Neutral Citation Number: **[2023] EWHC 540 (Ch)**

Case No: BL-2021-000873

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

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

Date: 15/03/2023

Before :

SIR ANTHONY MANN

- -

Between :

(1) SUNIL GUPTA **(2) SUNIL GUPTA. M.D. LLC d/b/a Retina Speciality Institute** **(a Delaware limited liability company)**	**Claimants**
- and -	
(1) OLGUN HALIL SHAH **(2) LEX FOUNDATION LIMITED** **(company no. 11718673)** **(3) NUREL HALIL SHAH** **(4) KADIR HALIL SHAH** **(5) KEREM HALIL SHAH** **(6) MELTEM HALIL SHAH**	**Defendants**

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Marc Glover and **Hugh Rowan** (instructed by **Spencer West LLP**) for the **Claimants**
The Defendants did not attend and were not represented

Hearing date: 20th February 2023

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Approved Judgment

Remote hand-down: This judgment will be handed down remotely by circulation to the parties or their representatives by email and release to The National Archives. A copy of the judgment in final form as handed down should be available on The National Archives website shortly thereafter. The deemed time and date of hand down is 10.30am on 15th March 2023.

Sir Anthony Mann :

Introduction

1. This is an application for summary judgment, or alternatively striking out parts of the Defences of the defendants.

2. The first claimant (Dr Gupta) is an ophthalmologist and retinal surgeon based in the USA. The second claimant is his company through whom he trades. Since it will for the most part be unnecessary to distinguish between them I shall use Dr Gupta's name to refer to them both unless the contrary appears. He claims to have been defrauded by the first defendant, Mr Shah, into parting with US$14m for the purposes of a purported investment scheme. He sues Mr Shah and his company, the second defendant ("Lex") for breach of trust, the return of the money and damages. The third defendant ("Mrs Shah") is the wife of Mr Shah, and she is sued on the basis of alleged receipt of Dr Gupta's money and as constructive trustee on the basis of dishonest or knowing assistance and knowing receipt. The remaining three defendants are the adult children of Mr and Mrs Gupta and are said to be recipients of a relatively small part of the trust funds involved in this case.

3. The claimants were represented before me by Mr Glover and Mr Rowan. In the history of this matter the defendants have been represented by solicitors and by Direct Professional Access counsel. Most recently they have been represented by solicitors (Mackrell). However, in a draft application sent to the court the day before the hearing Mackrell indicated that they intended to apply to come off the record. There is no indication that they had prepared themselves or counsel for this application. In those circumstances the defendants had no representation before me.

4. Nor did they appear in person. I received emails from Mr Shah and from or on behalf of the children, each seeking an adjournment of this application. Mr Shah's application was in a witness statement in which he set out some reasons why the claim should fail and sought the adjournment. The witness statement says that he was informed that his solicitors were going to come off the record on the Sunday morning, which is the day before this hearing started. I think that the suggestion may be that he thought until then that he would be represented. If that is right then it is implausible. He must have known that there had been no preparations for this hearing, and no arrangements for representation, some time before then. He also states that he cannot attend this hearing

"for both security and medical reasons", and claims that the latter is supported by a letter previously supplied in these proceedings. That letter has not been identified or produced again. Then he claims that he has not had an opportunity to find replacement lawyers after the notification from Mackrell that they were coming off the record, that he has not received copies of the claimants' evidence or pleadings and that there was new evidence that Dr Gupta was dead. Mr Shah said he was awaiting authorisation from "the highest political level" to release classified information and documents that would profoundly affect the outcome of these proceedings. Finally, he claimed to wish to put in new evidence and to get investigators to submit a report which corroborates some of his (somewhat extravagant) assertions about the machinations of others who are said to stand behind the claim.

5. When I sat at the beginning of the hearing, I announced that I had considered the informal applications to adjourn and refused them, with reasons to be given in this judgment. My reasons are as follows.

6. I refused Mr Shah's application because his grounds were insufficient, it was not apparent that an adjournment would serve any useful purpose and it would have been open to him to deal with the hearing remotely had he sought to do so (which he did not). He is believed to be in Northern Cyprus. His security and health reasons were not specified, and the former is implausible. The date for the hearing of this application has been fixed since October, and although there was an initial hiccup in informing his solicitors they, and therefore he, have known about it since mid-November . They were served with the application and evidence on 11th January 2023. There is no indication that they took any steps towards preparing for it, other than some discussion about bundles. The history of this matter demonstrates delay and reluctance to disclose information, and if Mr Shah wishes to rely on an intention to appoint new solicitors then he must make that good by more than just some brief assertion. He gives no real indication as to where his new evidence would come from, which might be thought to be telling when set against the time that he has had to present his case overall. Perhaps most significantly, I am not without evidence as to what Mr Shah says his defence is. He has filed a Defence in the action, and in a large number of interlocutory witness statements he and his wife have advanced explanations and justifications of their actions. The very recent witness statement from Mr Shah does not suggest any new material line save for some extravagant allegations about external actors to which I will come. I have borne all that material in mind in considering whether the claimants have discharged their burden. It would not be fair on the claimant, against the background of this case, to delay a determination of this application. That is why I refused his application.

7. Mrs Shah made no separate application. If she intended to join in her husband's, that too is refused for the same reasons.

8. The children, Kadir, Meltem and Kerem, applied for an adjournment on the basis that they had no representation now. Kadir wrote on behalf of himself and Meltem, and added a reference to his own medical anxieties which would make representing himself difficult. He and Meltem were said to have applied for their own summary judgment on the basis that the claim against them had no prospects of success bearing in mind, inter alia, that they had "returned the monies in question to court" and were merely the recipients of money from their parents. Kerem made a similar application seeking time to represent himself, again referring to the money paid into court (a matter to which I will come). He said he was relying on his father to arrange representation.

9. I announced that I refused this application too. The reasons are allied to those which I have given in relation to Mr Shah. This is a late application based on the loss of solicitors which cannot have come out of the blue. They may not have known it was coming because they relied on their father, but they inherit his problems in this respect. In addition, as will appear, the application against them is in effect confined to moneys paid into court which they seem to be content to give up in any event, as will appear.

The nature of the evidence in this case

10. There is just one witness statement specifically in support of this application, that of Mr Johal, the claimants' solicitor. However, he exhibits a very large number of the numerous previous witness statements which were filed during the passage of this case through various injunction and disclosure applications. That is where much of the meat of the application lies, and from where one can see matters raised as potential defences by the defendants. The claimant also relies on a bundle comprising the evidence and judgment in a Commercial Court case between Mr Shah and Citibank which has a relevance to the issues in this case.

An outline of the case

11. It will aid a navigation of the facts of this case if I provide a brief outline of the nature of the case and some of the defences. Dr Gupta gave $14m to Mr Shah and his company in order that it be invested in a "trading program" which would generate returns (it was said) of $14m per month. It was agreed that the moneys would be held in an account at Barclays Bank as collateral for the trades and would not be released from the account,

and the account would be "blocked". Mr Shah has agreed in his Defence that he held the property on trust for Dr Gupta. However, in the period after it was deposited the money was removed in various tranches. A series of disclosure, *Bankers Trust* and *Norwich Pharmacal* orders have revealed the direction the money took. Some of it was paid to other entities; some of it was paid to Mrs Shah, who disbursed it in various directions including (as to at least £300,000) to the children (hence their joinder). There is nothing left in the Barclays account.

12. The claim is therefore brought as a breach of trust and constructive trust claim, and there is also a conspiracy claim. In his Defence, Mr Shah's sole real defence is one of illegality - he claims that Dr Gupta's money has a criminal or illegal source and thus Mr Shah is not liable. Later a different defence emerged - that Dr Gupta's interest in the money in the Barclays account was switched to an interest in money in what was said to be Mr Shah's Citibank account, and it can be returned from there or, if it cannot, that is because Citibank wrongfully refuses to acknowledge that money is owed on that account. This latter point has not yet been pleaded by Mr Shah, but it emerges from the evidence.

13. So far as Mrs Shah is concerned, she claims to have received the money in the honest belief that it was her husband's money, and she cannot be liable for what has happened to it. She relies on the Citibank defence, as do the children, who again claim to have taken the money innocently, albeit that they have now paid it into court. They also mimic Mr Shah's illegality defence.

14. The claimants' case is that Mr Shah was thoroughly dishonest at all times, and that that is clear enough for the purposes of a summary judgment claim. In any event, he was a trustee who has wrongfully misappropriated the entirety of the trust fund. They also say that Mrs Shah knew or must have known that the money was not her husband's. Like her husband, she is said to have lied to try to cover up the truth and to retain the money.

The summary judgment test

15. Under CPR 24.2:

> "24.2 The court may give summary judgment against a … defendant on the whole of a claim or on a particular issue if:

> (a) … (ii) that defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

The sort of criteria applicable to such applications appear in the oft-cited and approved judgment of Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at paragraph 15. His judgment was in the context of a defendant's application but by and large the same principles apply to a claimant's application:

> (i) The court must consider whether the claimant [defendant] has a "realistic" as opposed to a "fanciful" prospect of success ...
>
> (ii) A "realistic" claim [defence] is one that carries some degree of conviction. This means a claim that is more than merely arguable…
>
> (iii) In reaching its conclusion the court must not conduct a "mini-trial;"…
>
> (iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statement 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…
>
> (v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application but also the evidence that can reasonably be expected to be available at trial.

16. A case which depends on dishonesty is not necessarily excluded from the possibility of summary judgement. In *Wrexham Association Football Club v Crucialmove lTD* [2006] EWCA Civ 237 Sir Igor Judge PQBD said:

> "57 I do not underestimate the importance of a finding adverse to the integrity to one of the parties. In itself, the risk of such a finding may provide a compelling reason for allowing a case to proceed to full oral hearing, notwithstanding the apparent strength of the claim on paper, and the confident expectation, based on the papers, that the defendant lacks any real prospect of success. Experience teaches us that on occasion apparently overwhelming cases of fraud and dishonesty somehow inexplicably disintegrate. In short, oral testimony may show that some cases are only tissue paper strong....

> And that is why I commented in *SP Telecoms UK Ltd and others v Fashion Gossip Ltd*, unreported, 27 July 2000 that I was
>
> 'Troubled about entering summary judgment in a case in which the success of the claimant's case involves, as this one does, establishing allegations of dishonesty and fraud, which are strongly denied, and which cannot be conclusively proved by, for example, a conviction before a criminal court."

17. The need for caution in a fraud case was underlined by Clare Ambrose (sitting as a Deputy High Court Judge) in *Rahbarpoor v Suliman* [2021] EWHC 2686 (Ch):

> "26. The defendants refer to *Fashion Gossip ...* , where the Court of Appeal suggested that where there are allegations ofdishonesty which cannot be conclusively determined, for instance by a conviction, then the court should not make a finding summarily and that all the facts and every nuance needs explanation. Both sides also referred me to the decision of Cockerill J in *Foglia v The Family Officer Ltd & Ors* [2021] EWHC 650 (Comm)."
>
> 27. All these cases show that a court must show very considerable caution in granting summary judgment where dishonesty is critical to the claim in question, especially where each side will effectively be saying that the other is lying. This is the paradigm case for having a trial, where each side's witness evidence can be challenged. However, *Foglia* and *Easyair* do suggest that the court may properly be willing to grasp the nettle where various firm, unanswerable contemporaneous evidence suggesting that the defence to the allegation of dishonesty has no real prospect of success. So, for instance, *Foglia* , summary judgement was allowed where contemporaneous emails provided several separate answers to any defence to the allegation of fraud."

18. The summary judgment application in this case involves, in part, allegations of dishonesty which would need to be established to an appropriate standard if the application is to succeed, particularly where constructive trust is relied on. That is not

wholly true in relation to the proprietary claims that are made because the claim itself does not necessarily involve dishonesty, but even in that case necessarily issues of dishonesty will arise because, as will appear, the defences that seem to be being run involve clear averments of fact which would have to be discounted and disbelieved if the claim is to succeed. In considering this application I bear all the above principles firmly in mind.

The claim against Mr Shah - his disposal of funds held on trust

19. Many of the key facts are now incontrovertible or uncontroverted. On 23rd November 2020 Mr Shah sent to Dr Gupta a short document describing the second defendant, a Panamanian company, as a company that controlled or had access to billions of pounds in assets. It was said to be controlled by Mr Shah and members of his family and Mr Shah was said to have had great experience in finance and was a member of the London Institute of Banking and Finance. The company's board was said to include His Royal Highness Prince Abdulaziz Bin Nawaf Al Saud, who was "a partner in our trading platform in London". The "credentials" of the company and Mr Shah were said to be registered with the "Federal Reserve" (presumably the US Federal Reserve) and the Bank for International Settlements.

20. Discussions took place between Mr Shah and Dr Gupta about the latter's investing funds with the former. Dr Gupta wished to generate a return to be applied in free eye care in the US and Mr Shah said that for a one year participation in a Programme he proposed Dr Gupta would receive a monthly return over 10 months that would match the funds provided by Dr Gupta, that is to say that an investment of $x million would attract a return of $x million per month. That is admitted in Mr Shah's Defence, and the agreement that was ultimately signed provided that the return would indeed be "100% of the face value of the Fund each month for a total of ten (10) months" (section 3.06). The funds were to stand as collateral/security for participation in the Programme. Participation was to be by way of funds deposited in an account at Barclays Bank in London and Mr Shah and Lex would act as trustees for Dr Gupta. The statement about trusteeship was contained in an email from Mr Shah dated 24th November 2020 in which he said that:

> "The foundation and I will effectively be your trustee, irrespective of the account in which the funds are deposited. In this instance, your funds will be pooled with private funds for a small cap program. Your money will not leave the account that you send it to; it will be blocked there for one year, after which it will be returned to you. You have my personal guarantee of that."

21. The trusteeship is also admitted in Mr Shah's Defence. On 24th November 2020, Dr Gupta on behalf of the second claimant and Mr Shah (on behalf of Lex) signed an agreement which was said to be intended to govern Dr Gupta's forthcoming investment ("the Agreement"). It recited that the second claimant held deposit cash funds which it wished to place as collateral for participation in a "Private Placement Program" and that Lex desired to accept funds as collateral "to enable him to undertake the trading of financial instruments and fixed income securities for the mutual benefit of the Parties". It went on to provide:

> (a) In section 2.04, that the Trader [ie Lex] was empowered to do anything lawful as the sole representative "of the Agreement" and to execute all necessary documents, and should have full authority to supervise and direct dealing with instruments.
>
> (b) The second claimant was to provide financial assets as collateral in face value of USD 14,000,000 in a designated account at Barclays Bank within 3 days of the signing of the Agreement.
>
> (c) Section 3.03 contained "Transaction Procedure":
> "3. Within seven to ten days of receiving the Funds [Lex] will notify [the second claimant] by email that the Program has commenced.
> 4. The Funds will remain blocked in [Lex's] account for twelve (12) months.
> 5. [Lex] will remit the Investor's profit share from the Program to the Investor's designated account within four weeks of the commencement of the Program and at four weekly intervals thereafter for a total of 10 months.
> 6. At the end of the Term of this Agreement, the Investor's Funds will be unblocked and returned to the Investor's chose banking coordinates."
>
> (d) "Section 3.06. Profit Share
> The Investor will receive a return of 100% of face value of the Fund each month for a total of ten (10) months. This will be inclusive of commissions payable to intermediaries."

22. This agreement does not contain an express trust over the moneys to be deposited, but the Defence of the first two defendants admits that the money would be and was held on trust, and the existence of a trust was accepted in further emails from Mr Shah. Thus the claimants are able to establish a key element of their claim.

23. In an email of 25th November 2020 Mr Shah asked Dr Gupta not to share the background of this transaction with his bankers "unless you are dealing with a level 7 bank (bank board director)."

24. On 1st and 3rd December Dr Gupta paid his money into the Barclays account, which was in the name of Mr Shah not Lex, in instalments of $10m and $4m on those dates respectively. (Those sums, and some other sums referred to in this judgment, are referred to in round terms. The sums arriving in the Barclays account were slightly less because of the transaction costs.) No sooner had the sums arrived there than Mr Shah transferred a sum of $1m to "Waison" and $2,690,400 to another account of his at Barclays. Those payments out were clearly paid out of the Gupta money because there was no other money in the Barclays account at the time. These transfers were a clear breach of trust because there should have been no transfers out at all, and there is no evidence they were transferred for the purposes of a trading program anyway. In a subsequent witness statement Mr Shah sought to explain the transfer to Waison as being a transfer to someone who could arrange financial instruments, and in exchange for this $1m transfer he was given control of a $5m fund at HSBC London. No evidence was produced to explain what this meant or how it could conceivably have been a proper discharge of the obligations in the Agreement. The other transfer out was explained as being part of an attempt to invest the fund. No further explanation has been given and, in any event, it is a clear breach of the Agreement which provided that the Fund should remain intact. Mr Shah's own bank statements show that on the same day as his account received the $2.69m, it was then paid out to "Amicum Partners Ltd". No proper justification has been given for that.

25. No further explanation or justification has ever been given, notwithstanding the prior admission of a trust in the Defence of the first two defendants, and notwithstanding the plentiful opportunities to do so in prior witness statements in these proceedings.

26. On 15th December 2020 Mr Shah emailed Dr Gupta to tell him that "filings for our program have been approved, just waiting for a start date". He said nothing about the funds that had already been transferred out and has never provided evidence that any program was possible, let alone filings approved. On 21st December Mr Shah emailed to say that platforms for private placement programs were closed from December until January, but assured him Lex was engaged in other programs that would be able to provide an interim advance. Such an advance was never provided.

27. When nothing was forthcoming Dr Gupta sent a Whatsapp message on 26th February 2021 pressing for money and speaking of the damage to his business from the delay in providing funds. He was assured "we're almost there". On 4th March 2021 Dr Gupta again referred to his difficulties and asked for a definitive statement as to the funds placed so that he could use it to borrow funds elsewhere. In response Mr Shah said they had "a definitive agreement for the small cap program" and suggested a comfort

letter for Dr Gupta. On 9th March he wrote what was presumably intended to be such a letter to Dr Gupta, saying that the "Small Cap Program" had commenced on 1st March and they anticipated profits to start coming in in four weeks. Dr Gupta continued to press for information and on 10th April 2021 Mr Shah emailed to say that the funds were invested and were on track to receive the first tranche of profits. He said that if proceedings were initiated he would have to terminate the agreement and return the funds.

28. Exchanges of Whatsapp messages demonstrate that Dr Gupta was getting increasingly anxious about the absence of information and the absence of confirmation about his funds. On 21st April at 12.09pm Mr Shah said he would call Dr Gupta later that night or early in the morning and "I expect to have some good news."

29. It is now known that on that same day, 21st April 2021, Mr Shah transferred the whole of the remaining balance in the Barclays account (apart from 73 cents) to his personal account at HSBC. There can be no justification for that and it is a clear breach of trust. No proper explanation has been provided by Mr Shah for that transfer. On 22nd July 2021 Mr Shah provided his fifth witness statement in which he simply says, in a one sentence paragraph:

> "16. The remaining $10 million was transferred out to my HSBC accounts on 21 April 2021."

He advances no explanation or justification for that transfer.

30. The call did not apparently take place that day or the next, and Dr Gupta continued to try to set one up. On 23rd April at 9.40am Dr Gupta told Mr Shah:

> "Meeting with attorneys in 2 hours so need something in hand to show them."

At 9.41 he was promised an email and at 9:42 Dr Gupta said:

> "OK, thanks please make sure it is some form of third party validation as they will not accept your word or mine."

At 11.29 Mr Shah said:

> "I'm waiting for authorisation to release certain documents. You will find it illuminating - in one way or another."

At 1.14 pm Dr Gupta told Mr Shah:

> "Olgun the meeting with the attorneys did not go over well for you. All the funds came from the practice and are personally guaranteed by me and future revenues. I don't know what you think they are not from the practice but it doesn't matter. More importantly, the 14 should be in a trust account that a Barclays bank account can verify. If you could start by getting me this while you get me other confirmation that we are going to be fully funded."

At 11.51 pm Mr Shah told Dr Gupta:

> "We shall have a good outcome if you hold your nerve."

31. I have not set out all the Whatsapp contacts in this period, which included a number of missed calls, but the above extracts demonstrate that Dr Gupta was pressing for money or clear statements as to where his money was and Mr Shah was not providing them. In particular Mr Shah did not tell him in this exchange that the Barclays account had been reduced to zero (apart from 73 cents) on 21st April. On 8th March and 29th March there were debits of $75,000 and $5,000 respectively in favour of Fiona Hook, about whom nothing material is known. It has never been said by Mr Shah that she had anything to do with a trading program. On 7th April $3,400 came back in from "Commercial Hydro" and the next day $76,000 odd came in from another account of Mr Shah, restoring the balance to $10m. Then, crucially for the purposes of these proceedings, on 21st April Mr Shah moved the $10m balance of the money in the Barclays account to his own personal account at HSBC in two tranches of $5m as already referred to. That sum, bar an extra $100 which was already in there, was the only sum in the account until it was transferred out later in June.

32. As I have said, this transfer was another plain breach of trust for which an explanation has never been advanced, save insofar as a later justification for treating the money as his own might be an implied justification for it - I shall come to this. It was not

disclosed to Dr Gupta at the time when he was pressing for information, returns and reassurance in April and into May 2021. It was not discovered until disclosure by Barclay's Bank on a *Bankers Trust* application when proceedings were commenced in May/June 2021.

33. I find that it was a breach of trust by Mr Shah as trustee (the Barclays account was in his name) because it was in breach of the obligation to keep the fund whole, and that in any event it was not an application of the funds in the bona fide operation of the Agreement or any investment scheme. Furthermore, insofar as relevant I find the transfer to be dishonest because Mr Shah knew that he was misappropriating trust moneys. This is a clear inference from his behaviour thus far and his concealment of the $10m transaction (and the earlier debits, which were equally dishonest) from Dr Gupta, as well as his later conduct in this matter.

34. Dr Gupta continued to press Mr Shah in Whatsapp messages. On 10th and 11th May 2021 Mr Shah told Dr Gupta in Whatsapp messages that certain alleged associates of Dr Gupta had hacked his computer and wiped his emails, and that a "crooked banker" in Barclays had leaked unspecified confidential information about the deposits. As a result:

> "… we shall be diverting funds to a different bank this from which you will be paid [sic]" (10th May 2021 at 12:38).

On 11th May at 9.40 he added:

> "I have things under control. I am diverting funds to a new account out of reach of this criminal group. Colleagues in Washington set it up for the foundation specifically to receive funds from the program. Your first payout will happen this week."

This was manifestly untrue. There has never been any evidence of this despite various explanations given by Mr Shah, and the money had in fact left the Barclays account some 3 weeks previously in the direction of Mr Shah's personal account.

35. Whatsapp messages in May in the period leading up to the commencement of proceedings on 29th May continue to demonstrate purported reassurance from Mr Shah. On 25th and 26th May he said "Funds are ready to transfer" and "The funds are ready to be transferred from Singapore but I am waiting for my new bank co-ordinates to receive it. The Barclays account has been compromised by not one but two corrupt bankers who are leaking information etc to [individual identified] and her criminal associates. Don't worry, we shall get you funds very soon."

36. In later witness statements there was never any suggestion of any evidence to back any of this up, and no indication at the time that the funds had been transferred out to a personal account of Mr Shah a month previously.

37. On 28th May 2021 Dr Gupta applied for and obtained a proprietary freezing injunction from Snowden J against Mr Shah and Lex. It restrained dealing with the $14m. Mr Shah was required to give information as to the whereabouts of the fund and to provide documents relating to that point. It was served on 29th May. On 1st June, and apparently with knowledge of the order, Mr Shah transferred $9.927m from his HSBC account to an account at Lloyds bank in the name of his wife. Since the only money in the HSBC account was the $10m transferred in April, this money represented Dr Gupta's fund. The next day a further £250,000 from a different account was transferred to Mrs Shah, again in apparent breach of the injunction. The first of these transactions was also a further breach of trust, because (subject to his ability to control his wife's dealing with the money) he put them out of his control.

38. That is not quite the end of his connection with the money. As appears below, in the section dealing with the movement of the money by Mrs Shah, in July 2021 he was re-united with £2.04m of it via 2 Turkish bank accounts into which it was paid in two separate but equal transfers.

The Citibank strand

39. Having considered the path of the money through the hands of Mr Shah it is necessary to go back in time and consider what I will call the "Citibank strand" of the facts, because it bears on a possible defence of Mr Shah. It also, if relevant, goes to his lack of honesty.

40. Mr Shah and Lex pleaded a Defence on 25th July 2021. In it they accept most of the facts relating to the circumstances of the provision of funds by Dr Gupta, including the existence of the trust relationship and the originally intended blocking of the fund. In response to a pleading that, contrary to prior assertions, Lex did not have billions of pounds of assets, paragraph 18 of the Defence pleads, by way of example, that €10bn was paid into an account in Citibank. There is no other reference to Citibank in the pleading. Paragraph 25 pleads that at all material times Mr Shah was willing to return Dr Gupta's investment but the freezing injunction made that impossible. It is not explained how that can have been the case. Dishonest misrepresentations are denied. The only other material defence is pleaded in paragraph 37 in which it is pleaded:

> "… it is to be inferred on a balance of probabilities that the sum of $14m million was or included the proceeds of crime. The way in which this huge sum of money was produced by a mere ophthalmologist from Pensacola as a sum to be invested, bears all the hallmarks of money-laundering. The defendants will call expert evidence at trial in order to demonstrate this fact."

It is unnecessary to set out the rest of this paragraph. This paragraph is part of the pleading which is subject to the application to strike out on the footing that it is devoid of any particulars when particulars should be given of such a serious allegation. I deal with this point below and rule that, so far as necessary, it should not be allowed to stand. The significant point for present purposes is that it is the only material positively pleaded defence in the document.

41. However, in due course a different form of defence involving the name of Citibank came to emerge. In his fifth witness statement (22nd July 2021) Mr Shah gave an entirely new version of events relating to the $14 million (paragraphs 17 to 21). He says that after the money was placed Dr Gupta revealed that the money was not his. In those circumstances Dr Gupta could not participate in the PPP operated by Barclays bank and he was advised that the only hope for his investment was to piggy-back it on to another transaction. He goes on:

> "18. It was for this reason that I secured the $14m (apparently) paid by the first claimant by "exchanging" an equivalent amount in the second defendant's account at Citibank on or about 24 April 2021. Before that date, I <u>was</u> dealing with the $14 million – but only in order to use my best endeavours to invest it in accordance with my contractual duty. That money is still at Citibank as part of a pool of €10 billion of funds held by the second defendant within the Citibank Treasury account.

> 19. Therefore, the claimants have suffered no loss and "their" money is safe. This claim was unnecessary and indeed I offered the first claimant "his" money back before he started this claim.
>
> 20. An "exchange" is an established investment mechanism. Clause 2.04(b) 'of the [Agreement] expressly provided that they had a power of exchange. The claimant was credited with $14m in the second defendant's Citibank account and debited $14m at Barclays. This is hardly novel: the entire global banking system works on the principle of debits and credits by means of messaging. The claimant agreed to this verbally and signed up to it at clause 2.04(b) of the agreement. When the relevant exchange was completed on about 24 April 2021 and the first defendant was earmarked funds of $40 million at Citibank, the original tranche of money was for me to deal with as I saw fit."

42. This version of events, involving a "switch", involves a number of things. First it involves Lex having an account at Citibank; second it involves that account containing €10 billion; third it involves Dr Gupta consenting to this activity; fourth it involves some form of earmarking and crediting in that account. That version of events can be seen, even at this stage of these proceedings, to be completely untrue. It does not require a trial to demonstrate that that is the case.

43. The first observation which falls to be made is that if this version of events were true it is quite remarkable that it was not pleaded in his Defence. It is simply not pleaded (even though it is referred to in a slightly earlier witness statement), despite Mr Shah apparently having Citibank in mind because he pleads that Lex had money there.

44. Second, the notion that Dr Gupta was told about and agreed to this is completely contrary to the messaging passing between him and Mr Shah. I have set out some of those messages above. All that messaging is consistent with, and only with, Dr Gupta being told that the money was still at Barclays and there is not even a hint of the switch having been proposed, let alone carried out. The only close reference is the obviously fabricated nonsense about the Barclays account having been compromised and the funds having to be placed elsewhere, with no indication that the funds had already been moved out of the account and no reference to the "switch".

45. Third, on his own version of these events, Mr Shah did not attempt the "switch" until 24th April 2021. Even if that "switch" had happened, it does not justify the removal of almost $4 million in December 2020. The "switch" presupposes there being $14m in the Barclays account, when of course that was not the case by 24th April.

46. Fourth, although Mr Shah was in negotiation with Citibank in April 2021, and an account was set up for Lex there, there never was €10bn in that account and in any event the account was closed by Citibank on 27 April 2021. Mr Shah was in serious dispute with Citibank about this, and he knew that Citibank was denying the existence of €10 billion euros in an account there. None of that appears in his account of matters in the witness statement to which I have referred.

47. It is necessary to consider briefly what passed between Mr Shah and Citibank in this connection in order to demonstrate the falsity and incompleteness of what he said in his witness statement and in order to demonstrate the complete inconsistency between what he was telling Citibank and what he was telling (and failing to tell) Dr Gupta. This material comes from documents and evidence deployed in litigation between Mr Shah and Lex on the one hand and Citibank on the other. That material was served in these proceedings as part of the evidence on this summary judgment application. It was summarised and relied on by Henshaw J when he decided a summary judgment in favour of Citibank. In what follows I rely on the evidence rather than findings of Henshaw J in order to avoid any complications arising out of the rule in *Hollington v Hewthorne* [1943] KB 587, though that judgment retains a relevance as appears below.

48. In December 2020 Mr Shah was in negotiation with Citibank in order to open a relationship with them. On 14th December 2020 he sent an email pursuant to their Know Your Client enquiries in which he referred to cash at Barclays in the sum of $10m as being his money. He enclosed a copy of a screenshot “of one of my personal accounts”. The screenshot was a Barclays statement of the balances on his various personal accounts, and one of them was the account in which the $10m remaining balance of Dr Gupta’s funds were still held at that time ($4m having already left the account a few days earlier). In this exchange he was clearly, and wrongly, claiming that the $10m was his. This is long before he can have claimed any switch to an interest in a Citibank account because there was no such account.

49. A month later, on 15th January 2021, he had a video conference with Citibank in which his proposed enterprises were discussed and he stated that he planned to fund them with $10m of his own money. Although that money is not identified in the note of that call, it is to be inferred that that is the money in the account which held that sum, ie Dr Gupta’s money. No other sum of $10m had been identified.

50. An account was opened shortly thereafter in the name of Lex, but no moneys were deposited in it by the end of March and there was no apparent activity on it. Then in April there was a flurry of activity. The Prince identified above apparently received from Mr Shah a purported copy of a SWIFT message from Deutsche Bank to Citibank dated 7th April 2021 indicating that they were ready, willing and able to transfer €10bn from its client Intrepid Capital Funding to Citibank - a form of pre-advice. A member of the Sheikh's staff rang Citibank to check its receipt by Citibank. It had not been received, and Mr Hodgson at Citibank said he had been expecting $10m, not €10bn. A call with the Prince was proposed to see what he knew of the transaction. The matter was taken up with Mr Shah on 9th April and he said that details of Intrepid would be shared on receipt of the SWIFT message. When asked if he had confirmed with Deutsche Bank whether they had sent the SWIFT message he responded that he had had confirmation from the CIA that the transaction advice was in the system. He gave some details of the source of the funds which were said to be controlled by the Bank of International Settlements and the European Union.

51. That much appears from documents produced in evidence in the proceedings which followed thereafter. The remainder of the relevant facts appears from a witness statement provided in those proceedings by Mr Christopher Yates, Citibank's solicitor. Mr Shah apparently referred to a second SWIFT message from Deutsche Bank, not received by Citibank, but did not produce it. On 27th April the account was closed with no funds being credited to it.

52. That led to a dispute between Mr Shah and Citibank London. He made claims that the €10bn had been transferred to Citibank for crediting to the account but that Citibank had stolen it. He circulated letters of complaint to various people, including the Governor of the Bank of England, making extravagant claims and making dire threats of the consequences to the careers of various people if the matter was not resolved in his favour. In a letter dated 27th August 2021 he said (among other extravagant claims):

> "The transfer of EUR 10 billion to Foundation originated from a fund (the "Fund") held by Deutsche Bank referred to as a "Special Status Fund", comprised in large part of money derived from Chinese and Russian heritage assets. 28% of the Fund is M1 money and the remaining is M4 money. It also includes Iranian money, given to the Iranian regime by the US government and derived from secret commercial dealings between the US government and Iranian regime (contrary to sanctions)
>
> ….

> Thousands of pallets of cash US dollar notes reside in depositories around the world; including London, Moscow, Oman, Hong Kong and Istanbul, some of which I have personally inspected. The safekeeping receipts are issued by the depositories in favour of Deutsche Bank.
>
> ...
>
> I have been approached by Chinese State Security, which has offered me "unlimited" resources and assistance in supporting their interests in the Special Status Funds in Deutsche Bank and UBS. The Chinese have a plethora of classified material on the banking cartel's dealings with their assets.
>
> ...
>
> A cartel of bankers led by Deutsche Bank and including Citibank, Barclays, HSBC, JP Morgan, Bank of NY Mellon, have systematically drained monies out of the Fund from which Lex Foundation received EUR 10 billion. The theft has been facilitated by agents of the CIA."

53. The upshot of all that was that on 26th July 2021 he procured that Lex commenced proceedings against Citibank, claiming that Citibank had received the €10bn and had wrongly failed to credit it to Lex's account. Citibank defended inter alia on the footing that the SWIFT message was not authentic and denying that the €10bn fund ever existed. On 30th September 2021 Citibank applied for summary judgment against Lex on the footing that there was no real prospect of its succeeding in the case. The witness statement of Mr Yates was served in support of this application and the subsequent judgment records that Mr Shah/Lex did not file any evidence in response, though Lex was represented by counsel at the hearing. In a judgment dated 28th June 2022 Henshaw J acceded to the application and struck out the claim. There has been no apparent appeal from that judgment.

54. The commercial effect of that is that while Lex did have an account with Citibank for a very brief period of time, Mr Shah and Lex cannot claim to have had €10bn in it. He has tried to establish the contrary and has failed. The state of account between him and Citibank is that no moneys are or ever were owed as between banker and customer. There was therefore no such fund into which Dr Gupta's interest in the Barclays account can have been switched. Mr Shah's account of the "switch" in his 5th witness statement was given at a time when he knew that the account had been closed and that Citibank was claiming that there never were any funds in it, but he made no mention of that and proceeded on the implicit assumption that the fund still existed in the hands of Citibank. Were it necessary to do so, which it is not, I would have determined that an attempt to argue otherwise in this case is a collateral attack on the judgment of Henshaw J which

should not be permitted, but I reach my conclusions on the Citibank strand without needing to resort to that.

55. I should record that Mr Glover relied in part on findings by Henshaw J that the SWIFT document referred to in the evidence was a forgery as were other SWIFT documents, and sought to demonstrate that by looking at the document properties of various electronic versions and the dates of emails enclosing them. His additional material is not material on which Mr Shah has had an opportunity to comment even though it was in the bundles, because attention has not been specifically drawn to it. I do not rely on that material for the purposes of this section of this judgment. There is other material, which Mr Shah has had an opportunity to meet, which is sufficient to demonstrate that there never was, and probably never could have been, moneys in the Citibank account at any, or any relevant, time, and that the "switch" allegation was a late contrivance put forward dishonestly. In so I concluding I bear in mind the caution required in making dishonesty findings short of a trial, but have no difficulty in reaching that finding.

56. For all those reasons it is quite clear that the more recently advanced defence of the agreed "switch" is a fabrication and provides no defence.

Conclusions thus far as against Mr Shah and Lex

57. Mr Shah and Lex have not filed any evidential response to this summary judgment application. However, they have over the course of the various interim applications, and in particular in Mr Shah's fifth witness statement, had opportunities which one would expect them to have taken to advance any defences which they might have, in addition to the Defence itself. I have considered such potential defence matters as can be seen to arise. I have considered all that material. It affords no defence to the breach of trust claim which arises and it can be seen that they have no defence to that claim. It is plain that Mr Shah has treated trust moneys as his own, both by taking them and in his presentation to Citibank of the moneys as his. There can be no defence to the breach of trust which arises. It is not apparent that there was ever a program in which Dr Gupta's money could be invested. So far as it is necessary to do so, his conduct can be regarded as dishonest.

58. The apparent illegality alleged against Dr Gupta is without pleaded substance and is of the same kind as his wilder allegations such as those referred to above. It cannot amount to a defence to the claim. I elaborate on this point below.

59. It follows that the claim against Mr Shah for breach of trust succeeds and the claimants are entitled to summary judgment.

The claim against Mrs Shah

60. The claim against Mrs Shah is brought against her as recipient of part of Dr Gupta's funds so far as she still has them (the proprietary claim) and as constructive trustee (the knowing receipt and dishonest assistance claim) insofar as she had them and has parted with them.

Mrs Shah - the money flows

61. I will first set out how the money has flowed to and from Mrs Shah. This exercise is done on the basis of information appearing from a series of *Bankers Trust* orders, from the fruits of disclosure orders made against the Shahs and from admissions. The flows can be pieced together as follows.

62. I have described above how $10m came to be paid out of the Barclays account into Mr Shah's personal account at HSBC on 21st April 2021, and how it was that on 1st June 2021 he transferred what was left of it ($9.9m in round terms) into an account in the name of his wife at Lloyds Bank. It was credited as a sterling sum of £7m. The first freezing order in this case had been served on 29th May, which was a Saturday. At the time the claimants did not know of the existence of the HSBC account, so notice was not given to that bank. That enabled Mr Shah to transfer that sum on the next banking day, which was Tuesday 1st June (the 31st May being a Bank Holiday). He transferred another £250,000 to his wife on the next day, 2nd June. At the time of these transfers there was a credit balance on the Lloyds account of £50,000.

63. 2 days later Mrs Shah transferred the sum of £4.007m from her Lloyds account to Knights Solicitors. At this point the moneys in her account were not directly the subject of a freezing order against her, and the claimants still did not know of her involvement, so in practical terms she was able to do that. It was later explained by her that this was for the purchase of a large family home, though as will appear the moneys were never applied to that end and no details of the intended purchase have been provided. In between the receipt of the £7m and this debit there were minor credits, and the payment out of something over £250,000 in favour of other accounts of Mr Shah. The £4.007m can clearly be traced back to the £7.25m credits and thus be seen to be part of misapplied trust funds.

64. On 21st June 2021 Mrs Shah paid £100,000 to each of her 3 children out of the Lloyds account. In the intervening period there had been various credits and debits, but the account did not drop below £2.9m in the interim. Those moneys paid to the children fall, as a matter of equitable tracing or following, to be treated as part of the Gupta moneys in her hands.

65. On 2nd July 2021 Mrs Shah paid £2.050m and £30,000 to an overseas account. Her witness statement signed on 18th August 2021 (by way of disclosure after a freezing order had been made against her) says that it was paid to buy a second home abroad. The transaction did not proceed and 2.049m was sent back to her account on 21st July 2021. She identified a sum of £29,935 as having been sent back to her account on 7th July but she did not know why. At the time of the payment out of the two payments the account was in credit to the amount of £2.6m odd, not having dipped below £2.49m in the interim period. The money paid out falls to be treated as part of Dr Gupta's trust moneys on equitable tracing or following principles.

66. On 22nd July 2021, the day after the receipt back of the £2.049m, Mrs Shah paid out two sums of £1.020m from her Lloyds account by way of two foreign payments. There were no significant debits or credits from the account in the meanwhile. She gives a reason in her witness statement of 18th August. She says that there had been threats to her husband's life and a threat to kidnap her or one of her four sons, so she sent those two payments "to security operatives to secure our family's protection". She points out that she paid the sum of £144 to a locksmith on 23rd July to install extra locks at the recommendation of Surrey Police. She repeated that account in a later witness statement dated 27th August 2021, and also said that she knew nothing about the bank account into which the two payments had been paid, and knew nothing of the then whereabouts of the money. She also said that she questioned her husband about the sum paid for protection and he told her that it was also deployed to obtain intelligence about the criminal activities and associates of Dr Gupta. It is hard to fit this into the rest of the narrative about the money.

67. The claimants then made further inquiries of Lloyds bank as to those two identical payments. Those inquiries produced bank documents revealing that the amounts were not paid to security operatives, but were paid to her husband at two separate Turkish bank accounts. In his 8th witness statement signed on 27th August 2021 Mr Shah said he knew nothing about the bank account into which the £2.04m had been paid and did not know the names and addresses of the entities to whom payment was made. Since the payment was made to two of his bank accounts, that statement is manifestly false. His wife's third witness statement signed on 24th January 2021 (after the claimants had discovered the truth) acknowledges that these two sums were actually paid to her

husband but she offers no explanation as to why or to explain the apparent inconsistency with her previous important evidence.

68. The witness statement of Mr Johal provided in support of this application says that his firm instructed inquiry agents to see what security was provided at the Shahs' home in Weybridge in Surrey. That property was a flat above a parade of shops. When they visited there were no visible security measures in place, either in terms of hardware or in terms of personnel. Mrs Shah was seen to move freely and unaccompanied.

69. The last stage of this money trail concerns the £4.007m paid to Knights Solicitors. An order of ICCJ Jones, sitting as a judge of the High Court and dated 9th August 2021, ordered that that sum be paid into court. That payment in was duly made.

Mrs Shah - the claim against her

70. Based on that material the claimants make two claims against Mrs Shah. The first is a proprietary claim based on her receipt of trust moneys for which she gave no consideration and which fall to be treated as still held by her. The second is based on constructive trusteeship and an allegation of knowing receipt or dishonest assistance in a breach of trust. It is said that when she dealt with the money she did so knowing its origin or was reckless as to its origin, and is liable for all the money (and especially the sums which she no longer can be seen to have) accordingly.

71. Mrs Shah has put in a Defence, along with her children. There are three principal limbs to her defence. The first is that Dr Gupta's money has an unlawful origin and that is a bar to its return on the basis of the maxim *ex turpi causa*, or otherwise. The second is an averment that when she received and dealt with the money she did so honestly believing that it was her husband's to deal with when it was paid, and hers to deal with thereafter. The third, associated with the second, is that she understood "at all material times" that Dr Gupta had exchanged his interest in his invested moneys for an interest in a large sum held in Citibank's "treasury account", leaving Mr Shah to deal with the Barclays money as he saw fit. It would seem that she is saying that she understood this purported transaction at the time.

72. I deal with the illegality defence in a separate section of this judgment. For the moment it is sufficient to record that I consider it has not been properly pleaded and should be struck out.

73. I will deal with the constructive trust claims once I have dealt with the proprietary claim. This claim applies to the money that she has not successfully disposed of, which for these purposes means the money paid into court by Knights Solicitors. The origin of those moneys is the trust account into which Dr Gupta paid his money, which I have already found to have been trust moneys. It retained its character as trust moneys when Mr Shah misappropriated it, and it further retained that character when the £4.007m was paid to Mrs Shah and on to the solicitors. She gave no consideration for the receipt of that money, even on her own evidence, so the proprietary claim persists into her hands. I am satisfied on the basis of simple tracing or following principles that it was trust moneys that were paid to the solicitors, and it follows that it is trust moneys that are now sitting in court. Mrs Shah's evidence has not in terms addressed this tracing exercise because the only evidence she has filed is evidence in response to orders to provide information, and that sort of tracing exercise (strictly conducted) did not fall naturally within the intention and purview of her evidence, but the simple facts to which she has deposed, coupled with the evidence of the claimants, make it clear that there can be no defence to a proprietary claim to those moneys on a simple tracing/following exercise. I so determine.

74. So far as the remainder of the claim is concerned, I have to bear in mind that the evidence she has filed has not been specifically targeted at the present application. It is more geared to meet her disclosure obligations under freezing orders. Nonetheless it does seek to support her resistance to being liable for the moneys. If she is to be liable for money she has disposed of (essentially the £2.04m and the £300,000 odd paid to the children) it must be on the basis that when she paid them she had notice of the trust claims and/or that she was dishonestly assisting Mr Shah in his breach of trust. Her main defence to those claims is that at the time she did not know the moneys were impressed with a trust or that Mr Shah was guilty of a breach of trust. I am invited to disbelieve her when she says that, and indeed I am invited to proceed on the footing that she was a co-conspirator with her husband throughout (as I understand the claimants' case).

75. The claimants rely on what are said to be clear elements of the evidence from which it is said it is right to infer that Mrs Shah knew of or was reckless as to the trust source of the money. They rely on:

(a) The transfer of the £2.04m to her husband's account "in the face of these proceedings". It is clear that she transferred the money, and it is hard to accept her description of its purpose as an accurate or honest one, but it has not been demonstrated what, if anything, she knew of the proceedings at the time of its transfer. She was not joined to the proceedings and served with them until August 2021.

(b) Her apparent mis-statements about the destination and purpose of the £2.04m which can now be seen to have been paid to her husband.

(c) Her willingness to advance the Citibank defence. That may, at least in theory, be because her husband told her of those matters at the time and she accepted that explanation, though in order for that to be true she would have to have been told of Dr Gupta's transaction and therefore the trust.

(d) Her behaviour in relation to the transfer of the £2.05m for the alleged property transfer. It can now be seen from matching up account numbers that the money was paid to a Mr Gűrdal Mehmetcik. The Lloyds bank statements for the account from which the moneys were paid show a foreign payee without helpful details. However, later disclosure by Lloyds bank revealed the account number, being a number ending with the numbers 6787. The payee is not identified there. Nonetheless, it is now apparent that the funds were paid to Mr Mehmetcik. Later in the story Mr Mehmetcik provided funds for the Shahs' legal costs. This can be seen from a "funding notice". In order to police the freezing orders that had been made in these proceedings the court put in place a "funding notice" scheme under which any provider of funds for legal costs had to certify that the provided funds did not emanate from the moneys in dispute in this case. On 10th August 2021 Mr Mehmetcik provided £30,000 to the Shahs to fund legal work. His funding notice associated with that transaction shows the funds as coming from the same account as the account to which Mrs Shah paid the £2.05m on 2nd July (the 6787 account). Thus Mr Mehmetcik was identified as the payee of the £2.05m. The Shahs have never explained this connection. It was also pointed out that there is some sort of relationship between Mr Mehmetcik and Mr Shah because in the Citibank proceedings referred to above he disclosed as one of his assets a convertible loan made to Anka Aviation, which (according to Mr Mehmetcik's Twitter profile) is a company of which Mr Mehmetcik is a director. It would therefore appear that the alleged "property transaction" was with this associated person, and Mr Glover relies on Mrs Shah's failure to make any reference to this, and says she did not disclose it because the link and the payment notice would be seen to be suspicious.

(e) It was reckless for Mrs Shah as a director of Lex (which she was), being aware of an injunction and that Dr Gupta had a large sum of money with her husband, not to check the extent of the injunction. She turned a blind eye because she was aware of the fraud. She should have seen the original freezing injunction, and if she had she would have seen it was against her husband as well as Lex and would have been put on inquiry as to the fraud perpetrated on Dr Gupta, if she did not know about it from the outset.

(f) Mrs Shah is not a person of obvious wealth herself. She and her husband lived in a small undistinguished flat behind a filling station in Weymouth; she drew universal benefit; and was a shop assistant at John Lewis. She was handling large sums of money, presumably at her husband's direction, and must have, or ought to have, made an inquiry as to where they came from.

(g) Mrs Shah herself provided funding notices at one stage. It is said that when she did so she worded them carefully so as to present a case consistent with ignorance of the injunction. The funding notice regime required certification that the moneys paid did not derive from "the Fund" (undefined in the order of Trower J of 14th June which first established the notice regime). In her first funding notice given on 16th June 2021 Mrs Shah certified that the funds did not come from the "Fund" as described in the Particulars of Claim. Mr Glover said that that formulation was used so as to avoid an acknowledgment that she knew of the original freezing order made by Snowden J on 28th May. I do not think that that logic works, but what can be said is that in signing this first funding notice she is likely to have known of the original freezing order because the notice refers to the subsequent order of Trower J which in turn refers to the freezing order and the application for it. Later notices state that moneys she was providing did not derive from her husband's assets; it is hard to see how this can have been the case when the sums in her account would not have been sufficient to pay them (especially one for £184,000 on 21st June 2021) without the £7m she had received from him. I agree that this matter casts serious doubts on her honesty.

76. Mr Glover advanced a number of lesser points which he said accumulated with the above to paint a picture of a dishonest wife who was at all times acting in support of her husband in his nefarious intent, knowing what she was doing.

77. This limb of the claim against Mrs Shah depends on her dishonesty when she paid the sum for the purported property transaction, the two $1.02m sums to her husband and the sums paid to the children. That in turn depends on whether she genuinely believed that she was dealing with her husband's money, or whether she turned a blind eye to the source of the moneys or had some other state of mind relevant to dishonest assistance. I do not need to go into the various types of knowledge which suffice or might suffice for these purposes because I consider on any footing the claim against Mrs Shah based on her dishonesty or knowing receipt at the moment of the subsequent dispositions should go to trial.

78. I bear in mind the guidance in the authorities which I have identified above. It would be open to me, if the evidence justified it, to draw the conclusion that at some point of time, prior to her disposition of the moneys to which this part of the claim relates, she was drawn into her husband's unlawful schemes, or had the requisite degree of knowledge or wilful blindness, to justify summary judgment against her (which is the claimants' case at its highest). However, I consider that an insufficiently strong case has been presented that she was a conspirator at the outset, so one has to consider how and when she acquired any relevant degree of knowledge. That is quite a sophisticated exercise in the circumstances, and I consider that the chances of her establishing a defence based on ignorance are more than fanciful, if only marginally at present.

Bearing in mind the complexities involved, and the significance of the dishonesty, I consider the matters should be considered at a trial. It is plain that at a trial Mrs Shah will have much to deal with.

79. It follows, therefore, that the claimants succeed on this application in relation to the £4m odd coming back from Knights Solicitors, but not in relation to the balance of the moneys received and disbursed by Mrs Shah, as to which she will have permission to defend. I have considered whether it should be conditional, but have decided that the more appropriate course is to make it unconditional, especially since I have not received submissions from Mrs Shah as to the appropriateness of any conditions. The matter needs to be got on for a trial as soon as possible.

The claim against the children

80. The claim against the children is primarily based on their receipt of two sums. First, there is a proprietary claim to the three amounts of £100,000 which they received respectively from their mother, as identified above. There is also said to be a sum of £10,000 which each is said to have received (and which each admit to having received) from the father.

81. I am puzzled by the latter claim (the £10,000). There is a pleading that each received that sum, and it is pleaded that it was paid out of the fund constituted by Dr Gupta (Re-Amended Particulars of Claim para 14.14). The children defendants in their Defence admit the receipt of that sum and have paid it into court (see below), but not its source. (In fact I do not think they have actually pleaded to the latest form of para 14.14). However, I have not detected in the documents any indication that sums of £10,000 were paid to the children out of the funds. The Barclays bank statements for the account opened to receive the Gupta moneys do not show debits of £10,000 on the pleaded date and I have not been able to detect any other bank statements which show the source, especially in the light of the undesirably chaotic way in which the papers for this application have been presented. Since I have not (as far as I am aware) been shown evidence of the source of this lesser sum of money I shall not make an order in respect of it on this application.

82. So far as the three payments of £100,000 are concerned, the bank statements clearly show payment of those sums by the mother, and receipt is admitted by the children in their Defence. As appears above, the statements show that those sums were paid out of funds which represented the Gupta trust moneys in the hands of the mother. The children therefore received trust moneys.

83. The children all plead that they were the innocent recipients of the moneys and thought that their source was their mother's money. There is little or no evidence at present to challenge that averment. However, before they utilised that money they received notice of the trust claims when proceedings were started against them and freezing orders obtained. In paragraph 22 of their Defence they plead:

> "22. … The fourth to sixth defendants have made it clear and herein repeat that, to the extent that gifts to them of £100,000 each have been made by the third defendant and £10,000 from the first defendant, they are each ready and willing to repay such monies to the claimants, without any admission of liability. Their bank accounts have been frozen at the instance of the claimants, so the claimants are asked to take all necessary steps to remove the embargo over those bank accounts and to discontinue the claim against the fourth to sixth defendants on receipt of £330,000. In the premises, there is no viable cause of action that lies against the fourth to sixth defendants."

84. Each of the three children signed witness statements on 27th August 2021 (after proceedings were commenced against them and freezing orders obtained) admitting receipt of £110,000 and each demonstrating where the sums still were. They each strongly stated that they wished to repay the moneys if they were released from the proceedings, and invited the release of the freezing orders so that they could do so. They did not in terms admit that they held trust moneys, but they did demonstrate (or accept, in essence) that the moneys could still be found in their bank accounts and indicated in the clearest terms that they did not wish to retain it.

85. By an order of 8th September 2021 Bacon J ordered that the children defendants should pay into court the sums of £100,000 and £10,000 that each had received, and that the freezing orders be released so as to allow that to take place. She made further orders for the disclosure of information by all defendants. I am told that the moneys have now been paid into court.

86. It follows from my previous findings that the three sums of £100,000 paid to the children can be traced back to Dr Gupta's find. They came from the mother, who had received her large sums from her husband, who had illegitimately taken them from Dr Gupta's fund. It was trust moneys. Where the property can be followed or traced into the hands of the children, who on any footing were volunteers, it keeps its character as trust property and the proprietary claim persists. It is that claim to which they are now liable because they do not seem to challenge the traceability. When the children

received notice of the claim they received notice that the sums were trust moneys, so even if they had no knowledge (constructive or otherwise) of the source of the moneys (and I have seen little evidence that they did) at that point in time they were no longer able to treat the moneys as their own.

87. It follows that Dr Gupta can assert his claim to the three amounts of £100,000, which are now represented by the moneys paid into court. The children do not seem to wish to assert a real defence to the claim, though it has to be acknowledged that their previous indications in their Defence and their evidence that they wished to repay the money were coupled with a sort of condition that they be released from the proceedings. Dr Gupta does not wish to release them from the proceedings because of what is said to be the possibility that they have received other sums from their father from the £2.04m he received from the mother (see above), and orders for disclosure of the fate of that moneys have not been complied with. It is not clear to me that there is a pleaded case in relation to this point, but whatever the position on that may be, as a matter of law £300,000 of Dr Gupta's moneys can be traced or followed into their volunteer hands and they should give it up.

88. I therefore find that the £300,000 paid into court by the children are trust moneys belonging to Dr Gupta which were misappropriated in breach of trust and that he is entitled to them. I award summary judgment accordingly. That would seem to me to require an order that they be paid out to him. Because of the absence of evidence at this stage which links the three lots of £10,000 to Dr Gupta's funds I make no finding about that money and it will have to stay in court, subject, of course, to an acknowledgment by the children (who do not seem to want it) that it can be paid out as well. They will not thereby necessarily be released from the proceedings, but that may come at a later date. I am not concerned with that.

The striking out application revisited

89. It is necessary to consider the fate of the application to strike out the allegations in the Defences as to Dr Gupta's alleged illegal sources of his funds. I may not need to make a formal order striking them out of Mr Shah's Defence because Dr Gupta is completely successful on his trust claim without striking out those allegations on the way. However, it is technically necessary to consider the application in relation to Mrs Shah and the children defendants because the action survives against them in part, and I also need to deal with the point in that it might otherwise have been a defence to the breach of trust claim against Mr Shah (subject to his overcoming some serious legal difficulties on the authorities in running it).

90. I can take the wording from the Defence of Mrs Shah and the children defendants (who plead in the same document). It is for all practical purposes the same as the wording in Mr Shah's paragraph 37:

> "41. As to paragraph 17, it is to be inferred on the balance of probabilities that a sum of $14 million was all included the proceeds of crime. The way in which this huge sum of money was produced by an ophthalmologist from Pensacola as a sum to be invested, bears all the hallmarks of money-laundering. The defendants intend to call expert evidence at trial in order to demonstrate this fact. Further, investigation has given rise to the strong suspicion that the first claimant is merely a front-man for others. There will be further extensive investigation as to the identity and activities of those for whom the first claimant appears to be the figure-head. However, the impression of criminality is corroborated by information that a contract has been taken out to murder the first defendant and to kidnap the third defendant and the children. In the premises, the defendants and each of them intend to rely on the doctrine of *ex turpi causa non oritur actio*".

91. This pleading has all the hallmarks of a speculative and improper pleading. As the Chancery Guide makes clear in its 2016 edition (current when the Defence was pleaded) full particulars of any allegation of illegality must be pleaded – see paragraph 10.1. That is in accordance with all the normal principles of pleading, particularly where a serious allegation is made. In the Commercial Court Guide at paragraph C1.3(c) it is said:

> "(i) Full and specific details should be given of any allegation of fraud, dishonesty, malice or illegality; and
>
> (ii) where an inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged must be fully set out."

92. Those principles apply throughout all courts. The pleading contravenes them. Such a serious allegation requires proper particularisation from the outset and the paragraph does not contain it. If there are obvious hallmarks of money laundering they should have been particularised, especially since they are said to be "obvious". They were not so obvious that they troubled Mr Shah at the outset or for some very significant time thereafter. That is apparent from his Whatsapp exchanges. He did not rely on those signs when he claimed the Barclays money as his when he was talking to Citibank. No details are given as to what further investigation revealed about Dr Gupta as a "front

man"; if they existed they should have been. The existence of the "contract" is a matter of mere assertion by Mrs Shah (and Mr Shah), and no details are pleaded as to how they came to know that, or why the alleged "contract" is attributed to Dr Gupta.

93. In short, this allegation is so woefully short of particularisation in respect of a very serious matter that it should not be allowed to stand. It has itself all the hallmarks of a wild pleading in a desperate attempt to ward off a claim which is itself based on a provable theft, and it comes against a background of all sorts of wild allegations made from time to time by Mr Shah about organised crime and the security services, none of which put any substantial flesh on the inadequately bare bones of the pleading.

94. I have considered whether it would be right to allow the allegation to stand and to have it fleshed out by a request for further information, which the defendants would be obliged to provide under the above principles. However, that does not seem to me to be the right course in the present case in relation to the allegations made. If they had substance then they ought to have been pleaded in the firstinstance, especially in the case of the wife and children who had more time to put together whatever case they think they had. Instead they adopted word for word the inadequate pleading of Mr Shah. It is right that I should observe that in his 7th witness statement, signed on 20th August 2021, which is shortly before the wife's and childrens' Defence was served, Mr Shah makes some further generalised allegations of a potential source of illegal money, but he does so only in terms of information implausibly suggested to come from "colleagues" in the security services (unspecified), and they do not re-appear in the Defence served a week or so later.

95. In those circumstances I would strike out the paragraph in both Defences, so far as necessary, and reject the point as being available, as a matter of fact and pleading, in defence of the claims against all defendants. That makes it unnecessary to decide whether an illegal source of the money would provide a legal defence , a proposition which I find unlikely in any event.

Conclusions on the summary judgment claim

96. On the summary judgment application I therefore find:

(a) Mr Shah is liable for breach of trust in relation to the whole of the sum paid to him by Dr Gupta and is liable to pay the whole of the $14m misappropriated by him.

(b) Mrs Shah is liable to account to Dr Gupta for the sum repayable to her by

Knight Solicitors and currently standing as paid into court. I shall make any necessary orders for payment out to Dr Gupta. She will be allowed to defend the remainder of the claim.

(c) Each of the children are liable to repay to Dr Gupta the three £100,000 sums paid to them out of moneys representing trust moneys of Dr Gupta, currently standing as paid into court. I shall make any necessary orders for payment out to Dr Gupta.

Conclusion overall

97. I therefore conclude that the application for summary judgment against Mr Shah succeeds, and as against Mrs Shah and the children it succeeds in part. The two paragraphs in the Defences fall to be struck out. The appropriate form of order will be the subject of further consideration after this judgment has been delivered; it will have to contain provisions for the payment out of the relevant sums in court. I shall also give directions for the taking what remains of this case to trial.

98. This judgment will be handed down without going through the usual stage of being being sent in draft to the parties. It will be handed down remotely and to that end will be sent to the parties by email at the appropriate time. There are various freezing orders in place against all the defendants, and to prevent their lapsing by virtue of the effect of this judgment, and for the avoidance of doubt about that, I will simultaneously make an order which continues their effect until a further hearing when the matters consequential upon this judgment (which will include costs, the appropriate form of order, directions to trial and the continuation of freezing order relief) will be further debated. Since I anticipate that the freezing order relief against the third to sixth defendants may have to be significantly modified (at least in amount) when the payment out takes effect, that hearing must in fairness to those defendants take place as soon as possible, and the claimants should make an appropriate application for a listing.

ADDENDUM

99. This judgment was delivered under the remote hand-down protocol, but without being sent to the parties in draft first. When the parties were notified of the date of hand-down Mr Shah sent a letter to the court seeking a deferment of the handing down. He did so on the basis that the gentleman whom I saw in court at the hearing, and who was said to be Dr Gupta and a copy of whose passport I saw, was not in fact Dr Gupta but was his brother who resembles him. This impersonation was said to have been arranged by the solicitor acting in the case who was said to be "heavily involved with criminal organisations and his audacity stems from the fact that he was being blackmailed". There was a promise of further revelations in an independent report to be filed in due course. The deferment was sought pending a police investigation into the

impersonation pursuant to a report to the Metropolitan Police made by Mr Shah and which contains equally extravagant claims. I infer that Mr Shah, who was not present or represented at the hearing, was told about the presence of Dr Gupta by someone who attended court on his behalf and who reported back to him, but nothing turns on that for these purposes.

100. Mr Shah was informed that the handing down of the judgment would not be deferred on the basis that insufficient grounds had been made out. This judgment was handed down accordingly.