Neutral Citation Number: [2026] EWCA Civ 510

Case No: CA-2025-001367

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
Mrs Justice Heather Williams DBE
[2025] EWHC 1283 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/04/2026

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE PHILLIPS
and
LADY JUSTICE COCKERILL

- -

Between :

LOGIX AERO IRELAND LIMITED	**Appellant**
- and –	
SIAM AERO REPAIR COMPANY LIMITED	**Respondent**

- -
- -

Hugo Page KC (instructed by **Watling & Co.**) for the **Appellant**
Lucy Colter KC (instructed by **Peters & Peters Solicitors LLP**) for the **Respondent**

Hearing date: 5 February 2026

- -

Approved Judgment

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

.....

Lord Justice Phillips:

1. These proceedings arose from an email interception fraud of a type now all too common. Unknown fraudsters managed to insert themselves in the middle of email correspondence between the appellant ("Logix") and the respondent ("Siam Aero") as those parties were finalising Logix's purchase of two aircraft engines from Siam Aero. The fraudsters eventually procured that Logix paid the purchase price of US$824,900 to a bank account under their control in Vietnam rather than to Siam Aero's account in Thailand. Needless to say, the funds had left the fraudsters' account before the fraud was discovered.

2. In these proceedings Logix sought to recover its loss from Siam Aero on a number of bases. The only claim still pursued by way of this appeal was that the loss was caused by Siam Aero's breach of a binding confidentiality clause contained in what was a predominantly non-binding Letter of Understanding signed by the parties on 4 July 2024 ("the LOI").

3. On 23 May 2025, on Siam Aero's application to strike out the Claim Form and Particulars of Claim (alternatively, for summary judgment), Heather Williams J ("the Judge") struck out the proceedings pursuant to CPR 3.4(2)(a) as disclosing no reasonable grounds for bringing the claim. In relation to the claim for damages for breach of the confidentiality clause, the Judge accepted, in her reserved judgment of the same date, that it was arguable that Siam was in breach of that clause by sending (and thereby disclosing) documents and information to the fraudsters, albeit unwittingly. However, the Judge held that it was not arguable that any such breach caused Logix's loss. Rather, that loss was caused by the fraudsters' intervening actions.

4. Logix appealed that decision with permission granted by Males LJ solely on the issue of causation. Logix's ground of appeal was that the Judge was wrong to find that the chain of causation between the arguably wrongful provision of information by Siam Aero and Logix's loss had been broken by the intervention of fraudsters. Logix asserted that, in so doing, she wrongly failed to follow and apply the decision of the House of Lords in *London Joint Stock Bank Limited v Macmillan and Arthur* [1918] AC 777.

5. Siam Aero opposed the appeal, but also sought by way of Respondent's Notice to uphold the Judge's order on various other grounds, including that it was not arguable that Siam Aero's actions had breached the confidentiality clause.

6. I would dismiss the appeal for the reasons set out below. As I understand that Peter Jackson and Cockerill LJJ agree with that decision, it is not necessary to consider the issues raised by the Respondent's Notice.

The essential facts

7. As their full names suggest, Logix is incorporated in Ireland and Siam Aero in Thailand. By the LOI, Logix and Siam Aero agreed the potential purchase by Logix and sale by Siam Aero of two specified Pratt & Whitney 127 aircraft engines ("the Engines") for a total price of US$935,000 (US$50,000 of which was payable by Logix within two days as a deposit), with delivery at the facility of Sky Aeroservices SARL ("Sky Aero") in France.

8. Section 16 of the LOI provided that it was subject to contract and created no legal obligations except for provisions as to the deposit (section 5), the costs of negotiating and closing the transaction (section 13), confidentiality (section 14) and governing law and jurisdiction of the LOI and the Purchase Agreements when executed, namely, English law and non-exclusive jurisdiction of the English courts. Those provisions were legally binding.

9. The confidentiality clause in section 15 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. On 29 July 2024 at 02.16 Michael Gofshteyn of Siam Aero emailed Remi Krys of Logix, thanking him for sending draft Purchase Agreements, stating that Siam Aero had located missing Line Replaceable Units ("LRUs") for one of the Engines, and pressing for agreement on price and finalisation of the deal.

11. At that point the fraudsters intervened, having gained access to Mr Gofshteyn's email of 29 July 2024 by unknown means; there was no evidence that either party's IT systems had been compromised, nor that either party had been responsible for the leak. At 08.05 on 29 July 2024 the fraudsters sent to Mr Krys what purported to be a follow-up email from Mr Gofshteyn, chasing a response to his earlier email, but sent from a fake Siam Aero email address using a newly registered domain name. The fake address was the same as Mr Gofshteyn's real address, save that it ended ".co" rather than ".com". False addresses were also used for other persons copied in to the email at Siam Aero and at Sky Aero, the false domain for the latter having been registered as early as 18 June 2024.

12. Logix's automated system notified Mr Krys that "You don't often get email from [the email address falsely purporting to be Mr Gofshteyn's address]", but Mr Krys did not spot the subtle change. On 31 July 2024 he replied to the fraudulent email address (copying the other fraudulent addresses). The fraudsters then sent that reply to Mr Gofshteyn, but from a fake Logix email address, slightly changed from Mr Krys' real address by use of a newly registered domain name. False addresses were also used for persons copied in at Logix and Sky Aero. Mr Gofshteyn, when receiving the email from the fraudsters, also did not notice the subtle changes.

13. From that point onwards the parties unwittingly corresponded through the fraudsters, who changed the contents of the genuine emails before sending them on. In particular:

    i) On 31 July 2024 Mr Gofshteyn emailed the fraudsters, believing he was emailing Logix, sending two draft Purchase Agreements together with a list of LRUs. The fraudsters sent the email on to Logix, but changed the bank details in the draft Purchase Agreements to their account in Vietnam.

ii) On 13 August 2024 Mr Gofshteyn sent two emails to the fraudsters, one attaching signed Purchase Agreements, the other attaching invoices, showing a lower agreed price for one of the two Engines. The fraudsters replaced Siam Aero's bank account details with the details of their own bank account in Vietnam in those documents before sending the email to Logix. Logix signed the Purchase Agreements and returned them to the fraudsters, who sent the documents on to Siam Aero after reinserting Siam Aero's bank account details.

iii) On 19 August 2024 Mr Gofshteyn sent details of the previous owner of the Engines, ownership which was not reflected in the relevant register. The fraudsters sent those details on to Logix.

14. On 21 August 2024 Logix paid the balance of the purchase price to the fraudsters' account in Vietnam, as shown on the fraudulently changed Purchase Agreements and invoices, believing it was paying Siam Aero. Logix did not take any step independent of the email correspondence to verify the bank details before making payment.

15. In the days thereafter Siam Aero informed Logix by telephone and WhatsApp that payment had not been received. The fraud was then discovered; but it was ascertained that the payment had already left the fraudsters' account.

16. Thereafter Logix obtained without notice interim relief in France, seizing the Engines. On 23 October 2024 it commenced these proceedings, claiming that it had acquired title to the Engines by paying the funds with Siam Aero's authority, and seeking delivery up. The original claim suggested complicity by Siam Aero in the fraud. That allegation was dropped following a forensic investigation of the computer systems. Logix also included a tort claim for damages for Siam Aero's alleged failure to secure its IT system. The claim for breach of the confidentiality clause was pleaded briefly and in the alternative, subsequently expanded in draft Amended Particulars of Claim which the Judge treated as the operative pleading for considering Siam Aero's application to strike out. In that draft Logix identified the four emails referred to in paragraph 13 above as wrongfully disclosing information to the fraudsters. As mentioned above, only the claim for breach of confidentiality is now pursued by Logix, accepting as it now does that Siam Aero did not receive the payment (directly or indirectly) and that there is no evidence Siam Aero was culpable in any other way in relation to the fraud.

The Judgment

17. At [57] the Judge noted that there was no difference between the test to be applied in considering an application to strike out a statement of case as disclosing no reasonable grounds and that applicable on an application by a defendant for summary judgment, citing *Begum v Marcan (UK) Limited* [2021] EWCA Civ 326 per Coulson LJ at [20]-[21]. As Coulson LJ stated at [22(a)], in essence the court is determining whether or not the claim is "bound to fail", applying *Altimo Holdings v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804 at [80] and [82].

18. The Judge held at [95]-[97] that it was arguable that the confidentiality clause prohibited the disclosure to a third party of any information or documentation provided by a party in pursuance of the terms of the LOI, including each party's own information and documents. But, even if the prohibition was limited to commercially sensitive

information, the Judge further held that it was conceivable that certain aspects of the Purchase Agreements or the LRUs might be so regarded.

19. The Judge further held at [101] that, although there was a counter argument that the particular circumstances fell outside the intended operation of the clause, it was arguable that each communication with the fraudster was a "disclosure".

20. Nevertheless, the Judge considered that the pleaded claim was highly artificial and had no realistic prospect of success. At [100], after summarising the key events, she stated:

> "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….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."

21. At [103] the Judge further stated that, even if all of the communications with the fraudsters involved breaching the confidentiality clause:

> "…the fraudster needed the communications from [Siam Aero] and the communications from [Logix] 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 [Siam Aero's] four emails identified in [para 13 above] that caused [Logix's] loss. Plainly, [Logix's] loss was caused by the fraudster."

22. The Judge then addressed Logix's argument that the present case was analogous to *Macmillan*, which Logix submitted was authority for the proposition that the interposition of an act of forgery does not prevent the loss being attributable to the party which provided the fraudsters with the opportunity to undertake the fraud. At [105] the Judge distinguished that decision, holding that it was not authority for the broad proposition for which Logix contended, but applied in the specific circumstances of a customer breaching a special duty to their bank to take care in drawing a cheque so as not to facilitate fraudulent alteration. The alteration in the amount of the cheque was the direct result of that breach and thus the customer was responsible to the bank for any loss sustained. At [106] the Judge further noted three points of distinction: in *Macmillan* the forgery was "not a remote but a very natural consequence of" the customer's actions. Second, the customer was plainly at fault when it was undisputed that the firm owed a duty of care to the bank. Third, the reasoning only applied to negligence by the customer in the immediate transaction.

The relevant legal principles

23. It was not in dispute that Siam Aero's assumed breach of the confidentiality clause would satisfy the "but for" test of factual causation, in that Logix's loss would not have occurred had Siam Aero not sent documents and information to the fraudsters: see *McGregor on Damages* 22nd ed. para. 9-148 to para. 150, stating that the element of causation in contract is usually satisfied by meeting the "but for" test. The central legal issue in the appeal was whether Siam Aero could, in principle, be held liable for

damages notwithstanding the intervention of third party fraudsters between its assumed breach of contract and the relevant loss.

(a) Breaking the chain of causation

24. The starting point, as stated in *Chitty on Contracts* 36th ed, 30-077, is that a voluntary act of a third person intervening between the breach of contract by the defendant and the loss suffered by the claimant will normally "break the chain of causation". The legal basis of that starting point is, however, far from clear, illustrated by the fact that *Chitty* addresses the effect of an intervening act of a third party as an issue of causation, whereas *McGregor* (at para. 9-209) treats it as an aspect of the law of remoteness. It appears that one or more of the following principles is engaged.

25. First, as a matter of "causation", the intervention of a third party may entail that the breach of contract is not the "effective" or "dominant" cause of the loss, but merely the opportunity or occasion for the loss and so not sounding in damages: *Galoo v Bright Grahame Murray* [1994] 1 WLR 1360 at 1374-1375. The *Galoo* limitation would seem to be an example of "legal causation" (distinct from factual or "but for" causation and separate from scope of duty and remoteness limitations) as referred to by Lord Leggatt and Lord Burrows JJSC in the tort case of *Armstead v Royal & Sun Alliance Insurance Co Ltd* [2024] UKSC 6, [2025] AC 406 at [56];

> "...[A]s a separate concept, "legal causation" refers to the question whether the defendant's breach of duty is to be regarded in law as responsible for causing the loss for which damages are claimed when a subsequent and significant factual cause combines with it to produce the loss. This question is often expressed by asking whether the new intervening cause has "broken the chain of causation" between the defendant's breach of duty and the loss.

26. Second, as a matter of "scope of duty", loss caused by the intervention of a third party may not be regarded as the type or kind of loss in respect of which the contract breaker had assumed responsibility: *Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)* [2008] UKHL 48, [2009] 1 AC 61 per Lord Hoffmann at [21] and Lord Hope at [32].

27. Third, as a matter of "remoteness", loss caused by the intervention of a third party might not be regarded as arising "in the usual course of things" as a result of the breach of contract (the "first limb" of *Hadley v Baxendale* (1854) 9 Ex. 341).

28. In *Macmillan*, none of those principles prevented a contract breaker being liable for loss caused by the breach, even though the loss was the result of the voluntary intervention of a fraudster. A partner in a firm signed a cheque (made out to the firm or to bearer) which had gaps in the amount of the cheque written in figures and no words in the space for writing the amount in words. A clerk at the firm fraudulently inserted numbers and words to increase the amount shown on the cheque from £2 to £120 and cashed the cheque at the firm's bank. The firm claimed a declaration that the bank was not authorised to debit its account with the amount of the altered cheque, but only with £2. The House of Lords rejected the claim, holding that the firm was in breach of the duty its owned to its bank to take care in drawing the cheque, the alteration of the cheque

(and the bank's loss in paying against a void bill of exchange) being the direct result of that breach.

29. Lord Finlay LC stated at p. 789:

> "As the customer and the banker are under a contractual relation in this matter, it appears obvious that in drawing a cheque the customer is bound to take usual and reasonable precautions to prevent forgery. Crime, is indeed, a very serious matter, but every one knows that crime is not uncommon. If the cheque is drawn in such a way as to facilitate or almost to invite an increase in the amount by forgery if the cheque should get into the hands of a dishonest person, forgery is not a remote but a very natural consequence of negligence of this description.

30. After considering the seminal case of *Young v Grote* (1827) 4 Bing. 253, a case on similar facts, Lord Finlay further stated at p. 794-795 as follows:

> "The duty which the customer owes to the bank is to draw the cheques with reasonable care to prevent forgery, and if, owing to neglect of this duty, forgery takes place, the customer is liable to the bank for the loss…It may be put in various ways. Sometimes it has been said that an estoppel is created, and that as the negligence of the customer enabled the clerk to alter the amount to that which the banker paid, he is estopped from disputing the authority of the banker to pay. Sometimes it has been said that the payment must be allowed in account with the bank in order to avoid circuity of action, the customer being liable to the bank for his negligence….In whichever of these ways it may be put, the ground is really one and the same - as the negligence of the customer caused the loss, he must bear it. The fact that a crime was necessary to bring about the loss does not prevent its being the natural consequence of the carelessness. If the door of a warehouse is left unlocked at night, the goods may be stolen, and if a cheque is drawn with neglect of all usual precautions to prevent falsification, the cheque may be falsified. The loss in each case is the result of the omission of ordinary and reasonable precaution…
>
> Of course the negligence must be in the transaction itself, that is, in the manner in which the cheque is drawn. It would be no defence to the banker, if the forgery had been that of a clerk of a customer, that the latter had taken the clerk into his service without sufficient inquiry as to his character. Attempts have often been made to extend the principle of *Young v. Grote* beyond the case of negligence in the immediate transaction, but they have always failed."

31. Lord Finlay proceeded to consider cases in which the grounds of the decision in *Young v. Grote* was discussed, concluding as follows at pp.810-811:

> "The ground on which *Young v Grote* proceeded was, according to the judgment of three out of the four judges, simply this, that if a customer in drawing a cheque neglects reasonable precautions against forgery

> and forgery ensues, he is liable to make good the loss to the banker, and that the fact that a crime has to intervene to cause the loss does not make it too remote. Indeed, forgery is the very thing against which the customer is bound to take reasonable precaution. Leaving blank spaces in the cheque is the commonest way in which forgery is facilitated, and to lay down as a matter of law that it is no breach of duty would be a somewhat startling conclusion…..
>
> No one can be certain of preventing forgery, but it is a very simple thing in drawing a cheque to take reasonable and ordinary precautions against forgery. If owing to the neglect of such precautions it is put into the power of any dishonest person to increase the amount by forgery, the customer must bear the loss as between himself and the banker."

32. Lord Haldane also referred to the numerous ways in which the firm's responsibility for the loss might be analysed, concluding at p. 821 as follows:

> "It was immediately due to the action of [the firm], and not to any other cause, that [the fraudulent clerk was able to make additions to the cheque], and I am of the option that in putting as much as they did within his power they took the risk of failure in the discharge of their duty to the bank of which they were customers. It follows that they cannot now recover the amount of a loss which was due to their own negligence."

33. Lord Shaw of Dunfermline stated as follows at p. 827:

> "It is no doubt true that had the cheque been presented as signed it might have been honoured without impropriety, but when a cheque is not presented as signed, and has been tampered with before presentation, the question as to whether the customer has been negligent in a duty that lay upon him of so filling up his cheque as to prevent such tampering, if answered in the affirmative, absolves the banker if the latter has paid on an ex facie unsuspicious document."

34. Lord Parmoor (delivering the fourth and final speech) stated as p.834 as follows:

> "Apart from special contract or some accepted course of dealing between the parties, it is the duty of a customer to use due caution in the preparation and issue of a mandate to his banker to charge his account at the bank, and if he commits a breach of this duty, and thereby misleads his banker to make a payment on a forged instrument, and such payment follows in natural and uninterrupted sequence from such breach, the consequent loss falls, not on the banker, but on the customer. The principle is well established that the negligence which would deprive the customer of his right to insist that payment on a forged cheque is invalid must be negligence in or immediately connected with the actual transaction…"

35. Lord Parmoor, however, considered that the firm's claim failed because, as a result of its negligence in a duty which they owned to their banker in the actual transaction in

question, an estoppel was created with the result that evidence was not admissible of the fraudulent alteration.

36. *Chitty* para. 30-078 relies upon *Macmillan* as support for the proposition that if the defendant owes a contractual duty to the claimant to take care to ensure that an intervening and voluntary act of a third party is not permitted, then the defendant will be liable if they fail to take such care: the chain of causation is not broken. In my judgment, however, it is apparent, in particular from Lord Finlay's speech, that the existence of a duty to prevent the very intervention which caused the loss is not a free-standing answer to the chain of causation being broken, but entails (and perhaps necessarily entails) that:

    i) the breach of contract is the effective cause of the loss ("as the negligence of the customer caused the loss, he must bear it");

    ii) the loss is, by definition, of a type which was within the scope of duty assumed ("forgery is the very thing against which the customer is bound to take reasonable precaution"); and

    iii) the loss is not too remote ("the fact that a crime has to intervene to cause the loss does not make it too remote").

37. It follows that, contrary to Logix's contention, *Macmillan* is not authority for the proposition that the intervention of a third party fraudster does not break the chain of causation and that the contract breaker remains liable, subject only to the issue of remoteness of loss. The decision is firmly based on the existence of a specific contractual duty to prevent the very fraud which was in fact perpetrated (and the very loss which ensued), so that the loss was effectively caused by the breach, was within the scope of duty and was not unlikely to occur. The "chain of causation" in that case was not therefore broken on any of those grounds.

(b) Effective cause

38. As referred to above, one way in which the chain of causation between a breach of contract and loss may be broken is if a new cause intervenes such that the breach is no longer regarded an "effective" cause of that loss, the dominant or effective cause being the intervening event. The intervention that breaks the chain may be that of a third party or that of the claimant. It is on this basis that the Judge appears to have decided the present case.

39. In *Galoo* two of the claimant companies sought to recover trading losses they had incurred and a dividend they had paid, arguing that they would not have done so but for the negligence (a breach of the contractual duty of care) of their auditor, but would have been placed in liquidation. The companies argued that as the "but for" test was satisfied, causation of loss could be established. The Court of Appeal affirmed the decision to strike out that claim as disclosing no reasonable cause of action, holding that the auditor's breach gave the companies the opportunity to incur trading losses, but that it was the continued trading that caused them.

40. Glidewell LJ (with whom Evans and Waite LJJ agreed) held that satisfying the "but for" test was not enough and that question was whether the breach of contract was the

dominant or effective cause of the loss, applying dicta from the House of Lords decision in *Monarch Steamship Co. Ltd. v. Karlshamns Oljefabriker (A/B)* [1949] A.C. 196. Glidewell LJ further drew on the decision in *Quinn v Burch Bros. (Builders) Ltd* [1966] 2 QB 370 for the proposition that it is necessary to distinguish between a breach of contract which causes a loss to the plaintiff and one which merely gives the opportunity for him to sustain the loss, further holding (and thereby endorsing the view of the editors of the then current edition of *Chitty*) that the decision as to whether the breach was the cause of the loss or merely the occasion for the loss was a matter for the application of the court's commonsense.

41. The last aspect of that decision, the role of the court's commonsense, has been subjected to significant academic criticism, including in *McGregor* at para. 148. It remains an authoritative statement of the law however, and *Galoo* is not alone in so stating it. In *County Ltd. v Girozentrale Securities* [1996] 3 All ER 834 Hobhouse LJ stated at p. 858C as follows:

> "In the legal analysis, the concepts of contemplation and foreseeability interact with concepts of standard of conduct. If a defendant is under a duty to protect the plaintiff against the consequences of the conduct of others, such conduct will not break the causal relationship between the defendant's conduct and the plaintiff's loss; indeed, it provides the necessary causal link. It is often said that legal causation is a matter of fact and common sense. Causation involves taking account of recognised legal principles but, that having been done, it is a question of fact in each case."

42. It is well established, nonetheless, that there may be more than one effective cause of loss, so that a breach of contract may remain an effective cause even if a subsequent intervention is also an effective cause. Thus in *Heskell v Continental Express Ltd* [1950] 1 All ER 1033 a warehouse, in breach of contract with the owner of the goods, failed to dispatch goods to the ship on which they were to be carried and failed to inform the owner of that fact. Nevertheless, a bill of lading was wrongly issued to the owner, who forwarded it to the buyer of the goods, and thereafter became liable in damages for non-delivery. In answer to the owner's claim to recover his loss, the warehouse asserted that the wrongful issue of the bill of lading broke the chain of causation between its breach of contract and the loss suffered. Devlin J rejected the defence, stating at 1047B:

> "The issue of the bill of lading could not extinguish the first defendants' breach of duty as a causative event; the breach being continuing is a continuous source of damage. But the two were equally operative causes in that if either had ceased the damage would have ceased…"

43. At 1048A Devlin J went on to state:

> "Whatever the true rule of causation may be I am satisfied that if a breach of contract is one of two causes, both cooperating and both of equal efficacy, as I find in this case, it is sufficient to carry judgment for damages."

44. Indeed, the breach of contract need not be the cause with the greater effect to remain operative, so long as it remains an effective cause. In *Girozentrale* brokers had breached

their contract with a bank by allowing investors the right to withdraw their commitments to subscribe to an issue of shares, exposing the bank to losses. The brokers argued that the bank's failure to take care in making its own inquiries before accepting investor commitments meant that the broker's breach was not the effective cause of the loss. Beldam LJ, with whom Hobhouse and Aldous LJJ agreed, rejected that defence, pointing out at p.846G that it was wrong to reject an effective cause of loss merely because another cause might be considered to have had greater effect. At 849C he concluded:

> "As I have previously indicated, there mere fact that [the bank's] failure to take reasonable precautions in its own interest could be regarded as an effective and concurrent cause of the need to refresh places did not justify the conclusion that [the brokers'] breach of contract was not an effective cause.
>
> For my part I would not agree that the conduct of [the bank] could be regarded as of greater efficacy but, even if it could, it certainly did not displace the efficacy of [the brokers'] breach…."

45. Thus it has been stated, in cases involving acts of the claimant subsequent to the defendant's breach of contract, that is only if the intervening cause "destroys the causative potency of the anterior breach" or "obliterates the wrongdoing of the defendant" that the chain of causation is broken: see *Stacey v Autosleeper Group Ltd* [2014] EWCA Civ 1551 per Floyd LJ (with whom Elias and Patten LJJ agreed) at [14] and [15], approving the analysis of Gross LJ (sitting as a judge of the Commercial Court) in *Borealis v AB Geogas Trading SA* [2010] EWHC 2789 (Comm), [2011] 1 Lloyd's LR 482 at [42] to [47].

Application in the present case

46. The Judge's decision was firmly based on her finding that Logix's loss was not caused by the assumed breach of contract by Siam Aero, but was caused by the fraudsters. That was a straightforward application of the principle that the voluntary intervention of a third party breaks the chain of causation, the Judge determining that, as a result of the third party intervention, the assumed breach of contract by Siam Aero was not an effective cause of the loss.

47. Mr Page KC, for Logix, argued that the Judge was wrong to so find in the context of a strike out application. Siam Aero's assumed breach of the confidentiality cause was, he submitted, an essential continuing element of the fraud during its operation, such that the fraud could not have been perpetrated without it. Stress was placed on the fact that the only documents containing payment instructions or enabling the fraudster to insert fraudulent payment obligations were sent by Siam Aero. The assumed breach was therefore an effective cause of Logix's loss, even if the intervention of the fraudsters was also an effective cause, or even a much greater cause. The actions of the fraudsters did not, he contended, obliterate Siam Aero's breach of contract, or at least arguably did not.

48. In my judgment, however, the Judge's conclusion was correct. The essential facts of what occurred were not in dispute, being fully recorded in the email traffic, both genuine and fraudulent. That revealed that intervention of the fraudsters occurred

before any assumed breach of contract by Siam Aero (following an initial assumed breach by Logix in responding to the very first doctored email), so that the fraud was in fact the cause of Siam Aero's assumed breach as well as an intervening and independent cause after the breach. Siam Aero's assumed breach was one of a number of necessary stages in the fraud, brought about by the fraudsters as part of their overall fraudulent scheme which depended for its success on Logix being deceived and making payment to the wrong account. Indeed, that final stage of deception by the fraudsters and mistaken payment by Logix occurred without any involvement of Siam Aero. It is a clear case of the breach being part (and only part) of the opportunity for the fraud rather than the cause of the fraud, or otherwise of the fraud destroying the causative potency of the anterior breach.

49. The Judge was also plainly right to distinguish the present case from *Macmillan.* The confidentiality clause was primarily concerned with protecting the parties from commercial damage by reason of their documents and information (predominantly if not exclusively confidential in nature) falling into the hands of competitors and used to give them a commercial advantage. There is no hint that it imposed a special duty to protect the other party from being deceived by fraudsters gaining sight of anodyne or otherwise publicly available information and manipulating it. There is no aspect of the contractual formula that required the Judge to find that Siam Aero remained the effective cause of the loss caused by the fraud.

50. It follows that it would also have been open to the Judge to have found (i) that the loss suffered by Logix was outside the scope of the duty assumed by Siam Aero by entering the LOI and (ii) that Logix's loss would have been too remote. Indeed, the Judge did refer to the duty and remoteness aspects of the decision in *Macmillan* in distinguishing it. She did not, however, at least expressly, decide the case on those grounds and Males LJ granted permission to appeal only on the issue of causation on the basis that the Judge had not decided that the loss was too remote.

51. I would add that, if it had proceeded to trial, Logix's claim would have faced other significant obstacles. In my view it is far from clear that Siam Aero was in breach of the confidentiality clause by "disclosing" its *own* information, including its own bank account details, to a third party. There might also have been a question as to whether, if Siam Aero were otherwise liable for such a breach, Siam Aero could have claimed that such liability was caused by Logix's own breach of the clause, giving rise to a defence by way of circuity of action.

Cockerill LJ :

52. I agree.

Peter Jackson LJ :

53. I also agree.