Neutral Citation Number: [2026] EWHC 2546 (BP)

Case No: BL-2025-000532

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
BUSINESS LIST

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 9 October 2026

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

CHRISTOPHER SHAW	**Claimant**
- and -	
(1) COLEMAN CAPITAL LLP (in Liquidation)	**Defendants**
(2) MATTHEW MCCLEAN	
(3) COLEMAN (EUROPE HOLDINGS) LIMITED (a company registered in Gibraltar)	

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- -

Anna Lintner (instructed by **PCB Byrne LLP**) for the **Claimant**
The Defendants did not appear and were not represented

Hearing dates: 21 July 2026

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This judgment was handed down remotely at 10:15 am on 9 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archive.

HHJ Paul Matthews :

Introduction

1. This is my judgment on an application by the claimant by notice dated 1 May 2026 for summary judgment and ancillary orders. That notice complies with the requirements of CPR rule 24.5(1). The application arises in the context of a claim begun by Part 7 Claim Form issued on 29 April 2025. Amended particulars of claim ("APOC") were filed on 21 October 2025. The claim itself seeks personal and proprietary remedies in respect of investment monies of his placed between 2020 and 2024 under the management of the defendants and associated companies, but now apparently lost. It is a feature of this application that none of the defendants has filed even an acknowledgement of service, let alone a defence to the claim.

2. The claim itself is made on several distinct juridical bases:

    1. A claim for damages against the 1st to 3rd defendants for fraudulent misrepresentation (APOC [75]);

    2. A similar claim, but as joint tortfeasors (APOC [76]);

    3. A claim for damages against the 1st to 3rd defendants for conspiracy (APOC [77]);

    4. A proprietary claim to recover the investment monies or their substitutes in the hands of the defendants (APOC [78]);

    5. A claim for equitable compensation against the first and second defendants for breach of fiduciary duty in dealing with the investment monies (APOC [79]);

    6. A claim in dishonest assistance against each defendant (APOC [82]).

3. However, the parts of the claim with which this summary judgment application is concerned are only the first two set out above. They are based on the tort of deceit, or fraudulent misrepresentation; in laymen's terms, fraud. The amount claimed by this application is about £17.5 million.

Background

4. The claimant is a successful chartered surveyor and businessman. Although his original businesses are located in the UK, he now lives in Gibraltar. The first defendant has been in liquidation since 6 August 2025. The second defendant was bankrupt from 12 August 2025 to 12 August 2026. The same insolvency practitioner is both the liquidator of the first defendant and the trustee in bankruptcy of the second. In those two capacities, he neither consents to nor opposes this application. He has taken no part in the argument. Although the second defendant was resident (and was properly served) in the UK when the claim began, he has since moved to Dubai. He had legal representation until 14 July 2025, and since then has acted in person. He has standing to do so since the claim against him includes claims in fraud, which (if proved) will survive his discharge from bankruptcy.

5. The third defendant is a company incorporated in Gibraltar, controlled by the second defendant, who is now its sole director. When the third defendant was incorporated by the second defendant, approximately 10% of the shares were allotted to the claimant, who was also appointed a director. But the management and control of the third defendant was in the hands of the second defendant. There was originally a fourth defendant, Linear Investments Ltd ("Linear"), but the claim against it was compromised by an order in "Tomlin" form dated 13 March 2026. If this application succeeds, it will of course be necessary to ensure that there is no double recovery by the claimant of his losses, as the claimant accepts.

6. A brief summary of the factual background is as follows. Between September 2020 and April 2024, the claimant placed a total of about £17.5 million under the management of the first and second defendants. The total comprises three distinct sums. The first is about £3.7 million, referred to in the application and in this judgment as the Coleman Funds Monies. The second is about £800,000, referred to in the application and in this judgment as the KH Assets (being the proceeds of sale of a portfolio of equities previously held by Kleinwort Hambros). The third is £13 million, referred to in the application and in this judgment as the LIBOR Deposit Monies.

7. These investments were all paid over by the claimant to a firm of accountants called Jones & Partners Ltd ("Jones"). Jones transferred them to Linear, which was an FCA regulated prime broker. The defendants had the management and the control of the assets, but not the possession of or title to them. On the other hand, the claimant had no visibility of the investments in real time, but was entirely reliant on what the defendants told him. By the end of 2024 the claimant had become concerned about his investments with the defendants. In March 2025 he asked for the return of £1 million. It was not repaid. The claimant then asked for all his investments back. They were not repaid. In fact, nothing whatsoever has been returned to the claimant.

Procedural matters

The beginning of the proceedings

8. As I have said, the claimant began these proceedings in April 2025, acting by his previous firm of solicitors. Although the claim form was not issued until 29 April 2025, on 24 April 2025 Mr Justice Trower granted proprietary asset preservation and worldwide freezing injunctions to the claimant separately against the first three defendants, and a proprietary asset preservation injunction against the fourth. The judge also made an order permitting service of the orders and the proceedings on the third defendant (being a Gibraltar company) out of the jurisdiction in Gibraltar, by sending to the email address for the second defendant. The injunction orders were served on the third defendant by this means on 25 April 2025.

9. Solicitors acting for the fourth defendant came on the record on 2 May 2025, and agreed a consent order for directions with the claimant solicitors. Solicitors acting for the first three defendants came on the record on 6 May 2025. On the same day the latter solicitors intimated their client's willingness to agree to a continuation of the injunctions "for now". They subsequently informed the claimant's solicitors that they were prepared to accept service of the proceedings by email. The proceedings themselves were in fact served on those solicitors by email on 12 May 2025. They also made a number of applications to the court on behalf of their clients, leading to orders,

including those of 6, 9 and 15 May 2025. On 21 May 2025, the second defendant made an affidavit in purported compliance with provisions of the injunctions made by Mr Justice Trower on 24 April 2025. In paragraph 2 of that affidavit, he said, "I make this affidavit on my own behalf and also on behalf of the First and Third Respondents by whom I am duly authorised". I record here that no application has been made, at any time, pursuant to CPR Part 11 by way of challenge to the jurisdiction of the court. Nor has any application been made for a stay under section 9 of the Arbitration Act 1996.

10. I record here in the chronology that the claimant changed from his previous to his current solicitors in June 2025.

11. The second defendant accepts that the defendants have not engaged with the process as they might have done. As I have said, no application has been made to challenge the jurisdiction, and no defence or other statement of case has been filed on behalf of any defendant. However, the second defendant in his witness statement (at [5]) blames this lack of engagement on the insolvency practitioner acting as liquidator of the first defendant and as his own trustee in bankruptcy. This ignores the chronology. The claim was issued in April 2025, and served on solicitors then acting for the defendants in May 2025. The first and second defendants did not enter insolvency processes until three months later, in August 2025. There was therefore ample opportunity for the defendants by their solicitors to formulate and serve their defences before the liquidator and trustee took over. But they did not do so. Even after the first defendant went into liquidation and the second became bankrupt, they could have served defences, since they were accused of fraud and thus had standing to do so. But they still did not do so. (The third defendant has never entered an insolvency process anyway.) Moreover, the liquidator and trustee in bankruptcy were not representing the first and second defendants' personal interests, but rather those of their creditors. So the second defendant's complaint is without foundation. The lack of engagement was effectively his own choice.

The evidence in support of the summary judgment application

12. The application for summary judgment with which I am now concerned is supported by two witness statements (the second, dated 1 May 2026, and third, dated 9 June 2026) from Thomas McKernan, the claimant's solicitor. It is opposed by the second witness statement (dated 18 May 2026) of the second defendant. The claimant also relies on evidence arising out of his (successful) application by notice dated 23 April 2025 for a freezing injunction against the defendants. This includes the claimant's first witness affidavit dated 23 April 2025, the first affidavit (dated 15 May 2025) of Paul Jason Kelly, the managing director of Linear, and Mr Kelly's witness statement, dated 30 June 2025. As I have said, no defences have been filed or served, but the second defendant has filed and served a witness statement, as well as an affidavit in compliance with the order of Mr Justice Trower. He also filed and served a skeleton argument for the purposes of this application hearing. Those three documents are the only intimations of any kind of defence to the claim or opposition to the application.

The request for a hybrid hearing

13. The application was argued before me on 21 July 2026, by Anna Lintner of counsel for the claimant (applicant). None of the defendants was present or represented before me, though all had been given notice of the hearing. However, it turns out that on 14 July

2026 the second defendant had sent an email to the court asking for the hearing on 21 July 2026 to be a "remote hearing". There was thereafter some brief correspondence by email between court staff and the second defendant. However, on the next day, 15 July 2026, the second defendant withdrew his request. On 20 July 2026, the second defendant sent a formal letter to the court, informing the court that he would not be attending the hearing on 21 July. In that letter, he said that he would not be absent by choice, and intended no abandonment of his defence, or any acceptance of the allegations made against him. He opposed the application for summary judgment "in full".

14. On 21 July 2026, the day of the hearing, an email was sent by court staff to the parties, timed at 08:55, setting out directions given by Deputy Master Jefferis. He said that he was minded to accede to the second defendant's request for a hybrid hearing, but that it was necessary first to check that court facilities could be arranged in time for the hearing. By that stage, of course, time was obviously very short. The hearing was due to start at 10:30 am. As it happened, the second defendant managed to send an email, in which he indicated that he would be prepared to attend a hybrid hearing if the court thought fit, but that he could not get to a computer today, and that it would have to take place at another time.

15. It was only at the outset of the hearing on 21 July 2026 that I was for the first time apprised of this correspondence from 14 July to that morning. I therefore discussed the matter with counsel for the claimant. Ms Lintner indicated that the claimant would prefer the hearing to go ahead that day. I then gave a short extempore judgment, taking the correspondence into account, and leading to my decision that the hearing should go ahead that day. Accordingly, I then proceeded with the hearing.

Permission to apply for summary judgment

16. The next question which was raised before me was the question of permission for the claimant to apply for summary judgment at all. By virtue of CPR rule 24.4(1)(a), no application for summary judgment may be made against a defendant who has not yet filed an acknowledgement of service or a defence, *unless* the court gives permission. This was the position in relation to all three defendants. Of course, the claimant could have applied for a *default* judgment, given that none of the defendants had filed and acknowledgment of service or a defence. But the claimant preferred to seek a summary judgment against them, and this for a number of reasons.

17. One reason was that the judgment sought was sought only in relation to part of the claim. A second, and more important, reason was that the second defendant's discharge from bankruptcy would not release him from any bankruptcy debt incurred in respect of any fraud or fraudulent breach of trust to which he was a party. So, obtaining a summary judgment in respect of an allegation of fraud would make clear that the debt so incurred survived bankruptcy. In this respect, a reasoned summary judgment would be more useful for the purposes of enforcement after the second defendant's discharge from bankruptcy.

18. A third reason was that the second defendant was now resident in Dubai, and the third defendant was based in Gibraltar. It would be easier to enforce a summary judgment abroad than a mere default judgment. Lastly, because of the size of the claim and the

second defendant's opposition to it, it was more appropriate for the court to concentrate on the merits of the claim, rather than the procedural failings of the defendants.

19. In my judgment, it is appropriate for me to give permission to the claimant to apply for summary judgment notwithstanding rule 24.4(1)(a). This is not a case where the defendant has remained utterly silent and said nothing. Instead, the defendant, albeit without complying with any of the formal rules on acknowledgment of service or serving a defence, has purported to engage with the substance of the claim by way of a witness statement and a skeleton argument. In the circumstances, it would not be sensible for the court to restrict itself to a mere default judgment.

20. Moreover, in considering the enforcement of any judgment that the court might give in favour of the claimant, it is important to take into account both the survival of the judgment debt after the discharge from bankruptcy, and the stronger appeal to enforceability of a judgment on the merits as opposed to a judgment on formalities and procedural rules. In the circumstances, this is especially the case where two of the three defendants are situated abroad. I therefore have no hesitation in saying that it is right and in the interests of justice to give permission to the claimant to apply for summary judgment, notwithstanding CPR rule 24.4(1)(a).

Lifting the automatic stay

21. A second part of the application before me was for the lifting of the automatic stay against the first defendant, imposed by section 130(2) of the Insolvency Act 1986. This provides that, after a winding up order has been made, no action or proceeding against the company (or, in this case, a limited liability partnership) may be proceeded with, except by the leave of the court. It is clear from authorities such as *Re Carillion plc (in liquidation)* [2020] EWHC 2146, [52], and the earlier case of *Cosco Bulk Carrier Co Ltd v Armada Shipping SA* [2011] EWHC 216 (Ch), [47]-[48], that the relevant test is "What is right and fair according to the circumstances of the case".

22. In the present case, the claimant is concerned that the liquidator's lack of engagement so far means that the claim will not be effectively or efficiently dealt with within the liquidation, at least for the moment. Moreover, it appears on the evidence before me that the liquidator is presently unwilling to admit the claimant proof in the absence of a judgment. The summary judgment process will be less expensive for the claimant than attempting to prove the claim within the liquidation. And summary judgment in favour of the claimant will facilitate his proving the debt in the liquidation. Secondly, the claimant says that the court should deal with the claims against the defendants together at the same time. Thirdly, the claimant points out that the liquidator does not object to the lifting of the stay. He is in effect neutral on this application. In my judgment, this is by no means conclusive. However, overall, I think it is right in the circumstances of the case to lift the stay, for the purposes of this application only. Dealing with the defendants together reduces the risk of inconsistent decision-making, and summary judgment would facilitate the insolvency process.

Jurisdiction

23. There is no suggestion that the relationship between the claimant and the first and second defendants should be governed by anything other than English law. At all material times the first and second defendants were based in England and were subject

to the jurisdiction of the English court, even though the second defendant subsequently left England for Dubai. However, the relationship between the claimant and the third defendant (a Gibraltar company) is said to be governed by a loan agreement dated 24 July 2020 (but in fact executed in September 2020) between them.

24. That agreement relevantly provided in part as follows:

> "8.6 Clauses 10.1 (Confidentiality), 11 (Notices) and 12 (Governing law and jurisdiction) shall survive termination of this Agreement.
>
> […]
>
> 12.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement (including its formation) is governed by and shall be construed in accordance with the laws of Gibraltar.
>
> 12.2 Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of Gibraltar over any claim, dispute or controversy (whether contractual or non-contractual) under or in connection with this Agreement or any of the documents executed pursuant to this Agreement or the legal relationships established by this Agreement."

It also contained provisions (in clause 13) dealing with the resolution of disputes by mediation "and/or" arbitration, but I shall come back to these.

25. It appears from the second defendant's witness statement (at [36]) that the third defendant wishes to rely on clause 8.6 of the loan agreement as meaning that, even if the loan agreement were set aside for fraud, clause 12 would still be binding upon the claimant. That is not what clause 8.6 means. A contract that is set aside for fraud is not "terminated". It is instead rescinded *ab initio* (from the beginning), meaning that in law it never existed. English law provides that, where the inclusion of a governing law or exclusive jurisdiction clause in a contract is procured by fraud or other vitiating factor, that clause is liable to be set aside: see *Fiona Trust and Holding Corporation v Privalov* [2007] Bus LR 1719, HL. It is not however necessary for me in the present case to decide whether that is so, or at least whether there is a good arguable case to that effect.

26. This is because it is possible for a party that has the benefit of an exclusive jurisdiction clause to waive that benefit by submitting to the jurisdiction of a court in another state. The standard practitioner work, *Dicey, Morris & Collins on the Conflict of Laws*, 16th ed 2022, says this (emphasis supplied):

> "11-065 **A person who appears voluntarily after service submits to the jurisdiction, even though out of England at the time of issue and service of the process.** They may, for instance, instruct their solicitor to accept service on their behalf; and the Civil Procedure Rules provide that where a solicitor who has a business address within the jurisdiction is authorised to accept service on behalf of a party, in principle process must be served on the solicitor. **So also where a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within the jurisdiction**. But the

> solicitor may accept service of proceedings on the basis that the defendant remains free to contest the jurisdiction in the same way as if the claimant had obtained permission to serve abroad and had effected service abroad. If the defendant instructs its solicitor to accept service and the solicitor communicates those instructions to the claimant, the defendant will be regarded as having submitted, even if the instructions are withdrawn.
>
> […]
>
> 11-068 Submission, in the form of common law waiver has been inferred when the defendant applied to strike out part of the claim. **It has also been inferred when the defendant filed affidavits** and appeared through counsel to argue the merits on the claimant's application for an injunction; **when the defendant consented inter partes to the continuance of a freezing injunction without reserving its right to contest the jurisdiction**; when the defendant sought to set aside a committal order and gave an undertaking and submitted evidence; when the defendant moved to set aside a default judgment and at the same time applied for an order that the claimant deliver a statement of claim; and when a defendant applied for an order for security for costs … "

27. In the present case, the third defendant was properly served out of the jurisdiction with the order of Mr Justice Trower. Its sole director (the second defendant) thereafter made an affidavit on its behalf in purported compliance with its disclosure obligations. In addition to that, solicitors acting for the third defendant notified the claimant in writing that they were instructed to accept service of the proceedings. Those solicitors also consented to the continuance of a freezing injunction without reserving the right to contest the jurisdiction. No application has ever been made under CPR Part 11, and the defendant is now out of time for doing so. In my judgment, even if the claimant would otherwise be bound by the exclusive jurisdiction clause in the loan agreement, the third defendant has clearly waived the benefit of it, and submitted to the jurisdiction of the English court.

The scope of the summary judgment application

28. As I have already indicated, this application for summary judgment is restricted to the first two of the claims summarised in paragraph 2 above, that is, those based on deceit/fraud. (As an aside, under the old procedural rules, the RSC, a plaintiff could not obtain summary judgment in a claim any part of which was based on an allegation of fraud: Ord 14, rule 1(2)(b). But this limitation on summary judgment was abrogated in 1992, and since then it has been possible to obtain summary judgment in a claim based on fraud.) And, as I have also already mentioned, the application is made in respect of a total of about £17.5 million, made up of three distinct asset classes:

    (i) The Coleman Funds Monies (about £3.7 million);

    (ii) The KH Assets (about £800,000);

    (iii) The LIBOR Deposit Monies (£13 million).

29. The representations on which the claimant relies for the purposes of this application fall into three categories, which for present purposes have been called the Coleman Funds

Representations, the Performance Representations, and the LIBOR Representations (which themselves are divided into the LIBOR Deposit Representations and the Further LIBOR Deposit Representations). These are set out below. In relation to the Coleman Funds Monies, the claimant relies on the Coleman Funds Representations and the Performance Representations. In relation to the KH Assets the claimant relies on the Coleman Funds Representations. In relation to the LIBOR Deposit Monies the claimant relies on the Performance Representations and the LIBOR Representations.

The Amended Particulars of Claim

The representations

30. The **Coleman Funds Representations** are pleaded at APOC [14]-[15], [18] in the following terms:

> "14. From around February 2018 onwards, Mr McClean began to refer to the possibility of establishing a new Cayman-based 'Coleman' fund in which Mr Shaw could invest. This subsequently became known as the Coleman MSF and / or Coleman DAS.
>
> 15. The purported nature of the Coleman MSF and the Coleman DAS and their key features were described and explained in a series of presentations and other documents that were provided to Mr Shaw by Mr McClean and / or Coleman LLP including:
>
> 15.1. A presentation dated April 2020 (the 'Presentation') …
>
> 15.2. An 'Offering Memorandum' for the Coleman MSF dated 1 June 2021 (the 'Memorandum') …
>
> 15.3. The 'Supplement' to the Memorandum (the 'Supplement') dated 1 June 2021 …
>
> […]
>
> 18. By inter alia the contents of the Presentation, Memorandum and Supplement (and the drafts thereof which were provided to Mr Shaw) and the communications, documents and statements pleaded in Schedule 1, the substance of which were repeated to Mr Shaw by Mr McClean in WhatsApp, telephone and video calls and during in person discussions, the Coleman Defendants (or each of them) made the following representations to Mr Shaw in relation to the nature and operation of the Coleman Funds and the application of the Coleman Funds Monies (the 'Coleman Funds Representations'):
>
> > 18.1. The Coleman Funds were each genuine, legitimate and bona fide investment funds that others were also investing in;
> >
> > 18.2. The Coleman Funds (or each of them) would be independently administered and reported on, would use Goldman Sachs as the (or the ultimate) prime broker and would be subject to independent professional audit by BDO;

18.3. Monies advanced by Mr Shaw to Coleman LLP or CEHL (or other of the Coleman Entities) would be used only for the purpose of investing in the Coleman Funds; and

18.4. The monies that were advanced by Mr Shaw would be held by an independent custodian (which from around 24 July 2020 was identified as Linear) in a segregated account for Mr Shaw and Mr Shaw would be able to withdraw them at any time as he wished.

31. The **Performance Representations** are pleaded at APOC [35]-[36] in the following terms:

"35. The performance of the Investment Monies was reported by Mr McClean to Mr Shaw at the end of each month, followed by a monthly summary or statement of account purportedly showing the performance of the Investment Monies (the 'Statements of Account'). The Statements of Account were provided by Mr McClean weeks late, despite Mr Shaw repeatedly complaining about such delays, and without any proper excuse or justification by Mr McClean. Had the Investment Monies genuinely been invested in the Coleman Funds, or deposited in the LIBOR Deposit Account, the production of such statements ought to have been automatic and regular (particularly in view of Coleman LLP's FCA-regulated status).

36. Each of the Statements of Account from September 2020 onwards included statements and information purportedly showing:

36.1. that the Coleman Funds Monies (or such of them as had been transferred by the date of the relevant Statement of Account) had been invested in the Coleman Funds;

36.2. from June 2023 onwards, that the LIBOR Deposit Monies (or such of them as had been transferred by the date of the relevant Statement of Account) had separately been deposited in the LIBOR Deposit Account; and

36.3. that those investments / deposits were each performing well and were each generating a positive return or interest for Mr Shaw (the 'Performance Representations')".

32. The **LIBOR Representations** are pleaded at APOC [31]-[32] in the following terms:

"31. On or around 4 June 2023, Mr McClean wrote to Mr Shaw to confirm the 'commercial terms' of deposits placed with Coleman LLP over and above £10 million (the 'LIBOR Terms Letter'). The LIBOR Terms Letter stated, inter alia, that 'All deposits over and above the original £10m deposit will be invested in 1Y LIBOR SONIA OIS (Overnight Index Swap) or other money market deposit products agreed' (the 'LIBOR Deposit Representation').

32. On 7 and 8 June 2023 Mr McClean made the following 'Further LIBOR Representations':

32.1. By WhatsApp message sent on 7 June 2023, Mr McClean confirmed to Mr Shaw that the money market products in which Mr Shaw's money would be deposited 'have a term but we can sell out when we want', thereby

representing to Mr Shaw that the sums paid pursuant to the LIBOR Terms Letter and LIBOR Deposit Representation would be available for Mr Shaw to withdraw as he wished. As Mr McClean was aware, it was important to Mr Shaw that the monies deposited in the LIBOR Deposit Account (defined at paragraph 32.2 below) were available for withdrawal upon demand, in order that Mr Shaw could use them as desired in connection with his property business;

32.2. By further WhatsApp message sent on 7 June 2023, Mr Shaw asked Mr McClean 'will I be able to view the fixed deposit? Just asking for family office transparency. They all like that they can actually see the sum (and the interest rate and actual interest) on screen?'. Mr McClean responded 'We don't have a client portal from [Goldman Sachs]. Let me give that some thought'. In an email sent at 3:07 pm on the same day, Mr McClean stated 'We will send [the funds] to Goldman'. By those statements and the first email referred to in paragraph 32.3 below, Mr McClean represented that the LIBOR / SONIA Overnight Index Swap or other money market deposit product ('LIBOR Deposit Account') in which Mr Shaw's monies were to be deposited would be held with Goldman Sachs; and

32.3. On 8 June 2023 Mr McClean emailed JPL, copying Mr Shaw, and stated (referring to a conversation that had taken place between Mr McClean and Mr Shaw): 'I have agreed with Chris to send the money into his segregated account at Linear. From there it will be sent into Goldman.' Mr Shaw replied and stated 'Matt has also confirmed that we will have evidence of the monies in a Linear segregated account specific to me and will have monthly assessments of interest applicable' and asked Mr McClean to provide 'the account details for the Linear seg account'. Mr McClean stated in response: 'The account is COLE-1 CJS'. Mr McClean thereby represented to Mr Shaw that the monies paid pursuant to the LIBOR Terms Letter would be paid into a segregated account in Mr Shaw's name at Linear (and would therefore be subject to the assurances given by Mr McClean in his email of 15 April 2021, pleaded as item 31 of Schedule 1 to these Amended Particulars of Claim)."

Inducement and reliance

33. Inducement in relation to the **Coleman Funds Representations** is pleaded at APOC [19]:

"19. The Coleman Funds Representations were made with the intention of inducing Mr Shaw to make payments or enter into transactions or agreements which would have the effect of placing Mr Shaw's monies under the control of one or more of the Coleman Defendants."

34. Inducement in relation to the **LIBOR Representations** is pleaded at APOC [34]:

"34. The LIBOR Deposit Representation and Further LIBOR Representations were made by Mr McClean and / or Coleman LLP with the intention of inducing Mr Shaw to make payments or enter into transactions or agreements which would have the effect of placing additional of Mr Shaw's funds under the control of Mr

McClean and Coleman LLP, purportedly for the purposes of depositing in the LIBOR Deposit Account."

33. Inducement in relation to the **Performance Representations** is pleaded at APOC [40]:

> "40. The Performance Representations were made with the intention of inducing Mr Shaw to make further payments or enter into further transactions or agreements which would have the effect of placing further of Mr Shaw's funds under the control of Mr McClean and / or Coleman LLP."

34. Reliance in relation to all the representations is pleaded at APOC [55]:

> "55. Mr Shaw was, as pleaded above, induced by the Representations (or such of them as had been made at the relevant date) to:
>
> 55.1. enter into the Loan Agreement and other contractual documents with Coleman Entities;
>
> 55.2. pay the Investment Monies to JPL;
>
> 55.3. give instructions to JPL to transfer the Investment Monies to Linear;
>
> 55.3A give instructions to KH to transfer the KH Assets to Linear; and
>
> 55.4. allow the Investment Monies (or the substantial majority thereof) and the purported returns thereon to remain under the control of Mr McClean and / or Coleman LLP and / or remain purportedly invested in the Coleman Funds and / or deposited in the LIBOR Deposit Account."

35. The payments and transfers made by the claimant are pleaded at APOC [26K], [28], [48]:

> "26K. According to a "Portfolio Valuation" provided by KH, Mr Shaw's assets were transferred from KH to Linear as follows (the "KH Assets"):

Trade Date	Transaction Description	Valuation as at Trade Date (GBP)
22.03.21	AXA EUR2.29 (XPAR)	32,584.05
22.03.21	AT&T INC COM USD1 (XNYS)	33,539.64
22.03.21	CITIGROUP INC COM	27,621.86
22.03.21	ISHS CORE FTSE 100 UCITS ETF (XLON)	91,505.30
23.03.21	BAYER AG (XETR)	42,810.69
26.03.21	MAN FUNDS PLC JPN CORLPA EQTY 1 GBP	57,526.65

29.03.21	LYXOR IRL3 BRDGWTR CORE GBL MAC EUR	470,505.14
13.04.21	CT I LUX UK EQUITIES IGP GBP	58,778.31
		Total 814,871.64

[…]

28. The net Coleman Funds Monies that were transferred to Linear were as follows:

Date money transferred to Linear / withdrawn	Amount GBP
25/09/2020	£ 1,654,255.00
01/02/2021	£ 1,617,023.05
04/08/2021	£ (1,756,362.96)
21/02/2022	£ 2,149,985.00
01/09/2022	£ 514,466.33
28/09/2022	£ 490,430.00
05/03/2024	£ (1,000,000.00)
Total Net Transfers	£ 3,669,796.42

[…]

48. The total net sums paid by Mr Shaw to Linear (via JPL) for the purpose of deposit in the LIBOR Deposit Account (or, in the case of the sum of £1.5 million pleaded at paragraph 44.1 above, investment in the Coleman Funds and subsequent deposit in the LIBOR Deposit Account) were therefore £13,000,000 (the 'LIBOR Deposit Monies') as follows:

Date of payment to Linear / withdrawal	Amount GPB
08/06/2023	£ 9,000,000.00
15/04/2024	£ 5,000,000.00
25/06/2024	£ (1,000,000.00)
Total Net Transfers	£13,000,000.00".

Fraud and falsity

36. Fraud is pleaded at APOC [56]:

> "56. Further the Representations were, as pleaded further below, made fraudulently and were each of such a nature that they would be likely to play a part in the decision of a reasonable person to act as pleaded at paragraph 55 above, and were intended to induce Mr Shaw to so do. As such, the presumption of inducement applies and Mr Shaw is to be presumed to have relied upon the Representations in acting as pleaded at paragraph 55 above."

37. Falsity is pleaded at APOC [68]-[70]:

> "68. To the extent that any of the Representations were, at the time they were made, a statement as to future intention, in order for the representation to be true, the person making the representation was required to honestly and reasonably hold the stated intention.
>
> 69. In view of the matters pleaded at paragraph 71 below it is to be inferred and is averred that the Representations were untrue, in that:
>
> > 69.1. Contrary to the Coleman Funds Representations, the Coleman Funds (or each of them) were not genuine and / or legitimate or bona fide investment funds; and / or
> >
> > 69.2. Contrary to the Coleman Funds Representations, the Coleman Funds (or each of them) did not (at least to any material extent) use Goldman Sachs as their prime broker and / or were not (at least to any material extent) subject to independent professional audit by BDO; and / or
> >
> > 69.3. Contrary to the Coleman Funds Representations and the Performance Representations, the Coleman Funds Monies were not and were never intended by the Coleman Defendants to be invested, at least to any substantial extent, in the Coleman MSF or other of the Coleman Funds; and / or
> >
> > 69.4. Contrary to the LIBOR Representations and the Performance Representations, the LIBOR Deposit Monies were not and were never intended by Mr McClean and / or Coleman LLP to be deposited in a segregated LIBOR Deposit Account; and / or
> >
> > 69.5. Contrary to the Performance Representations, the Investment Monies were not invested and / or deposited as shown in the Statements of Account, were not performing as shown in the Statements of Account and / or were not generating a positive return for Mr Shaw.
>
> 70. By reason of the matters pleaded at paragraph 71 below it is inferred and averred that each of the Representations was untrue as at the date on which it was made. Further and alternatively, each of the Representations was continuing in nature and, to the extent that any of the Representations were true as at the date on which they were made (which is denied), but subsequently became false at any material time, the Coleman Defendant who made the relevant Representation was under a duty to correct the Representation but failed to do so. The material times for these purposes are any time: (i) prior to Mr Shaw's entry into the Loan Agreement; (ii) prior to each payment by Mr Shaw of the Investment Monies to JPL; (iii) prior to each instruction given by Mr Shaw for the transfer of the

> Investment Monies or the KH Assets to Linear; and / or (iv) during which the Investment Monies remained under the control of any of the Coleman Defendants."

Loss

38. Loss is pleaded at APOC [66] and [83]:

> "66. By email and WhatsApp sent by Mr Shaw to Mr McClean on 13 April 2025, Mr Shaw demanded the immediate return of all funds under management, including the Investment Monies. No funds have been received by Mr Shaw and the entirety of the Investment Monies remain unaccounted for.
>
> […]
>
> 83. In the premises, Mr Shaw has suffered loss and damage equal to:
>
> 83.1. £16,669,796.42, being the Investment Monies paid by or on behalf of Mr Shaw to Linear, via JPL, which has not been returned or repaid to him. Such figure comprises the LIBOR Deposit Monies of £13 million and the Coleman Funds Monies of £3,669,796.42;
>
> 83.2. The sum representing the interest or return on investment which Mr Shaw would have received had the Investment Monies been deposited in an interest bearing account and / or invested in an alternative investment product. The precise quantification of this head of loss will be a matter for expert evidence in due course, however Mr Shaw conservatively estimates that the loss he has suffered as a result of being deprived of the ability to invest the Investment Monies elsewhere is not less than £1.9 million;
>
> 83.3. Additional financing costs in the amount of approximately £150,000 which Mr Shaw has incurred as a result of having to arrange a temporary facility with Coutts as a result of being unable to access the missing LIBOR Deposit Monies;
>
> 83.4. As yet unquantified, but likely to be significant, losses caused by Mr Shaw having to dispose of assets which would otherwise have been retained and which would have increased in value, as a result of being unable to access the missing LIBOR Deposit Monies.;
>
> 83.5. The value of the KH Assets."

The relevant evidence

Representations made?

39. The making of the **Coleman Funds Representations** is evidenced by at least 12 of the documents listed in Schedule 1 to the APOC, details of which are set out below.

40. (1) An email from the second defendant to the claimant, dated 20 April 2020, included the following statements:

> "▪ Chris Shaw will lend the commitment capital to a new Maltese holding company (the '**Maltese HoldCo**'). The Maltese HoldCo will own 100% of a new Maltese AIFM.
> ▪ Chris Shaw will enter into the loan agreement with the Maltese HoldCo and receive 10% of the ownership of the Maltese HoldCo in return, along with interest on the loan.
> ▪ The Maltese HoldCo will invest Chris' loan into a Cayman based feeder fund (the '**Matched Seed Fund**').
> ▪ The Matched Seed Fund will hold the money in a segregated Argon custody account at Goldman Sachs or Barclays.
> ▪ Argon will invest two times the commitment capital into a newly created portfolio ('**Sleeve V**') under a long form equity swap agreement, which will in turn invest in a newly created segregated portfolio of the Master Fund"

41. (2) An email from the second defendant to the claimant, dated 22 May 2020, included the following statement:

> "The fund will go live in June regardless of the Malta entity situation with the £100m single investment and likely a few others totalling £20m."

It also confirmed that there would be "no lock in" of funds invested by Mr Shaw in the Coleman Funds.

42. (3) A "Company Structure" diagram dated 2 June 2020 attached to an email from the second defendant to the claimant, of that date, stated various things:

"Independent reporting" for the Coleman MSF was stated to comprise:
(i) "Trussedge – Outsource middle and backoffice. Daily reporting"; (ii) Centaur – Administrator providing Monthly statements"; (iii) "BDO – yearly audit"

Mr Shaw's investment, via Gibraltar and Maltese "Coleman" companies was shown as going into: (i) the Coleman MSF "Sleeve 5" which was stated to have "£60M Assets" including "Argon invests £40M"; and (ii) the Coleman MSF "DAS" which was stated to have "$100M Day 1 Investment"
It also stated:

> "Prime Broker – Goldman Sachs Argon is appointed the prime broker on Sleeve 5 and invests £40M in return for the business. The assets are held at Goldman Sachs along with all of Coleman other business".

43. (4) A loan agreement dated 24 July 2020, but executed in September 2020, stated:

> "Coleman will invest initially in a Managed Account and then into the Coleman Dynamic Allocation Strategy Fund"

and

> "Coleman shall apply all amounts borrowed by it under this Facility only for the purpose of, in accordance with this Agreement, making investments initially in Managed Accounts and shortly thereafter the Fund".

44. (5) An email from the second defendant to the claimant, dated 14 July 2020, included the following statement:

> "Once the fund is live I will then move the monies out of the managed account back to J&P and then re-invested in the fund for 1st September."

45. (6) An email from the second defendant to the claimant, dated 18 September 2020, included the following statement:

> "Coleman Multi-Strategy Product is a Fund or managed account that allocates to a select group of Coleman's highest conviction Portfolio Managers. The strategy targets an 8-12% annualised return with limited correlation to traditional asset classes. The fund is a Cayman domiciled Master-Feeder with top tier legal and operational service providers."

46. (7) An email from the second defendant to the claimant, dated 23 September 2020, included the following statement:

> "It is anticipated that the Multi Strategy Fund will go live in early October but for the avoidance of doubt the strategy is pari passu with the managed accounts that are currently live. Coleman has one Multi strategy product".

47. (8) An email from the second defendant to the claimant, dated 15 April 2021, included the following statements:

> "Monies withdrawn due to AML rules, CAN ONLY be sent to and from the original bank account. Money deposited in COLE1 and COLE2 have only come from J&P and therefore can only go back and forth to J&P. This is an effective regulatory lock."

And

> "Now the [Coleman Multi-Strategy] fund is live the numbers will be independently verified by Centaur".

48. (9) An email from the second defendant to the claimant, dated 9 June 2021, included the following statement:

> "Please see attached documentation for the Coleman Multi Strategy Fund, all of the operational issues have been ironed out and we are book building."

49. (10) An email from the second defendant to the claimant, dated 17 December 2021, included the following statement:

> "Centaur the administrator for the fund have calculated a marginally different number to what we are holding at Goldman. It's marginal but they wont sign the fund number off till it's resolved."

50. (11) An email from the second defendant to the claimant, dated 18 February 2022, included the following statement:

> "Please instruct that the money you sent to Jones & Partners is to be invested into the Coleman Multi Strat managed account in your name?"

51. (12) An email from the second defendant to the claimant, dated 31 August 2022, included the following statement:

> "Sarah has confirmed receipt of £514,466.33. Please confirm that you want this to be invested in your Coleman Multi Strategy account".

The claimant responded:

> "…please apply these to my investment in the Coleman Multi Strategy account."

52. In relation to the Coleman Funds Representations, the second defendant says in his witness statement:

> **"28.** Mr Shaw's case appears to proceed on the assumption that investments in unlisted companies were outside the scope of the agreed investment mandate. This is wrong. The Coleman Multi Strategy Product definition was left blank in the contract Mr Shaw's own lawyers drafted. The Managed Account definition imposes no asset class restriction. Schedule 1 states the composition will vary between 0% and 100% behind each strategy. Clause 10.3 supersedes any prior oral representations."

53. So, the point made is that the loan agreement did not impose any asset class restriction in relation to the investments that could be made with the claimant's money. But the second defendant himself provided the claimant with a definition of "Coleman Multi Strategy Product" in his email of 18 September 2020, referred to above. And in his emails he repeatedly told the claimant that, once the Coleman Funds were live, the claimant's money would be invested in them. In my judgment, the second defendant's point goes nowhere.

54. In his witness statement, the second defendant does not deal with the representation that the claimant would be able to withdraw his money at any time. In effect, therefore, that is not contested.

55. The making of the **Performance Representations** is evidenced by the statements of account provided monthly to the claimant by the second defendant, each bearing the first defendant's name and FCA registration number. Each such statement showed that the claimant's money was held as a deposit, reflecting the total amounts paid by him from time to time plus accrued interest. In his evidence, the second defendant does not address the Performance Representations or the statements of account. Again, therefore, the making of the representations is not contested.

56. The **LIBOR Representations** consist of (i) the LIBOR Deposit Representation, (ii) the Further LIBOR Representations, and (iii) the LIBOR Performance Representations.

57. The LIBOR Deposit Representation is contained in a letter sent by email from the second defendant to the claimant on 4 June 2023. It stated that

> "All deposits over and above the original £10m deposit will be invested in 1Y LIBOR SONIA OIS (Overnight Index Swap) or other money market deposit products agreed".

(By that stage the monthly statements sent to the claimant purported to show his balance as exceeding £10 million.)

58. The Further LIBOR Representations are contained partly in a WhatsApp message sent by the second defendant to the claimant on 7 June 2023, and partly in an email of 8 June

2023. The claimant had asked by WhatsApp: "So how long do we lock in for in order to optimise but not restrict future plays if markets change." The second defendant replied: "Essentially, they have a term but we can sell out when we want, take a view." Then, in an email of 8 June sent by the second defendant to Jones, but copied to the claimant, the second defendant said:

> "I have agreed with Chris to send the money into his segregated account at Linear. From there is will be sent into Goldman. Chris, Please confirm."

The claimant sent an email within the hour confirming this.

59. The LIBOR Performance Representations are contained in a series of documents:

(1) A WhatsApp message sent by the second defendant to the claimant on 9 June 2023 stated that the rate secured for the initial deposit was "5.89 [%] locked".

(2) A WhatsApp message sent by the second defendant to the claimant on 3 August 2023 stated that "Rates moved since we fixed. Should be able to sell at a small profit and fix higher".

(3) Two WhatsApp messages sent by the second defendant to the claimant on 11 August 2023 stated: "Ok. Done. 6.095 sold" and "Re bought at 6.22".

(4) A WhatsApp message sent by the second defendant to the claimant on 4 March 2024 stated that

> "The interest on fixed deposits is paid at the end of the term. We have been reflecting it monthly as it is effectively a monthly performance. Please let me know if you want that changed? … All Assets sit at Goldman but are controlled through the segregated account at Linear for Jones & Partners … "

(5) Statements of account sent by the second defendant to the claimant after June 2023 showed the sum of £9 million in a "Fixed Interest Deposit" attracting "Monthly Interest".

(6) An email sent by the second defendant to the claimant on 12 April 2024 in relation to a proposed further deposit of £5 million stated:

> "At Linear £1.5m will be committed to the main strategy and £3.5m into 12m Libor currently 5.65%."

60. The second defendant does not challenge the LIBOR Representations. Indeed, he does not deal with this part of the claim at all. In effect it is unanswered.

Falsity and knowledge of falsity?

61. The claimant says that the **Coleman Funds Representations** were untrue, and the second defendant must have known this. He relies on the evidence of Mr Kelly of Linear (summarised in that of Mr McKernan, the claimant's solicitor) to the effect that the claimant's money was not invested in the Coleman Funds or even placed in a LIBOR segregated account, but was used by another company in the Coleman group controlled by the second defendant, Coleman Asset Management Group ("CAMG"), for its own purposes, including proprietary trading.

62. The second defendant appears to accept this, saying in his own witness statement:

> **"34.** The Investment Monies transferred by Mr Shaw were received by CAMG through Linear and were used in the management of the Coleman Group's investment activities. I accept that the accounts were not fully segregated in the way originally described and that the investment profile differed from initial expectations."

63. In his affidavit of 21 May 2025 made in response to the initial court orders in this matter, the second defendant said, inter alia:

> "7. … from December 2022 until the end of 2023, Coleman Capital received various requests for redemption, meaning that investors had to be returned their funds, which coincided at the same time as the Group was committed to private equity deals and was also attempting to build out its real estate offering …
>
> 8. I did not know why such a significant of redemption requests were made in a relatively short period of time given that the Group and its funds had performed consistently. The number and volume of redemptions meant that liquidity was severely impacted …
>
> 9. The result of this was that by the end of 2023, the Claimant's funds were increasingly exposed to private equity. He invested more monies with the Group while at the same time the Group were paying investors."

64. I understand this to mean that, according to the second defendant, the claimant's investment money went to pay redeeming investors, rather than being invested in the assets in which it should have been. This meant that his money would not be available for withdrawal on demand.

65. The **Performance Representations** as set out in the monthly statements of account are shown to be untrue by the CAMG trading data provided by Linear in relation to CAMG's transactions with that company, and relied on in these proceedings by the claimant. CAMG's running balance with Linear was frequently negative, so that by the end of 2021 CAMG had a negative balance of more than US$5 million, by the end of 2022 one of nearly US$11 million, and by the end of 2023 one of over US$18 million. The data shows that the second defendant instructed Linear to transfer funds to CAMG on the same days as the claimant's money was received.

66. The second defendant controlled CAMG's account with Linear. The claimant says that he must have known that the monthly statements which he sent out were untrue. In his evidence, the second defendant does not say that the statements were true, and he gives no explanation for the provision of the untrue statements. Indeed, he does not address them at all.

67. As for the **LIBOR Representations**, the claimant relies once more on the evidence of Mr Kelly of Linear (summarised in that of Mr McKernan, the claimant's solicitor) to the effect that the claimant's money was *not* held in a fixed interest deposit account attracting monthly interest but was instead used to pay out CAMG fund redemptions and to pay down CAMG's negative balance with Linear. As I have said, the second defendant in his evidence does not address the LIBOR Representations at all, let alone their falsity.

Inducement and reliance

68. The claimant's inducement is pleaded at paragraphs 19, 34 and 40 (set out earlier), and his reliance on the representations at paragraph 55. The claimant's own positive evidence is that he relied on the representations in making payments to Linear via Jones. It is clear from the nature of the representations that their purpose was to induce the claimant to rely on them. The second defendant's knowledge of their falsity would make them fraudulent, thereby also engaging the presumption of inducement.

The defendants' case

69. The defendants' case is not set out in any statement of case. But it appears partly from the second defendant's affidavit of 21 May 2025, his witness statement of 18 May 2026, and partly from his skeleton argument. By way of general statement, he says this at the beginning of his second witness statement:

> **"3.** I categorically deny that I defrauded Mr Shaw. I deny that I made representations knowing them to be false. I deny that the Coleman Funds were a sham. The losses that Mr Shaw has suffered are real and I deeply regret them. However, those losses resulted from a combination of third-party failures — principally the default of Omnia Group Holdings AG on a $100 million medium-term note, the conduct of Linear Investments Limited as custodian, and a broader market and liquidity crisis — not from any fraudulent intent on my part."

70. The second defendant relies on the facts that (i) the claimant's lawyers drafted the loan agreement between him and the defendants and (ii) he was a minority shareholder in and director of the third defendant:

> "9. … A man who occupies both sides of a commercial transaction — as lender, director and shareholder of the borrower — is not the victim of a hidden structure. He is a principal participant who, through his own solicitors, designed and executed the arrangement with full knowledge of its terms."

71. And again:

> "31. … A person who takes a directorship, takes increasing equity stakes over three years, and approves three consecutive years of financial statements is not a passive investor who was deceived about the nature of the arrangement."

The claimant's case, however, is not that the claimant was deceived about the nature of the arrangement. It is that he was deceived by the defendants' misrepresentations.

72. The second defendant further says that

> "12. The Coleman funds were subject to a comprehensive regime of independent third-party audit and administration, mandated by the Cayman Islands Monetary Authority ("CIMA") … A fraudulent operation does not submit to CIMA-mandated monthly administration and annual audits by international accounting firms."

73. He also relies heavily on the fact that in the loan agreement the definition of "Coleman Multi Strategy Product" in clause 1.2 was left blank. He says:

> **"28.** Mr Shaw's case appears to proceed on the assumption that investments in unlisted companies were outside the scope of the agreed investment mandate. This is wrong. The Coleman Multi Strategy Product definition was left blank in the contract Mr Shaw's own lawyers drafted. The Managed Account definition imposes no asset class restriction. Schedule 1 states the composition will vary between 0% and 100% behind each strategy. Clause 10.3 supersedes any prior oral representations."

74. However, as I have already pointed out, the second defendant himself subsequently provided the claimant with a definition of "Coleman Multi Strategy Product", and in his emails he repeatedly told the claimant that, once the Coleman Funds were live, the claimant's money would be invested in them. The claimant's case is that they were not invested at all, but used to pay off others. His case is not poor investment, but theft.

75. The second defendant also says (in a passage some of which I set earlier):

> **"34.** The Investment Monies transferred by Mr Shaw were received by CAMG through Linear and were used in the management of the Coleman Group's investment activities. I accept that the accounts were not fully segregated in the way originally described and that the investment profile differed from initial expectations. However, the use of funds in the management of a genuine investment business, within a contractually agreed fee structure, overseen by CIMA mandated auditors and administrators, is not theft and is not fraud. The losses resulted from the failure of specific investments and from third-party defaults — principally Omnia and Linear — not from deliberate misappropriation."

76. The meat of the defence appears in the last sentence. But the allegation is wholly unparticularised. We have to go further into the witness statement for any further explanation. In a section headed "LINEAR'S PRIMARY RESPONSIBILITY", the second defendant says:

> **"49.** The dissipation of Mr Shaw's Investment Monies occurred at Linear, through Linear's systems. The proximate cause of the loss was Linear's conduct as custodian. It is not appropriate to enter summary judgment for the full £17,484,668.06 against me for fraudulent misrepresentation where the primary custodian responsible for the dissipation has already settled and the quantum of that settlement is undisclosed."

77. But although he says that "The proximate cause of the loss was Linear's conduct as custodian", he has still not particularised that conduct. And Linear's conduct appears to have been to implement the instructions *given by the second defendant*, so it is difficult to see how that can shift the primary responsibility from the defendants. As to the second point, I have already made clear that to the extent that the claimant recovers from the defendants he will have to give credit for any recovery from Linear.

78. The second defendant opposes summary judgment on four grounds, to which I shall return in due course:

> *"Ground 1: The Fraud Allegation Is Genuinely Disputed With Real Evidence*

> **66.** The test under CPR 24 is whether the defendant has a real prospect of successfully defending the claim. The following matters each independently create a triable issue: (i) the Linear escrow email directly contradicts McKernan §68.1 and was in PCB Byrne's possession before the statement of truth was signed; (ii) BDO's appointment is confirmed in the signed Loan Agreement and Shaw's own First Affidavit, directly contradicting McKernan §68.2; (iii) the Coleman funds traded directly at Goldman Sachs and the managed accounts traded through Boothbay at Goldman Sachs, contradicting the Goldman Sachs absence allegation; (iv) CIMA-mandated monthly administration and annual audits by international firms directly contradict the absence of independent verification allegation; (v) the Interim Loan Agreement — in which Shaw expressly acknowledged the CAMG account structure, confirmed compliance, and signed as Lender, director and shareholder — directly contradicts the non-segregation allegation at paragraph 73; (vi) the blank Coleman Multi Strategy Product definition, in a contract drafted by Shaw's own solicitors, undermines the reliance element; (vii) clause 7.1 addresses the Linear situation as a contracted and accepted risk; (viii) clauses 4.1, 4.2(c), 5.1(d) and 5.1(g) breach allegations require contemporaneous valuation evidence not before the Master; (ix) Shaw's own solicitors designed the structure he now claims was fraudulent; (x) the introduction to JPL was made by Martin Peters and Tim Hodges in 2015, not by me.
>
> […]
>
> *Ground 2: The Mishcon Conflict Taints the Proceedings as Initiated*
> **68.** The Freezing Order was obtained by a firm with an undisclosed concurrent conflict. It is not appropriate to enter a fraud judgment — one that will survive bankruptcy discharge and follow the defendant for life — in proceedings whose foundation is compromised in this manner.
>
> *Ground 3: The s.281(3) and Liability Cap Purposes Are Tactical*
> **69.** McKernan 2 paragraph 8.2 expressly states that the reason for seeking a fraud judgment is to obtain a debt surviving bankruptcy discharge under s.281(3) IA86. The fraud label also serves a second tactical purpose: defeating the contractual 120% liability cap at clause 7.3 that Mr Shaw agreed to. The summary judgment jurisdiction under CPR 24 is not designed to serve these dual tactical purposes where the underlying fraud allegation is genuinely disputed.
>
> *Ground 4: The Contractual Dispute Resolution Process Was Not Followed*
>
> **70.** Clause 13 of the Loan Agreement — drafted by Mr Shaw's own solicitors — requires good faith negotiation, then CEDR mediation, then LCIA arbitration before resorting to court proceedings. Mr Shaw followed none of these steps. He went directly to the English High Court for a without-notice freezing order."

79. The second defendant also makes clear that quantum is disputed. There are two points. The first (with which I have already dealt) is that any recovery from the defendants must take account of anything recovered from Linear. The second is that the defendants' liability is capped by clause 7.3 of the loan agreement at 120% of the aggregate loans made. But neither of these affects the question whether summary judgment is granted.

The law

Deceit/fraudulent misrepresentation

80. The elements of the tort of deceit are (1) a representation which is (2) false, (3) dishonestly made, (4) intended to be relied on, and (5) in fact relied on: see *AIC Ltd v ITS Testing Services* [2006] EWCA Civ 1601, [251]. In relation to the concept of a representation, the court has to consider what a reasonable person would have understood the words to mean used in the context in which they were used: *IFE Fund SA v Goldman Sachs International* [2006] 2 CLC 1043, [50]. A representation as to future conduct may well amount to a promise, but it is still a representation of fact as to the state of mind of the representor, and in particular whether the representor has the genuine intention of fulfilling the promise. As Bowen LJ said in *Edgington v Fitzmaurice* (1885) 29 Ch D 459, 483, "the state of a man's mind is as much a fact as the state of his digestion". For the purposes of the tort of deceit, a representation is made dishonestly if it is made either (i) knowing that it is untrue, or (ii) without any belief in its truth, or (iii) recklessly (that is, not caring whether it is true or not): see *Derry v Peek* (1889) 14 App Cas 337, 374.

81. A person who assists another to commit a tort such as deceit is jointly liable for it, if the assistance is more than trivial and is made pursuant to a common design. This will cover, for example, the director of a company where the director causes the company to make a misrepresentation. Thus, in *Lifestyle Equities CV v Ahmed* [2025] AC 1, Lord Leggatt (with whom all the other justices agreed) said:

> "35. These rules of attribution [of acts of officers and agents to a company] do not, however, operate in reverse to cause acts attributed to the company to be treated as if they were not acts of the individual who actually did those acts. It does not follow that, because an act done by a director or other individual is treated as the company's act for which the company can be held liable, the director is immunised from liability … "

82. In this connection, Lord Leggatt referred to the decision of the House of Lords in *Standard Chartered Bank v Pakistan National Shipping Corporation (Nos 2 and 4)* [2003] 1 AC 959, where the House of Lords had held that

> "The fact that the director's representation and knowledge would also be attributed to the company 'cannot detract from the fact that they were his representation and his knowledge' and made him liable for deceit (para 20)."

83. There is one other point that needs to be made in this context. In *civil* cases, the standard of proof to be achieved is the balance of probabilities. This is in contradistinction to the position in *criminal* cases, where the standard is beyond a reasonable doubt. For this purpose, it makes no difference that the civil case concerned involves an allegation of facts which would otherwise amount to a criminal offence: see *eg Hornal v Neuberger Products Ltd* [1957] 1 QB 247, 256, 261, 265. The standard is still the civil standard, because the consequence of proof is not *a criminal conviction*, leading to punishment by the state for the harm done to society. Instead, it is *civil liability to the claimant*, resulting in compensation or other civil remedy to the claimant alone for the wrong done to him or her.

Rescission for fraud

84. A contract can be rescinded on the grounds that it was induced by misrepresentation both at common law and in equity. At common law, it can be rescinded only where the misrepresentation is fraudulent. In *Kennedy v The Panama, New Zealand and Australian Royal Mail Co Ltd* (1867) LR 2 QB 580, Blackburn J, delivering the judgment of the court, said (at 587):

> "It is enough to shew that there was a fraudulent representation as to any part of that which induced the party to enter into the contract which he seeks to rescind; but where there has been an innocent misrepresentation or misapprehension, it does not authorize a rescission, unless it is such as to shew that there is a complete difference in substance between what was supposed to be and what was taken, so as to constitute a failure of consideration."

85. In equity, a contract may be rescinded even where the misrepresentation inducing it is innocent. In *Redgrave v Hurd* (1881) 20 Ch D 1, Sir George Jessel MR said (at 12-13):

> "As regards the rescission of a contract, there was no doubt a difference between the rules of Courts of Equity and the rules of Courts of Common Law—a difference which of course has now disappeared by the operation of the Judicature Act, which makes the rules of equity prevail. According to the decisions of Courts of Equity it was not necessary, in order to set aside a contract obtained by material false representation, to prove that the party who obtained it knew at the time when the representa tion was made that it was false. It was put in two ways, either of which was sufficient. One way of putting the case was, 'A man is not to be allowed to get a benefit from a statement which he now admits to be false. He is not to be allowed to say, for the purpose of civil jurisdiction, that when he made it he did not know it to be false; he ought to have found that out before he made it.' The other way of putting it was this: 'Even assuming that moral fraud must be shewn in order to set aside a contract, you have it where a man, having obtained a beneficial contract by a statement which he now knows to be false, insists upon keeping that contract. To do so is a moral delinquency: no man ought to seek to take advantage of his own false statements.' The rule in equity was settled, and it does not matter on which of the two grounds it was rested. As regards the rule of Common Law there is no doubt it was not quite so wide. There were, indeed, cases in which, even at Common Law, a contract could be rescinded for misrepresenta tion, although it could not be shewn that the person making it knew the representation to be false. They are variously stated, but I think, according to the later decisions, the statement must have been made recklessly and without care, whether it was true or false, and not with the belief that it was true."

Summary judgment

86. The court's jurisdiction to give summary judgment arises under CPR rule 24.3, which in its current form relevantly provides:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
>
> (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and

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

In this connection, it is well established that, on an application for summary judgment, the burden of proof rests on the applicant: *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, [9]. That is so, even if, at the trial of the claim, the burden would rest on the respondents as claimants.

87. I was of course referred to the well-known decision of Lewison J (as he then was) in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch)) 16. In a much-cited passage, the judge said:

> "15. As Ms Anderson QC rightly reminded me, the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:
>
> i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success: *Swain v Hillman* [2001] 1 All ER 91;
>
> ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]
>
> iii) In reaching its conclusion the court must not conduct a 'mini-trial': *Swain v Hillman*
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]
>
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;
>
> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the

> question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

88. In *Elite Property Holdings Ltd v Barclays Bank plc* [2019] EWCA Civ 204, a case where permission to amend a statement of case was in issue, Asplin LJ (with whom Hamblen LJ and Nugee J agreed) said:

> "41. For the amendments to be allowed the Appellants need to show that they have a real as opposed to fanciful prospect of success which is one that is more than merely arguable and carries some degree of conviction … A claim does not have such a prospect where (a) it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without substance; (b) the claimant does not have material to support at least a *prima facie* case that the allegations are correct; and/or (c) the claim has pleaded insufficient facts in support of their case to entitle the Court to draw the necessary inferences …
>
> 42. The court is entitled to reject a version of the facts which is implausible, self-contradictory or not supported by the contemporaneous documents and it is appropriate for the court to consider whether the proposed pleading is coherent and contains the properly particularised elements of the cause of action relied upon."

Although that was said of the phrase "real prospect of success" in the context of an application for permission to amend a statement of case, I consider that, making allowance for the different context, the same applies to the same phrase in the context of an application for summary judgment.

89. This is borne out by the later decision in *King v Stiefel* [2021] EWHC 1045, where Cockerill J (as she then was) said:

> "21. … in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that – even bearing well in mind all of those points – it would be contrary to principle for a case to proceed to trial."

90. In relation to the possibility of future disclosure, as Lord Hamblen said in *Okpabi v Royal Dutch Shell plc* [2021] 1 WLR 1294, SC, the relevant question to ask was

> "128. … are there reasonable grounds for believing that disclosure may materially add to or alter the evidence relevant to whether the claim has a real prospect of success?"

91. Overall, although the court is rightly cautious before condemning a defendant as liable in the tort of deceit without a full trial (see *eg King v Stiefel*, [24]), it has been prepared in appropriate cases to do so on an application for summary judgment: see *eg Global Metals AG v Colony Capital Ltd* [2020] EWHC 3361 (QB); *Burns v Burns* [2021] EWHC 75 (Ch); *Foglia v The Family Officer Ltd* [2021] EWHC 650 (Comm); and *Umbrella Care Limited (In Liquidation) v Khair Un Nisa* [2022] EWHC 86 (Ch). It is on this basis that I approach the present application.

Corporate liability for director's fraud

92. In *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500, Lord Hoffmann, giving the advice of the Privy Council, said (at 507, 511):

> "7. Any proposition about a company necessarily involves a reference to a set of rules. A company exists because there is a rule (usually in a statute) which says that a *persona ficta* shall be deemed to exist and to have certain of the powers, rights and duties of a natural person. But there would be little sense in deeming such a *persona ficta* to exist unless there were also rules to tell one what acts were to count as acts of the company. It is therefore a necessary part of corporate personality that there should be rules by which acts are attributed to the company. These may be called "the rules of attribution".
>
> 8. The company's primary rules of attribution will generally be found in its constitution, typically the articles of association, and will say things such as "for the purpose of appointing members of the board, a majority vote of the shareholders shall be a decision of the company" or "the decisions of the board in managing the company's business shall be the decisions of the company". There are also primary rules of attribution which are not expressly stated in the articles but implied by company law, such as "the unanimous decision of all the shareholders in a solvent company about anything which the company under its memorandum of association has power to do shall be the decision of the company": see *Multinational Gas and Petrochemical Co. v. Multinational Gas and Petrochemical Services Ltd.* [1983] Ch. 258.
>
> 9. These primary rules of attribution are obviously not enough to enable a company to go out into the world and do business. Not every act on behalf of the company could be expected to be the subject of a resolution of the board or a unanimous decision of the shareholders. The company therefore builds upon the primary rules of attribution by using general rules of attribution which are equally available to natural persons, namely, the principles of agency. It will appoint servants and agents whose acts, by a combination of the general principles of agency and the company's primary rules of attribution, count as the acts of the company. And having done so, it will also make itself subject to the general rules by which liability

> for the acts of others can be attributed to natural persons, such as estoppel or ostensible authority in contract and vicarious liability in tort.
>
> […]
>
> 23. … But their Lordships would wish to guard themselves against being understood to mean that whenever a servant of a company has authority to do an act on its behalf, knowledge of that act will for all purposes be attributed to the company. It is a question of construction in each case as to whether the particular rule requires that the knowledge that an act has been done, or the state of mind with which it was done, should be attributed to the company … "

93. Consistently with the comment made by Lord Hoffmann in the last paragraph of the extract above, there are cases where the fraud of the sole director of a company is *not* attributed to the company. They include cases such as *Bilta (UK) Ltd v Nazir (No 2)* [2016] AC 1, SC, where a company and its liquidators brought claims against its directors and others who were alleged to have dishonestly assisted the directors in a conspiracy to defraud the company. As summarised by Lady Hale in *Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd* [2020] AC 1189, SC (another such case),

> "30. The claim was defended on the basis that the fraud of its directors was attributable to the company which could not then make a claim against the other conspirators relying on its own illegality. This court held unanimously that where a company has been the victim of wrongdoing by its directors, the wrongdoing of the directors cannot be attributed to the company as a defence to a claim brought against the directors - and their co-conspirators - by the company's liquidator for the loss suffered by the company as a result of the wrongdoing. The court explained that the key to any question of attribution was always to be found in considerations of the context and the purpose for which the attribution was relevant. Where the purpose was to apportion responsibility between the company and its agents so as to determine their rights and liabilities to one another, the answer might not be the same as where the purpose was to apportion responsibility between the company and a third party."

94. On the other hand, picking up the point made in the last sentence of that extract, where the claim is one by a third party against the company by reason of its acts committed against the third party through the agency of a director, the state of mind of the director *can* be attributed to the company. A well-known example is *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378. This was a case concerning a travel company, BLT, that was owned and managed by one man (Mr Tan). He caused it to act in breach of trust in relation to monies belonging to an airline. In giving the advice of the Privy Council, Lord Nicholls of Birkenhead said (at 393):

> "Set out in these bald terms, the defendant's conduct was dishonest. By the same token, and for good measure, BLT also acted dishonestly. The defendant was the company, and his state of mind is to be imputed to the company."

95. Again, in *Standard Chartered Bank v Pakistan National Shipping Corporation (Nos 2 and 4)* [2003] 1 AC 959, a company director (Mr Mehra) had deceitfully made false statements to a bank (SCB) in order to obtain payment under a letter of credit in favour of the company (Oakprime). The Court of Appeal held that the director was not personally liable

for deceit, reasoning that the relevant statements were expressly made on behalf of the company, and the director had not led the bank to believe that he was assuming personal responsibility for the statements. An appeal by the bank to the House of Lords was allowed without the bank's counsel even being called on.

96. Lord Hoffmann (with whom the other law lords agreed) said:

> "20. My Lords, I come next to the question of whether Mr Mehra was liable for his deceit. To put the question in this way may seem tendentious but I do not think that it is unfair. Mr Mehra says, and the Court of Appeal accepted, that he committed no deceit because he made the representation on behalf of Oakprime and it was relied upon as a representation by Oakprime. That is true but seems to me irrelevant. Mr Mehra made a fraudulent misrepresentation intending SCB to rely upon it and SCB did rely upon it. The fact that by virtue of the law of agency his representation and the knowledge with which he made it would also be attributed to Oakprime would be of interest in an action against Oakprime. But that cannot detract from the fact that they were his representation and his knowledge. He was the only human being involved in making the representation to SCB (apart from administrative assistance like someone to type the letter and carry the papers round to the bank). It is true that SCB relied upon Mr Mehra's representation being attributable to Oakprime because it was the beneficiary under the credit. But they also relied upon it being Mr Mehra's representation, because otherwise there could have been no representation and no attribution.
>
> 21. The Court of Appeal appear to have based their conclusion upon the decision of your Lordships' House in *Williams v Natural Life Health Foods Ltd* [1998] 1 WLR 830. That was an action for damages for negligent misrepresentation. My noble and learned friend, Lord Steyn, pointed out that in such a case liability depended upon an assumption of responsibility by the defendant. As Lord Devlin said in *Hedley Byrne & Co Ltd v Heller & Partners* [1964] AC 465, 530, the basis of liability is analogous to contract. And just as an agent can contract on behalf of another without incurring personal liability, so an agent can assume responsibility on behalf of another for the purposes of the *Hedley Byrne* rule without assuming personal responsibility. Their Lordships decided that on the facts of the case, the agent had not assumed any personal responsibility.
>
> 22. This reasoning cannot in my opinion apply to liability for fraud. No one can escape liability for his fraud by saying 'I wish to make it clear that I am committing this fraud on behalf of someone else and I am not to be personally liable.' Sir Anthony Evans framed the question ([2000] 1 Lloyd's Rep 218, 230) as being 'whether the director may be held liable for the company's tort.' But Mr Mehra was not being sued for the company's tort. He was being sued for his own tort and all the elements of that tort were proved against him. Having put the question in the way he did, Sir Anthony answered it by saying that the fact that Mr Mehra was a director did not in itself make him liable. That of course is true. He is liable not because he was a director but because he committed a fraud."

97. This area of the law was considered again by the Supreme Court in *Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd* [2020] AC 1189, SC, referred to above. In that case, AS, a rich Saudi Arabian businessman, was sole shareholder, a director and also chairman, president and treasurer of Singularis, a Cayman company. He had extensive

powers, including signing powers in relation to the company's bank accounts. There were six other directors, who did not exercise any influence over the management of the company. In 2009, the company had an account with Daiwa (a London investment bank) holding some US$204 million. Daiwa was instructed by Singularis (acting by AS) to, and did, make eight payments, totalling approximately US$204,500,000, out of the company's account. One month later, AS placed Singularis into voluntary liquidation, although a month after that the Cayman court made a compulsory winding up order. The liquidators then sued Daiwa for the full amounts of the payments, on the basis that they were a misappropriation of the company's money, and that the bank's actions amounted to (i) dishonest assistance, and/or (ii) negligence.

98. The dishonest assistance claim was dismissed, but the negligence claim succeeded, on the basis of a *Quincecare* duty of care (from *Barclays Bank plc v Quincecare Ltd* [1992] 4 All ER 363). The Court of Appeal dismissed an appeal by Daiwa (that it had a countervailing claim in deceit against the company) on the basis (*inter alia*) that AS's fraudulent state of mind could not be attributed to the company. Daiwa appealed to the Supreme Court, arguing that Singularis was in effect a one-man company, and that AS's state of mind should be attributed to the company. The Supreme Court dismissed the appeal. Lady Hale (with whom the other Justices agreed) said:

> "34. … in my view, the judge was correct also to say that 'there is no principle of law that in any proceedings where the company is suing a third party for breach of a duty owed to it by that third party, the fraudulent conduct of a director is to be attributed to the company if it is a one-man company'. In her view, what emerged from *Bilta* was that 'the answer to any question whether to attribute the knowledge of the fraudulent director to the company is always to be found in consideration of the context and the purpose for which the attribution is relevant' (para 182). I agree …
>
> 35. The context of this case is the breach by the company's investment bank and broker of its *Quincecare* duty of care towards the company. The purpose of that duty is to protect the company against just the sort of misappropriation of its funds as took place here. By definition, this is done by a trusted agent of the company who is authorised to withdraw its money from the account. To attribute the fraud of that person to the company would be, as the judge put it, to 'denude the duty of any value in cases where it is most needed' (para 184). If the appellant's argument were to be accepted in a case such as this, there would in reality be no *Quincecare* duty of care or its breach would cease to have consequences. This would be a retrograde step."

The positions of the individual defendants

Attribution of the second defendant's state of mind to the first defendant

99. In the present case the attribution of the second defendant's state of mind to the first defendant is sought for the purpose of a claim by the third party victim against the first defendant company as the corporate wrongdoer. It is not, as in *Bilta* and *Singularis*, a case where attribution is sought for the purpose of a claim by the victim company against the wrongdoing director or a third party insurer. In my judgment, this is a proper case for the attribution of the second defendant's state of mind to the first defendant.

The second defendant

100. The evidence is that the second defendant made the representations and knew of their falsity, that the claimant relied on them and suffered the losses pleaded. If those matters are decided in the claimant's favour, the second defendant is liable for losses flowing directly from the frauds: see *Lifestyle Equities CV v Ahmed* [2025] AC 1, [37].

The first defendant

101. The first defendant would also be liable on that basis, as the corporate vehicle through which the frauds were committed, and the second defendant's knowledge is to be attributed to it. But the first defendant would also be a joint tortfeasor with the second.

The third defendant

102. The third defendant is concerned only by the claim in relation to the Coleman Funds Monies. The third defendant made the Coleman Funds Representations in the Loan Agreement. The second defendant's knowledge is to be attributed to it for this purpose. If these representations were false, it would also be liable for those representations as a joint tortfeasor because it would have known of the representations and shared a common design with the second defendant to operate a fraudulent investment scheme, which it implemented by acting as counterparty in the Loan Agreement. In my judgment, the fact that the claimant was also a director of and minority shareholder in the third defendant cannot affect this conclusion. These matters were pure window-dressing, designed to draw in an otherwise sophisticated investor. The claimant never had any real-time visibility of his investments, nor any control over where they were transferred. Whether he had any other active management role in the third defendant is simply irrelevant. In my judgment, on the basis that the third defendant made the Coleman Funds Representations, the second defendant's knowledge is to be attributed to it, and the representations were false, the third defendant would be liable in fraud to the claimant in respect of the Coleman Funds Monies.

Discussion

103. I have referred to the evidence filed in support of the application and to that filed on behalf of the defendants (so far as it goes). I have also referred to the relevant law. According to that law, I am not to conduct a mini-trial (or any trial) of the allegations put forward in the claim or by the defendants. Instead, I am to ask myself whether I consider whether (i) the defendants have, or any of them has, no real prospect of succeeding on their defence, *and also* (ii) whether there is no other compelling reason why the case should be disposed of at a trial.

104. In considering this question, I take into account the voluminous evidence adduced by the claimant, which, on its face, clearly demonstrates the necessary elements of the claimant's case. In addition to that, I am struck, first of all, by the failure of the defendants to repay *any* of the money invested by the claimant. Disaster may unfortunately strike the most careful of investment managers. But honest managers do not usually lose *everything*. Secondly, I am struck by the failure of the defendants (and especially the second defendant, as the controlling mind of the first and third) to explain exactly what *has* happened to the claimant's money. After all, they really must know. Thirdly, I am struck by the absence of any documentation to support the (partial) case put forward by the

defendants. In the modern finance world, operated and recorded by computers, connected by the internet, it is inconceivable that such documentation would not exist and be available to the defendants, at least without there having been some extraordinary cyber-cataclysm (of which there is no mention). Fourthly, I take account of the fact that the second defendant, although based in the UK at all material times since the relationship with the claimant began, chose to emigrate to Dubai only *after* these proceedings were commenced, and moreover without any convincing explanation for doing so. The obvious inference is that he is running away.

105. As against all that, there are the four grounds of opposition referred to above. In the second defendant's words, there are:

Ground 1: The Fraud Allegation Is Genuinely Disputed With Real Evidence
Ground 2: The Mishcon Conflict Taints the Proceedings as Initiated
Ground 3: The s.281(3) and Liability Cap Purposes Are Tactical
Ground 4: The Contractual Dispute Resolution Process Was Not Followed.

106. Ground 1 has ten different strands. I set them out separately as follows:

107. "(i) the Linear escrow email directly contradicts McKernan §68.1 and was in PCB Byrne's possession before the statement of truth was signed"

Paragraph 68.1 of Mr McKernan's second witness statement says:

> "The total lack of evidence, other than documentation created and provided by Mr McClean, regarding: (i) the application of the Coleman Funds Monies in connection with the Coleman Funds, and (ii) the existence of the LIBOR Deposit Account or the depositing of the LIBOR Deposit Monies in any equivalent money market deposit product (in each case, despite Mr Shaw's repeated requests for evidence and Mr McClean's assurances that it was available)".

108. The "Linear escrow email" of 17 July 2020 is concerned with the opening of the claimant's account with Linear. The second defendant says that Mr McKernan's statement in paragraph 68.1 is untrue. The claimant does not ask me to resolve that question. I do not need to do so for the purpose of determining this application. Even if paragraph 68.1 were incorrect, that would have no bearing on the aspects of this application with which I am dealing.

109. "(ii) BDO's appointment is confirmed in the signed Loan Agreement and Shaw's own First Affidavit, directly contradicting McKernan §68.2"

The contract stipulated for the appointment. What actually happened is another matter. Again, even if there were an issue about paragraph 68.2 of Mr McKernan's witness statement, I would not need to decide it for the purposes of determining this application.

110. "(iii) the Coleman funds traded directly at Goldman Sachs and the managed accounts traded through Boothbay at Goldman Sachs, contradicting the Goldman Sachs absence allegation"

There is no documentary evidence of this, although if it were true it would surely exist. The evidence of Mr Kelly is that it did not happen. I must consider whether there is any real prospect of the defendants' defence on this point succeeding.

111. "(iv) CIMA-mandated monthly administration and annual audits by international firms directly contradict the absence of independent verification allegation"

Again, the defendants have adduced no documentary evidence of this, though if it were true it would exist. The same point arises as under the previous paragraph.

112. "(v) the Interim Loan Agreement — in which Shaw expressly acknowledged the CAMG account structure, confirmed compliance, and signed as Lender, director and shareholder — directly contradicts the non-segregation allegation at paragraph 73"

The Interim Loan Agreement says what *should* have happened. What *actually* happened is another matter. In any event, the non-segregation allegation is one which I do not need to resolve.

113. "(vi) the blank Coleman Multi Strategy Product definition, in a contract drafted by Shaw's own solicitors, undermines the reliance element"

I have already dealt with this definition question.

114. "(vii) clause 7.1 addresses the Linear situation as a contracted and accepted risk"

I have already explained why the "Linear situation" is irrelevant to my present decision.

115. "(viii) clauses 4.1, 4.2(c), 5.1(d) and 5.1(g) breach allegations require contemporaneous valuation evidence not before the Master"

I do not understand what these refer to. If they are references to a contract, then they are irrelevant, because this application concerns liability for fraudulent misrepresentation, and not for breach of contract.

116. "(ix) Shaw's own solicitors designed the structure he now claims was fraudulent"

But, as already stated, the claimant does not say that the designed *structure* was fraudulent; he says that the defendants' *behaviour in operating that structure* was fraudulent.

117. "(x) the introduction to JPL was made by Martin Peters and Tim Hodges in 2015, not by me."

Even if this were true, it would make no difference.

118. Ground 2 relies on alleged misconduct of the proceedings by the claimant's original solicitors, in that (it is said) the original freezing order was obtained by a law firm with "an undisclosed concurrent conflict". The alleged conflict is that the law firm was simultaneously acting for a company called IN9 Trading DMCC "in related proceedings involving the same parties, the same accounts, and the same factual territory", but that was not disclosed to the judge. It is said that, seven months before the freezing order was obtained, the law firm, then acting for and instructed by IN9, wrote to Linear in terms showing that they had detailed knowledge of the CAMG Linear account structure, knowledge that Mr Kelly had admitted that the Coleman accounts were not segregated, and knowledge of the second defendant's role at CAMG. At the hearing before Trower J at which the freezing order was obtained, the law firm did not disclose the concurrent

retainer for IN9. After obtaining the freezing order for the claimant, the same law firm wrote to the second defendant asking for categories of documents for the IN9 matter, including the claim documents in the present case.

119. The second defendant does not explain what the alleged conflict was. If it is said to be that a law firm cannot act for two separate claimants with similar claims against the same defendants, then that is simply not the law. Indeed, it is usually a more efficient use of resources to do so, especially in so-called "group" litigation. If it is said to be that a law firm cannot use information obtained from one client for the purposes of its claim for the benefit of another client, then I accept that there may be circumstances in which the law firm cannot properly use the first client's information for the benefit of another client without the first client's consent. But that would depend on the facts, and no particulars are given to suggest that any such consent that was necessary was not obtained. Even if that consent were needed but not obtained, that would be a matter for the first client to complain of, not for the defendants in this case. On the other hand, if it is said to be that a law firm cannot use information obtained for the benefit of one client's claim, by compulsion from the defendant to that claim, for the benefit of another client in its own claim against the same defendant, then I would understand the complaint. But no sufficient facts are alleged here which would call for a resolution of that question. On the contrary, the allegation seems to be of the first or second kind above. Accordingly, in my judgment, there is nothing in this point.

120. Ground 3 complains that the application is being made for tactical reasons, that is, to enable a judgment to be obtained against the second defendant which will survive his bankruptcy and outflank the liability cap in the loan agreement. But, if it be true that the defendants are in law liable to the claimant in fraud, I cannot see that that is any objection to seeking to obtain a judgment for that fraud, even if those be the consequences.

121. Ground 4 complains that the contractual dispute process was not followed. Clause 13 of the loan agreement provides for negotiation followed by mediation and/or arbitration of any dispute arising between the parties. The claimant says that the loan agreement, *including* clause 13, is vitiated by the defendants' fraud. But, irrespective of that point, the parties' agreement to use these processes can be waived by them. What you agree to do can be *unagreed*, and not only by words, but by actions too. When the claimant sought an injunction and then issued proceedings, he was demonstrating his intention not to follow clause 13. The defendants could have objected to the court and said that the parties had agreed to deal with disputes in a different way. That may or may not have produced a different result. But the defendants did not object. They did not refer to clause 13. They made no challenge to the jurisdiction of the court under CPR Part 11. They made no application for a stay under section 9 of the Arbitration Act 1996. Instead, in fact, they used the court process themselves. They made a number of applications to the court on behalf of their clients. In these circumstances, the parties have by their conduct impliedly agreed between themselves that the provisions of clause 13 shall not be followed, and they cannot now complain that a different process should have been followed.

122. So now I stand back and look at the position as a whole. Overall, the evidence in support of the application is full, cogent and precise. It is backed up by documents upon the authenticity of which the defendants have cast no doubt. In most cases, the substance of what the documents say is not challenged. In the few cases where a different interpretation is sought to be placed upon them, that different interpretation is in my view simply not credible. The evidence filed on behalf of the defendants is partial at best, leaving much of

the claim unchallenged, and it is thin to the point of inconsequence throughout. There is nothing in it that causes me to have any doubt in the matter: none of the defendants has any real prospect of succeeding on their defence. Nor can I see any other compelling reason why this matter should go to trial. In these circumstances, I am quite satisfied that I should award summary judgment to the claimant against all three defendants as asked in the application notice, and I will do so. This includes an order setting aside the loan agreement.

Quantum?

123. The details of the payments and transfers made by the claimant are pleaded in the APOC, and have been set out already. The defendants do not suggest (nor could they) that these transfers and payments did not take place. Indeed, in his second witness statement (at [3], set out earlier), the second defendant accepts that the claimant has suffered losses. The only points of challenge to the quantum claim are the two already mentioned. The first is the need to give credit for recovery from Linear. I have dealt with this. The second is the liability cap in clause 7.3 of the loan agreement. But that cannot apply where the loan agreement has been rescinded for fraud. That is the case here. In these circumstances, the claimant has adduced evidence showing his losses to be £3,669,796.42 in respect of the Coleman Funds Monies, £814,871.64 in respect of the KH Assets, and £13,000,000 in respect of the LIBOR Deposit Monies. I assess the damages in those sums. The first and second defendants are liable for all of the losses. The third defendant is liable only in respect of the Coleman Funds Monies.

Conclusion

124. In accordance with the reasoning above, I will order that summary judgment be entered for the claimant against the defendants as sought in the application notice. The final matter with which I must deal is the claimant's application to stay the remaining claims against the defendants under CPR rule 3.1(2)(g). The claimant says that the evidence of what happened to his money is incomplete, and that therefore at present he is unable to pursue his proprietary claims, for example. I accept this, and will therefore stay the other claims, with liberty to restore.