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Case No: KB-2024-003518

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 May 2025

Before :

THE HONOURABLE MRS JUSTICE HEATHER WILLIAMS DBE

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Between :

LOGIX AERO IRELAND LIMITED	**Claimant**
- and -	
SIAM AERO REPAIR COMPANY LIMITED	**Defendant**

- -
- -

Hugo Page KC (instructed by **Watling & Co**) for the Claimant
Lucy Colter (instructed by **Peters & Peters Solicitors LLP**) for the Defendant

Hearing dates: 1 May 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HEATHER WILLIAMS

Introduction

1. The claimant and the defendant are companies engaged in the purchase, repair, sale and lease of aircraft engines. By a Letter of Intent ("LOI") the claimant, Logix Aero Ireland Limited ("Logix"), agreed to buy and the defendant, Siam Aero Repair Company Limited ("Siam Aero"), to sell two Pratt & Whitney 127 aircraft engines. The agreement was in part subject to the signature of Sale and Purchase Agreements ("SPAs"). The parties' negotiations were largely conducted by email. From 29 July 2024, a fraudster inserted himself into this email correspondence in a way that led the parties to believe they were still dealing with each other when, in fact, both were communicating with the fraudster, who was doctoring their communications before sending them on to the other party. This led to the claimant paying the purchase monies for the engines into the fraudster's bank account and the defendant declining to release the engines to the claimant as it had not received payment.

2. By a Claim Form dated 21 October 2024, the claimant brought a claim seeking declarations, damages and/or delivery up of the engines.

3. By application notice dated 27 December 2024, the defendant applied to strike out the Claim Form and the Particulars of Claim on the basis that the statements of case disclosed no reasonable grounds for bringing the claim and/or were an abuse of the court's process or otherwise likely to obstruct the just disposal of the proceedings. In the alternative, reverse summary judgment was sought pursuant to CPR 24.3 as, it is said, the claim has no real prospect of succeeding and there are no other compelling reasons as to why the case should be disposed of at trial. The defendant also applied for payment of its costs on an indemnity basis. I indicated at the outset of the hearing that I would hear submissions at this stage as to whether I should award indemnity costs against the claimant in respect of the way that the Particulars of Claim were originally pleaded; whereas the parties would be given the opportunity to address other costs issues via written submissions after judgment was handed down on the strike out and/or summary judgment applications.

4. The claimant subsequently provided a draft Amended Particulars of Claim ("draft APC"), which substantially revised the way that the claim is put. The parties agreed I should determine the defendant's application on the basis of the draft APC.

5. The defendant relies upon a witness statement dated 27 December 2024 from Sarah Lindsay Gabriel, the supervising partner at Peters & Peters Solicitors LLP (the defendant's solicitors). The claimant relies upon a statement dated 31 March 2025 from John Francis Watling, the principal of Watling & Co (the claimant's solicitor). Both parties obtained reports from forensic IT specialists. Ms Gabriel's statement exhibits a report from Mr Jon Fowler of Secretariat dated 23 December 2024 ("the Secretariat Report") and Mr Watling's statement exhibits a report from Kroll dated 23 October 2024 ("the Kroll Report").

Summary of the material circumstances

6. The factual matters I will set out are not in dispute. Counsel agreed I could take this narrative into account, as well as the contents of the draft APC, when determining whether to strike out the statements of case, as well as in relation to the application for summary judgment.

7. The claimant is incorporated in the Republic of Ireland; the defendant in Thailand. The claimant specialises in auxiliary power units and engine leasing. The defendant specialises in aircraft teardowns and parts supply and sale.

The LOI

8. The LOI was signed by Siam Aero on 4 July 2024 and by Logix on 9 July 2024. The document stated that the claimant (or subsidiary or affiliate) agreed to buy and the defendant (or subsidiary or affiliate) to sell two Pratt & Whitney 127 aircraft engines, engine serial numbers EB0021 and EB0028 for a price of USD 285,000 for EB0021 and USD 650,000 for EB0028. A deposit of USD 50,000 was to be paid. The defendant's bank details were set out in clause 6. The agreement was in part subject to the signature of SPAs. It provided for the LOI and the obligations arising out of it to be governed by and construed in accordance with English law and for the non-exclusive jurisdiction of the English Courts. The purchase price for EB0028 was subsequently re-negotiated to USD 540,000 in light of further information as to its condition.

9. Clause 14 of the LOI ("the Confidentiality Clause") provided as follows:

> "Seller and Buyer acknowledge and agree: (a) that this LOI contains commercially sensitive information: (b) to maintain any information and documentation provided hereunder on a strictly confidential basis: (c) that it will not disclose such information and documentation to any third party other than (i) their respective Board of Directors and employees, auditor's professional advisors, shareholders and financiers: or (ii) as may be required to be disclosed under applicable law or regulations or for the purpose of legal proceedings."

10. Clause 16 of the LOI stated that certain clauses, including clause 14, were to be legally binding immediately.

The negotiations and the fraud

11. The claimant and the defendant primarily negotiated the terms of the SPAs via email correspondence. In particular, the claimant negotiated with Michael Gofshteyn of the defendant. Mr Gofshteyn used an email address from the domain "@siam-aero.com". Mr Remi Krys was involved in the negotiations for the claimant. His emails came from the "@logix.aero" domain. Negotiation and agreement of the revised price for EB0028 was conducted in a telephone conversation or conversations between Mr Krys and Mr Gofshteyn.

12. The sale was introduced to the defendant by Corentin Espitalier, the CEO of Sky Aeroservices SARL ("Sky Aero"), the French company providing the tear down

services for the aircraft from which the engines were obtained. Representatives of Sky Aero were copied in to the parties' email correspondence. Sky Aero's genuine email domain was "sky-aero.com".

13. Between 18 June and 31 July 2024, three fake domains were set up by persons unknown: "@sky-aero.net" on 18 June 2024; "@siam-aero.co" on 29 July 2024; and "@logix-aero.co" on 31 July 2024.

14. On 25 June 2024, Mr Gofshteyn emailed Mr Krys a list of the line-replaceable units ("LRUs") in relation to the engines. He said the list was not final as Siam Aero were waiting for three more components to be checked and verified. Mr Krys replied the next day, thanking Mr Gofshteyn for the information and providing an updated version of the draft LOI, with the listed LRUs.

15. On 29 July 2024 at 02:16 hours, Mr Gofshteyn emailed Mr Krys, copying in nine other addressees at Siam Aero, Logix and Sky Aero. This was a genuine email and the recipients' email addresses were all correct. The Secretariat Report indicates the email was sent from Mr Gofshteyn's genuine email address and was received by all of the Siam Aero personnel who were copied in to it. The email referred to Siam Aero having found the missing LRUs and the email included a link to the relevant certificates and photograph. Mr Gofshteyn wrote that all the LRUs were being shipped to the Sky Aero Facility where the EB0021 engine was located. He asked Mr Krys to indicate the price he was ready to offer for the engine with the LRUs. It is not suggested that Mr Gofshteyn, or others at Siam Aero, sent this email to the fraudster.

16. However, on the same day, Mr Krys at Logix received an email timed at 8:05am from a false email account. It purported to be from Mr Gofshteyn but it was sent from the "siam-aero.co" domain that had recently been set up. The other Logix addressees of the earlier 29 July email were copied in, using their genuine email addresses, whereas the Siam Aero and the Sky Aero recipients of the earlier email were purportedly copied in, with the fraudster using fake email addresses based on the new domains that had been registered. In terms of its content, the email chased up a response to the earlier 02:16 hours email. Mr Krys did not realise that this was not a genuine email from Mr Gofshteyn. By the time of sending this email, the fraudster had somehow gained access to the genuine 29 July email from Mr Gofshteyn. This was the first email sent by the fraudster to one of the parties.

17. On 30 July 2024, Mr Krys sent a reply to the same addressees, believing he was communicating with Mr Gofshteyn, but in fact sending his message to the fraudster and (outside of Logix) to the other false email addresses. Mr Krys said that the further information was "great news". He asked for the contract to be amended to show the LRUs and the new price.

18. On 31 July 2024 at 07:33 hours, Mr Gofshteyn and others at Siam Aero received the first email sent to them by the fraudster. It was sent from a false email account using the "logix-aero.co" domain and made to look as if the communication had come from Mr Krys. Mirroring the approach taken in relation to the false 29 July email to Mr Krys, genuine Siam Aero emails were used, but fake email addresses (using the recently set up domains) were deployed for the Logix and Sky Aero personnel, giving the wrong impression that they had been copied in. Siam Aero did not realise that the email was not genuine. The email largely replicated the text of Mr Krys' 30 July 2024 email.

19. Thereafter, emails were sent by both parties to the false domains and the fraudster controlling these domains falsified and controlled the communications, so that both parties were no longer communicating with each other (although they believed that they were) and were instead communicating with the fraudster. The subsequent emails from the fraudster to one or other of the parties followed the same approach that I have described, in terms of who was and was not copied in. Accordingly, neither those at Logix nor at Siam Aero were alerted to the fraud.

20. There is no clear evidence at this stage as to how the fraudster obtained access to the genuine email that Mr Gofshteyn sent on 29 July 2024. Both the Secretariat Report and the Kroll Report indicate there is no evidence of either parties' IT systems having been hacked or otherwise compromised and there is no evidence that either party, or anyone connected to them, sent the email to the fraudster. Kroll was not able to review Sky Aero's email system, having been informed by Sky Aero that the logs for the relevant months were missing.

21. Mr Gofshteyn responded to the fraudster's email of 31 July 2024 at 21:25 hours the same day (believing he was communicating with the claimant). He sent "two SPAs for your review". These draft contracts attached the lists of LRUs. By email sent on 5 August 2024, the fraudster sent the draft SPAs to Mr Krys at the claimant for his review, using the fake Siam Aero email handle to give the impression that the email had come from Mr Gofshteyn. As with the other emails sent by the fraudster to Logix, the email was written as if sent by "Michael Gofshteyn", who conveyed his "warm regards".

22. On 8 August 2024, Mr Richard Lewsley of Logix replied to the fraudster (believing he was writing to the defendant). He expressed thanks for the draft SPAs and asked that they be signed and returned. He said Logix would then send them to its Board. In the same email, he asked Ms Hensnee Kamchun of Logix (who was one of those copied in) to "raise the POs" (purchase orders). On 9 August 2024, the fraudster emailed the defendant from "logix-aero.co", purporting to be from Mr Lewsley and writing in substantially the same terms as Mr Lewsley's email, albeit adding "within today" after the text requesting that Siam Aero sign and return the documents.

23. On 11 August 2024, Mr Gofshteyn emailed the fraudster, believing he was emailing Mr Lewsley, asking that the purchase orders be sent "so we can issue an invoice". I was not taken to an email indicating the fraudster sent on a version of this email to Logix, although that would be a reasonable inference to draw, given the fraudster's modus operandi with the other emails.

24. On 12 August 2024, Ms Kamchun of Logix emailed the fraudster (believing she was emailing Mr Gofshteyn), pointing out an error on the purchase agreement for EB0021 in respect of the name of the Logix entity that was making the purchase. She asked for this to be addressed and the SPAs to be signed and returned to her. She said this had been corrected on the master purchase agreement for the relevant engine. It is not clear if that document was attached, but it is apparent from the body of the email that she attached the purchase orders for each of the engines. The same day, the fraudster emailed Mr Gofshteyn in similar terms, adding "also can we get invoices within today".

25. On 13 August 2024, Mr Gofshteyn sent the signed SPAs to the fraudster, with the corrected Logix entity. Again, he believed he was sending the documents to Mr Lewsley at Logix. The SPAs signed by Siam Aero included details of the defendant's

bank account into which payment was to be made. This was the same account as that referred to in the LOI. The fraudster then emailed Logix from the fake email account for Mr Gofshteyn, attaching signed SPAs in which the payment details had been changed to the fraudster's bank account with the Vietcombank in Vietnam. The covering email deleted some of the wording in Mr Gofshteyn's email. Whilst the email looks as if it was sent on 12 August 2024, it clearly post-dated Mr Gofshteyn's email of 13 August 2024 to the fraudster and this mis-alignment of the dates is likely to be the result of the different time zones between the locations of the senders and recipients.

26. On 13 August 2024, Ms Kamchun of Logix emailed the SPAs that had now been signed by Logix to the fraudster. These were the doctored versions of the SPAs provided by the fraudster. The same day, using the fake email handle for Ms Kamchun, the fraudster emailed counter-signed SPAs to Siam Aero which did contain the latter's correct bank details.

27. Also on 13 July 2024, Mr Gofshteyn emailed the fraudster (still believing he was emailing the claimant) indicating he was attaching two invoices for the engines. The invoices contained the defendant's correct bank details. Later the same day, the fraudster emailed Ms Kamchun and Mr Lewsley, pretending the email had come from Mr Gofshteyn. Part of the text used in Mr Gofshteyn's email had been deleted and the invoices that were attached had been doctored to now give details of the fraudster's bank account.

28. On 21 August 2024, Mr Paul Rogan at Logix emailed the fraudster (believing he was emailing Siam Aero) attaching proof of payment of the two invoices. On 22 August 2024, the fraudster emailed the defendant, using a fake Logix email account for Mr Rogan and with the attached proofs of payment altered to indicate that payment had been made to the defendant's bank account.

29. In the interim, there had also been emails relating to the registration of the engines. On 14 August 2024, Ms Kamchun emailed the fraudster, believing she was emailing Mr Gofshteyn, asking him to get the engines registered "so that we can proceed with the purchase". The same day the fraudster emailed Mr Gofshteyn in similar terms, with the message purporting to be from Ms Kamchun.

30. On 19 August 2024, Mr Gofshteyn emailed the fraudster, believing he was communicating with Ms Kamchun. The email referred to the name of the previous owner of the engines, stating that this owner had not reflected their ownership of the engines in the registry. The email also attached reports relating to the engines. The same day the fraudster sent a version of this email to Ms Kamchun, using the fake email address for Mr Gofshteyn.

31. On 21 August 2024, the claimant made payment totalling USD 824,900 to the bank account supplied by the fraudster, in the belief that payment was being made to the defendant.

Discovery of the fraud and the aftermath

32. The claimant discovered the fraud when the defendant informed the claimant by telephone and WhatsApp that the money had not been received. By then the money had disappeared from the fraudster's account. The claimant and the defendant

communicated with each other by WhatsApp, but were unable to reach agreement as to what should happen to the engines, which were being held by agents of the defendant in France. The WhatsApp messages from 29 August 2024 indicate that Mr Gofshteyn supplied the signed SPAs he had unwittingly sent to the fraudster and the purchase orders he had received from the fraudster. He explained that he had not sent the doctored documentation which was received by Mr Krys. The terms of the discussions between Mr Gofshteyn and Mr Krys indicate that by this stage they were aware that the bank details were changed on the documents and that fake email addresses had been used to make it appear as if they were communicating with each other. Mr Gofshteyn also explained that the Siam Aero system had not been compromised.

33. On 26 September 2024, the claimant obtained without notice interim relief in the form of French Saisies Conservatoires (precautionary seizures) over the engines, granted by the Commercial Courts of Pontoise and Toulouse. The orders were sought on the basis that the defendant was at the centre of a fraudulent scheme to divert the funds paid by Logix and had in reality received the monies paid for the engines. The French orders required proceedings on the merits to be commenced within a month.

34. The Claim Form was issued on 23 October 2024. Although Peters & Peters initially declined to accept service, copies of the Claim Form and the original Particulars of Claim were provided to the firm on 1 November 2024. The pleaded claim sought declarations that the two engines were the property of the claimant and that the claimant had paid the contract price for them; an order for delivery up of the engines and/or damages for breach of the Confidentiality Clause and in tort for failure to secure the confidential information. Reference was also made to fraud, as I set out in more detail from para 52 below. By letter dated 22 November 2024, Peters & Peters indicated they were now instructed to accept service, and the Claim Form and attached Particulars of Claim were then formally served on them via a letter dated 30 November 2024.

35. It is accepted that the claimant's solicitors did not send a letter before claim prior to issuing the proceedings and did not request information from the defendant's solicitors at that stage.

36. Peters & Peters wrote to Watling & Co on 24 October 2024, summarising that Siam Aero's position was that they had negotiated and contracted in good faith and the company had nothing to do with the bank account in Vietnam into which Logix had paid the monies. The letter said that Siam Aero were sympathetic to Logix's position and "to the extent possible and appropriate, will try to work with you so that your client may recover the funds it has lost. However, it must be understood that Siam Aero has not been engaged in any wrongdoing and is not prepared to be treated as if it had been". The letter pointed out that Siam Aero had already agreed to preserve all relevant material.

37. By letter dated 25 October 2024, the claimant's representative asked Peters & Peters to provide specified email logs. By a response dated 14 November 2024, Peters & Peters indicated they had now engaged an IT specialist to review the logs and that they would endeavour to respond to the request by 19 November 2024. In the event, Peters & Peters sent a letter dated 20 November 2024 containing some further observations about the material that could and could not be preserved, but did not supply the logs at that stage.

38. By letter dated 12 December 2024, Peters & Peters enclosed a copy of the defendant's Acknowledgement of Service, indicating they were instructed to apply to strike out the claim and that they would shortly be writing with a detailed explanation as to why the claim was misconceived.

39. Peters & Peters then sent a detailed letter dated 17 December 2024, setting out why it was said that the claim was misconceived and pleaded defectively. The letter contended there was no evidence to show the defendant was involved in or facilitated a fraud and that it was wrong for the claimant to have alleged this without a proper evidential basis. Complaint was made that the claim had been issued hastily and without proper engagement in pre-action correspondence. The letter summarised and enclosed the Secretariat Report and explained how it appeared that the fraud had been undertaken. The explanation that was set out is consistent with what is now agreed to be the narrative of what occurred. The letter contended that the pleaded claims disclosed no reasonable causes of action and that the proceedings were an abuse of process. The letter also enclosed approximately 350 pages of emails and attachments from the relevant period. The claimant was invited to confirm by 20 December 2024 that it was discontinuing the claim with the usual costs consequences, failing which the strike out application would be issued.

40. By letter dated 18 December 2024, Watling & Co observed that the 20 December deadline was unreasonable and asked for further time. By a response dated 19 December 2024, Peters & Peters declined to do so, saying that the deadline was because of the timetable for filing a strike out application (in lieu of a Defence) and the intervening Christmas holidays. The letter also pointed out that the interim seizure orders remained in place in France and were preventing the defendant from dealing with its assets.

41. The defendant's application notice was duly filed and issued on 27 December 2024. The claimant's draft APC was provided to the defendant on 21 March 2025.

The claimant's pleaded case

The draft APC

42. I will first of all describe the claimant's case as it is now put in the draft APC.

43. Paras 1 – 3 refer to the claimant and the defendant companies, the LOI and the terms of the Confidentiality Clause. Para 3 states that it was within the contemplation of the parties that disclosure of confidential details of the sale process to a third party might allow a fraudster to divert payment to himself.

44. Para 4 retains text from the original pleading that was apparently relied upon to support the claim that was then advanced in tort. It states that the Confidentiality Clause required the defendant "to take all reasonable steps, involving security for its email and computer systems, to protect the information and documentation from falling into the hands of third parties" including those "attempting to access them without authorisation". However, the pleading does not go on to identify any alleged failures on the part of the defendant to take such reasonable steps and the allegation in para 4 was not relied upon as part of Mr Page KC's submissions on the alleged breach of the Confidentiality Clause.

45. Paras 5 – 8 of the draft APC contain uncontroversial narrative regarding the purchase price, the negotiations and the involvement of the fraudster, who set up email accounts for himself "pretending to be the claimant" and "pretending to be the defendant". It is said that the claimant "received and replied to emails from Mr Gofshteyn (or someone who appeared to be him)" and then the fake email address is set out. Para 7 records that the claimant is unable to state with certainty how the fraudster obtained copies of the email correspondence between the claimant and the defendant, save that it was not from the claimant. Para 12 refers to the Kroll Report confirming that the claimant's computer files were not compromised.

46. Para 12A is a key part of the draft pleading for the purposes of the confidentiality claim and so I set it out in full:

> "12A Email messages disclosed by the Defendant as attachments to the Witness Statement of Sarah Lindsay Gabriel dated 27th December 2024 show that, in breach of the LOI and the Confidentiality Clause, the Defendant provided the fraudster with the following confidential information:
>
> (1) By email dated 31st July 2024 from the Defendant to the Fraudster, the Defendant provided the Fraudster with draft SPAs together with lists of Line Replaceable Units (LRUs). This enabled the Fraudster to send these on to the Claimant with the Fraudster's bank account details substituted for those of the Defendant;
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> (2) By email dated 13th August 2024, from the Defendant to the Fraudster, the Defendant sent the Fraudster signed SPAs, also with lists of LRUs. This enabled the Fraudster to send these on to the Claimant, again, with the Fraudster's bank account details substituted for those of the Defendant;
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> (3) Also by email dated 13th August 2024, from the Defendant to the Fraudster, the Defendant sent the Fraudster invoices for the Engines in the form requested by the Claimant in a telephone call with the Defendant, thus enabling the Fraudster to send invoices to the Claimant in the correct form but with the bank details manipulated;
>
> (4) By email dated 19th August 2024 from the Defendant to the Fraudster, the Defendant sent the Fraudster details of the previous owner of the engines, so that they could be registered in the Claimant's name, thus allowing the Fraudster to send the details to the Claimant."

47. Para 18 pleads that the defendant's provision to the fraudster of the confidential information identified in para 12A constituted a breach of the Confidentiality Clause.

Para 20 pleads that as a result of this breach the claimant suffered loss and damage in the sum of USD 835,000, plus statutory interest.

48. The alternative way the case is now put appears at para 14:

> "14. In any event, the Defendant…placed the Fraudster in a position which carried with it usual authority to negotiate and execute the SPAs on the Defendant's behalf, and consequently that person has apparent even if not actual authority to do so."

49. Paras 15 – 17 refer to the fraudster sending the draft SPAs to the claimant on 12 August 2024 "executed, or appearing to be executed, by Mr Gofshteyn", and the claimant returning them executed on 13 August 2024. It is said that the executed SPAs provided for payment to the defendant at an account at the Vietcombank, Vietnam, as did the invoices dated 13 August 2024, and that the claimant duly paid the purchase price to the nominated accounts. Para 17 contends, "In the premises, the payment was duly made pursuant to the SPAs between the Claimant and the Defendant".

50. In other words, the claimant's alternative contention is that a binding agreement was reached between the claimant and the defendant in the form of the SPAs that the claimant signed and returned on 13 August 2024, as the fraudster was acting with the apparent authority of the defendant; and that, accordingly, the defendant is in breach of the agreement in not supplying the engines after the agreed payment was made.

51. I have referred to the pleaded relief at para 34 above.

The original Particulars of Claim

52. In light of the defendant's application for indemnity costs, it is also necessary to refer to the way that the claim was originally pleaded. It included the following paragraphs, which are deleted in the draft APC:

> "9. Prior to disclosure and inspection, the Claimant is unable to state with certainty whether the emails sent to and received from [the fake email address for Mr Gofshteyn] were communications with Mr Gofshteyn, with another individual employed by the Defendant, or with an outside fraudster. Nor is the Claimant able to state with certainty how, if it was an outside fraudster, that person obtained copies of email correspondence between the Claimant and the Defendant.
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> ……
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> 11. The following matters suggest that the Defendant was complicit in the fraud:
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> (1) On 29th July 2026 at 8.05am, (Montreal time) the Fraudster provided the Claimant with an email, apparently timed at 02.16, from Mr Gofshteyn's

> correct email address, in which Mr Gofshteyn asked the price the Claimants were prepared to offer for ESN EB00028 in its current condition. The email was apparently copied to the Fraudster.
>
> (2) After that email, email communications by the Claimant relating to the purchase of the engines were only with the Fraudster using the [fake Siam Aero email address]. If the Defendant was not aware of the communications with the Fraudster it is very odd that it did not continue communicating with the Claimant by email so as to finalise the purchase;
>
> (3) In particular, the Defendant needed to provide the Claimant with an executed revised SPA for ESN EB00028 with the amended price, to receive the Claimant's Purchase Orders and to provide the Claimant with invoices. However, there was no email communication from the Defendant on any of these matters. Communication was only with the Fraudster;
>
> (4) The Fraudster appears to have known the following facts about the engines, known only to the Defendant and which could not have been found just by accessing the Defendant's email correspondence with the Claimant…[A number of matters relating to the negotiations were then listed.]
>
> …….
>
> 13. If the Fraudster was not an employee or agent of the Defendant, the Claimant is unable to say prior to disclosure and inspection, how the Fraudster gained access to the Defendant's email files and, in particular, whether the Defendant, or one of its employees, passed details of its email correspondence to the Fraudster."

53. Para 19 pleaded that the defendant owed a duty, as an implied term of the LOI or in tort, to take reasonable precautions for the security of its computer and email systems and that, negligently and/or in breach of duty, the defendant had failed to do so.

The legal framework

Striking out and summary judgment

54. CPR 3.4(1) states that for the purposes of this rule, reference to a statement of case includes reference to part of a statement of case. CPR 3.4(2) provides:

> "(2) The court may strike out a statement of case if it appears to the court-

> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
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> (c) that there has been a failure to comply with a rule, practice direction or court order."

55. When the court strikes out a statement of case, it may make any consequential order it consider appropriate (CPR 3.4(3)).

56. CPR 24.2 provides that the Court may give summary judgment against a claimant on the whole of a claim or on a particular issue if "the claimant has no real prospect of succeeding on the claim or issue" and there is "no other compelling reason" why the case should be disposed of at trial.

57. When applications are made to strike out Particulars of Claim pursuant to CPR 3.4(2)(a) as disclosing "no reasonable grounds" for bringing the claim and, in the alternative, for summary judgment in the defendant's favour, there is no difference between the tests to be applied by the Court under the two rules: *Begum v Maran (UK) Limited* [2021] EWCA Civ 326 ("*Begum*") per Coulson LJ at paras 20 – 21. In para 22(a), he described the applicable test as follows:

> "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. A realistic claim is one that carries some degree of conviction: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472. But that should not be carried too far: in essence, the court is determining whether or not the claim is 'bound to fail': *Altimo Holdings v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1804 at [80] and [82]."

58. As the factual basis on which I am asked to proceed is essentially agreed, it is unnecessary for me to refer to the well known guidance in *Easyair Ltd v Opal Telecom* [2009] EWHC 339 (Ch), as to the extent to which the court may make an assessment of the factual allegations when considering an application for summary judgment.

59. The onus lies on the defendant to establish that this test is made out.

60. Where a statement of case is found to be defective, the Court should consider whether the defect might be cured by amendment and, if it might be, the Court should give the party concerned an opportunity to amend: White Book 2025, para 3.4.2 citing *In Soo Kim v Young* [2011] EWHC 1781 (QB).

Apparent authority

61. In *The Law Debenture Trust Corpn plc v Ukraine* [2023] UKSC 11, [2024] AC 411, after noting that the authority of an agent may be actual or apparent, the joint judgment

of Lord Reed PSC, Lord Lloyd-Jones and Lord Kitchin JJSC, explained the principles of apparent authority as follows:

> "39. Apparent or ostensible authority…describes a relationship between the principal and a contractor which arises from a representation made by the principal to the contractor that an agent has authority to enter on behalf of the principal into a contract within the scope of that apparent authority. The representation, if acted upon by the contractor, by entering into a contract with the agent, creates an estoppel, preventing the principal from asserting that he is not bound by the obligations which the contract imposes on him: *Freeman & Lockyer*, at p 503 per Diplock LJ [*Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd and Another* [1964] 2 QB 480]. For the estoppel to operate the representation must be one upon which the contractor could and did reasonably rely. The doctrine protects a contractor who is entitled to assume that the person with whom he is dealing has the authority which he appears to have. But the principle cannot be relied upon by a contractor who is put on inquiry, by which we mean that the contractor fails to make the inquires that a reasonable person would have made in all the circumstances to verify that the person with whom he is dealing does indeed have authority..
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> 40. The representation which forms the basis for ostensible authority may be made by conduct. In *Armagas Ltd v Mundogas SA (The Ocean Frost)* [1986] AC 17, Robert Goff LJ put it this way at p 731D-E:
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> 'The representation which creates ostensible authority may take a variety of forms; but the most common is a representation by conduct, by permitting the agent to act in some way in the conduct of the principal's business with other persons, and thereby representing that the agent has the authority which an agent so acting in the conduct of his principal's business usually has.'
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> ……
>
> 42. The expression 'usual authority' is generally used to refer to the authority of a person, the agent, to enter into transactions of a type that are ordinarily undertaken by a person appointed to a particular position…"

62. Both counsel referred me to the articulation of the principles of apparent authority set out in *Bowstead and Reynolds on Agency* (23rd edition), paras 8-009 – 8-022. I have considered this text in full, but I will set out the passages upon which the parties placed particular reliance.

63. Article 72, Apparent (or Ostensible) Authority is stated in the following terms:

> "Where a person, P, by words or conduct, represents or permits it to be represented that another person, A, has authority to act on P's behalf, P is bound by the acts of A with respect to anyone dealing with A as an agent on the faith of any such representation, to the same extent as if A had the authority that A was represented to have, even though A had no such actual authority."

64. The text that follows (reproduced without the footnotes) includes the following regarding the requirement that the principal represents by words or conduct that another person has authority to act on its behalf:

> "8-013…There must be a representation…This seems to occur in three main ways. It may be express (whether orally or in writing); implied from a course of dealing; or it may be made 'by permitting the agent to act in some way in the conduct of the principal's business with another person'…The weight of authority supports a course of dealing being sufficient to create apparent authority, at least where it can be inferred that the principal must have become aware of the earlier transactions and the transactions are of a consistent type. But the position will be different where it is no part of the agent's role to be representing anything on behalf of the principal, such as whether the agent is a mere conduit or messenger…
>
> 8-014…If the doctrine is based on the idea of representation, it may be suggested that the cases be divided into two types. First…cases where there is something that can be said to be something like a genuine representation…<u>Secondly, cases where the representation is only of a very general nature, and arises from the principal's putting the agent in a specific position carrying with it usual authority</u>, e.g placing the agent in a certain physical position on the principal's business premises, or making the agent a partner or managing director or using the services of a professional agent, viz. someone whose occupation normally gives an agent a usual authority to do things of a certain type, e.g. a solicitor… " (Emphasis added.)

65. Mr Page's argument is based on the second form of representation, as explained in the text I have underlined.

66. Mr Page emphasised that the text goes on to say at para 8-015 that the observations of Diplock LJ (as he then was) in *Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd and Another*, appearing to require the representation to be deliberate and intended to be acted on, are too narrow.

67. Ms Colter emphasises the principle referred to at para 8-019, where *Armagas Ltd v Mundogas SA (The Ocean Frost)* is cited (amongst other cases), that the appearance of authority must emanate from the principal; an agent cannot ordinarily self-authorise. The text continues:

> "The position may be different where the principal has in some way instigated or permitted an agent to appear to have authority of the scope in question…But it may be sufficient if the principal has conferred a general authority of the precise type in question on the agent, which the principal is aware the agent is regularly exercising, and there is nothing to indicate to the third party that the transaction in question was other than routine."

68. Ms Colter also placed reliance on the following passage at para 8-022 headed "No estoppel through simple negligence":

> "It is plain that if the third party does not know of the existence of any principal there cannot be apparent authority, as when the agent purports to deal as principal. A representation that does not come to the notice of the third party is no representation. The mere fact that the principal enables the agent to commit fraud by putting the agent in a position where the agent can do so is not, without more decisive. The common law has avoided, so far at least, a concept of estoppel by negligence…"

Pleading an allegation of fraud

69. As this aspect is now only relevant to the question of indemnity costs, rather than to the strike out, I will address the key principles briefly. They were fully reviewed in the recent judgment of Newey LJ (Coulson and Phillips LJJ agreeing) in *Persons Identified in Schedule 1 to the Re-amended Particulars of Claim v Standard Chartered plc* [2024] EWCA Civ 674, [2024] 1 WLR 4589 at paras 23 – 34. As Newey LJ said at para 30, Arnold LJ summarised the principles governing the pleading of dishonesty in *Sofer v Swiss Independent Trustees SA* (2020 24 ITELR 160 at para 23. His summary included:

> "(i) Fraud or dishonesty must be specifically alleged and sufficiently particularised and will not be sufficiently particularised if the facts alleged are consistent with innocence: *Three Rivers DC v Bank of England (No 3)* [2003] 2 AC 1.
>
> (ii) Dishonesty can be inferred from the primary facts, provided that those primary facts are themselves pleaded. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be pleaded: *Three Rivers* at para 186 (Lord Millett).
>
> (iii) The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded,

> an inference of dishonesty is more likely than one of innocence or negligence…"

Indemnity costs

70. CPR 44.3(1) provides that where the court is to assess the amount of costs (whether by summary or detailed assessment), it will assess the costs on the standard basis or the indemnity basis.

71. Counsel did not cite any specific authorities on the court's power to award indemnity costs, but the general principles are well known. The making of a costs order on an indemnity basis will be appropriate in circumstances where the conduct of the parties or other particular circumstances of the case, or both, are such as to take the situation "out of the norm" per Lord Wolf LCJ at para 31 and Waller LJ at para 39 in *Excelsior Commercial and Industrial Holdings Ltd* [2002] EWCA Civ 879. In *Esure Services Ltd v Quarcoo* [2009] EWCA Civ 595, Waller LJ indicated that this reference to "out of the norm" was intended to reflect "something outside the ordinary and reasonable conduct of proceedings" (para 25).

The defendant's submissions

Alleged breach of the Confidentiality Clause

72. Ms Colter submitted that the pleaded allegations at para 12A of the draft APC did not have any real prospect of amounting to a breach of the Confidentiality Clause. Broadly, her contentions can be grouped into three themes.

73. Firstly, that the claimant's pleading did not identify material that was capable of amounting to information or documentation that was within the scope of the clause. She contended that the obligation at (c) not to "disclose such information and documentation to any third party" (emphasis added) referred to the information described at (a), namely "commercially sensitive information", which she said was "the target" of the clause. The four emails from Mr Gofshteyn relied on at para 12A of the draft APC did not contain commercially sensitive information. The list of LRUs (minus the more recently added items) had already been attached to the LOI and there had been earlier communications about the SPAs, so this was already "out there" prior to the para 12A emails. Further, Mr Gofshteyn's email sent at 02:16 hours on 29 July 2024 to the proper recipients would already have provided the fraudster with information relating to the LRUs and the SPAs, when he accessed the message by unknown means. The invoices relied on at para 12A (3) and the information relating to the previous owner of the engine, relied on at 12A (4), could not conceivably amount to commercially sensitive information.

74. Ms Colter also submitted that the Confidentiality Clause imposed an obligation not to reveal commercially sensitive information provided by the other party; it did not prohibit a party from revealing its own information; and the claimant had not alleged that the defendant had disclosed Logix's commercially sensitive information.

75. Secondly, Ms Colter disputed that any information covered by the Confidentiality Clause had been "disclosed" by the defendant. She said the four emails identified at para 12A of the draft APC had been taken out of context. In fact, both parties

unwittingly provided information to the fraudster during the course of the email communications, for example Ms Kamchun emailed the purchase orders to the fraudster (para 24 above); and the fraudster utilised the wording of Logix's emails to accomplish the fraud. The fraud only worked because both parties were sending material to the fraudster, which the fraudster was then manipulating and feeding to the other party.

76. Thirdly, Ms Colter argued that, in any event, any breach of the Confidentiality Clause by the defendant was plainly not the cause of the claimant's loss. On her analysis of the Confidentiality Clause, the only conceivable information that could come within it related to the LRUs and it could not be said that the fraudster's access to that information was the reason why he was able to carry out the fraud. Alternatively, if the claimant's much broader interpretation of the Confidentiality Clause was correct, then every email communication which *both* the claimant and the defendant sent to the fraudster amounted to a breach of that clause and it could not be shown that it was the defendant's conduct pleaded at para 12A that had caused the claimant's loss; for example, the first email to the fraudster was sent by Mr Krys of Logix (on 30 July 2024) and the fraudster needed the SPAs signed and sent by the claimant for the fraud to work. The flow of data to the fraudster came from both parties and put simply, the cause of the claimant's loss was the fraudster's deception of both parties.

Apparent authority

77. Ms Colter submitted that the claimant's alternative case on apparent authority was unsustainable. This claim was predicated on there being a valid execution of the SPAs, when in fact there were no executed SPAs as a result of the fraud; the defendant had signed a different document to the one signed by the claimant. Further, Siam Aero did not in any way represent to the claimant that the fraudster was acting on its behalf; any representation came from the fraudster himself, rather than the defendant, who was also taken in by the fraudster. The fraud had occurred without fault on the part of the defendant.

78. More fundamentally, said Ms Colter, there was no relationship between claimant, defendant and fraudster that fitted within the apparent agency paradigm. Neither the claimant nor the defendant knew of the fraudster's existence; they both thought that they were dealing with each other, rather than the claimant believing it was dealing with an agent who was acting on the defendant's behalf.

Abuse of process

79. Ms Colter faintly kept alive the alternative ground for striking out the claim, namely that the pleading was an abuse of process. She characterised the abuse as instituting and pursuing a profoundly unmeritorious claim in an attempt to keep alive the claim for interim relief in France.

Indemnity costs

80. Ms Colter relied primarily on the proposition that the claimant's originally pleaded case contained an allegation of fraud, emphasising, in particular, the contents of para 11 (para 52 above). She contended that there was no proper evidential basis to support an allegation of fraud and that the pleading of this was vague, incoherent and improper. In

the alternative, she submitted that if the Court took the view that the pleading did not amount to an allegation of fraud, the references to fraud or potential complicity in the fraud, which have subsequently been withdrawn, were in any event groundless and should never have been included. This was not a case where new evidence had subsequently emerged, prompting a legitimate change of position by the claimant. The claimant knew more than Mr Page had suggested it did before it issued proceedings, in light of the WhatsApp conversations in the aftermath of the fraud (para 32 above); and the defendant had attempted to adopt a co-operative approach with the claimant (para 36 above).

The claimant's submissions

Alleged breach of the Confidentiality Clause

81. Mr Page took issue with Ms Colter's construction of the Confidentiality Clause. He submitted that the reference to "information and documentation" in (c) should be read as deliberately mirroring that wording in (b), so that the reference to "such information and documentation" in (c), was to information and documentation "provided hereunder", that is to say pursuant to the LOI, which, the parties agreed, were provided "on a strictly confidential basis".

82. Mr Page emphasised that the Confidentiality Clause extended to inadvertent as well as to deliberate or careless disclosures. He said it was no defence for the defendant to say that the claimant was doing it too. It was quite unrealistic to say that the confidentiality obligation only covered information and documentation provided by the other party; the breach of confidentiality could be just as damaging whichever party published the material.

83. Mr Page disputed Ms Colter's suggestion that the correspondence passing between the claimant and the defendant prior to 29 July 2024 in relation to the SPAs and the LOI was "out there" in the sense of being available to the fraudster; there was no evidence that the fraudster had access to the earlier communications before Mr Gofshteyn's email of 02:16 hours on 29 July 2024.

84. Mr Page accepted that on his interpretation of the Confidentiality Clause, it may be that both parties acted in breach of the clause in sending confidential information to the fraudster, but this only mattered if the information sent by Logix had broken the chain of causation from Siam Aero's breach, which was not the defendant's argument. The information and/or materials that were key to the fraudster obtaining the payment from Logix were the invoices and the SPAs signed by the defendant and these were disclosed to the fraudster by Mr Gofshteyn. By contrast, the purchase orders were not sought by the defendant and their provision by the claimant was not a vital part of the chain of events.

85. Mr Page submitted that the position was analogous to the House of Lords' decision in *London Joint Stock Bank Limited v Macmillan and Arthur* [1918] AC 777, which showed that the interposition of an act of forgery does not prevent the loss being attributable to the party who provided the fraudster with the opportunity to undertake the fraud. Issues regarding foreseeability of loss and remoteness and/or whether there was a break in the chain of causation were for the trial judge to assess having heard the evidence.

Apparent authority

86. Mr Page submitted that the actions of Siam Aero allowed it to appear to Logix that the fraudster had been entrusted with the conduct of the negotiations; consistent with the Confidentiality Clause, it would have appeared that the person communicating with them could only have been given the information and the documentation relied upon with the defendant's authority. He said that a company can only act through its agents and the claimant thought they were dealing with an authorised agent when they communicated with the fraudster. There was no authority precluding the application of the apparent authority principles simply because the claimant thought it was dealing with the same person from the defendant company both before and after the 29 July 2024 email; and to the extent that the circumstances were not covered by existing authority, this only underscored that the claim was inappropriate for determination on a strike out.

Indemnity costs

87. Mr Page denied that fraud was alleged in the original pleading of the claim. He said that at the time of its drafting, the claimant's view (having taken legal advice) was that there were grounds for suspicion that the defendant, or one its employees, was involved in the fraud, but that the material then known was insufficient for a plea of fraud. Mr Page said that in order to ensure the defendant was aware of the claimant's full position, the pleading set out the reasons for these suspicions. It was thought right for the claimant to lay its cards on the table and that if the Court thought that this was a mistaken approach, it was an honest one and not a situation for costs to be ordered on the indemnity basis.

88. Mr Page also emphasised the context. There was a time pressure to issue proceedings before the expiry of the deadline imposed by the French courts. The claimant gave the defendant all the notice of the proceedings that it reasonably could in the circumstances. He said that at the time when this claim was issued the claimant only had: (a) its own communications from the fraudster, which included detailed technical information which could only have come from the defendant; (b) the Kroll Report confirming that the claimant's email system had not been hacked; and (c) the Defendant's insistence that the account details were incorrect and that it had not sent the emails emanating from the "siam-aero.co" address. Furthermore, it was only on 17 December 2024 that the defendant provided the claimant with its own correspondence with the fraudster, which thereby explained how the fraudster had obtained the detailed technical information. Equally, it was only on 17 December 2024 that the defendant provided the Secretariat Report, which indicated that its system had not been compromised. Mr Page contended that it was unreasonable for the defendant not to have provided this material prior to 17 December 2024, especially as it then demanded the claimant give a commitment to discontinue as soon as 20 December 2024.

Analysis and conclusions

Apparent authority

89. As I have explained at para 50 above, the claimant's contention that a binding agreement was reached for sale and purchase of the engines (which the defendant subsequently reneged on) is dependent upon the proposition that the fraudster acted with the defendant's apparent authority. For the reasons I indicate below, I conclude that this contention has no realistic prospect of success. The claimant's contention does not involve a novel proposition of law that is better assessed on the facts found at trial; an application of the conventional, established principles indicates that this claim is bound to fail.

90. I accord full allowance for the various ways in which a representation can be conveyed by the principal to the contractor, as to the authority of the person in question to act as its agent, including permitting the agent to act in some way in the conduct of the principal's business (paras 61 – 66 above). However, in the present instance, even taking the claimant's pleaded case at its highest, no representation was made by the defendant, by words or by conduct, that another (the fraudster) was authorised to act on its behalf in the negotiations with the claimant. Nor is there any pleaded allegation (or supporting evidence) that the claimant ever believed this to be the case.

91. As the claimant's own pleaded case alleges (at para 45 above), the fraudster set up fake email accounts "pretending to be the claimant" and "pretending to be the defendant"; and it is evident that at all material times the claimant believed it was communicating with the defendant. There is no suggestion of third party involvement, either permitted by the defendant, or understood to be present by the claimant. As to the former, the defendant did not know of the alleged agent's existence or of any of the actions that the fraudster was taking and nor is it suggested that there was anything that should have alerted the defendant to this. As I noted earlier, enabling an agent to commit fraud does not of itself found an instance of apparent authority, even if negligence was involved (para 68 above); and negligence is not even alleged here. Similarly, it is also quite clear that an alleged agent cannot self-authorise (para 67 above).

92. Furthermore, each of the emails the claimant received during the relevant period were signed as coming from Michael Gofshteyn, both the genuine communications and the ones sent by the fraudster; there was nothing in the messages to suggest a change of circumstances, with a further person becoming involved who was acting on behalf of the defendant. This is illustrated by the two emails sent on 29 July 2024 (paras 15 – 16 above), a matter of hours apart. The texts of both the email that genuinely came from Mr Gofshteyn and the email sent shortly thereafter by the fraudster concluded, "Warm regards, Michael Gofshteyn", and then under the name, appeared his role within the defendant ("Assets Sales & Acquisition Department"), his contact details and the defendant's logo and address. The claimant had no impression at all that a new person, acting with the authority of the defendant, had become involved in the negotiations; the claimant simply believed that the fraudster was the defendant.

93. I accept Ms Colter's submission that it is apparent from existing principles that the concept of apparent authority has no application to the present circumstances where both parties thought they were dealing with each other, rather than either party believing that an agent was involved on the defendant's behalf. I bear in mind Mr Page's point

that a company can only act through its agents; but this does not alter the fact that the defendant did not know that anyone other than its own personnel were involved and the claimant believed it was dealing with the same Mr Gofshteyn throughout.

Breach of the Confidentiality Clause

94. I consider that there are at least two arguable interpretations of the Confidentiality Clause. I agree that "information and documentation" in (c) of the clause must bear the same meaning as "information and documentation" in (b). However, that in itself does not resolve the parties' dispute.

95. On one view, the information and documentation the parties agreed to "maintain" on a "strictly confidential basis" pursuant to (b), is the "commercially sensitive information" referred to (a); and, in turn, it is also that commercially sensitive information the parties agreed not to disclose at (c). However, even if that is the correct interpretation, it does not provide a knock-out blow to the claimant's case. I agree that it is very hard to see how the invoices sent by Mr Gofshteyn to the fraudster (sub-para (3) of para 12A) or the information about the previous owner (sub-para (4) of para 12A) could come within that interpretation of the clause. On the other hand, and at least if this was pleaded more specifically, it is conceivable that certain aspects of the SPAs and the LRUs which were emailed by Mr Gofshteyn to the fraudster, could amount to commercially sensitive information. I do not see any basis for Ms Colter's suggestion that this information was already "out there" in the sense of available to the fraudster. There is no indication that the fraudster had access to the parties' communications pre-dating the 29 July 2024 email from Mr Gofshteyn and this message only contained material relating to the recently identified additional LRUs, not to the contents of the draft SPAs or to the other LRUs.

96. In any event, I do not consider that Mr Page's interpretation of the Confidentiality Clause is unarguable. It may be less likely, as if correct, it would (apart from matters within the stated exceptions) embrace the vast majority, if not the entirety, of the parties' communications following the signing of the LOI. But it is right to note that (b) refers to "any information and documentation provided hereunder", which is arguably a reference to anything that can fairly be described as information or documentation provided by a party in pursuance of the terms of the LOI. Furthermore, the phrase is not qualified, as it could have been, by expressly limiting (b) to any "such" information, which would have explicitly confined its meaning to the commercially sensitive information referred to at (a).

97. Accordingly, I approach my evaluation of the Confidentiality Clause claim on the basis that both parties' interpretations of the clause are arguable and without determining which interpretation should prevail (which would be a matter for trial, if the claim were otherwise arguable). I mention for completeness, that I reject Ms Colter's suggestion that the clause only prohibits the disclosure of commercially sensitive information <u>that relates to the other party</u>; quite simply, that is not what the clause says.

98. Nonetheless, I do consider that the pleaded claim is highly artificial and has no realistic prospect of success. It is advanced on the pleaded basis that the four emails identified in para 12A of the draft APC "enabled the Fraudster" to send the stated material on to the claimant, in the first three instances with the fraudster's bank details substituted for those of the defendant. In turn, it is alleged that these breaches of the Confidentiality

Clause were the cause of the claimant losing the purchase monies which it paid to the fraudster (para 46 above). However, this ignores the reality of how the fraud was carried out.

99. The matters set out at para 12A are just a part of the relevant steps that enabled the fraud to take place. The events also involved (by way of non-exhaustive example):

i) The first email sent by one of the parties to the fraudster was the email from Mr Krys of the claimant on 30 July 2024 (para 17 above). To use the claimant's terminology in the pleading, this email enabled the fraudster to then communicate with the defendant under the guise of purporting to be Mr Krys' of Logix and to move the negotiations forwards towards the point where payment would be made, by using the text of Mr Krys' email. In turn, this led to the defendant sending the draft SPAs to the fraudster;

ii) Similarly, Mr Lewsley's email to the fraudster of 8 August 2024 (para 22 above), enabled the fraudster to then communicate with the defendant under the guise of purporting to be Mr Lewsley and to move the negotiations forwards by using Mr Lewsley's text requesting the signed SPAs. In turn, this led to the defendant sending the signed SPAs (which were then manipulated) to the fraudster;

iii) Ms Kamchun's email to the fraudster of 12 August 2024 (para 24 above), enabled the fraudster to then communicate with the defendant under the guise of purporting to be Ms Kamchun and to move the negotiations forwards by seeking the identified correction of the details in the draft SPAs regarding the claimant's name and by supplying the purchase orders which the defendant had requested (para 23 above). In turn, this led to the defendant sending the invoices (which were then manipulated) to the fraudster;

iv) Ms Kamchun's email to the fraudster of 13 August 2024 (para 26 above) provided the fraudster with the signed, doctored versions of the SPAs and thus moved the fraud forwards to the point where the claimant was ready to pay the purchase monies (believing they had sent the signed agreements to the defendant). Furthermore, the fraudster was able to use the doctored SPAs signed by the claimant to provide signed SPAs using the original text of the documents to the defendant, so that it was given the impression that all was in order and the agreement had been signed; and

v) Ms Kamchun's email to the fraudster of 14 August 2024 (para 29 above) asking Mr Gofshteyn to get the engines registered, enabled the fraudster to communicate with the defendant to move that aspect of the process forwards, leading to the defendant's email to the fraudster regarding the registration information.

100. Accordingly, on the accepted facts, this was a situation where both parties unwittingly enabled the fraud to take place by the communications they provided to the fraudster. As Ms Colter submitted, the fraud only worked because both parties were sending material to the fraudster, who was then able to manipulate this material and feed it to the other party.

101. As Mr Page submits, on the wording of the Confidentiality Clause, a disclosure does not have to be intentional or deliberate. Accordingly, on Mr Page's broad interpretation of the scope of the clause, it may be that each communication with the fraudster was a "disclosure". There is also a counter argument that these particular circumstances fall outside the intended operation of the clause where the communication with the fraudster was not only unwitting, but each of the parties positively believed that they were communicating with the other party. I cannot say at this stage that Ms Colter's contention that the situation is incapable of coming within the meaning of "disclose" is bound to prevail.

102. However, I do consider, in light of the circumstances I have referred to at paras 98 – 100 above, that the pleaded claim is bound to fail on causation. I remind myself that this is a situation in which it is not alleged that the defendant let the fraudster into the email communications, or that the defendant was at fault or that the defendant otherwise created the conditions in which the fraud was operated.

103. I first address causation on the basis of the claimant's wide interpretation of the Confidentiality Clause. On this basis, all, or virtually all, of the communications with the fraudster involved sending information or documents that fell within the scope of the clause. As I have explained at paras 98 – 100 above, the fraudster needed the communications from the defendant and the communications from the claimant for the fraud to work and both parties' emails assisted the fraudster in moving the fraudulent scheme to its completion. In these circumstances, it is unsustainable and wholly artificial to claim that it was the defendant's four emails identified at para 12A that caused the claimant's loss. Plainly, the claimant's loss was caused by the fraudster.

104. The *London Joint Stock Bank Limited* case relied upon by Mr Page does not assist him. The reasoning of Lord Finlay LC, who gave the leading speech, emphasises that their Lordships' conclusion was specific to the circumstances before them, rather than it being authority for the alleged general principle that Mr Page asserted, namely that the interposition of an act of forgery does not prevent the loss being attributable to the party who provided the fraudster with the opportunity to undertake the fraud.

105. In *London Joint Stock Bank Limited,* a firm who were customers of a bank entrusted a clerk with the presentation of the firm's cheques to the bank. One of the partners of the firm signed a cheque provided to him by the clerk drawn in favour of the firm. At that stage, no sum in words was written on the cheque and there were gaps around the space where a figure had been entered. The clerk subsequently added a sum in words to the cheque and additional figures, which increased the amount to be paid. He cashed the cheque at the bank intending to retain the balance over and above the sum that the signatory had intended. The House of Lords held that the firm had been guilty of a breach of the special duty arising from the relation of banker and customer to take care in the mode of drawing the cheque, that the alteration in the amount of the cheque was the direct result of that breach of duty and thus the firm was responsible to the bank for any loss sustained (p. 789).

106. There are at least three points of material distinction from the present case. Firstly, the decision was a fact sensitive one, in circumstances where the forgery was "not a remote but a very natural consequence of" the firm's actions, so that, despite the crime, the loss was "the natural consequence of the carelessness" (ps. 790 and 794). This is easy to see when a cheque is left blank by the signatory, when it is signed. Secondly, the firm was

plainly at fault – negligent – in circumstances where it was undisputed that the firm owed a duty of care to the banker (who suffered the loss) in relation to the drawing of the cheque (ps 789, 793 and 804). There is no equivalent in the present situation. Thirdly, Lord Finlay made clear that his reasoning, consistent with the earlier authorities, did not apply beyond the specific instance of negligence in the immediate transaction of the cheque itself, as opposed to, for example a situation where the negligence lay in the firm employing the clerk without sufficient inquiry (ps 795, 799 – 800). As Lord Finlay was at pains to indicate, the latter situation would not render the firm liable to the bank for the clerk's forgery. Accordingly, the decision is not in fact authority for the broader principle that Mr Page seeks to derive from it.

107. Alternatively, if the Confidentiality Clause is narrowly interpreted so that, at best, only some of the contents of the SPAs and the LRUs list supplied by the defendant are caught by its prohibition (para 95 above), then it would be even more difficult for the claimant to show that the potential breaches in question were the cause of its loss.

108. It therefore follows that both of the pleaded claims have no realistic prospect of success and are bound to fail.

Abuse of process

109. In light of my conclusion that the pleaded claims are bound to fail, there is no need for me to determine the alternative basis upon which the strike out application is made. I simply note that there is no clear evidence that the claimant acted in bad faith in the way it issued and conducted the proceedings.

Indemnity costs

110. The claimant's original pleading did not meet the strict requirements for pleading fraud (para 69 above). Neither party suggests that it did. However, the fact that the pleading was somewhat equivocal on the question of whether the defendant had committed fraud, does not mean that it was unobjectionable. One of the purposes of the strict requirements for the pleading of fraud (in addition to the other party being able to clearly understand the case against it, when this is asserted), is because something this serious should not be alleged lightly or without a sufficient evidential foundation. In my judgment, it was wholly inappropriate for the claimant to raise the possibility that the defendant was involved in the fraud at para 9 of the pleading and to list a series of matters at para 11 that were said to "suggest that the Defendant was complicit in the fraud", in circumstances where, as Mr Page accepts, there was insufficient material to warrant a fully pleaded case of fraud. A statement of case is a document which members of the public can generally obtain from the court records pursuant to CPR 5.4C(1).

111. Furthermore, the matters that were said to be suggestive of fraud are, on examination, insubstantial. There was no evidence that the defendant had copied the email sent at 02:16 hours on 29 July 2024 to the fraudster, contrary to the suggestion or implication at para 11(1) of the original pleading. Far from it being "very odd" that the defendant did not continue communicating with the claimant so as to finalise the purchase, as stated at para 11(2); the fraudster's deception led Mr Gofshteyn to believe that he was still communicating with the claimant, as he had already explained to Mr Krys before the pleading was prepared during the WhatsApp conversations after the fraud was discovered (para 32 above). Furthermore, information was not "known only to the

Defendant" as alleged at para 11(4); it had been sent unwittingly to the fraudster, as Mr Gofshteyn had also explained during the WhatsApp communications.

112. I accept the explanation that Mr Page provided as to the thinking at the time (para 87 above). However, the existence of bad faith is not a pre-requisite for costs to be awarded on the indemnity basis.

113. I do not consider that any of the points relied upon by Mr Page, justify or adequately explain the course that the claimant took. In his oral submissions, Mr Page accepted that the orders of the French courts did not require references to fraud to be included in the Particulars of Claim. Accordingly, the tight one month deadline for issuing the proceedings imposed by the French courts does not justify or even explain why the case was pleaded in the way that it was. Moreover, the position is compounded by the fact that this was done in circumstances where no letter before claim was sent, giving the defendant an opportunity to rebut the suggestions of fraud and nor was the defendant asked to provide the emails it held before the proceedings were issued (paras 35 and 36 above). I also note that, if there was insufficient time to do it beforehand, after issuing the Claim Form (to meet the requirements of the French courts), the claimant could have sought an explanation and documentation from the defendant before serving the Claim Form and then preparing and serving the Particulars of Claim. CPR 7.4(1) requires the Particulars of Claim to be served within 14 days of service of the Claim Form. When I put this point to Mr Page, he frankly admitted it had not been thought of at the time.

114. In these circumstances, the fact that the defendant did not provide a detailed explanation and supporting documentation until 17 December 2024 is of no direct materiality; the claimant had already "jumped the gun", pleading the claim in the inappropriate way I have identified, before seeking information from the defendant for the first time on 25 October 2024 (para 37 above).

115. For these reasons, I am quite satisfied that the way the claim was originally pleaded in the Particulars of Claim was highly inappropriate and that the explanations which have been advanced do not provide any justification for this. The course that was taken was indeed outside the ordinary and reasonable conduct of proceedings and I award the defendant its costs on an indemnity basis.

Outcome

116. For the reasons set out at paras 89 – 108 above, I consider that the pleaded claim is bound to fail and should be struck out. There is no prospect of the position being remedied by giving the claimant the opportunity a further opportunity to amend.

117. For the reasons identified at paras 110 – 115 above, I award the defendant its costs on an indemnity basis in relation to the originally pleaded Particulars of Claim.

118. The parties will have an opportunity to address consequential matters, including other costs issues by way of written submissions.