enjoined to adopt when determining whether a foreign judgment has preclusive effect in proceedings in this jurisdiction."

58. Although Mr Pienaar was content to accept Mr Vorster's evidence of foreign law as accurate for the purposes of the Strike Out Application, there was one important issue of South African law which was in dispute and I accept the submission that I should approach the determination of that issue summarily with caution. Finally, Ms Cooke and Mr Kok relied on the decision of Fancourt J in *Grant v News Group Newspapers Ltd*

[2023] EWHC 1273 (Ch) in support of their submission that limitation issues which turn on questions of fact such as what a party knew and when they knew it were not suitable for summary determination. Again, I accept that submission as a matter of general principle.

(ii) CPR Part 3.4(2)(b)

59. The editors of the White Book state that the abuse of the Court’s process is not defined in the CPR or any practice direction and that the categories of abuse are many and not closed. But they also state that the striking out of a claim should be the last option and that if the abuse can be addressed by a less draconian course, it should be: see Vol 1, 3.4.3. Mr Pienaar placed particular reliance on *Hunter v Chief Constable of The West Midlands Police* [1982] AC 529 *Mueen-Uddin v Secretary of State for the Home Department* [2024] UKSC 21, [2025] AC 945 at [40] (Lord Reed PSC) both of which are concerned with the doctrine of collateral attack. But both decisions provide clear authority for the proposition that the categories of abuse of process are not fixed or closed.
60. Mr Pienaar also relied upon *Asturian Foundation v Alibrahim* [2020] EWCA Civ 32 and *McDonald v Excalibur & Keswick Groundworks Ltd* [2023] EWCA Civ 18 in which Nicola Davies LJ addressed the question whether a claimant was guilty of misconduct which was so serious that it justified striking out. She summarised the effect of the relevant authorities at [48] and [49]:

“48. I accept the contention made on behalf of the claimant that the wording of CPR r 3.4(2)(b) creates a high bar for a strike-out with its focus on abuse of process or a Statement of Case which is “otherwise likely to obstruct the just disposal of the proceedings”. In addressing the issue of whether the claimant was guilty of conduct which is likely to obstruct the just disposal of the proceedings the Judge, relying upon the authority of *Arrow Nominees*, at para 56 posed the relevant questions as follows: “whether the appellant's conduct in this case rendered the just of fair trial impossible or whether his conduct corrupted the trial process so that a just result could not be achieved”. At para 59 he stated that what the Rules envisage is conduct “which jeopardises the fairness of the trial process”.

49. I accept the contention made on behalf of the defendant that the approach of the court to this issue, as identified by the court of Appeal in *Arrow Nominees*, was not whether the litigant's conduct rendered a just or fair trial *impossible*. Reflecting the approach of the court in *Arrow Nominees*, in particular as stated at para 54, I would formulate the question thus: is the litigant's conduct of such a nature and degree as to corrupt the trial process so as to put the fairness of the trial in jeopardy? In my judgment, the claimant's conduct did not begin to meet the degree of seriousness which is envisaged in this formulation.”

(iii) CPR Part 5.4(2)(c)

61. Neither party relied on any specific authority in relation to CPR Part 5.4(2)(c) although Mr Pienaar submitted that the Court should apply the three stage *Denton* guidelines to the Joint Liquidators’ failure to provide extended disclosure by 6 March 2026. He

submitted that if the Court was not prepared to give them an extension of time, the claims should be struck out because the Joint Liquidators could never be ready for trial (although he accepted that this was very much his fall-back position).

(2) *South African Law*

62. Section 10 (“**S.10**”), section 11 (“**S.11**”) and section 12 (“**S.12**”) of the Prescription Act 68 of 1969 (the “**SA Prescription Act**”) provide as follows (omitting footnotes and amendments):

“10 Extinction of debts by prescription

(1) Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt.

(2) By the prescription of a principal debt a subsidiary debt which arose from such principal debt shall also be extinguished by prescription.

(3) Notwithstanding the provisions of subsections (1) and (2), payment by the debtor of a debt after it has been extinguished by prescription in terms of either of the said subsections, shall be regarded as payment of a debt.

11 Periods of prescription of debts

The periods of prescription of debts shall be the following:

(a) thirty years in respect of (i) any debt secured by mortgage bond; (ii) any judgment debt; (iii) any debt in respect of any taxation imposed or levied by or under any law; (iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;

(b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a);

(c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);

(d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.

12 When prescription begins to run

(1) Subject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due.

(2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.

(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.”

63. Mr Vorster is a distinguished lawyer and academic who was awarded senior counsel status in 2001 and who acted as a judge of the High Court in Pretoria from time to time between 2001 to 2012. He has also appeared in a number of cases which dealt with the issue of prescription. Unlike English law, time does not stop running for the purposes of limitation until legal process has been not only issued but also served on the defendant. Mr Vorster's evidence was that claims under S.26, S.29 and S.30 of the SA Insolvency Act constitute debts within the meaning of S.11(d) but that a debt is not deemed to be due until the creditor has actual knowledge of the name and address of the debtor. It was also his evidence that the burden is on the debtor to prove a prescription defence (although that burden is not a particularly heavy one): see Vorster 1, ¶15 to ¶30.
64. For the proposition that time does not begin to run until the creditor knows the name and address of the debtor, Mr Vorster relied on the decision of Diemont JA in *Gericke v Sack* (1978) (1) SA 821 (A) and he gave evidence that it had been cited in a number of subsequent decisions. He also gave evidence that Diemont J took a strict view of the words in section 12(3) "the identity of the debtor" and that although South African law contains provisions for substituted service, there is no authority that time begins to run any earlier where an order for substituted service has been obtained. He stated as follows at Vorster 1, ¶30 to ¶35:

"30. As an aside, I point out that what is notable about Gericke is that Diemont JA took a strict view of the words "identity of the debtor". It was not enough, he held, that the creditor knew the characteristics of the debtor or facts enabling her to establish the debtor's identity. See 829B-830C and in particular:

"I am not persuaded that there is any merit in this contention. The Act provides in express terms that prescription does not begin to run "until the creditor has knowledge of the identity of the debtor" not that prescription will begin to run as soon as the creditor has knowledge of facts or information from which it will be possible for him to deduce or discover the identity of the debtor...

In common parlance I apprehend that the identity of an individual can be said to be determined when one or more of his characteristics is established so that he is definitively recognizable or known. Thus it may serve to identify an individual if his registration number as a citizen of the Republic is ascertained. But in order to determine the meaning which the Legislature intended to give the words they should be read in the context in which they are used in the Act... In order to establish the identity of the person on whom service is to be effected the sheriff will require the name and address of the debtor; it will not suffice to tell him that service must be effected on the pilot of a boat which competed in a race on 13 February 1971. (emphasis mine)

31. Finally, I should say that although South African procedural law has for some time contained provisions for substituted service of process, this does not in my view change the requirement that knowledge of the debtor's name and address is necessary for knowledge of his "identity".

32. There is no authority directly on point. The one case that appears to allude to the issue (albeit very obliquely) is *Slomowitz v Kok* 1983 (1) SA 130 (A). That was a case in which an attorney acting in a personal injury

lawsuit was sued for negligently failing to serve process on behalf of his client timeously, such that the client's claim prescribed. The defendant in the personal injury lawsuit appears to have been a member of a "floating community" whose members did not own their own homes and moved from place to place. However, the trial judge, O'Donovan J, recorded at 131B-C that:

A third-party insurance disc had not been found on the vehicle, but the name of the driver, one Rall [the defendant in the underlying action], and his residential address, which was in Westinghouse Boulevard, were known.... The Assistant Deputy Sheriff's return, dated 25 March 1977, shows that he attempted to serve Rall at his house in Westinghouse Boulevard at 9.25 am on March 17, but found the house to be empty. In fact Rall, as the evidence shows, had moved out the previous day, and left for the Cape. Further efforts to serve Rall were made on 17 and 18 March, but he could not be traced at various addresses in Vanderbijlpark....

33. Muller JA gave a short judgment in Afrikaans (with which Holmes AJA concurred) that did not mention substituted service at all. Kotzé JA concurred in the result but said at 136G – 137C that:

"A careful attorney would appreciate that to delay service on a natural person to a very late stage ...especially in a community like Vanderbijlpark where, according to the undisputed evidence, the residents are a floating community, most of whom do not own their own homes. In the present case precisely that happened... It was then too late to obtain leave to effect substituted service before 20 March and the period of prescription expired. The appellant as behoves a diligent attorney, should at least have arranged his conduct of the respondent's affairs in such a way that he could, in the event of service of the summons being thwarted, timeously apply for leave to effect substituted service."

34. These remarks do not seem to me to change the position that knowledge of both the name and address of the debtor is needed. No reference was made to **Gericke v Sack**. Further, the name and address of the defendant in the underlying personal injury proceedings was known such that prescription had in fact clearly started running.

35. My view is that prescription cannot start running where substituted service is necessary by reason of the defendant's address being unknown. Not only does there seem to be no authority for that proposition, but the existence of procedural rules relating to substituted service cannot change the well-established requirements for knowledge of a debtor's identity."

65. Mr Vorster also gave evidence that although it is only necessary for the creditor to know the basic facts which give rise to the debt for the purposes of section 12(1), knowledge is a subjective requirement which requires actual belief of the relevant facts. He summarised his evidence at Vorster 1, ¶45:

“By way of summary: The existence of “knowledge” in the mind of a creditor is a subjective requirement requiring “justified, true, belief”, as made clear in the **Minister of Finance v Gore** case (op cit). A subjective justified, true, belief cannot exist where the creditor has access to the relevant information but has not discovered it for him or herself. In my view, therefore, mere “access” to information does not constitute “knowledge”.”

66. Finally, for present purposes, Mr Vorster addressed the question what is meant by the words "exercising reasonable care" in section 12(3) of the Prescription Act. He gave the following evidence at Vorster 1, ¶49 and ¶50:

“49. In **Drennan Maud and Partners v Pennington Town Board** 1998 (3) SA 200 (SCA) at 209F–H the following was stated:

“In my view, the requirement ‘exercising reasonable care’ requires diligence not only in the ascertainment of the facts underlying the debt, but also in relation to the evaluation and significance of those facts. This means that the creditor is deemed to have the requisite knowledge if a reasonable person in his position would have deduced the identity of the debtor and the facts from which the debt arises.”

50. It is also instructive to consider **Administrator, Cape v Olpin** 1996 (1) SA 569 (C) at 577H – I, where it was held by the Cape Full Bench, in the context of section 2(2)(c)12 the (now repealed) Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970, that the exercising of reasonable care by the creditor in acquiring knowledge of the identity of the debtor did not require heroic deeds or exceptional diligence or prudence in an extreme degree on the part of the creditor. The Court also referred to section 12(3) of the Prescription Act which uses similar words, viz “exercising reasonable care” in this context and held that it was required that the creditor does no more than could reasonably be expected, in the circumstances of a reasonable person at 578A – B.”

67. After discussion a number of authorities upon which Mr Thynne had relied in his letter to the Court, Mr Vorster then expressed the following views about the facts of the present case at Vorster 1, ¶62 to ¶64 (original emphasis):

“62. If the evidence does indeed establish that the Joint Liquidators were in possession of the identities of the debtors and all necessary factual material no later than 9 April 2021, I would have no difficulty agreeing that prescription would start running on that date. However, as I have said, the Joint Liquidators would have had to have both the name and address of the relevant debtors. Further the mere fact that the Joint Liquidators had in their possession an unprocessed set of data which might have contained the names of the relevant debtors and ‘raw’ data about their transactions does not in itself amount to ‘knowledge’ of the minimum facts necessary to bring a claim, because it would not meet the standard for ‘knowledge’ set out in the **Gore** case.

63. I am also in agreement with the statement in paragraph 5.5 that once the Joint Liquidators gained access to the Maxtra Database **and could by exercising reasonable care**, identify the relevant debtors and understand the factual basis for their claims, prescription began to run.

64. I have emboldened the words above in order to emphasise that the gaining of access to the Maxtra Database would not necessarily in itself cause prescription to start running. Once access to the database was gained, the question would remain when, by exercising reasonable care the Joint Liquidators would have been able to identify the debtors and understand the factual basis for their claims.”

F. Analysis

(1) *The Foreign Limitation Periods Act 1984*

68. There was a dispute between the Joint Liquidators and Mr Pienaar whether the South African law of prescription applies at all to the South African claims brought in the English proceedings. Section 1(1) of the Foreign Limitation Periods Act 1984 (the “**FLPA 1984**”) provides as follows:

“1.— Application of foreign limitation law.

(1) Subject to the following provisions of this Act, where in any action or proceedings in a court in England and Wales the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter— (a) the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings subject to section 1ZA and section 1B; and (b) except where that matter falls within subsection (2) below, the law of England and Wales relating to limitation shall not so apply.”

69. The issue between the parties was whether the S.426 Order extended only to the SA Clawback Provisions or whether ICC Judge Greenwood also intended it to apply to the law of prescription. The Joint Liquidators pleaded case was that he did not: see the POR, ¶19.3.1. Mr Pienaar’s case was that the SA Prescription Act fell within the description “the general law of South Africa” which was “ancillary to or necessary for the operation of the” SA Clawback Provisions and, therefore, fell within the FLPA, S.1(a) (above).

70. It is unnecessary for me to decide this issue because the Joint Liquidators conceded for the purpose of the Strike Out Application that the SA Prescription Act applied under the FLPA 1984 to the question whether the South African claims were barred by limitation but not to the question whether the English claims were barred by limitation. I, therefore, approach the Strike Out Application on that basis. The scope of the S.426 Order is, however, relevant to other issues which I must decide.

(2) *Debt Due*

71. The Macgregor Defendants’ pleaded case was that time began to run for the purposes of the SA Prescription Act when the statutory debts under S.26, S.29 and S.30 became due and that this date was the appointment of provisional liquidators on either 22 January

2021 or 20 January 2021 (as Ms Cooke and Mr Kok stated in their Skeleton Argument). The rationale for this date was that on their appointment the provisional liquidators had power to bring proceedings under section 386(5) of the SA Companies Act. The Macgregor Defendants alternative pleaded case was that the statutory debts became due on 11 November 2021 when the appointment of the Joint Liquidators (or, at least, the First to Sixth Claimants) was made final: see the POD, ¶24.2.3.

72. In my judgment, the Joint Liquidators have a good arguable case that the alternative dates pleaded in the POD are wrong and do not reflect the law of South Africa. Mr Pienaar did not seek to rely on Thyne 1 and Mr Vorster’s evidence was that it was inaccurate and that the general principle in S.12(1) is subject to S.12(2) and S.12(3). He also stated that this is sometimes described as “extinctive prescription”: see Vorster 1, ¶10 and ¶11. Mr Pienaar did not challenge this evidence for the purposes of the Strike Out Application and I accept it for that purpose.

(3) *Actual Knowledge*

73. The Joint Liquidators’ pleaded case was that time began to run when they had actual knowledge of the name and residential address of Mr Pienaar and in Appendix A they pleaded that this date was 20 December 2023. In my judgment, the Joint Liquidators have a good arguable case that time did not begin to run for the purposes of the first limb of S.12(3) until this date. Mr Vorster gave clear evidence that time did not begin to run until the Joint Liquidators had actual knowledge of Mr Pienaar’s name and residential address and it is not appropriate for the Court to go behind that pleaded date for the purposes of the Strike Out Application. In any event, Mr Pienaar accepted that this date was accurate (for the purposes of the application at least).
74. This is sufficient to dispose of the first limb of S.12(3). But out of deference to Mr Pienaar’s oral submissions (and also because they were relevant to deemed knowledge), I set out address his argument in full. Mr Pienaar argued that the Joint Liquidators had actual knowledge for the purposes of S.12(3) on or soon after 10 May 2021 when they had access to the MAXTRA database and, in any event, before 27 January 2022 which was all that he had to demonstrate for the claims to be extinguished. He relied on the following facts and matters which were largely derived from the Joint Liquidators’ own evidence:
- (1) Mr Pienaar took me to his User Login Panel and Back Office Dashboard on MTI’s Maxtra database. His profile gave his username as “Lightning Trader”, his given name and his email address as lightningtrader69@gmail.com. It also contained his wallet transaction history setting out all of the relevant transactions. I will refer to this information as Mr Pienaar’s “**Back Office**” information and Mr Pienaar submitted that it contained all of the information which the Joint Liquidators would need to bring a claim against him and to serve it on him if he had been prepared to accept service by email.
 - (2) Mr Pienaar also took me to a series of “Replications” which the Joint Liquidators had served in a number of sets of proceedings in South Africa against a number of Defendants including Mr Frans Petrus Van Sittert. A Replication is the equivalent of a Reply in English proceedings and in their Replication dated 7 October 2025 in Claim No. 2024 053705 in the High Court (Gauteng Division, Pretoria) (the “**Van Sittert Claim**”), the Joint Liquidators pleaded that on 9 April 2021 they obtained

access to the Maxtra database:

“1.4.5.2 On 9 April 2021 the plaintiffs obtained access to the Maxtra Database from which the plaintiffs could, through the exercise of reasonable care, establish the identity of the defendant and the facts upon which the claims of the plaintiff against the defendant are founded.

1.4.5.3. Prior to access being obtained by the plaintiffs to the said database as aforesaid there existed no reasonable means by which the plaintiffs could otherwise establish the identity of the defendant or the facts giving rise to their claims against him.

1.4.5.4. The claim of the plaintiffs therefore did not arise before 9 April 2021 in terms of section 12(3) of the Prescription Act.”

- (3) On 31 October 2024 Mr Cooper made his third witness statement in the English proceedings (“**Cooper 3**”). He stated that the relevant date on which Maxtra granted access to the Joint Liquidators to the Maxtra database containing Mr Pienaar’s Back Office information was 10 May 2021. He also explained that they had instructed forensic IT experts, Peddy Tech trading as TGC Forensics (“**TCG**”), who had developed bespoke software for user identification and tracing called the “MTI Administrative Reporting System” or “**MARS**”. Mr Pienaar placed specific reliance on the following passage (original emphasis):

“31. MARS was only in a sufficiently advanced build to identify users and analyse MTI’s transactions by June 2022. Therefore, prior to June 2022, it was not possible at all for the Joint Liquidators to: i. identify the debtors of MTI at all; ii. properly analyse and/or verify the debtor’s transactions; nor iii. account for the whereabouts of large amounts Bitcoin expected to be in MTI’s possession.

32. Although improvements to MARS continued to be made after June 2022 to refine MARS’s ability to analyse the Maxtra data, the Joint Liquidators have assumed, in favour of the debtors and only for the purposes of this hearing, that MARS could meaningfully be said to be able to identify MTI’s debtors on 1 June 2022.”

- (4) Based on Cooper 3, Mr Pienaar submitted that from 9 April 2021 or 10 May 2021 (whichever was correct) the Joint Liquidators had available his Back Office information and could have obtained the information necessary to bring a claim against him from that date. In support of this submission he also relied upon the fact that on 12 August 2021 Moster & Bosman, a firm of attorneys, sent a circular email to Mr Pienaar at his “lightning trader” email address addressed to “All Known Members/Investors of Mirror Trading International (Pty) Ltd (in liquidation)”. They stated that they were acting for the joint provisional liquidators and continued as follows:

“In as far as your contact details, as the recipient of this e-mail, appear in the members' data base maintained by MTI, you may be an interested party in the outcome of a High Court application instituted by our clients in the High Court of South Africa, Western Cape Division, Cape

Town under case number 19201/2020, in terms of which our clients seek the following order from the High Court:

2.1 That the provisional liquidators be granted leave to intervene in the application for MTI to be placed in final liquidation. Alternatively, that the provisional liquidators are granted leave to seek the relief dealt with below, as substantial relief under the abovementioned case number and to rely on the affidavits filed under the aforesaid case number;...”

- (5) Mr Pienaar also told me that access to his MTI account and his wallet were frozen when MTI went into provisional liquidation but that it was restored in December 2021 when the Joint Liquidators’ final appointment took effect. In particular, on 8 December 2021 an email was sent to him at his Lightning Trader address from an email address admin@mticlaims.co.za. It stated as follows:

“In furtherance of assisting creditors to validate their claims, the system known to you as the “MTI Backoffice” has been placed in a live form at www.mticlaims.co.za. On this website, you will be able to reset your password and view data relevant to your deposits into MTI and withdrawals from MTI. To gain access, you will be required to provide Know Your Customer (KYC) documentation as you claim your account and will need access to the e-mail address with which you registered on the MTI System. In addition to verifying your data, you will be able to download, complete and upload your claim document within the system. A brief introduction video is available to guide you through the process. Should you struggle to navigate the system, e-mail support is available to assist you as well as a Facebook Chat option. The website can be found at www.mticlaims.co.za. Can't access the link? Copy and paste the following in your browser URL bar <https://mticlaims.co.za>.”

- (6) Finally, Mr Pienaar took me to the pre-action correspondence between Farrer and himself and, in particular, his letter dated 11 March 2024 to show that Farrer wrote to him at his Lightning Trader email address (rather than his residential address), that he was cooperative throughout and that the Joint Liquidators had sufficient information to bring a claim against him when they issued the Old Application on 9 April 2024. He submitted that they could and should have brought the claims against him then and that, if they had done so and if the Old Application had not been struck out, the South African claims would not have been extinguished by prescription.

75. I am prepared to accept that the Joint Liquidators knew Mr Pienaar’s name and his Lightning Trader email address earlier than 20 December 2023 (and they admit to having access to his name in August 2022). I am also prepared to accept that they could have served proceedings on him at his email address if they had obtained an order to that effect under Rule 12.9(2)(c) of the Insolvency Rules (England & Wales) 2016 or, alternatively, if he had agreed to accept service by email. However, I am not satisfied that this gives Mr Pienaar an unarguable defence of prescription for the following reasons:

- (1) Mr Vorster gave evidence that there is no authority under South African law for the proposition that time begins to run any earlier where the creditor has obtained an order for substituted service: see Vorster, ¶31 to ¶34 (above). In my judgment, the Joint Liquidators have an arguable case that time did not begin to run until 20 December 2023 and whether or not they could have served Mr Pienaar by email much earlier and this is clearly a matter for expert evidence at trial. This is the issue which it is necessary for the Court to approach with caution.
- (2) But even if it is sufficient to show only that the Joint Liquidators had actual knowledge of Mr Pienaar’s name and email address, I am not satisfied that they had that knowledge from 9 April 2021 or, alternatively, 10 May 2021 simply because they had access to the Maxtra database. Mr Vorster’s evidence was that actual knowledge of facts must be proved strictly and is not to be equated with access to the relevant information or documents from which those facts can be derived: see Vorster 1, ¶45.
- (3) It may be that Mr Pienaar will be able to persuade the Court at trial that on 11 August 2021 Mostert & Bosman knew his name and email address and that their knowledge should be attributed to the Joint Liquidators for the purpose of the South African claims in the English proceedings. But, in my judgment, that must also be an issue for trial. Ms Cooke submitted that the email dated 11 August 2021 was no more than an automatic email sent to all of the email addresses on a distribution list and that this should not be equated with actual knowledge.
- (4) But even if I were prepared to accept that the Joint Liquidators knew Mr Pienaar’s name and email address as early as 12 August 2021, I am not prepared to accept that the Joint Liquidators knew that he was a debtor of MTI at any time before 1 June 2022 and had actual knowledge of the facts giving rise to the claims under S.26, S.29 and S.30 at that date. This requires Mr Pienaar to prove that they knew the balance of the account between MTI and its individual investors and customers earlier than 27 January 2022.
- (5) The Macgregor Defendants (who included Mr Pienaar at the time) have pleaded that the Joint Liquidators had knowledge of the “facts from which the debt arise” [sic] on their appointment as provisional liquidators on 22 January 2021 or, alternatively, on their final appointment on 11 November 2021: see the POD, ¶24.2.3. However, no particulars of this allegation are given and the Joint Liquidators have denied that allegation: see the POR, ¶19.3.4. They also advanced a positive case that they could not meaningfully analyse the data on the Maxtra database until that date: see the POR, ¶19.3.4.3.
- (6) Furthermore, Cooper 3, ¶31 (upon which Mr Pienaar placed significant reliance himself) provides evidence in support of such a conclusion (as does the evidence to which I refer below in the context of deemed knowledge). In my judgment, the Court cannot go behind the Joint Liquidators’ pleaded case on the Strike Out Application. It is not obviously bad in law, it is impossible for the Court to resolve the factual issues on the pleadings alone and, in any event, the Joint Liquidators’ case is supported by credible evidence. I, therefore, dismiss the Strike Out Application to the extent that it is based on the Liquidators’ actual knowledge.

(4) *Deemed Knowledge*

76. I turn to consider deemed knowledge and whether the Joint Liquidators could have acquired knowledge of Mr Pienaar’s name and residential address or, alternatively, his name and email address before 27 January 2022 by exercising reasonable care. In Cooper 3, Mr Cooper gave the following additional evidence about the Maxtra database in addition to the extract which I have quoted above:

“24. During May 2021, the liquidators issued an application in the South African High Court and obtained an order to, inter alia, declare the business of MTI illegal and, consequently, the agreements between MTI and investors to be (such that they existed at all) void ab initio. Documents and information discovered and disclosed in those proceedings did not fill the substantial gaps in the liquidators’ knowledge as to the identity of MTI’s debtors, the extent and/or accuracy of debts owed to MTI, and the whereabouts of most of the Bitcoin.

25. On 10 May 2021, Maxtra provided access to MTI’s database to the liquidators. On instruction of the liquidators, forensic IT experts, Peddy Tech CC trading as TCG Forensics (“TCG”), also gained access and began their investigations.

26. Ascertaining the identity of the debtors of MTI was a complex and laborious task for TCG to undertake. Initial analysis of the database revealed 304,040 investors in, and therefore accounts on, the MTI platform. However, further analysis of the database revealed the true number of investors to be lower because numerous duplicate accounts were identified. They also found 58,607 potentially duplicate accounts. Further, there were 275,544 users/members with no address details and 3,806 users with no phone number provided. Moreover, more than 200,000 members/users were found to be outside of South Africa.

27. In addition, analysis of the back-office IT records on the database over a period of many months indicated that the initial details of investors recorded in the MTI system were not always accurate: name, address and contact details information were often found to be either false/inaccurate or missing. This, in turn, made it difficult to identify which groups of user accounts were controlled by the same natural person or entity.

28. Consequently, further analysis and investigation of the investor details was necessary in some cases to identify the debtors.

29. Determining the relevant withdrawal dates to determine whether an investor was a debtor or creditor of MTI was similarly complex because each of ~300,000 user accounts contained multiple transactions, meaning millions of transactions needed review.

30. Given the aforementioned complexity of the data and records, bespoke software needed to be developed by TCG in order to – merely – reach the point where MTI transactional data could begin to be interrogated, and to reach the point where user identification and tracing could begin. TCG called this software the ‘MTI Administrative Reporting System’ or “MARS”.”

“43. As stated above, at all material times, the Joint Liquidators acted reasonably and expeditiously to learn the relevant facts by inter alia: (i) obtaining an extension of powers from the court on 22 January 2021 and thereafter commissioning an enquiry; (ii) instructing a firm of digital forensic analysts (TCG) in early 2021 to obtain access to the back-office system/database hosted on a server in India, which was obtained promptly on 10 May 2021 but whose interrogation only ended in June 2022 for the reasons stated above; and (iii) interviewing de facto directors and senior MTI management in February and March 2021.

44. In summary, owing to the complexity of deciphering, analysing, and interpreting technical back-office data, it took some time before the liquidators could ascertain, with any credible confidence, the relevant facts to bring a claim against Mr. Merritt, the Macgregor Applicants or any of the other Respondents in the Main Application. It was not possible to determine one specific date from when the running of time for bringing a claim against the debtors, as a group, would have commenced because the circumstances of each debtor may have differed by reference to the relevant facts.

45. However, the process of deciphering, analysing, and interpreting the IT data became possible in respect of all debtors by (taking a conservative date) 1 June 2022. As I have explained, this was the earliest date when the Joint Liquidators had the tools (in the form of an early build of MARS) to properly identify individual debtors of MTI. I understand from the report by Mr van Rooyen that pursuant to section 12(3) of the Prescription Act 68 of 1969, the running of prescription commenced on this date. Hence, the Joint Liquidators could have brought the claim as late as 31 May 2025 against Mr. Merritt, the Macgregor Applicants and all the other debtors.”

77. On 19 February 2025 Mr Cooper made his sixth witness statement (“**Cooper 6**”) in which he stated that the Joint Liquidators were pursuing approximately 7,196 Respondents in 14 jurisdictions and that this was likely to increase. On 14 October 2025 Mr Connell made his seventh witness statement for the purposes of the CMC (“**Connell 7**”). One of the issues which he addressed was the need for expert evidence on the forensic analysis of large computer databases and the development of software to interrogate it. His evidence included the following:

“24. Initial enquiries carried out by the South African authorities following MTI's provision liquidation in January 2021 were unable to establish, or establish with any degree of reliability, the identity of MTI's investors or debtors. MTI operated a 'back-office' system, which was used to record, execute and manage bitcoin transactions. During the initial enquiries into MTI, it became evidence that this 'back-office' was managed solely by Mr Steynberg. The back-office system was operated by Maxtra Technologies Pvt Ltd ("Maxtra") and hosted on servers based in India. I refer to the data held by Maxtra comprising the back-office system as "the Maxtra Database".

25. In April 2021, following their final appointment, the Joint Liquidators instructed forensic IT experts Peddy Tech cc trading as TCG Forensics ("TCG") to obtain a secured copy of the Maxtra Database. Maxtra

provided a secured File Transfer Protocol address at which the Maxtra Database could be downloaded, which TCG promptly did. The downloaded file was copied to a removable hard disk held by the Joint Liquidators.

26. It has always been the case that each individual user of MTI was able to access their account details and transaction history by using their credentials to log onto a website www.mymticlub.com. However, the raw data as stored on the Maxtra Database was not structured in a way which enabled the Joint Liquidators to identify user details and related transactions. For example, investors in MTI were encouraged to refer new users, for which they would receive referral bonuses (a standard function of a Ponzi scheme). Many users therefore created multiple accounts which they would 'refer' to generate these bonuses. The raw format of data on the Maxtra Database did not identify links between accounts (which may be established following analysis of transactions between accounts, identifying password matches, re-used or similar email address, the same bitcoin wallet addresses being used etc.) and so a process needed to be created by which such analysis could be carried out.

27. As such, TCG were instructed by the Joint Liquidators to develop a reporting overlay which would allow the data to be analysed so that relevant users (who would include both creditors and debtors of MTI) could be identified. To this end, TCG developed the 'MTI Administrative Reporting System', or "MARS". The first version of MARS was released in late 2021 but only served as an initial iteration which allowed further development of a reporting tool which could be relied upon by the Joint Liquidators. MARS was only in a sufficiently advanced build to identify users and analyse MTI's transactions by sometime in June 2022.

28. The Joint Liquidators consider that this is a topic appropriate for expert evidence given the highly technical and complicated nature of the above matters, which are matters on which the Court will require assistance. The Court will not be in a position to conclude whether or not the speed and extent of the Joint Liquidators' efforts to analyse the Maxtra Database and develop MARS were or were not objectively reasonable, without specific expert evidence from a professional with knowledge of such matters.

29. The specific areas which should be addressed are:

29.1. the condition of MTI's data (namely the Maxtra Database) when recovered by the Joint Liquidators;

29.2. whether it was reasonably possible to identify individual respondents to the claim from this data, without the aid of bespoke or specialised software; and

29.3. the process of development and operation of software to analyse the said data to the end described above, and how quickly such software could reasonably have been developed to do so."

78. I am prepared to accept that the Joint Liquidators could and, possibly, should have issued and served the Pienaar Application on Mr Pienaar by 9 April 2024. They knew his name and residential address by then and they had already engaged in pre-action correspondence with him. Moreover, the Joint Liquidators offered no explanation for failing to include him in the Old Application nor did they seek to defend their conduct in failing to prevent it from being struck out. Ms Cooke relied on the fact that no order for indemnity costs was made against them. But she did not seek to persuade me that the Joint Liquidators could not reasonably have avoided the Old Application being struck out.
79. But it does not follow that because the Joint Liquidators are unable to defend the nine and half months between 9 April 2024 and 27 January 2025, the Pienaar Application is now barred by prescription. The issue for the Court is not whether they could reasonably have issued any earlier but whether they could reasonably have known Mr Pienaar's name and residential address (or, alternatively, his name and email address) and that he was a debtor of MTI more than three years before 27 January 2025. Moreover, on this issue, I am satisfied that they have reasonable grounds both for bringing the claims against Mr Pienaar and meeting his prescription defence. I have reached this conclusion for the following reasons:
- (1) The Macgregor Defendants (who included Mr Pienaar at the time) have pleaded that the Joint Liquidators could have acquired knowledge of their identities and the facts from which the debts owed by them arise on their appointment as provisional liquidators on 22 January 2021 or, alternatively, on their final appointment on 11 November 2021: see the POD, ¶24.2.3. Again, no particulars of this allegation are given and, again, the Joint Liquidators have denied that allegation: see the POR, ¶19.3.4. Indeed, they advanced a positive case that they could not have reasonably acquired that knowledge before 1 June 2022: see the POR, ¶19.3.4.3.
 - (2) Both Cooper 3 and Connell 7 provide detailed support for the Joint Liquidators' pleaded case. In my judgment, the Court cannot go behind the Joint Liquidators' pleaded case on the Strike Out Application. It is not obviously bad in law, it is impossible for the Court to resolve the factual issues on the pleadings alone and, in any event, I am satisfied that the Joint Liquidators' case is supported by credible evidence.
 - (3) I accept that Mr Connell described MARS as a "reporting overlay" and that it is possible that a specific search could have been carried out for Mr Pienaar's name and email address at any time after 9 April 2021 (or 10 May 2021). But I am not satisfied that it was reasonable to expect the Joint Liquidators to carry out a search for him by name or what it would have revealed without hearing both factual and expert evidence. As Mr Cooper stated in Cooper 6, they are pursuing almost 8,000 investors in 14 jurisdictions.
 - (4) In reaching this conclusion, I have also taken into account the fact that on 12 August 2021 Mostert & Bosman's circular email was sent to a computer generated list of email addresses including Mr Pienaar's Lightning Trader email address. However, I am not prepared to attribute significant weight to this single document alone without both factual and expert evidence. In particular, it is unclear whether any individual was consciously aware of Pienaar's name and email address at the time and, if so, what other information was available to them. The purpose of the

circular email was to provide information about the hearing of the winding up proceedings to interested parties and not to pursue claims against the recipients.

- (5) I have also taken into account the fact that from 8 December 2021 Mr Pienaar had access to his account and that in order to access it, he may well have provided his original KYC material (which might have included his residential address in the UK). But I am not satisfied that the Joint Liquidators could have obtained access to Mr Pienaar's Back Office information themselves. Mr Connell's evidence, which Mr Pienaar did not challenge before me, was that it was always possible for investors to access their accounts but not possible for the Joint Liquidators to do so themselves without developing the MARS software.
- (6) But in any event, I must have regard to the evidence of Mr Cooper that the Joint Liquidators acted reasonably and expeditiously and that the earliest date on which they had the relevant knowledge to identify individual debtors of MTI was 1 June 2022: see Cooper 3, ¶41 to ¶43. In my judgment, it would not be appropriate to reject this evidence and the pleaded case which it supports on an application to strike out under CPR Part 3.4(2)(a) and without it being tested at trial. I, therefore, dismiss the Strike Out Application to the extent that it is based on the Liquidators' deemed knowledge as well as actual knowledge.

(5) *The English Claims*

80. This leaves the English claims under S.238 and S.239. The Joint Liquidators' pleaded case was that the SA Prescription Act had no application to those claims and Ms Cooke submitted that even if the South African claims were extinguished by prescription, the English claims were unaffected and the Joint Liquidators were entitled to pursue them on exactly the same facts. This issue turns on the application of S.426 itself, the relevant parts of which provide as follows:

“426.— Co-operation between courts exercising jurisdiction in relation to insolvency.

(4) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.

(5) For the purposes of subsection (4) a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory is authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction. In exercising its discretion under this subsection, a court shall have regard in particular to the rules of private international law.

10) In this section “*insolvency law*” means—

(a) in relation to England and Wales, provision extending to England and Wales and made by or under this Act or sections 1A, 6 to 10, 12 to 15, 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 and sections 1 to 17 of that Act as they apply

for the purposes of those provisions of that Act;

(b) in relation to Scotland, provision extending to Scotland and made by or under this Act, sections 1A, 6 to 10, 12 to 15, 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act, Part XVIII of the Companies Act or the Bankruptcy (Scotland) Act 2016;

(d) in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions falling within any of the foregoing paragraphs;

and references in this subsection to any enactment include, in relation to any time before the coming into force of that enactment the corresponding enactment in force at that time.

(11) In this section “*relevant country or territory*” means— (a) any of the Channel Islands or the Isle of Man, or (b) any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument.

81. In *Hughes v Hannover Ruckversicherungs-AG* [1997] BCC 921 the Court of Appeal upheld the decision of Knox J refusing an anti-suit injunction in exercise of the powers in S.426 on the basis that the definition of “insolvency law” in S.426(10) was exhaustive and did not extend to the general power to grant injunctions under section 37 of the Supreme Court Act 1981 (as it was then called). In the course of his judgment, Morritt LJ discussed the scope of S.426 at 937H to 938D:

“The earlier statutory provisions referred to the request of the other court as being ‘sufficient to enable [the English] Court to exercise ... such jurisdiction as [it] could exercise in regard to similar matters within [its] jurisdiction’. The earlier references to ‘jurisdiction in bankruptcy’ and ‘jurisdiction in bankruptcy and insolvency’ were used to identify the courts to which reference was being made. But the jurisdiction which might be exercised was not so limited. Thus on a request to the High Court in England for assistance in a form it could not give did not inhibit it from exercising its general equitable jurisdiction to appoint a receiver. The fact that the jurisdiction to do so did not arise under the Bankruptcy Act for the time being in force was immaterial.

In my view the position is the same under s. 426. The reference to ‘insolvency law’ in subs. (4) serves to identify the courts in any part of the UK on which the obligation to assist is cast. Those courts have their usual jurisdiction and powers as such courts; in England they are the High Court and certain county courts. There is nothing in s. 426 to exclude the general jurisdiction and powers vested in those courts as such under the laws of England and Wales. The purpose of subs. (5) is not to reduce that jurisdiction or those powers but for the purposes of subs. (4) only to extend them. Thus the court in England, faced with a request from a relevant country may in respect of the matters specified in the request apply either the insolvency law of the relevant country concerned or its own insolvency law. By itself this would not be of much help for the courts of the

relevant country would not normally see much point in making a request to the courts of England in preference to applying its own insolvency law; and if it could not do so it would be unlikely that the court in England could. Moreover the court in England would not require the further authority of subs. (5) to apply all the provisions of the Insolvency Act 1986 in accordance with their terms. Consequently the concluding words of subs. (5) introduce the hypothesis that the matters specified in the request fall within the jurisdiction of the court applying the insolvency law under consideration in so far as ‘comparable matters’ would do so. I agree with the analysis of Chadwick J in *Re Dallhold Estates* [1992] B.C.C. 394 at p. 398 which I have already quoted. Thus there is available to the court in England when asked for assistance by the court of a relevant country under s. 426 (a) its own general jurisdiction and powers and either (b) the insolvency law of England and Wales as provided for in the Insolvency Act 1986, the specified sections of the Company Directors Disqualification Act 1986 and the subordinate legislation made under any of those provisions or (c) so much of the law of the relevant country as corresponds to that comprised in (b). In the case of (b) and (c) but not (a) the court in England is entitled to apply such law on the hypothesis as to jurisdiction concerning the matters specified in the request to which I have referred. Thus in *Re Dallhold* Chadwick J applied (b) and in *Re B.C.C.I Rattee* J applied (a) and (b). In each of the three earlier cases the judge in question applied (a). It seems to me that on this construction the evident intention of Parliament is given effect to without distorting the language of subs. (10). Accordingly I disagree with Knox J as to the proper construction of subs. (10) but that may not lead to any different result as to the outcome of the request in this case.”

82. In reliance upon this passage, Ms Cooke submitted that the English Court had the power to apply its general jurisdiction and powers and the insolvency law of England and Wales (i.e. options (a) and (b) in the above passage) whether or not it also applied the law of South Africa (i.e. options (b) and (c)). I expressed a certain surprise in oral argument that the Joint Liquidators could invite the Court to make orders under S.238 or S.239 if their claims under South African law had failed and I am not satisfied that the decision in *Hannover Re* was really directed at this issue. But in any event, I am satisfied that the Joint Liquidators have a real prospect of success on this issue and whether or not I had refused to strike out the South African claims, I would have refused to strike out the English claims.

(6) *Abuse of Process*

83. In *Pienaar 1*, Mr Pienaar gave evidence that the present English proceedings were an abuse of process based on nine separate grounds which he identified from the Joint Liquidators’ own documents. In *Connell 10*, Mr Connell answered those criticisms in some detail. However, in his *Skeleton Argument* Mr Pienaar categorised the conduct which he contended was abusive into four independent “sub-grounds” derived from the Joint Liquidators’ own documents each of which independently established that the present English proceedings were an abuse of process. This did not appear to me to involve any further material but simply a different way of categorising the Joint Liquidators’ conduct.

84. At the beginning of his oral submissions on abuse of process, Mr Pienaar also handed in a table headed “CPR 3.4(2)(b) – Pattern of Conduct Across Two Jurisdictions” in which he identified fifteen key documents in which (so he submitted) the Joint Liquidators had given contradictory evidence in the proceedings in South Africa and England and had either compounded that misconduct by doubling down on it or concealed matters from the relevant Court. I will refer to that table as the “**Pattern of Conduct**” table.
85. I have considered Pienaar 3, his Skeleton Argument and my notes of his oral submissions (made principally by reference to the Pattern of Conduct table). I have also considered Connell 10 and Pienaar 3 in reply. I propose to address the allegations made by Mr Pienaar by reference to the categorisation in Pienaar 1 because Mr Connell answered the evidence against the Joint Liquidators and Farrer in detail in Connell 10 and it would not be fair to assess the abuse of process by reference to differently formulated grounds or allegations. Where necessary, I address the submissions made by Mr Pienaar in his Skeleton Argument, the Pattern of Conduct table and his oral submissions.

(i) Ground 1(a): Omission of known complete defence acknowledgment

86. Mr Pienaar alleges that the Joint Liquidators were aware that prescription was a complete defence to the South African claims but failed to draw this to the attention of the South African Court in the Farrer Letter. In Pienaar 1, ¶42 he relied on Farrer’s email dated 13 March 2025 as evidence that the Joint Liquidators appreciated this fact and, in particular, the following words which he quoted: “As you know, prescription under SA law would constitute a complete defence.” I reject that allegation. As Mr Connell pointed out in Connell 10, ¶46.3, Mr Pienaar did quote the email correctly and when read as a whole the email did not contain an admission or, as Mr Pienaar put it, “a settled prior assessment” that any particular Respondent to the English proceedings (far less Mr Pienaar himself) had a complete defence of prescription to the English law claims. Farrer were offering tactical advice in relation to settlement which did no more than recognise the significance which the Respondents themselves might attach to their prescription defences.
87. In Pienaar 1, ¶43 Mr Pienaar also relied on Cooper 2, ¶41 to ¶43 as an admission that there was a “real risk” that time began to run on 9 April 2021 and failed to draw this to the South African Court’s attention. I accept that Mr Cooper stated in Cooper 2, ¶41 that there was a risk that claims brought by the Joint Liquidators in an English Court under the SA Clawback Provisions might be barred by prescription if they were issued after 9 April 2024 but he did so for the purpose of explaining why they had issued a protective application on that date without waiting for Letters of Response. But he did not quantify that risk and he also stated that there were good arguments that their claims are not barred by prescription (as, indeed, I have found) and that the Joint Liquidators would contest any prescription defences.
88. For these reasons I am not satisfied that the Farrer Letter was misleading either because it failed to contain an acknowledgment that prescription was a complete defence for the Respondents (or any of them) or because it did not draw attention to Cooper 2, ¶41 to 43. But in any event, this is a matter for the South African Court. I doubt very much whether it will come as very much of a surprise to the South African Court (as it did not to me) that Farrer advised the Joint Liquidators that if successful, a defence of prescription would be a complete defence to the South African claims or that it might look weak tactically to engage it settlement discussions at that stage or that the Joint Liquidators had

issued protective proceedings on 9 April 2024 because there was a risk that time had begun to run when they obtained access to the Maxtra database.

89. But even if (contrary to the view which I have expressed) the South African Court were to find that Farrer ought to have referred to the email dated 13 March 2025 or to Cooper 2, ¶41 to ¶43 in the Farrer Letter, their failure to do so did not amount to an abuse of the proceedings before this Court. It was not a collateral attack on another judicial decision because neither Court has decided whether the Respondents have a good defence of prescription. Moreover, there is nothing to stop Mr Pienaar relying on both documents in the English proceedings in support of his defence of prescription and the English Court will give whatever weight is appropriate to them. In my judgment, therefore, the failure to refer to them did not amount to conduct of such a nature and degree as to corrupt the trial process or put the fairness of the trial of the English claims in jeopardy.
90. Finally, I should record that although Mr Pienaar alleged in Pienaar 3 that the Joint Liquidators deliberately withheld Cooper 2, ¶41 to ¶43, he withdrew that allegation in his Skeleton Argument and expressly stated that he was not advancing a case that Farrer or the Joint Liquidators deliberately misled the South African Court in the light of Mr Connell’s evidence: see ¶40. In my judgment, he was right to do so and, in the absence of any allegation of deliberate misconduct, the inadvertent failure to refer to either document “did not begin to meet the degree of seriousness which is envisaged in this formulation”: see *McDonald v Excalibur & Keswick Groundworks Ltd* (above) at [49]. I, therefore, dismiss Ground 1(a).

(ii) Ground 1(b): Affirmative misrepresentation of prescription

91. Mr Pienaar also gave evidence that the Farrer Letter was misleading because it stated that prescription was in issue in the English proceedings and that the English Court will be asked to determine the matter: see ¶20.1. He stated that it was false because ICC Judge Greenwood had already determined that the SA Prescription Act would apply and this was reflected in the S.426 Order. I reject that complaint. It is clear from the extract from his judgment which I have set out earlier in this judgment that ICC Judge Greenwood did not decide that the SA Prescription Act applied to the South African law claims and he did not include a direction to that effect in the S.426 Order. It is an as yet unresolved issue whether it is necessary or appropriate for the English Court to apply the SA Prescription Act.
92. In fairness to Mr Pienaar, I accept that the general principle applicable under the FLPA, section 1(a) is that the limitation periods of the *lex causae* are to be applied to claims brought in England and that, on this basis, the SA Prescription Act would apply: see Dicey, Morris & Collins 16th ed (2022), Vol 1 at 4—062. However, it remains the case that the Court has not yet determined this point and I do not find it easy to decide whether the Court has power under S.426 to apply the SA Clawback Provisions without applying the SA Prescription Act and, if not, whether the Court should permit the Joint Liquidators to pursue the English law claims on the same facts if the Respondents have a good defence of prescription to the South African law claims. I find the reasoning in the *Hannover Re* particularly dense and these are issues on which the Court will benefit from expert evidence and full argument. For these reasons, therefore, I am not satisfied that the Farrer Letter, ¶20.1 was misleading. But even it did not state the position accurately, I am not satisfied that it was an abuse of the process of the English Court for the reasons which I have given in relation to Ground 1(a). I, therefore, dismiss Ground 1(b).

(iii) Ground 2

93. Mr Pienaar gave evidence that the Farrer Letter was misleading because it stated that the “insolvent estate of MTI suffered no diminution as a consequence of the costs order of Judge Barber”: see ¶27.6. It did so on the basis that solicitors and counsel had waived fees equal to the adverse costs order which the judge had made: see ¶27.5. Mr Pienaar’s complaint was that the Farrer Letter did not refer to the Joint Liquidators’ own costs of the application to strike out the Old Application or their continuing costs. Mr Connell found it necessary to clarify those paragraphs in Connell 10:

“However, and for completeness, I wish to clarify that paragraphs 27.5 and 27.6 of the Farrer Letter do not mean – and I do not consider that they could be fairly read as meaning – that the order of Judge Barber had no negative effect at all on the insolvent estate of MTI. What was explained in the Farrer Letter was that Farrer & Co and English Counsel agreed to write-off equivalent costs exceeding the amount which the Joint Liquidators were ordered to pay to certain Respondents as adverse costs under the Barber Order and which were summarily assessed. However, the Joint Liquidators and the insolvent estate of MTI have obviously incurred and continued to incur wider legal costs in these Proceedings. To that limited extent, it could be said that the Joint Liquidators are suffering a degree of prejudice or detriment in respect of their costs, at least until such time as recoveries of their costs are made. I do not consider that the South African court, or any other party, has been misled concerning this obvious and self-evident position. But more importantly, I do not understand (and the Applicant has in no way established) how such limited misunderstanding (if the same exists) would warrant a strike out of the Joint Liquidators claims pursued in these Proceedings.”

94. I accept that the explanation which Farrer gave in the Farrer Letter was not as complete as it might have been and, in particular, that it failed to explain that the Joint Liquidators would have to bear their own costs of the Old Application and the additional costs thrown away by preparing and issuing the Main Application. But in my judgment this failure did not begin to meet the degree of seriousness which would be required to strike out the Pienaar Application. Mr Connell’s further explanation can be put before the South African Court and the Court can take whatever action it considers appropriate as a consequence.

(iv) Ground 3: False “no prejudice” strike out claim

95. Mr Pienaar gave evidence that the Farrer Letter was misleading because it stated that “there has been no prejudice suffered by the JLs in England as a consequence of the order of Judge Barber”: see ¶27.5 and ¶27.6. I dismiss that complaint. It is clear from both paragraphs when they are read in context and the letter in full that this statement was based on the Joint Liquidators’ case that even if the SA Prescription Act applied, time did not begin to run until 1 June 2022, that none of the claims would be extinguished by prescription until May 2025 and that, if the Court finds in the Joint Liquidators’ favour, the Main Application was issued in time: see ¶20.1. But in any event, on Mr Pienaar’s own case, the claim against him (and the other Respondents) had already been extinguished by prescription before the issue of the Old Application. His evidence was

that the Old Application had been served on 5 August 2024 and that the South African claims had been extinguished four months earlier.

(v) Ground 4: False Maxtra/Mars knowledge date

96. Mr Cooper gave evidence that MARS was only sufficiently advanced to identify users and analyse MTI's transactions by June 2022: see Cooper 2, ¶31. Mr Pienaar's evidence was that this was a false statement and he relied upon a number of documents including the Replications which the Joint Liquidators served in the Van Sittert Claim (and a number of other South African claims), Mostert & Bosman's email dated 12 August 2021, Cooper 2, ¶41 to ¶43, Cooper 3, ¶32 and the CMC Order. He also relied upon the following two extracts from TGC's forensic report prepared by Mr Pedersen and dated 28 October 2024:

“7.1 In April 2020, TCG Forensics received instruction from the duly appointed Liquidators in the matter of Mirror Trading International to acquire a secured file transfer protocol (SFTP) download of a database from MAXTRA Technologies (second floor, Aristos Tower, B-71, Sector 67 Rd, Block B, Sector 67, Noida, Uttar Pradesh 201301, India.”

“25.3 Therefore, MARS effectively rests on top of a copy of the MAXTRA data and does not alter it. It is used as a reporting overlay and investigative linking tool.”

97. Finally, Mr Pienaar relied upon the fourth witness statement (“**Cooper 4**”) which Mr Cooper made on 19 December 2024 in support of the New Application. In that statement, he gave the following evidence:

“38. Prior to the Previous Application, the Joint Liquidators have received South African legal advice (in which privilege is not waived) that there was a possible argument that the claims against the Respondents under the SA Insolvency Act could become barred by prescription (the South African equivalent of limitation) if they were issued after 9 May 2024 (the Joint Liquidators erroneously thought that the relevant date was 9 April 2024 when the Previous Application was issued).”

98. I have already held the Joint Liquidators have reasonable grounds both for bringing the claims against Mr Pienaar and meeting his prescription defence. As part of my reasoning, I have also held that it would not be appropriate to reject Cooper 2, ¶41 to ¶43 on the Strike Out Application and without it being tested at trial. In my judgment, that evidence is credible and it is not an abuse of process for the Joint Liquidators to maintain that the earliest date on which they had actual or deemed knowledge for the purposes of S.12(3) was 1 June 2022. Moreover, in reaching this conclusion I have taken into account the fact that the Joint Liquidators and TGC describe MARS as a “reporting overlay” and that they obtained access to the Maxtra database on 10 May 2021 (rather than in April 2021 as they had earlier but erroneously understood). I dismiss Ground 4.

(vi) Ground 5: False “new evidence” claim (solventy)

99. In the Directions Application, the Joint Liquidators have applied to adduce the evidence of two additional experts including an expert forensic accountant to address the financial

condition of MTI and, in particular, whether it was insolvent. Mr Pienaar's evidence is that this application was an abuse of process either because the Joint Liquidators could and should have applied for such a direction at the CMC or because they misled the Court by stating this was "new evidence" when it was not. In response, Mr Connell gave the following evidence:

"48. Ground 5: The Applicant argues that parts of the Joint Liquidators' Extension Application are an abuse of process on the grounds that they seek permission to rely on what the Joint Liquidators say is "new" evidence, but that such evidence is not new. Once again, the Applicant has not understood the arguments being made or the evidence filed in support. As mentioned in paragraph 13 above, these arguments have already been made by the Applicant in his responsive evidence filed in the Extension Application, and I have already addressed the court on the issues with the same in JMC9.

49. However, in brief, and as clearly set out in the evidence filed in the Extension Application, the Joint Liquidators seek permission to rely on (i) two topics of expert evidence which speak to the solvency of MTI for which permission has not previously been given that (ii) will be obtained not from an expert who has already submitted evidence in MTI proceedings (in any Jurisdiction). The Joint Liquidators are not seeking via the Extension Application permission to rely on the existing reports, such as the Romburgh/Dekker report to which the Applicant refers throughout paragraph 85 to 88, or new reports from existing experts. Nor do the Joint Liquidators claim that the issue of MTI's solvency is a 'new issue', as the Applicant suggests. Rather, the Joint Liquidators clearly explain in their evidence (JMC8 and JMC9) that events leading up to the Extension Application (namely the Applicant challenging the authors and content of the existing reports on MTI's solvency relied upon elsewhere by the Joint Liquidators) changed the Joint Liquidators' view as to whether new formal expert evidence would be needed. It is not appropriate to reiterate those arguments here, but it remains the case that the Applicant mischaracterises the Joint Liquidators' Extension Application, and that he has failed to demonstrate that anything in the Extension Application is an 'abuse of process'. All the other Active Respondents broadly consented to the Extension Application: it is only the Applicant who appears to consider it unacceptable."

100. Whatever may have been the Joint Liquidators' position or Mr Pienaar's understanding when the Directions Application was issued, Mr Connell has now made their position clear in this passage. In my judgment, it was not an abuse of process to apply to adduce additional expert evidence even though the question of solvency has been in issue. In my judgment, the points which Mr Pienaar has taken go to the question whether the Court should permit the parties to call additional expert evidence and to vacate the trial date and I consider them in that context below.

(vii) Ground 6: Tainted Pedersen evidence

101. Mr Pienaar initially gave evidence that Mr Pedersen admitted in a US deposition that he had agreed a 5% contingency fee arrangement with the Joint Liquidators and that this

arrangement was unlawful. The Joint Liquidators denied any such arrangement and in the course of his oral submissions Mr Pienaar withdrew this allegation. I do not consider it further.

(viii) Ground 7: Irreconcilable cross-jurisdictional positions

102. Mr Pienaar also gave evidence that the Joint Liquidators had advanced five irreconcilable positions in the South African and English Courts. His evidence was that they had made a binding admission in the Replication in the Van Sittert Claim that time began to run on 9 April 2021 and that they confirmed that this was correct in Cooper 2, ¶41 to ¶43. He also gave evidence that they had adopted irreconcilable positions in their pleaded case in the English proceedings and in the evidence which they had filed both in South Africa and this jurisdiction. These included a number of witness statements and other documents to which I have already considered and quoted from in detail.
103. I do not find it necessary to rehearse all of the affidavits and witness statements upon which Mr Pienaar relied because he wholly failed to persuade me that the Joint Liquidators made an admission in the Van Sittert Claim (or subsequently) that on 9 April 2021 they had actual or deemed knowledge of the identity of Mr Van Sittert or of the facts from which the debt due from him arose. They made an admission that on that date they had access to the Maxtra database (which appears to have been erroneous since they did not obtain access until a month later). They also admitted that from that date they could establish the identity of Mr Van Sittert and the facts upon which their claims against him were founded.
104. In my judgment, the case which the Joint Liquidators have pleaded in the Points of Reply and presented before me were consistent with those admissions. Subject to correcting the date, the Joint Liquidators accept that in May they did obtain access to the Maxtra database. But it is also their case is that they could not have identified individual debtors or analysed their transactions until 1 June 2022 even with the exercise of reasonable care. This is an issue which the Court will have to determine at trial. Moreover, at trial Mr Pienaar will be able to rely on all of the documents which he asserts are inconsistent with this claim and put them to any witnesses whom the Joint Liquidators call to give evidence. He will also be able to rely on the fact that the Joint Liquidators considered it necessary to issue the Old Application on or before 9 April 2024, that it was struck out and that they only issued and served the Pienaar Application nine months earlier.
105. But in any event, Mr Pienaar is not a party to the Van Sittert Claim or any of the other South African claims in which the Joint Liquidators served a Replication in the same or very similar form. He did not produce any authority to support the proposition that that they were bound by an admission which they had made in another jurisdiction in proceedings to which he was not a party. Moreover, even if such an admission were binding, it would have very limited effect on the issues in the Pienaar Application since the admission which they made related to knowledge of Mr Van Sittert's identity and the facts giving rise to the claims made against him and not to Mr Pienaar's identity or any of the facts giving rise to the claims made in the Pienaar Application.
106. Finally, apart from two discrete situations it is not an abuse of process to put forward alternative but inconsistent cases even in the same action before judgment: see Spencer Bower *Reliance-Based Estoppel* 5th ed (2017) at 13.54. In *Hunter v Chief Constable* (above) Lord Diplock stated that it was an abuse of process to initiate proceedings for the

purpose of mounting a collateral attack upon a final decision of another court of competent jurisdiction in which the claimant had a full opportunity of contesting that decision: see [1982] AC 529 at 541B-C. In *Mueen* the Supreme Court accepted that it could be a *Hunter* abuse to mount a collateral attack on a foreign conviction but only if it is manifestly unfair: see [65] to [71]. In the absence of a final decision of either the English Court or the South African Court by which both the Joint Liquidators and Mr Pienaar are bound, there is no *Hunter* abuse in the present case. I dismiss Ground 7.

(ix) Ground 8: Disclosure breach and *Denton* analysis

107. Mr Pienaar also gave evidence that it was an abuse of process for the Joint Liquidators to apply for an extension of time once the parties had exhausted the 28 day extension of time which the CMC Order permitted them to agree by consent. He argued that the Joint Liquidators required relief from sanctions under CPR Part 3.9 applying the guidance in *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3296 and submitted that relief should be refused and the Pienaar Application struck out. I dismiss Ground 8. In my judgment, it is not an abuse of process simply for a party to apply for relief against sanctions and there was nothing abusive about the Joint Liquidators' conduct in the present case. I consider whether the *Denton* guidance applies to the application to extend time below. But I dismiss the complaint that it was an abuse of process to make the application.

(x) Ground 9

108. In Pienaar 1, in Table 3 of his Skeleton Argument and in the "Pattern of Conduct" Table Mr Pienaar alleged that the Joint Liquidators failed to perform their "duty of candour" to the Court in nine respects. He submitted that they owed such a duty even though the Strike Out and Directions Applications were applications on notice and were fully contested by both parties. In answer to the nine breaches which Mr Pienaar alleged, Ms Cooke and Mr Kok prepared a schedule in answer in which they set out the Joint Liquidators' detailed response. I will refer to that schedule as the "**Joint Liquidators' Schedule**".
109. Mr Pienaar submitted that the Joint Liquidators owed a duty of candour because they were office-holders, Farrer were officers of the Court and because they offered partial explanations which they had a duty to correct. The authorities upon which he relied were *Myers v Elman* [1940] AC 282, *Medcalf v Mardell* [2002] UKHL 27, *ex parte James, Re Condon* (1874) LR 9 Ch App 609 and *Brook v Reed* [2011] EWCA Civ 331, [2012] 1 WLR 419. None of those authorities dealt with the duties of an office-holder or their solicitors to the Court on a contested application where the office-holder was defending or responding to that application. For example, *Brook v Reed* deals with the principles to be applied where the Court adjudicates on the remuneration of a trustee in bankruptcy.
110. I accept in principle that both the Joint Liquidators and Farrer owed a duty in their capacity as office-holders and solicitors respectively not to mislead the Court deliberately and to correct any inaccurate or misleading statements promptly as soon as they became aware that they were inaccurate. I also accept that solicitors and counsel owed the duty which is imposed on every professional representative to assist the Court when appearing against a litigant in person. But I do not accept that either the Joint Liquidators or their solicitors owed a duty to give full and frank disclosure to the Court which they would owe on a without notice application for, say, a freezing injunction or for service out and,

in particular, when defending a strike out application. Nevertheless, I go on to deal with each breach of the duty of candour which Mr Pienaar alleged below:

- (1) *S.426 Order*. Mr Pienaar alleged that the Joint Liquidators broke their duty of candour by failing to disclose the S.426 Order to the South African Court. Although Farrer did not disclose the Order to the South African Court in the Farrer Letter, it is my judgment that they fairly presented the issues in the English proceedings. But in any event, I fail to understand how the failure to disclose a document to a foreign court in foreign proceedings constituted a breach of any duty of candour to this Court (which made the S.426 Order and to which I was myself taken in argument).
- (2) *The Farrer Letter*. Mr Pienaar complained that Farrer stated: “The English Courts would not apply South African law of prescription to the UK Insolvency Act claims”: see ¶18.3.1. In my judgment, this paragraph was accurate. If the English Court permits the Joint Liquidators to pursue the English claims, it will not apply the SA Prescription Act. But in any event, this is a complaint about a statement made to the South African Court not the English Court.
- (3) *Connell 8*: Mr Pienaar asserts that the Joint Liquidators owed a duty of full and frank disclosure to disclose at the CMC that certain depositions had taken place three days before and that Mr Connell misled the Court by stating that the Directions Application arose out of “various developments” which were not known at the CMC. In the Joint Liquidators Schedule, Ms Cooke and Mr Kok gave an explanation which I accept and which disposes of this issue. Even if the Joint Liquidators were aware of the depositions upon which Mr Pienaar relied, I am not satisfied that Mr Connell was aware of them or that Connell 8, ¶16 was any more than an immaterial and inadvertent slip.
- (4) *The Farrer Letter*. Mr Pienaar misquoted the Farrer Letter in Pienaar 1 but now complains that Mr Connell misled the Court in Connell 10 by saying that the Farrer Letter did not use the words “As you know” (because the letter used that expression elsewhere). Again, I accept the explanation given in the Joint Liquidators Schedule, which disposes of this issue. It is obvious that Mr Connell meant to refer to the email dated 13 March 2025 in the last sentence of Connell 10, ¶46.3 and I am not satisfied that his reference to the Farrer Letter was any more than an immaterial and inadvertent slip.
- (5) *Connell A3*: Mr Pienaar complains that in his most recent affidavit in the South African proceedings Mr Connell made a “one-sided assessment” of the Strike Out Application’s merits to the South African Court six weeks before the hearing and without notice to Mr Pienaar. Having read the affidavit now, I am not satisfied that Mr Connell was doing any more than responding to allegations made about the English proceedings by Mr Lee’s legal representatives. Further, he owed no duty either to the English Court or to Mr Pienaar to be impartial in doing so. The Joint Liquidators are defending hotly contested applications. But in any event, neither party took me to Connell A3 and this is another complaint about evidence given to the South African and not to the English Court.
- (6) *The S.426 Order*. Mr Pienaar asserts that Mr Connell made materially false representations to the South African Court in Connell A3 by quoting selectively from the S.426 Order in Connell A3 and omitting paragraph 3(b). He also

complains that Mr Connell referred to the earliest date on which time began to run for the purposes of S.12(3) as 1 June 2025. For the reasons which I have given for dismissing the Strike Out Application under CPR Part 3.4(2)(a) I am not satisfied that either statement was incorrect. But in any event, Mr Connell owed no duty to correct them in the English proceedings. The S.426 Order was made by this Court, I was taken to it in argument and I disagree with Mr Pienaar about its effect (or its arguable effect).

- (7) *The Farrer Letter*. Mr Pienaar asserts that Farrer made materially false representations to the South African Court by stating: “The JL’s position on prescription in the English Proceedings has been clear and consistent throughout”: see ¶20. Ms Cooke and Mr Kok submitted in the Joint Liquidators’ Schedule that: “the JLs have simply pleaded alternative dates on prescription, which cannot reasonably be said to be abusive. They have not made any ‘concessions’ as to prescription of the kind alleged.” I accept that this as a fair characterisation of all of the material to which the parties took me and I am not satisfied that the Joint Liquidators made any materially false representations to the South African Court. But in any event, this is another complaint about evidence given to the South African and not the English Court.
- (8) *The Farrer Letter*. Mr Pienaar asserts that Farrer made a materially false representation to the South African Court by stating that there was no diminution in MTI’s assets as a consequence of the adverse costs order made by ICC Judge Barber: see ¶27.5 and ¶27.6. I have found that these paragraphs were not complete. But I am not satisfied that they were material because it would have been obvious to anyone familiar with English costs orders that the Joint Liquidators would have to pay their own costs and their continuing costs. Moreover, Mr Connell has now given a complete explanation and, in my judgment, that disposes of this issue. But, again, this is another complaint about evidence given to the South African and not the English Court.
- (9) *The Farrer Letter*. Finally, Mr Pienaar asserts that Farrer made a materially false representation to the South African Court by stating that there was no prejudice as a consequence of the Barber Strike Out Order: see ¶27.7 and ¶27.8. I have found that these statements were not inaccurate because it was (and remains) the Joint Liquidators’ case that time did not begin to run until 1 June 2025 and that Mr Pienaar’s own case was that the claims against him were barred by prescription before the service of the Old Application. These are all matters for trial and I dismiss this allegation.

(xi) The S.379 Proceedings

111. Finally, in his Skeleton Argument Mr Pienaar contended that the Joint Liquidators failed to disclose the S.379 Proceedings when issuing or making the Directions Application. Mr Cooke and Mr Kok submitted that these are fully contested proceedings at which Mr Pienaar was free to raise the S.379 Proceedings (if relevant), that the parties could not be expected to “drip feed” updates to the Court and, finally, that it is difficult to see how the S.379 Proceedings could affect the directions given by the English Court until the Joint Liquidators are either ordered not to continue these proceedings or removed from office.
112. I accept those submissions. It was always open to Mr Pienaar to apply for an adjournment

of the Directions Application or, indeed, the Strike Out Application until after the S.379 Proceedings had been resolved. He did not do so. Indeed, he wanted this Court to determine both applications before the South African Court had heard and decided whether to grant relief in South Africa. Given that both parties were agreed that the Court should hear the Strike Out and Directions Applications, I was effectively invited to ignore the S.379 Proceedings in making any case management decisions.

(7) *The CMC Order*

113. Finally, Mr Pienaar applied to strike out the Pienaar Application under CPR Part 3.4(2)(c) on the basis that the Joint Liquidators had failed to comply with paragraph 8 of the CMC Order and to give search-based Extended Disclosure and inspection in accordance with CPR PD 57AD and the DRD by 6 March 2026. His case appeared to be that because the Court gave permission to the parties to extend any time limit by up to 28 days without reference to the Court, no further extension of time was available unless the three limbs of the *Denton* guidelines were satisfied. In his Skeleton Argument he argued that paragraph 29 imposed a cap and once the parties had agreed to an extension it was “permanently exhausted”.
114. In my judgment, this argument is misconceived. Paragraph 8 of the CMC Order did not impose a sanction upon any party for the failure to give disclosure by 6 February 2026 (as extended). Furthermore, paragraph 29 did not impose a “cap” on any further extension of time. It is a standard provision inserted in Court orders to enable the parties to agree a first extension of time without having to make an application to Court. It furthers the overriding objective and the interests of all Court users and it certainly does not prevent a party from applying to Court for further extensions of time where appropriate. Finally, the Directions Application was an in-time application made before the deadline for compliance (as extended) had expired and in those circumstances the *Denton* guidelines have no application: see *Re Guidezone Ltd* [2014] EWHC 1165 (Ch), [2014] 1 WLR 3728 (Nugee J). I therefore dismiss the Strike Out Application.

III. The Directions Application

G. The Directions Order

(1) *Extensions of Time*

115. The Joint Liquidators have agreed the extensions of time in the draft Order for directions annexed to the Directions Application (the “**Directions Order**”) with the Macgregor Respondents and the BarraJ Respondents and Mr Pienaar only opposed any extension of time on the basis that paragraph 29 of the CMC Order was “permanently exhausted” the *Denton* guidelines applied and the Joint Liquidators were unable to satisfy them. He fairly accepted that if I was against him on that issue, then an extension of time of some kind was warranted. This was a realistic concession and given that none of the parties apart from Mr Pienaar have given disclosure and that the Joint Liquidators do not accept that Mr Pienaar has complied with the CMC Order, I will have to grant an extension of time of some length.
116. My principal concern about granting the extensions of time which the Joint Liquidators proposed in the Directions Order was that they require the Court to vacate the trial approximately five months before it is due to come on. However, I have consulted

Chancery Listing and since I am told that this will not cause any material inconvenience either to the Court itself or to other Court users, I am prepared to grant the proposed extensions of time. I make it clear that I do so with some reluctance. But since I see little or no prospect of the parties being ready for trial by early November and since all of the parties (with the exception of Mr Pienaar) have agreed to vacate the trial date and to extend the timetable, I will give the proposed directions in the Directions Order, ¶1 to ¶3 and ¶6 (so far as it applies to the existing experts).

(2) *Additional Expert Evidence*

117. In *Declan Colgan Music Ltd v UMG Recordings Inc* [2023] EWHC 4 (Ch) Deputy Master Henderson helpfully summarised the principles applicable to an application to call expert evidence at [132] and I apply them here. The Court should adopt a two stage approach and decide whether expert evidence is necessary. If it is not necessary, the Court should consider whether it will be of assistance and, if it is, then go on to consider whether it is proportionate to give permission.
118. Assuming that the law of South Africa is the same or similar to the law of England, the question whether MTI was (or is) insolvent is one of fact and I am not satisfied that it is necessary for the Joint Liquidators to adduce the expert evidence of either a forensic accountant or a bitcoin specialist and it would be possible, in my judgment, to prove the insolvency of MTI by factual evidence. However, I am satisfied that the expert evidence of both a forensic accountant and a bitcoin will be of considerable assistance to the trial judge given that it will involve contested evidence about both the value of bitcoin or crypto-currency more generally and the accounting principles to be applied to them. I have had recent experience of trying to make detailed findings of fact on complex financial issues without the assistance of an expert and it can make the task of a trial judge much more onerous: see, e.g. *Transworld Payment Solutions UK Limited (in liquidation) v First Curaçao International Bank NV* [2025] EWHC 2480 (Ch).
119. Mr Pienaar submitted that it was not proportionate to permit the Joint Liquidators to call additional expert evidence. He pointed out in his Skeleton Argument for the Directions Application that on 17 September 2024 they had obtained a 238 page report from two expert advisers on solvency and that on 20 October 2025, only three days before the CMC, those experts were deposed in US proceedings. Mr Pienaar argues that the Joint Liquidators could and should have applied for permission at the CMC. He also argues that the Joint Liquidators are, in substance, guilty of “expert shopping” because of the treatment of their experts in the depositions. Finally, he submits that the increase in time and costs is not justified and that the joint instruction provisions of the Directions Order are unworkable.
120. I have considerable sympathy with Mr Pienaar. He is a litigant in person and wants this litigation resolved as soon as possible. He faces the prospect of a long trial without legal representation and he has concerns about the ability of the remaining Respondents to participate in these proceedings. He told me that it was these concerns which prompted his decision to bring matters to a head and to make the Strike Out Application. These are strong reasons for refusing to impose the additional cost and burden on the parties of obtaining further expert evidence. However, on balance I have decided to grant permission for the parties to call the additional experts. If the parties instruct reasonable experts who comply with their duties under CPR Part 35, there ought, in my judgment, to be a real prospect of them reaching agreement on the question whether MTI was

insolvent or narrowing the issues significantly to make the trial judge's task very much easier.

121. However, in the light of Mr Pienaar's objection to the directions which the Joint Liquidators propose, I will not give the proposed directions in the Directions Order, ¶5 to ¶7 without giving all of the parties (including the Macgregor Respondents and the BarraJ Respondents) an opportunity to make oral submissions about the form of Order and whether it is appropriate to require all of the Respondents to agree to a single expert in each discipline or whether they should have permission to call their own experts (especially if Mr Pienaar or any other individual Respondents are unwilling to instruct the additional experts).

H. Preliminary Issue

122. Mr Pienaar also made an oral application for the Court to direct a preliminary issue for the determination of the issue of prescription under South African law. I was initially attracted to this proposal on the basis that it might lead to an early determination of the dispute. However, Ms Cooke persuaded me that a preliminary issue might significantly increase the costs of the litigation. She also persuaded me that a preliminary issue limited to the issue of prescription alone would not determine the dispute even if Mr Pienaar or the other Respondents were successful.
123. I am not minded to Order a preliminary issue or preliminary issues at the present time. However, on reflection, I am not satisfied that it would not be possible or, indeed, desirable to fashion a number of preliminary issues which might potentially determine the dispute. For example, the Court might be asked to determine whether (1) the South African claims have been extinguished by prescription, (2) if so, S.426 confers power on the Court to permit the English law claims to proceed and (3) if so, whether the Court should exercise that power. I will, therefore, give Mr Pienaar (or any of the other Respondents) an opportunity to make a formal application for the determination of a preliminary issue.

IV. Disposal

124. For these reasons I will make an Order dismissing the Strike Out Application and give directions granting the extensions of time in the Directions Order, ¶1 to ¶3 and ¶6 (insofar as they apply to the existing experts). I will also give permission to the Joint Liquidators to call the additional experts identified in the Directions Order, ¶4 but I will adjourn the remainder of the Directions Application and list a further hearing of up to half a day in order to determine what other directions to give in relation to the further expert evidence, to hear any application for a preliminary issue and to decide any other consequential issues (including costs). I leave it to the parties to contact Chancery Listing to fix the hearing on a date which is convenient to them and to the Court. I will also extend time for any application for permission to appeal against this judgment until the further hearing has taken place.
125. Finally, I direct that the Joint Liquidators to prepare and submit a draft Order which incorporates the order and directions which I have given in the paragraph immediately above. They should serve it on Mr Pienaar after the hand down of this judgment and I will give him one working day to agree its terms or to comment on it before the Joint Liquidators submit it for my approval. If there is any remaining dispute about the terms

of the Order, I will resolve them on paper.

V. Postscript

126. I prepared this judgment at some speed because the parties (and, in particular, Mr Pienaar) wished to have the judgment available for the hearing next week before the South African Court in the S.379 Proceedings. On Thursday 28 May 2026 I handed down the judgment in draft asking for corrections that day to enable me to hand down the judgment at 10.30 am on Friday 29 May 2026 to meet their deadline. At 13.22, 15.32 and 16.28 I received three lengthy emails from Mr Pienaar seeking to re-argue the Strike Out Application or to persuade me to permit further argument on the basis that I had not mentioned a number of points which he made orally in the judgment. It is apparent from all three emails that Mr Pienaar fully appreciated that this was impermissible and not the purpose of circulating the judgment in draft. Mr Pienaar now stated that there was no longer any urgency in the Court giving judgment.
127. It is unsurprising that I did not pick up every one of Mr Pienaar's points in the draft judgment because it was prepared at high speed (at his direct request) and because his written submissions were repetitive and diffuse. I dealt with the main points as best I could in the time available and, having done so, I was inclined to hand down judgment without addressing any of the other points which Mr Pienaar pressed on me but Mr Cooke and Mr Kok invited me to deal with two of them expressly and I do so at their request.

(1) CPR PD 57AD

128. Mr Pienaar submitted that my decision on CPR Part 3.4(2)(c) above was wrong because he was relying on CPR PD, 57AD, paragraph 18, which is headed "Varying an order for Extended Disclosure; making an additional order for, or in relation to, disclosure of specific documents" and it provides as follows:

"18.1 The court may at any stage make an order that varies an order for Extended Disclosure. This includes making an additional order for disclosure of specific documents or narrow classes of documents relating to a particular Issue for Disclosure.

18.2 The party applying for an order under paragraph 18.1 must satisfy the court that varying the original order for Extended Disclosure is necessary for the just disposal of the proceedings and is reasonable and proportionate (as defined in paragraph 6.4).

18.3 An application for an order under paragraph 18.1 must be supported by a witness statement explaining the circumstances in which the original order for Extended Disclosure was made and why it is considered that order should be varied.

18.4 The court's powers under this paragraph include, but are not limited to, making an order for disclosure in the form of Models A to E and requiring a party to make a witness statement explaining any matter relating to disclosure.

18.5 The court may order a party to request any person to produce for disclosure and inspection any document which may support the case or adversely affect the case of any party to the proceedings."

129. Mr Pienaar argued that the application for an extension of time for compliance with the CMC Order, ¶8 was an application to vary an Order for Extended Disclosure and that because the Joint Liquidators had failed to discharge the burden of proving that it was necessary to grant the extension of time for the just disposal of the proceedings or that it was reasonable and proportionate to do so, I should not only refuse the extension of time but strike out the entire Pienaar Application.
130. In my judgment, this argument was equally misconceived. As I pointed out to Mr Pienaar in oral argument, there was no application before me to vary the Extended Disclosure Order and, in particular, for an order for specific disclosure. Moreover, his argument ignored entirely the general case management powers to extend or shorten time for compliance with any Court Order: see CPR Part 3.1(2)(a). In the draft judgment, I exercised that power for the reasons which I gave and it was wholly unnecessary for me to have regard to PD 57AD, paragraph 18.2. But even if I am wrong, I am satisfied that is necessary for the just disposal of the Pienaar Application to extend time and that it is reasonable and proportionate. If I had not considered that to be the case, I would not have made the Order. I dismiss this argument.

(2) *Cooper 5, ¶11*

131. Mr Pienaar also complained that my decision was wrong because I had failed to address Mr Cooper’s fifth witness statement dated 27 January 2025 (“**Cooper 5**”), ¶11 where Mr Cooper had dealt with the issue of the Pienaar Application:

“Mr Pienaar was sent a letter before action by Farrer & Co on behalf of the Joint Liquidators dated 13 February 2025 (“the Letter Before Action”) [CC5/95]. On 28 February 2024, 360 Law responded to that email on behalf of Mr Eugene Pienaar, confirming they were instructed and requesting an extension of time to respond to the Letter Before Action, which was agreed by Farrer & Co [CC5/107]. Correspondence continued, during which time the Joint Liquidators hoped to reach a settlement with Mr Pienaar, and for this reason did not include him as a respondent to the Previous Application.”

132. Mr Pienaar argued that in this paragraph Mr Cooper “materially misrepresented” the settlement history and he rehearsed again those negotiations at great length in the email correspondence. This also involved a satellite issue about whether the Joint Liquidators had revealed confidential information about the settlement negotiations in a press article (and I could not possibly resolve that issue). But in any event, I considered it unnecessary to deal with Cooper 5, ¶11 or the timing of the Pienaar Application because I was prepared to assume in Mr Pienaar’s favour that the Joint Liquidators could have included him in the Old Application and that there was no obvious explanation for their failure to do so given the earlier negotiations: see [78] (above). I, therefore, discounted the period after the issue of the Main Application.
133. Cooper 5, ¶11 and the detailed settlement history would only have been relevant, therefore, if Mr Pienaar had alleged that Mr Cooper (or Farrer) had deliberately misled the Court. But this he was not prepared to do. Whenever he was challenged on this issue, Mr Pienaar backed down and made it clear that he was not alleging that the Joint Liquidators or their legal representatives were deliberately misleading the Court. Even if

I had made detailed findings about the settlement negotiations and concluded that Mr Cooper had given a partial explanation of them, it would have gone nowhere. I do not accept, therefore, that I should recall the judgment or give Mr Pienaar the opportunity to present further argument because I failed to address Cooper 5, ¶11 or the settlement history.

134. I am afraid that this is another example of Mr Pienaar’s inability to see the wood for the trees. His submissions based on abuse of process involved cherry-picking individual paragraphs or even sentences and phrases from witness statements or correspondence documents and attempting to demonstrate that they were inconsistent with other statements in other witness statements made at a different time and in a different context. Moreover, the statements which he cherry-picked usually involved statements about the legal points or arguments which were being taken in a different jurisdiction (rather than merits of those legal points or arguments).

(3) *Consequential Hearing*

135. In the light of Mr Pienaar’s conduct following the circulation of the draft judgment, it is clear that I need to case manage any further argument closely. I direct, therefore, that for any consequential hearing, the parties submissions on costs, permission to appeal will be limited to 10 pages only and I will not permit them to file any further evidence without my permission. I also direct that if Mr Pienaar wishes to make an application for a preliminary issue or issues, he must issue an Application Notice setting out the preliminary issues which he invites the Court to decide and that any witness statement or Skeleton Argument in support will be limited to 10 pages. I also make it clear that it is much more likely that I will order a preliminary issue if it can be framed as a simple question over one or two lines of text. I also make it clear that Mr Pienaar cannot sidestep these directions by including argument or evidence in the Application Notice itself (as he did for the Strike Out Application).