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Case No: BL 2023 001118

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

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

Date: 23 January 2024

Before :

HHJ JOHNS KC
Sitting as a Judge of the High Court

- -

Between :

LEE CHU

Claimant

- and -

(1) KIN MING JE
(2) SIN TING RONG

Defendants

- -

MR PAUL DOWNES KC and MS EMILY SAUNDERSON (instructed by **Weightmans LLP**) for the **Claimant**

MR JAMES RAMSDEN KC (of **Astraea Group Limited**) for the **First Defendant**

MR LAWRENCE POWER and MR CHRISTOPHER HANGES (by **Direct Access**) for the **Second Defendant**

Hearing dates: 22-23 November 2023
Written submissions: 8 & 11 December 2023

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APPROVED JUDGMENT

This judgment is handed down by email to the parties' representatives and release to The National Archives at 10.30 am on Tuesday 23 January 2024

HHJ JOHNS KC:

A. Introduction

1. According to a criminal indictment in a United States District Court and a complaint by the New York Securities and Exchange Commission, the First Defendant, Kin Ming Je (**Mr Je**), was involved in a very large-scale fraud fronted by a Mr Miles Kwok (**Mr Kwok**). It is alleged that thousands of Mr Kwok's online followers were persuaded to put a total of around US$1 billion into fraudulent investment schemes. The Claimant, Lee Chu (**Ms Chu**), says by these proceedings that she was one of the victims. She seeks equitable compensation from Mr Je for losses flowing from her investments in the sum of US$7,254,640. She also makes a proprietary claim to US$2,589,320 against Mr Je's wife, Sin Ting Rong (**Ms Rong**), as Second Defendant.

2. This is my judgment following the hearing of a set of interim applications.

   (1) Applications by Ms Chu against both Mr Je and Ms Rong by notice dated 16 August 2023 for worldwide freezing and asset disclosure orders. The draft order against Mr Je gives a figure of $6,254,640 up to which assets may not be dealt with; that sum reflecting a receipt of $1m by Ms Chu from the US authorities, reducing her losses by that amount, at the time of making the application. The draft order against Ms Rong gives the figure of US$2,589,320 reflecting the proprietary claim made against her. Both refer to 2 specific assets only, being a London house and a Hong Kong apartment.

   (2) Application by Mr Je by notice dated 7 September 2023 under CPR 3.4(2)(a) & (b) for strike out of the Particulars of Claim.

(3) Application by Ms Rong by notice dated 7 September 2023 under CPR 3.4(2)(a) to strike out those parts of the Particulars of Claim addressed to Ms Rong on the basis that no reasonable grounds for a claim against her are shown.

(4) Application by Mr Je by notice dated 21 September 2023 contesting jurisdiction on the basis that the proper forum for determination of the claim is the State of New York.

(5) Application by Ms Rong by notice dated 21 September 2023 contesting jurisdiction on the basis that the claim should be heard in the United States.

3. I will give a little of the background and refer to the legal framework before dealing with each of the applications, starting with the strike out applications.

B. Background

4. A lot happened on 15 March 2023. Mr Kwok was indicted by the United States District Court (Southern District of New York) for various counts including conspiracy to commit wire fraud, securities fraud, bank fraud, and money laundering (**the Indictment**). He was also the subject of a complaint by the New York Securities and Exchange Commission for breach of relevant securities rules (**the SEC Complaint**). And he was arrested.

5. Mr Je is the other defendant to the Indictment and the other individual defendant to the SEC Complaint. An attempt made on 15 March 2023 by the Metropolitan Police in London, acting at the request of the US authorities, to arrest him failed. It seems he was in the United Arab Emirates. I was told by Mr Ramsden KC, his

counsel, that he remains there and has no plans for an imminent return to either the United States or the United Kingdom.

6. The Indictment opens with these paragraphs which indicate the nature and scale of the alleged fraud and something of the alleged involvement of Mr Je.

"*1. From at least in or about 2018 through at least in or about March 2023, HO WAN KWOK … a/k/a "Miles Kwok" …, and KIN MING JE, a/k/a "William Je", the defendants, and others known and unknown, conspired to defraud thousands of victims of more than approximately $1 billion, including victims located in the Southern District of New York. KWOK, JE and their co-conspirators operated through a series of complex fraudulent and fictitious businesses and investment opportunities that connected dozens of interrelated entities, which allowed defendants and their co-conspirators to solicit, launder, and misappropriate victim funds.*

2. HO WAN KWOK … and KIN MING JE … took advantage of KWOK's prolific online presence and hundreds of thousands of online followers to solicit investments in various entities and programs by promising outsized financial returns and other benefits. The entities and programs used in the scheme included those known as GTV, G CLUBS, G MUSIC, G Fashion, and the Himalaya Exchange, among others. In truth and in fact, and as KWOK and JE well knew, the entities were instrumentalities that KWOK and JE created and used to perpetrate their fraud and exploit KWOK's followers. The scheme allowed KWOK and JE to enrich themselves, their family members, and their co-conspirators, and to fund KWOK's extravagant lifestyle.

3. As part of the scheme, HO WAN KWOK … and KIN MING JE … laundered hundreds of millions of dollars of fraud proceeds. To conceal the illegal source of the funds, KWOK and JE transferred, and directed the transfer of, money into and through more than approximately 500 accounts held in the names of at least 80 different entities or individuals. Hundreds of millions of dollars of the fraudulent scheme's proceeds were transferred, either directly or indirectly, to bank accounts in the United States, Bahamas, and United Arab Emirates … among other places, and held in the name of companies owned or otherwise controlled by JE.

4. HO WAN KWOK … and KIN MING JE … used more than approximately $300 million of the fraudulent scheme's proceeds for their and their families' benefit … For his part, among other things, JE transferred at least $10 million of the fraud proceeds into his and his spouse's personal bank accounts."

7. According to the Indictment at [7], "*JE owned and operated numerous companies and investment vehicles central to the scheme and served as its financial architect and key money launderer*".

8. The SEC Complaint covers similar ground. It names Mr Je as Mr Kwok's financial adviser, and alleges that the $10m referred to in the Indictment came largely from a convertible loan offering forming part of the fraud and was received as to $7 million into Mr Je's personal bank accounts and as to $3 million into Ms Rong's personal bank account.

9. That convertible loan offering, and the other schemes referred to in the Indictment and the SEC Complaint, feature in these proceedings brought by Ms Chu.

10. She complains of the following investments: (1) $2m paid over in what her Particulars of Claim call the GTV Private Placement, being a subscription for shares in GTV Media Group Inc (**GTV**). GTV operated a news-focussed social media platform; (2) $2,589,320 paid in the convertible loan offering, referred to in her Particulars of Claim as the Farm Loan Programme. These loans were to be convertible into shares in GTV else repaid with interest; (3) $2,600,000 paid to the Himalaya Exchange, being a cryptocurrency offering; and (4) $65,320 paid into the Hamilton Opportunity Fund, a high return investment fund.

11. The Particulars of Claim acknowledge that Ms Chu has received back from the US authorities out of seized funds a sum of $1m. The evidence for Ms Chu is that a further sum of $848,290 has since been received from those authorities on top of that initial $1m, and two more minor (in the context of this litigation) sums recovered of £100,000 and $99,895.66. Her claim against Mr Je is for equitable compensation in a net outstanding sum (as appears from her skeleton argument) of a little over $5m plus interest. It is alleged in relation to each of the investments (save the Hamilton Opportunity Fund) that "*The actions of Miles Kwok and [Mr Je] … amounted to an unlawful means conspiracy to cause loss to the Claimant by unlawful (viz fraudulent) means and in particular by extracting funds from the Claimant through the making of [representations] which each knew were false*" – see the Particulars of Claim at [17], [27], and [36]. The cause of action relied on against Mr Je in relation to the investment in the Hamilton Opportunity Fund is fraudulent misrepresentation.

12. The applications for freezing orders against Mr Je and Ms Rong came before Michael Green J on 17 August 2023. They were simply adjourned into the interim

applications list to be heard on notice on 24 August 2023. The hearing on 24 August 2023 was taken by HHJ Kramer sitting as a High Court Judge. He adjourned the applications further to a 2-day hearing and provided for any applications for strike out or contesting jurisdiction to be made in time to be disposed of at that directed hearing. To hold the ring in the meantime he also (a) made an order restraining Mr Je from dealing with any asset of a value in excess of £1m without first giving 14 days' notice to Ms Chu's solicitors, and (b) accepted an undertaking by Ms Rong not to deal with her interest in the London house without giving like notice. This property was said to be held in equal beneficial shares with Mr Je and be unencumbered by any third-party interest.

13. The 2-day hearing directed by HHJ Kramer took place before me on 22 and 23 November 2023. An offer by Mr Je not to dispose of his interests in both the London house and the Hong Kong apartment, and one by Ms Rong to continue her undertaking given to HHJ Kramer, expired the day before the hearing. On the second day of the hearing, Mr Downes KC (appearing with Emily Saunderson for Ms Chu) said that he wanted to make an application to amend but had yet to formulate the proposed amendments. In order that my decision on the then existing applications could be informed by the proposed amendments, I gave directions for the amendment application to be made within 7 days and made provision for written submissions in response from each of the defendants. The application to amend was made on 30 November 2023. I then received written submissions from the defendants on 8 December 2023 and some in reply for Ms Chu on 11 December 2023.

C. Law

C.1 Strike out

14. Mr Je's application to strike out relies on CPR 3.4(2)(a) and (b), which are in these terms:

"*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 courts process or is otherwise likely to obstruct the just disposal of the proceedings …".

15. In *Siemens Mobility Ltd v High Speed Two (HS2) Ltd* [2023] EWHC 2768 (TCC), having referred to those provisions, O'Farrell J gave at [784] this useful recent summary of the principles to be applied.

"*i) If the pleaded facts do not disclose any legally recognisable claim against a defendant, it is liable to be struck out. However, the application must assume that the facts alleged in the pleaded case are true.*

ii) It is not appropriate to strike out a claim in an area of developing jurisprudence, since in such areas, decisions as to novel points of law should be based on actual findings of fact: Barratt v Enfield BC [2001] 2 AC 550 per Lord Browne-Wilkinson at p.557; Philipp v Barclays Bank UK plc [2022] EWCA Civ 318 per Birss LJ at [20].

iii) The court must be certain that the claim is bound to fail; unless it is certain, the case is inappropriate for striking out: Hamida Begum v Maran (UK) Ltd [2021] EWCA Civ 326 per Coulson LJ at [22]-[24]; Rushbond v JS Design Partnership [2021] EWCA Civ 1889 per Coulson LJ at [41]-[42].”

16. At least the focus of that summary seems to me to be on CPR 3.4(2)(a). One point which might be added in relation to that limb is this. “*It also requires a court to consider whether any defects in the pleadings are capable of being cured by amendment and, if so, whether an opportunity should be given to do so*” – *Soriano v Societe D’Exploitation* [2022] EWHC 1763 (QB) at [15]. In relation to CPR 3.4(2)(b), that limb of the rule was described in this way by the Court of Appeal in *McDonald v Excalibur & Keswick Groundworks Ltd* [2023] EWCA Civ 18 at [43]: “*The essence of a strike-out under this Rule is that a claimant is guilty of misconduct which is so serious that it would be an affront to the court to permit him to continue to prosecute his claim*.”

17. Although that was said in the context of an application based on grounds other than inadequacy of pleading, it is a reminder of the height of the bar which must be reached if a claim is to be prevented from proceeding using CPR 3.4(2)(b).

18. The requirements for a proper pleading of fraud or dishonesty are emphasised often by the courts. One example is provided by the case of *Kasem v University College London Hospitals NHS Foundation Trust* [2021] EWHC 136 (QB). Saini J said at [37]:

“*As explained by Lord Millett in Three Rivers District Council v Governor and Company of the Bank of England (No 3) [2003] 2 AC 1(HL) at [186]: “It is well established that fraud or dishonesty...must be distinctly proved; that it must be*

sufficiently particularised... The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him... this involves knowing not only that he is alleged to have acted dishonestly but also the primary facts which will be relied on at trial to justify the inference...this is only partly a matter of pleading. It is also a matter of substance'"".

19. The same sort of points can be, and have been, made in relation to unlawful means conspiracy claims – see *Ivy Technology v Martin* [2019] EWHC 2510 (Comm) at [12]. In *Kasem,* Saini J went on to draw attention to CPR PD 16 8.2(1) which reflects that case-law. And to the Chancery Guide. The current edition includes this:

"*4.8 Paragraph 8.2 of PD 16 requires the claimant specifically to set out any allegation of fraud relied on. Parties must ensure that they state: (a) full particulars of any allegation of fraud, dishonesty, malice or illegality; and (b) where any inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged*".

20. However, it is important to be alive to the nature of some fraud cases, and to a competing consideration in such cases. As was stated by Stuart-Smith J in *Portland Stone Firms Ltd v Barclays Bank plc* [2018] EWHC 2341 (QB) at [27]:

"*One of the features of claims involving fraud or deceit is the prospect that the Defendant will, if the underlying allegation is true, have tried to shroud his conduct in secrecy. This has routinely been addressed in cases involving allegations that a defendant has engaged in anti-competitive arrangements. In such cases, the Court adopts what is called a generous approach to pleadings. The approach was summarised by Flaux J in Bord Na Mona Horticultural Ltd &*

Anr v British Polythene Industries Plc [2012] EWHC 3346 (Comm) at [29] ff. Flaux J set out the principles in play as described by Sales J in Nokia Corporation v AU Optronics Corporation [2012] EWHC 731 (Ch) at [62]-[67], which included the existence of a tension between (a) the impulse to ensure that claims are fully and clearly pleaded, and (b) the impulse to ensure that justice is done and a claimant is not prevented by overly strict and demanding rules of pleading from introducing a claim which may prove to be properly made out at trial but may be shut out by the law of limitation if the claimant is to be forced to wait until he has full particulars before launching a claim. Sales J indicated that this tension was to be resolved by "allowing a measure of generosity in favour of a claimant."

21. The concern in the cases to which Stuart-Smith J referred was, as he said at [28], "*in large measure based upon a lack of knowledge on the part of the Claimant before disclosure had been given*." And it is apparent from the *Nokia* case at [62] – [66] that the measure of generosity to be allowed reflects "*the existence of other protections for defendants within the procedural regime*".

22. Further, the primary facts pleaded need not be consistent only with fraud. Rather, "*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. As Lord Millett put it, there must be some fact "which tilts the balance and justifies an inference of dishonesty". At the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud. If the plea is justified, then the case must go forward to trial and*

assessment of whether the evidence justifies the inference is a matter for the trial judge."; see the judgment of Flaux J in *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [20].

C.2 Freezing injunctions

23. The test for whether a freezing order should be made, and the principles to be applied when assessing whether there is a risk of dissipation, can be taken from the judgment of Haddon-Cave LJ in *Lakatamia Shipping Company Ltd v Morimoto* [2019] EWCA Civ 2203 at [33]-[34].

"[33] *The basic legal principles for the grant of a WFO are well-known and uncontroversial and hardly need re-stating. It nevertheless is useful to remind oneself of the succinct summary of the test by Peter Gibson LJ in Thane Investments Ltd v Tomlinson [2003] EWCA Civ 1272, [2003] All ER (D) 496 (Jul) (at [21]) where he stated that, before making a WFO, the court must be satisfied that—*

'*the applicant for the order has a good, arguable case, that there is a real risk that judgment would go unsatisfied by reason of the disposal by the defendant of his assets, unless he is restrained by the court from disposing of them, and that it would be just and convenient in all the circumstances to grant the freezing order.*'

[34] I also gratefully adopt (as the Judge did) the useful summary of some of the key principles applicable to the question of risk of dissipation by Popplewell J (as he then was) in Fundo Soberano De Angola v Santos [2018] EWHC 2199 (Comm), [2018] All ER (D) 58 (Sep) (subject to one correction which I note below):

(1) The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. In this context dissipation means putting the assets out of reach of a judgment whether by concealment or transfer.

(2) The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient.

(3) The risk of dissipation must be established separately against each respondent.

(4) It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets [may be][*] dissipated. It is also necessary to take account of whether there appear at the interlocutory stage to be properly arguable answers to the allegations of dishonesty.

(5) The respondent's former use of offshore structures is relevant but does not itself equate to a risk of dissipation. Businesses and individuals often use offshore structures as part of the normal and legitimate way in which they deal with their assets. Such legitimate reasons may properly include tax planning, privacy and the use of limited liability structures.

(6) What must be threatened is unjustified dissipation. The purpose of a WFO is not to provide the claimant with security; it is to restrain a defendant from evading justice by disposing of, or concealing, assets otherwise than in the normal course of business in a way which will have the effect of making it

judgment proof. A WFO is not intended to stop a corporate defendant from dealing with its assets in the normal course of its business. Similarly, it is not intended to constrain an individual defendant from conducting his personal affairs in the way he has always conducted them, providing of course that such conduct is legitimate. If the defendant is not threatening to change the existing way of handling their assets, it will not be sufficient to show that such continued conduct would prejudice the claimant's ability to enforce a judgment. That would be contrary to the purpose of the WFO jurisdiction because it would require defendants to change their legitimate behaviour in order to provide preferential security for the claim which the claimant would not otherwise enjoy.

(7) Each case is fact specific and relevant factors must be looked at cumulatively.

([*] Note: I have replaced the words 'are likely to be' in sub-para (4) with 'may be')."

24. In this case, the principle at [34(3)] is of particular importance as, while Mr Je is sued as a wrongdoer, Ms Rong is not. Only a proprietary claim is made against her. Allegations of dishonest assistance and knowing receipt referred to in pre-claim correspondence are absent from the claim as issued and pleaded in the Particulars of Claim.

25. It is also apparent from the judgment of Haddon-Cave LJ that "*The test for 'good arguable case' in the context of freezing injunctions is not a particularly onerous one*" [35], and that "*The central concept at the heart of the test was 'a plausible evidential basis*'" [38]. Further, a good arguable case on the underlying claim may supply the necessary solid evidence of a real risk of dissipation. *"(1) Where the court accepts that there is a good arguable case that a respondent engaged*

in wrongdoing against the applicant relevant to the issue of dissipation, that holding will point powerfully in favour of a risk of dissipation. (2) In such circumstances, it may not be necessary to adduce any significant further evidence in support of a real risk of dissipation; but each case will depend upon its own particular facts and evidence.", [51].

26. One of the factors relied on by the defendants in resisting the making of a freezing order in this case is delay. In *Madoff Securities International v Raven* [2011] EWHC 3102 (Comm) Flaux J distilled from earlier cases the following principles relating to delay in this context:

"(1) The mere fact of delay in bringing an application for a freezing injunction or that it has first been heard inter partes, does not, without more, mean there is no risk of dissipation. If the court is satisfied on other evidence that there is a risk of dissipation, the court should grant the order, despite the delay, even if only limited assets are ultimately frozen by it. (2) The rationale for a freezing injunction is the risk that a judgment will remain unsatisfied or be difficult to enforce by virtue of dissipation or disposal of assets (see further the citation from Congentra AG v Sixteen Thirteen Marine SA, The Nicholas M [2008] EWHC 1615 (Comm), [2009] 1 All ER (Comm) 479 below). In that context, the order for disclosure of assets normally made as an adjunct to a freezing injunction is an important aspect of the relief sought, in determining whether assets have been dissipated, and, if so, what has become of them, aiding subsequent enforcement of any judgment. (3) Even if delay in bringing the application demonstrates that the claimant does not consider there is a risk of dissipation, that is only one factor

to be weighed in the balance in considering whether or not to grant the injunction sought."

27. Here, Ms Chu relies (in the alternative) on what is sometimes called the Chabra jurisdiction for the making of a freezing order against Ms Rong. The name comes from the case of *TSB Private Bank International SA v Chabra* [1992] 1 WLR 231, where Mummery J granted a freezing injunction against a company which held assets that were, at least arguably, beneficially owned by Mr Chabra, the defendant to the claim.

28. Against that background and legal framework, I turn to decide each of the applications and begin with Mr Je's application to strike out the Particulars of Claim.

D. Mr Je's strike out application

29. Mr Je's application relied on both CPR 3.4(2)(a) and (b). Mr Ramsden argued that the Particulars of Claim disclose no reasonable or properly particularised cause of action against Mr Je, are an abuse of the court's process, and/or fail to comply with the rules on pleading fraud and conspiracy, including CPR PD 16 at 8.2.

30. I have decided that, while the Particulars of Claim are not a model of fullness, clarity or accuracy, it would be an unjustified overreaction to strike them out. I do not consider it can be said either that the claim is bound to fail or that the imperfections of the statement of case are such that it would be an affront to the court to allow the claim to continue. That is particularly so as some inexactness is to be expected, and some generosity of approach to the pleading of Ms Chu's

case needed, given the nature of the alleged fraud and that there has not yet been disclosure.

31. Mr Ramsden made some fair criticisms of the Particulars of Claim. Whereas it was pleaded that Mr Je had a public role in promoting the GTV Private Placement and the Farm Loan Programme, no public activity by Mr Je was identified. Mr Downes accepted that criticism and said that the word "public" should come out. Mr Ramsden pointed out that the particular combination or agreement relied on for conspiracy was not set out. Related to that, I also asked Mr Downes about the role which Mr Je is said to have played in the alleged fraud. Mr Downes responded that Mr Je is said to have played a central role, that he was part of the central management team for these projects, and that that was what the Particulars of Claim were attempting to communicate. But they do not do so clearly. Mr Ramsden also questioned what was meant by "promoted" so far as that allegation is concerned with Mr Je. Mr Downes responded orally that it meant the preparation of the key memorandum in the case of the GTV Private Placement and dealing with the flow of money in the case of the Farm Loan Programme. But I do not consider that was obvious from the pleading.

32. Some criticisms, though, were not justified. Mr Ramsden presented it as fatal that the allegations of misrepresentation are (save in respect of the Hamilton Opportunity Fund) made against Mr Kwok alone. But that is to ignore that the cause of action relied on against Mr Je is not deceit. It is conspiracy. It is not necessary therefore to show that Mr Je made the misrepresentations. It need be shown only that he was party to a joint enterprise with Mr Kwok to injure Ms Chu and, in the context of this claim, that deceit was used as part of that enterprise.

He noted that the Particulars of Claim relied on Mr Je's silence and argued that silence was not enough for a misrepresentation. But silence is not relied on for that purpose. It is used instead to support an inference that he knew the representations made were false. Another suggestion made by Mr Ramsden was that it was not said Mr Je knew of the falsity of the representations. But that is said, and a basis given for the allegation, at [16.4], [25.4] and [35.4].

33. Other criticisms had some proper basis, but could not be taken very far. Perhaps most notably, it was submitted that nowhere was it pleaded that Mr Je was aware of the representations made by Mr Kwok. But while that is not spelled out expressly, it does seem to me at least implicit in the allegation that Mr Je knew of the falsity of the representations and in the description of the conspiracy, which is one to cause loss "*by extracting funds from the Claimant through the making of [representations] which each knew were false*". A point spotted by Mr Power was that whereas the sum of $10m from the Farm Loan Programme was pleaded as coming out of a fund of $81m, a proper reading of the SEC Complaint showed it coming out of a different fund of $66.3m. But it still came from the Farm Loan Programme, and this apparent error could be corrected by amendment, subject to permission being given.

34. Finally, some criticisms were not properly part of the strike out application (though they may be relevant for the purposes of assessing whether there was a good arguable case, being part of the test for a freezing order). These were criticisms that the factual allegations were not borne out by the evidence for Mr Je advanced in the affidavit of one of his lawyers, Mr Mulchrone. Questions engaging the evidence are not ones for strike out.

35. Overall, a proper cause of action is pleaded against Mr Je, and especially when the various investment schemes referred to are considered together, there is sufficient said about his involvement to justify that cause of action. In that regard, among other things, (a) he is said to have been the author of a key document in the GTV Private Placement, namely the information memorandum, (b) $10m from the Farm Loan Programme ended up with him and Ms Rong, and (c) he established the Himalaya Exchange. Further, as I have said, it is pleaded that he knew the representations to be complained of were false, and some particulars of that knowledge are given. I would add that it must be right to consider the schemes together. There are obvious connections between the GTV Private Placement and the Farm Loan Programme, as Mr Ramsden accepted in submissions. And between those schemes and the Himalaya Exchange; most obviously the involvement of Mr Kwok, and that it was his followers, including Ms Chu, who were again targeted. Further, at least the Indictment refers at [54] to the Hamilton Opportunity Fund as a repository for some proceeds of the fraud.

36. Mr Je's application to strike out the Particulars of Claim is therefore dismissed.

E. Ms Rong's strike out application

37. Ms Rong's application relied only on CPR 3.4(2)(a) and was to strike out those parts of the Particulars of Claim relating to her. Mr Power argued that Ms Chu's claim against Ms Rong was parasitic on her claim against Mr Je. That seemed to me correct in that the claim against Ms Rong is a proprietary claim which relies on tracing the proceeds of the alleged fraud, in particular the fraud alleged in relation to the Farm Loan Programme, into her hands. He adopted the points made by Mr Ramsden and submitted that the claim against Ms Rong therefore fell to

be struck out because of a failure to plead an adequate basis for the unlawful means conspiracy claim against Mr Je. It follows from my conclusion that the claim against Mr Je is not to be struck out that the claim as pleaded against Ms Rong survives this aspect of Mr Power's challenge.

38. But he also made a separate challenge. It involved pointing to a suggested inconsistency between the sum specified in the claim form as being held on constructive trust for Ms Chu, being $2,589,320, and what was said in the Particulars of Claim, being that $3m is held on trust for Ms Chu and the other victims of the Farm Loan Programme. It also involved pointing out that Ms Chu seeks by the Particulars of Claim an account and inquiry into all sums received by Ms Rong in relation to the four schemes, whereas it is only alleged that she has received sums from the Farm Loan Programme.

39. This challenge is really in the nature of saying that the claim goes too far. That means, in my judgment, that the answer is not to strike the claim out. It is not that there are no reasonable grounds for bringing the claim, but rather that it seems unlikely to succeed to its full extent. It would not be just to stop the claim from proceeding at all.

40. Mr Power does, though, seem to me correct that the claim is likely to be overstated. In that regard, given that Ms Chu was just one of the victims of the alleged Farm Loan Programme fraud, on any tracing through a mixed fund she could expect to trace only a proportion of her investment into the $3m received by Ms Rong. When I suggested that to Mr Downes, he said that he took that point and didn't disagree. And Mr Power accepted, in connection with the freezing order application, that if a good arguable case is shown in relation to that alleged

fraud and that $3m ended up with Ms Rong then there is a good arguable tracing claim to a proportion of that $3m, which he put at around $50,000. $50,000 bears the same proportion to $3m as $2.5m (being the approximate value of Ms Chu's investment in the Farm Loan Programme) bears to $150m (being the total amount of victims' money misappropriated under the Farms Loan Programme according to the US Indictment). Further, given that the only tracing case involving Ms Rong is that she has received a sum from the Farm Loan Programme, an account and inquiry against her probably ought not to extend to the other allegedly fraudulent schemes.

41. But, for the reasons already given, Ms Rong's application to strike out those parts of the Particulars of Claim relating to her is dismissed.

F. Ms Chu's application for a freezing order against Mr Je

42. Ms Chu seeks a worldwide freezing and ancillary asset disclosure order against Mr Je. In resisting such an order, it was argued first for Mr Je that no good arguable case against him has been shown. Mr Ramsden submitted that no real reliance could be placed on the Indictment and the SEC Complaint as they were documents which contained mere allegations and which would not be admissible as evidence of fact as a matter of US law. For this latter point, he relied on an expert report of a Mr Jesse T Conan replying to an earlier report of Mr Mark C Rifkin put forward for Ms Chu.

43. That earlier report was the subject of an application by Ms Chu for permission to rely on it. I do give permission for that expert evidence, and Mr Conan's report in reply, to be relied upon. Only Mr Je resisted such permission being given. He did so only on the basis of lateness, rather than relevance. Indeed, it was submitted

for him that the need for such evidence should have been obvious. I agree, in that the evidence is, in my judgment, reasonably required to resolve these applications. And as to lateness, it came in time for Mr Je to rely on his own expert evidence in response. I make clear I have not had regard to a second report of Mr Rifkin which came very late.

44. On all the evidence, including the expert evidence, I am satisfied that a good arguable case has been established by Ms Chu.

45. While it is important to have regard to the nature of the Indictment and the SEC Complaint, that nature is not, in my judgment, a bar to admissibility and therefore to reliance being placed on them by Ms Chu as some evidence of fact.

46. The question of admissibility falls to be decided not by reference to US law but to English law as Mr Ramsden accepted. Under that law, hearsay evidence is admissible by virtue of s.1 of the Civil Evidence Act 1995 which provides that "*In civil proceedings evidence shall not be excluded on the ground that it is hearsay*". I consider that makes the Indictment and the SEC Complaint admissible. Mr Ramsden sought to suggest otherwise relying on s.11(1) of the Civil Evidence Act 1968. That provides for the admissibility of the fact of a conviction by a UK court for the purposes of proving, in civil proceedings, that the convicted person committed the offence. His argument was that, in not referring to foreign convictions, the section made those inadmissible. But no conviction at all is relied on here. Section 11 of the 1968 Act is not, therefore, engaged. Further, the relevant exclusionary rule being addressed by s.11 is that against judgments in earlier proceedings; sometimes referred to as the rule from *Hollington v Hewthorn* [1943] 1KB 587. But no judgments are sought to be relied

on. There being no other general exclusionary rule, the Indictment and the SEC Complaint can, in my judgment, be relied upon.

47. Plainly, care needs to be taken in assessing what weight can be ascribed to them, as both documents are in the nature of setting out allegations. But, taking that care, my judgment is that they carry sufficient weight in this case for Ms Chu to establish a plausible evidential basis for her claim against Mr Je. Four points can be made.

48. First, both documents include detailed and specific allegations which can be expected to be the product of underlying documents and detailed investigations. They are to be contrasted with, for example, some unsubstantiated and vague allegations of a private litigant. This point is bolstered by the evidence of Mr Rifkin as to the duties on prosecutors including to refrain from prosecuting a charge known to lack probable cause. And the evidence at [113] of his report that "*Evidence that the Grand Jury is likely to have considered here include live testimony (typically from the investigating agents and cooperating witnesses) and documents obtained during the Government's criminal investigation (such as offering documents, transactional documents, internal financial records, bank account statements and records, and email and text messages).*"

49. Second, some of the allegations now find support in the evidence produced by Mr Je on these applications. One example. The Indictment refers at [23] to the seizure of funds by US authorities in September 2022 and gives a detailed account of an episode when "*JE attempted to transfer approximately $46 million from domestic bank accounts associated with the Himalaya Exchange, which had not yet been seized by the United States, to a bank account in the UAE that JE controlled*".

That detailed account includes that Je and a Himalaya Exchange executive claimed that the wire transfer was needed for a redemption for an unnamed client and that it was needed "*today or it is meaningless*". That is now supported by WhatsApp messages exhibited to Mr Mulchrone's statement: "*We are just doing the normal redemption of a client*", and "*We need the execution today or it is meaningless*". Further, it is plain from Mr Mulchrone's statement that there was indeed an attempt by Mr Je to redeem the funds; a surprise (which also corroborates the Indictment) being that it was Mr Je or his company that was the unnamed client.

50. There is like support in Mr Je's evidence for some of the key allegations, including that Mr Je was an author of the key memorandum for the GTV Private Placement (Mr Ramsden making clear in submissions that Mr Je accepts he drafted that document), and that he did establish the Himalaya Exchange.

51. Third, there is not a complete absence of underlying material. The evidence before me includes a copy of an affidavit by a Mr Robert Stout, an FBI investigator assigned to the FBI's Complex Financial Crimes squad. It supports the allegations and gives a flavour of his investigation; referring at [8] to, among other things, *"(vii) My participation in various witness interviews; (viii) my review of electronic evidence obtained pursuant to subpoenas, orders … for non-content information, and judicially authorized search warrants; (ix) the review and analysis of various bank account records, including financial records obtained from financial institutions pursuant to subpoenas and other requests, conducted by myself and financial analysts at the FBI and SEC …".*

52. Fourth, there is the evidence for Ms Chu, specific to her claim, to the effect that she invested in these schemes without proper return.

53. I do not ignore the explanations put forward in Mr Mulchrone's affidavit for some of the allegations, but this is not a trial, and none convinced me that there was not a plausible evidential basis for the case being made by Ms Chu. On the contrary, some of the explanations only underlined that there was a good arguable case to be met. For example, the explanation put forward for the $7m paid to Mr Je by Alfa Global Ventures Ltd out of the proceeds of the Farm Loan Programme relied on a written agreement under which a 1 percent fee was payable. But that agreement was not with Mr Je. It was with a company called ACA Capital Group Limited. And it went no way to explaining the sum of $3m paid to Ms Rong.

54. It is necessary to consider next whether a real risk of dissipation by Mr Je has been shown. It must be acknowledged there is no evidence of concrete steps having been taken to dissipate the specific assets identified by Ms Chu. And that there was a significant delay in bringing the application for a freezing order. Mr Ramsden also pointed to explanations having been given for Mr Je in Mr Mulchrone's affidavit, and to offers made by Mr Je not to dispose of his London and Hong Kong properties. However, I consider that the underlying case of dishonesty here points clearly to, and establishes by solid evidence, that there is a real risk of dissipation. The case being made is one of a very large-scale complex fraud with the proceeds, according to the Indictment, being passed through, and to, scores of entities and individuals and hundreds of accounts. By way of example, $3m is said to have been diverted to Ms Rong. The alleged fraud here is one on a great scale and with a great deal of sophistication. As HHJ Kramer

said at the hearing on 24 August 2023, it was "*a scheme in which money is removed from investors and then spirited away*". There is also the apparent attempt to obtain the sum of $46m which was yet to be seized, by referring to an unnamed client which turned out to be Mr Je himself. The risk is underlined by the fact that Mr Je is, without explanation, remaining indefinitely out of the jurisdiction. I do not, of course, ignore that the identified assets are real property, but equitable interests can be readily disposed of, and there is also no evidence from which the court can be satisfied that Mr Je has an interest which tops the value of the claim (even if giving credit for the accepted recoveries).

55. I also consider it is just and convenient to make a freezing and asset disclosure order against Mr Je. Mr Je sought to resist an order as a matter of discretion by pointing to the delay in making the application, as well as suggested non-disclosure at earlier hearings and errors in the Particulars of Claim.

56. As to the delay, I have already made clear that I am satisfied of a real risk of dissipation despite that delay. Further, there is some explanation for some of the delay in that Ms Chu was, on the evidence, under the impression that there may have been relevant freezing arrangements in place as part of the US proceedings. And there has been no change of circumstances in the period of delay making it now inequitable to grant Ms Chu the relief sought.

57. As to non-disclosure and errors, Mr Ramsden pointed by his skeleton argument to two particular points. One, the failure to tell Michael Green J or HHJ Kramer of the existence of an SEC fair fund from which Ms Chu could expect a further payment and which has since been received in the sum of over $848,000. Two, the failure to tell those judges, or reflect in her Particulars of Claim, sums

recovered in relation to her investment in the Himalaya Exchange. It is said for Mr Je that over $2.5m of that investment was reinvested in the Hamilton Opportunity Fund and that it is clear from Mr Bowman's third affidavit that she also received $99,895.86 and £100,000. The possibility of a later further receipt from the fair fund seems to me a fact of limited importance to the decision whether to grant a freezing order. It means that credit may later need to be given, reducing only the size of the claim. The sum later received here is only a fraction of the overall sum claimed. Further, neither of the earlier hearings was an effective hearing of a without notice application for a freezing order. So far as the investment in the Himalaya Exchange is concerned, the major point there, relating to the sum of $2.5m is not straightforward. Ms Chu's pleading is that she has not been able to recover the sums invested. Even on Mr Je's case she has not received back the sum of $2.5m odd and Mr Downes argued that the apparent movement of the sum to another of the schemes complained of is not a recovery.

58. Overall, these points are too flimsy a basis for refusing Ms Chu the protection of a freezing and asset disclosure order against Mr Je. Such refusal could work a real injustice. In my judgment, it is just and convenient to make a worldwide freezing order against Mr Je. But in what sum? By the draft order attached to the application, Ms Chu asked for an order restraining the disposal of assets up to a value of $6,254,640, being the stated value of her claim. That sum should, in my judgment, be reduced to reflect the total amount of the accepted recoveries. I was given no reason as to why credit should not be given for those sums. I ask counsel to agree the resulting figure when preparing the draft order. While the skeleton argument for Ms Chu referred to interest and a sum for costs "*of say £2-3m*" being added to arrive at a figure for the freezing order, that did not reflect the draft order

or the evidence on the application, which did not deal with costs. Further, while the maximum sum under an order often does include an allowance for interest and costs, according to *Commercial Injunctions, Gee QC, 7th Ed.*, at 12-013 "*Usually it is comparatively modest*". Given all that, I consider the best course is to give permission to apply to increase the sum so as to take account of interest and costs so that there can be proper argument.

G. Ms Chu's application for a freezing order against Ms Rong

59. Ms Chu also asks for a worldwide freezing and asset disclosure order against Ms Rong. The draft order seeks to restrain disposals up to a value of $2,589,320. That is the total value of her investment in the Farm Loan Programme.

60. But no good arguable case for a claim in a sum at anything like that level has, in my judgment, been shown. I understood Mr Downes to end up accepting the principle that only a proportion of Ms Chu's investment could be traced into the funds received by Ms Rong. As I have said, Mr Power came up with a figure of a little over $50,000. Mr Downes said it could be $100,000.

61. Further, I am not satisfied that Ms Chu has shown a real risk of unjustified dissipation of assets by Ms Rong. In this regard, it is important to remember that a risk of dissipation must be established against each respondent separately. My conclusion that such a risk was shown against Mr Je rested on the underlying claim against him, being guilty involvement in a large-scale and sophisticated fraud, compounded by his continued absence from the jurisdiction. Neither point applies to Ms Rong. Only a proprietary claim is made against her. Not any personal claim for, say, knowing receipt or dishonest assistance. And she remains in the jurisdiction.

62. There being a good arguable case only in a modest sum, and no real risk of dissipation having been shown, there should be no freezing or asset disclosure order against Ms Rong. Unless, that is, the order sought is justified under the Chabra jurisdiction.

63. This jurisdiction assumed a greater significance at the hearing than the single short paragraph in Mr Downes's skeleton argument suggested; reflecting, no doubt, the difficulty which became apparent in justifying a freezing order against her by the conventional route which I have already dealt with.

64. I have concluded that the order sought is not justified on the Chabra basis. I do not consider reliance on the Chabra jurisdiction relieves the applicant from establishing a risk of dissipation against the respondent. I was certainly shown no authority to that effect. In Chabra itself, Mummery J referred at 240C to the real risk that the non-cause of action respondent company would dispose of assets so as to defeat the plaintiff's chances of satisfying any judgment it may obtain against Mr Chabra; Mr Chabra being a director of the company. I have already made clear that a real risk of dissipation has not been established as against Ms Rong. That is so even in respect of any assets held by her which may turn out in substance to be assets of Mr Je. There is no evidence of her acting on Mr Je's instructions or otherwise in any attempt at dissipation.

65. I make clear I do not agree with the principal objection made by Mr Power to an order under the Chabra jurisdiction. That was that there is no jurisdiction to make such an order against Ms Rong as she is already a party, and Chabra orders can be made only against non-parties. I would not expect that objection to be a good one. The jurisdiction is concerned with restraining dealings with assets which,

though held by another, namely the respondent, are in substance assets of the principal defendant. It is hard to see why it should matter whether the respondent is already another defendant. Further, if an order is to be made, the respondent is joined to the proceedings for that purpose. The order therefore ends up being made against a party. If the respondent is already a defendant it means only that the stage of joinder is unnecessary. I also consider that authority demonstrates the objection is not a good one. The recent Privy Counsel decision in *Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24, to which I was taken for the Chabra jurisdiction, includes reference at [16] to the Court of Appeal case of *Mercantile Group (Europe) AG v Aiyela* [1994] QB 366 where an argument that Chabra itself was wrongly decided was rejected. The freezing order made in *Aiyela*, and upheld by the Court of Appeal, was one made against a wife who was already a fourth defendant to the proceedings.

66. But the grant of a freezing order is not justified against Ms Rong under the Chabra jurisdiction in the absence of a real risk of dissipation having been shown by solid evidence against her. I do not consider the mere receipt of the initial sum is enough, especially given it is not said to have involved any wrongdoing on her part. As I have said, no claim in knowing receipt or dishonest assistance is made against her.

67. Finally, it was suggested for Ms Chu at the hearing that a proprietary injunction should be made against Ms Rong. But such was not the order sought and lacked any evidential basis. The order sought was to restrain dealings with assets up to the value of $2,589,320, with specific mention made of the London house and the Hong Kong apartment, and (in the usual way) making clear that Ms Rong may

deal with any assets as long as the unencumbered value of remaining assets in the jurisdiction remained above the stated value. I was not pointed in the evidence to any specific asset currently held by Ms Rong in which Ms Chu had (arguably) a proprietary interest.

H. Applications in relation to jurisdiction

68. Both defendants made applications for orders that the court lacked jurisdiction to hear the claims against them.

69. By the time of the hearing before me, Mr Je was no longer contesting jurisdiction. He asked instead for a stay pending the criminal trial due to take place in the US in April 2024. Mr Ramsden argued that such was the right course having regard to the US law evidence of Mr Conan to the effect that US civil proceedings would be stayed so as to avoid prejudicing the criminal process.

70. I have decided there should be no such stay. Again, I must make the decision by reference to the principles applicable in this jurisdiction. Those were encapsulated in *Athena Capital v Secretariat of State for the Holy See* [2022] EWCA Civ 1051 at [59] in this way:

"*There is, as it seems to me, no reason to doubt that it is only in rare and compelling cases that it will be in the interests of justice to grant a stay on case management grounds in order to await the outcome of proceedings abroad. After all, the usual function of a court is to decide cases and not to decline to do so, and access to justice is a fundamental principle under both the common law and article 6 ECHR. The court will therefore need a powerful reason to depart from its usual course and such cases will by their nature be exceptional. In my*

judgment all of the guidance in the cases which I have cited is valuable and instructive, but the single test remains whether in the particular circumstances it is in the interests of justice for a case management stay to be granted. There is not a separate test in "parallel proceedings" cases…".

71. Applying those principles, it is not in the interests of justice to grant a stay in this case. There is no powerful reason to depart from the usual course of proceeding to deal with Ms Chu's claim. On the contrary, there will be no prejudice to Mr Je as the criminal trial in April 2024 is not due to involve him. He cannot, it seems, be tried in his absence. There is, as I have said, no sign of an imminent return to either the US or the UK. Further, far from those other proceedings being set to resolve the issues in this claim, no one was able to tell me what real difference a decision against Mr Kwok either way in those other proceedings would make to this claim.

72. On Ms Rong's jurisdiction application, her position at the hearing became not that any claim against her should be pursued in the US but that she should not be sued anywhere. The basis for that submission was that, in proving for her losses in the US bankruptcy of Mr Kwok, Ms Chu had made an election which should bar her from bringing these proceedings. I cannot accept that submission. I see nothing inconsistent between proving in Mr Kwok's bankruptcy and also suing Mr Je and Ms Rong. And Mr Power later accepted he could not rely on any legal doctrine of election. In my judgment, the most that can be said is that Ms Chu will need to give credit in these proceedings for any sums recovered in the bankruptcy. But that does not begin to deprive the court of jurisdiction to determine them.

I. The application to amend

73. On the application to amend, the defendants contended that these applications should be fought again at a further hearing. I do not consider that necessary or desirable.

74. I have had regard to the application to amend in deciding these applications. I see nothing in there which justifies a different answer to these applications. The amendments seek to update and correct the Particulars of Claim by referring to the further recoveries (see para. 11 above). They include another proposed correction, being to show the sums of $7m and $3m going to the defendants out of the Farm Loan Programme as coming from a fund of $66.3m rather than the $81m fund (see para. 33 above). There are substantial proposed amendments only to the pleaded case relating to the Hamilton Opportunity Fund. The alleged role of Mr Kwok in this scheme is enlarged and an allegation of unlawful means conspiracy added. A case in fraudulent misrepresentation is persisted in.

75. These proposed changes do not, in my judgment, make abusive that which I have decided on the strike out applications is not abusive. And I have already decided that credit needs to be given for the recoveries which, subject to permission being given, will now find their way into the Particulars of Claim.

76. Given that the application to amend does not warrant a different answer on the applications already argued before me, it can be contested as a separate, albeit related fight. And that is what should happen. To do otherwise would be to delay the resolution of these applications in circumstances where I have decided that, even having regard to the application to amend, there should be no strike out and Ms Chu should have the protection of a freezing order against Mr Je. Further, that

delay to the resolution of these applications and of the application to amend would most likely be a significant one, given that I have a full sitting pattern in a different jurisdiction for several months and busy counsel would no doubt want any hearing to be fixed having regard to their dates to avoid.

J. Effect of decisions

77. It follows from the above that the strike out applications will be dismissed, a freezing and asset disclosure order will be made against Mr Je, but Ms Chu's application for such an order against Ms Rong fails. The jurisdiction applications will be dismissed, no stay of these proceedings is granted and they shall instead continue. Directions can be given for the hearing of the application to amend and there will be permission to apply to increase the maximum sum in the freezing order.