Neutral Citation Number: [2024] EWHC 142 (Comm)

Case No: LM-2022-000232

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
LONDON CIRCUIT COMMERCIAL COURT

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

Date: 29/01/2024

Before :

HIS HONOUR JUDGE PEARCE
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

(1) LOWRY TRADING LIMITED **(2) SAS FINANCING LIMITED**	**Claimants**
- and -	
(1) MUSICALIZE LTD **(2) BENJAMIN DELANO ANDERSON** **(3) SOPHIE KATE ANDERSON** **(4) MUSICALIZE TOURING LIMITED** **(5) MUSICALIZE TOURING EVENTS LIMITED (in administration)**	**Defendants**

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MR JONATHAN COHEN KC and MR STUART SANDERS (instructed by **ARMA LITIGATION LIMITED**) for the **Claimants**
MR SIWARD ATKINS KC and MS DARIA GLEYZE (instructed by **DEVONSHIRE SOLICITORS LLP**) for the **Defendants**

Hearing dates: 20 November 2023

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Approved Judgment

This judgment was handed down remotely at 10.00am on 29 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE PEARCE SITTING AS A JUDGE OF THE HIGH COURT

His Honour Judge Pearce:

INTRODUCTION

1. By this application, the Claimants seek summary judgment as follows:

    a. The First Claimant, for the sum of £500,000 plus interest as against the First to Third and Fifth Defendants in respect of the First Claimant's claim in deceit as set out in paragraphs 72 to 75 of the Particulars of Claim and paragraph (a) of the Prayer, insofar as it relates to the Third Lowry Payment, as defined in paragraph 33 of the Particulars of Claim.

    b. The Second Claimant for the sum of £5,151,259, alternatively £2,864,064, as against the Second to Fifth Defendants in respect of the Second Claimant's claim in deceit as pleaded in the Particulars of Claim, insofar as it relates to sums advanced from October 2019, alternatively 6 July 2021.

    They rely on statements from Mr Robert Nugent, director of the First Claimant, dated 24 August 2023, and Mr Stephen McConnell, director of the Second Claimant, dated 25 August 2023.

2. The Defendants each oppose the application. They seek to rely on statements from the Second and Third Defendants, each dated 10 November 2023.

3. The application was heard before me on 20 November 2023, following which I reserved judgment. At the beginning of the hearing on that day I granted permission to the Defendants to rely on the evidence contained in statements of the Second and Third Defendants, notwithstanding their non-compliance with orders for the service of evidence made by HHJ Pelling KC on 10 August 2023 and 30 October 2023. I gave reasons for that decision orally at the time.

BACKGROUND

4. The Claimants are companies that operate investment business.

5. The Second and Third Defendants purport to be music promoters. (Whether they are genuinely so is a matter of hot dispute in this case.) They are the sole directors of the First Defendant, purportedly a concert and events promotions company, and have been directors of a number of other companies said to operate in the same sphere, including the Fourth and Fifth Defendants and a company now dissolved called Musicalize Entertainment Limited.

6. Following the style of the Claimants' skeleton argument, I shall refer to the various Defendants as follows:

    a. The First Defendant, Musicalize Limited - Musicalize

    b. The Second Defendant, Benjamin Delano Anderson – Mr Anderson

    c. The Third Defendant, Sophie Kate Anderson – Mrs Anderson

    d. The Fourth Defendant, Musicalize Touring Limited - MTL

    e. The Fifth Defendant, Musicalize Touring Events Limited - MTEL

    f. Musicalize Entertainment Limited – MEL

    Where reference is made in this judgment to "the Defendants," this includes MEL as well as all five named Defendants.

7. It is the Claimants' case that Mr and Mrs Anderson have, through the vehicle of various limited companies, falsely portrayed themselves as concert promoters to potential investors, including the Claimants. The Claimants say that all of the monies that they have advanced to the Defendants by way of loan (£1,591,200 in the case of the First Claimant and £6,699,659 in the case of the Second Defendant) together with additional contractual liabilities in the case of the First Claimant and interest in respect of both Claimants is recoverable on various bases including deceit; unlawful means conspiracy; a contractual liability to repay the loans; inducement of breach of contract; a Quistclose type trust of the monies; and/or pursuant to guarantees of the loans.

8. For the purpose of this application, the Claimants limit themselves to the monies that they say can be shown to have been paid in respect of claims where the Defendants are unable to show any real prospect of successfully defending the claim: in the First Claimant's case, that is the sum of £500,000 said to have been paid as a result of what are called the "First 2021 Lowry Representations". In the Second Claimant's case, this is the sum of £5,151,259, said to have been paid as a result of what are called the "Snoop Dogg Projection Representations" and the "Snoop Dogg Sales Representations". In the case of each Claimant, the difference between the gross amount of the claim referred to in the previous paragraph and the amount in which summary judgment is sought, is that the Claimant seeks summary judgment only on the payments made after the representations referred to in this paragraph. Of course, a payment made before any particular representation was made could not have been induced by that representation.

On the other hand, it is each Claimants' case that all payments made after the representations referred to in this paragraph were induced by those representations, even if the payments related to a different putative event than that to which the representation related.

THE NATURE OF THE DEFENDANTS' BUSINESS

9. The Defence makes several important points about the Defendants' business generally and the particular issues in play at the time of their dealings with the Claimants.

10. As to their business model generally, paragraph 18 of the Defence pleads:

> *"(8) In line with industry practice, Musicalize events are organised as follows:*
>
> *(a) The Andersons identify an artist that is of interest (based on their fanbase, reputation, whether they have been in the relevant jurisdiction recently, whether they released new music recently, have an anniversary for a previous project coming up etc). Alternatively, half of the time, artist agents or managers will approach the Andersons to inform them that they are in the market for a tour/live show and ask if they would like to discuss this further or make an offer.*
>
> *(b) The Andersons will do some background checks on previous shows, venues, and sales. If possible, they will look at the online following of the artist and will request details of their production and hospitality riders. Then they will put together a predicted profit and loss sheet based on costing up the information on their rider (if that is available) and adding a reasonable estimate of other costs, such as staffing, security, any production elements not quoted by the production team and marketing. The profit and loss sheet will indicate the amounts that could be offered to the artist for Musicalize to generate profit.*
>
> *(c) If a project needs external funding, the Andersons will approach their contacts/investors and, after signing non-disclosure agreements, share the information about the events and schedule a meeting/conversation. If an investor were interested in working together, then a loan/investor agreement would be put together confirming the terms.*
>
> *(d) The Andersons would request deposits from investors before making any formal offers to artists to save jeopardising the relationships with the artists and agents if an investor pulled out.*
>
> *(e) If the artist is happy with the offer, they will negotiate a contract, with redlined versions going back and forth until agreement is reached. Payment*

terms would be agreed, usually with 50% payable to the artist on a signing. After signing the agreement with the artist, the Andersons would confirm the venue and complete the venue paperwork.

(f) The ticket prices are calculated by working alongside ticket companies such as Ticketmaster to look at previous price data and also using dynamic pricing based on the venue layouts.

(g) Artwork will then be created to start the marketing rollout plan, including adding support acts to be announced. The artist will agree on a social media/online rollout plan in line with our marketing so that the maximum impact can be made on announcement. On the announcement day, the artist, venue, corresponding ticket companies, and Musicalize will announce at a scheduled time across all platforms and mailing lists.

(h) While a show/tour is on sale, the logistics are being planned in the background, including flights, hotels, ground transport, running order, soundcheck times, and schedules. The production manager will liaise with all parties to confirm all production needs. On show day, the Musicalize team will look after the artists and ensure a smooth running of the event alongside the production and venue teams.

(i) If/where the previously discussed artist is not available, or terms cannot be agreed, or they decide not to do a tour, all of which commonly happen in the industry, the Andersons would review what other opportunities have been presented to them by the relevant agent (who would usually offer alternatives) and/or look to identify similar artists/returns and use the investment monies accordingly. This is an accepted and established business practice with the investors in the industry.

(9) The above is the basis on which the Lowry and SAS contracts were negotiated and agreed and were going to be performed. Both Lowry and SAS had been explained the process by the Andersons and had, expressly or impliedly, agreed with it."

11. The Defendants' case, that this reflected their usual practice, is qualified in the case of their dealings with both Claimants by a combination of restrictions consequent upon COVID-19 and family events, including the premature birth by Mrs Anderson of twins in April 2019 who tragically died and complications in a later pregnancy, which caused

specific difficulties in progressing the organising of events and led to considerable delays in projects coming to fruition.

12. The Claimants do not accept that this is a genuine business at all (and therefore they do not accept this description of the business model), but, for the purpose of this application, they do not seek to persuade me that the Defendants have no real prospect of success in showing that there was a genuine underlying business; that simply seek to persuade me that the specific representations relied on were fraudulent. I accept for the purpose of the Claimants' applications that the Defendants have a real prospect of success in showing that the underlying business is genuine and that their usual practice was to follow the model described in paragraph 18 of the Defence.

THE DEALINGS BETWEEN THE FIRST CLAIMANT AND THE DEFENDANTS IN SUMMARY

13. It is common ground that, in late 2018 or mid 2019 (the date being in dispute between the parties but not relevant to the issues on this application), Mr and Mrs Anderson had contact with representatives of the First Claimant. This contact led to more detailed discussions about the First Claimant investing in a proposed concert tour by a well known American rapper, Andre Romell Young, better known as Dr Dre. As a result of the First Claimant's interest in this proposal, Mr Anderson sent to the First Claimant profit and loss forecasts for proposed concerts involving Dr Dre in January and February 2020 at the O2 Arena in London, the Manchester Arena, the Birmingham Arena and the SSE Hydro Glasgow.

14. On 30 October 2019, the First Claimant and MEL entered into a facility agreement for the provision of a loan for the purpose of funding Dr Dre concerts and on 31 October 2019, the First Claimant paid over £766,200 by way of loan pursuant to that agreement. The First Claimant contends in the Particulars of Claim that representations made by the Defendants prior to it entering into this agreement and advancing this loan were false and that it was induced into entering the agreement and making the advance by such misrepresentations. It does not pursue that allegation in the instant application.

15. In early 2020, Mr and Mrs Anderson stated that the Dr Dre concerts would have to be rescheduled because of the spread of COVID-19. There was some discussion of another American musician, Marshall Bruce Mathers (better known as Eminem), appearing as a special guest at the re-arranged events.

16. On 6 February 2020, the First Claimant advanced a further £235,000 to the Defendants. Again, although it is alleged that this further advance was induced by misrepresentation on the part of the Defendants, the First Claimant does not pursue that allegation on its summary judgment application.

17. In early 2021, Mr and Mrs Anderson told the First Claimant that the COVID-19 pandemic and associated lockdowns had further delayed the Dr Dre concerts. The First Claimant asked for documents showing how the money already advanced had been spent. In response to this, the First Claimant alleges (and the Defendants do not deny) that the following documents were provided under cover of emails from Mr Anderson dated 30 March 2021, 28 August 2021 and 15 September 2021:

    a. Invoices addressed to Musicalize and corresponding bank statements purporting to show how the monies had been spent;

    b. A document purporting to be a contract between Musicalize and GTB Talent Inc dated 25 February 2020 for the engagement of Dr Dre for 4 shows to be billed as "Dr Dre 2020 UK Tour + Special Guests" as follows:

        Friday 26 June 2020 – Glasgow

        Saturday 27 June 2020 – Birmingham

        Sunday 28 June 2020 – Manchester

        Monday 29 June 2020 – London

18. For reasons set out at paragraphs 28 and 29 of the Particulars of Claim, the First Claimant asserts that the invoices, the bank statements and the purported GTB contract were in fact false documents. The First Claimant contends that the provision of these documents was an implied assertion of a belief in the truth of their contents and refers to these as the "First 2021 Lowry Representations." These are the basis of the claim for summary judgment by the First Claimant.

19. It should be noted that the bank statements provided to the First Claimant in March 2021 which appear at pp 422-423 in the bundle can be compared to the genuine statement obtained by the First Claimant from the Metro Bank in respect of Musicalize pursuant to an order of this court made by HHJ Pelling KC on 21 October 2022. The following obvious points arise:

a. The genuine statement sets out the account holder and various details relating to the account at the top of each page;

b. In contrast the allegedly forged documents do not give that information;

c. Both the genuine documents and the allegedly forged documents show the receipt of £766,200 from the First Claimant on 31 October 2019;

d. The allegedly forged statements show payments out to a number of businesses in the period 31 October 2019 to 22 November 2019, some of which have matching invoices – by way of example, a payment of £570,000 was purportedly made to UAA Talent Agency LLC on 31 October 2019 and there is a corresponding invoice at page 425 of the bundle. None of those statements shows any payment to Mr Anderson, Mrs Anderson or Musicalize Touring;

e. In contrast, the genuine statements for the same period show payments to Mr Anderson (1 payment of £10,000), to Mrs Anderson (7 payments totalling £465,030) and to the Fourth Defendant (4 payments totalling £117,400).

20. The response of the Defendants to these allegations of falsity was, in the original Defence, limited to that part of the response to paragraphs 25 to 30 of the Particulars of Claim set out at paragraph 28(4) of the Defence:

> "*Mr Anderson evokes the privilege against self-incrimination in not commenting any further on this paragraph (*sic*). None of the allegations made by Lowry are admitted. Save as expressly denied or admitted herein, Lowry is required to prove all the matters alleged in these paragraphs*."

21. In the Amended Defence, the original paragraph 28(4) is struck out. The only part of the amended pleading which deals with the allegation of falsity is that in the new paragraph 28(6):

> "*Paragraphs 28 and 29, to the extent that they contain matters stated by third parties and/or Lowry's own inferences, neither of which being matters within Mr Anderson's direct knowledge, are not admitted*."

22. The allegedly false documents are referred to in Mr Anderson's witness statement. In terms of their provenance, his only comment is "*whatever the status of these documents (as to which I make no admission), Lowry has not placed any reliance on them to advance the £500,000….*"

23. The First Claimant contends that Mr and Mrs Anderson made further actionable representations in 2021 to the effect that they needed further funds in order to organise the Dr Dre Concerts. It calls these the "Second 2021 Lowry Representations." The First Claimant does not rely on these representations for the purpose of the summary judgment application.

24. On 20 September 2021, the First Claimant advanced the further sum of £500,000 to an account which the First Claimant says it believes was held by Musicalize but was in fact held by MTEL. I shall hereafter refer to this (following the style of the Particulars of Claim) as the "Third Lowry Payment." It is the Claimant's case that this payment was made in reliance on the First 2021 Lowry Representations and the Second 2021 Lowry Representations.

25. Since this claim was issued, MTEL has repaid the sum of £500,000 to the First Claimant.

DEALINGS BETWEEN THE SECOND CLAIMANT AND THE DEFENDANTS IN SUMMARY

26. The Second Claimant was introduced to the Defendants' representative, Stephen McConnell, on 20 March 2019 through Andrew Stancliffe, a mutual acquaintance. It is the Second Claimant's case (though the Defendants deny) that Mr and Mrs Anderson told Mr McConnell of a proposed tour of the United Kingdom and Ireland by Calvin Cordozar Broadus Junior (better known as Snoop Dogg), comprising concerts in 4 venues. In any event, it is common ground that, by the time of a meeting between Mr O'Connell and others on behalf of the Second Claimant and Mr and Mrs Anderson on 25 March 2019, the Second Claimant was aware of the proposed tour. It is the Second Claimant's case that, whether before or at that meeting, Mr and Mrs Anderson made representations about the proposed Snoop Dogg tour which were in fact untrue since they had no intention or prospect of organising the tour. These alleged representations, called "the Snoop Dogg Representations" by the Second Claimant, are not the subject of this application.

27. The Second Claimant thereafter agreed to provide a loan of £1,667,627.70 to fund the proposed concerts. In fact the larger sum of £1,873,985 was advanced in six tranches between 5 April 2019 and 22 January 2020. The Second Claimant contends that advances under this facility from October 2019 (that is to say excluding the first three

tranches which totalled £1,548,400) were made in reliance on the Snoop Dogg Representations and further representations made at the time of requests for payments under the facility. Those representations were in two forms:

a. Updated profit and loss projections (called by the Second Claimant, "the Snoop Dogg Projections Representations") based on statements of costs incurred and tickets sold for the intended Snoop Dogg concerts; and

b. Representations as to the number of tickets that had supposedly been sold for the concerts (called "the Snoop Dogg Sales Representations").

Collectively these will be called the "Snoop Dogg Projections and Sales Representations."

28. Within his witness statement, Mr McConnell of the Second Claimant refers at paragraph 32 to a spreadsheet which was said to have been updated on a weekly basis. At paragraph 33, he sets out an extract from the spreadsheet, showing statements as to how many tickets had been sold and the corresponding revenue. Further, Mr McConnell says that the Andersons provided to him, on the occasion of each request for further funds, a projection of profit and loss, like that referred to at paragraph 39 of his statement.

29. The Second Claimant contends that the Snoop Dogg Projections Representations and Sales Representations were false in that in fact no costs had been incurred nor had tickets been sold for the concerts.

30. The Defendants respond as follows to the allegations of falsity:

a. In respect of the projections, "*It is admitted that Mr Anderson supplied SAS with updated profit and loss projections. It is denied that their contents, or the alleged Snoop Dogg Sales Representations, amount to actionable representations of fact*" (paragraph 41(1) of the Amended Defence);

b. In respect of the sales figures, "*The Snoop Dogg tour was indeed scheduled for April 2020 and the tickets were sold as stated, but not by the Defendants. Mr Anderson had obtained the information about ticket sales and dates from online resources and discussions with his contacts in the industry, and the information provided by him to SAS was substantially accurate*" (paragraph 41(7) of the Amended Defence); and

c. In respect of the representations more generally, "*It is denied that Mr Anderson concocted a scheme to defraud SAS. It is correct that the Snoop Dogg tour scheduled for April 2020 was being organised by a third party, not the Defendants, but the representations statements (denied to be actionable representations) made by Mr Anderson were in the belief that the Andersons and/or MTL could subsequently generate profit equivalent to the ticket sales of the Snoop Dogg tour and/or organise another tour to pay SAS the contracted sums*" (paragraph 41(8) of the Amended Defence).

31. In his witness statement, Mr Anderson provides a little more flesh to the bones of this argument:

> "*[46] It would have been clear from the surrounding conversations that what might have looked like representations about us having sold the tickets and projections about profit and loss were simply figures based on open-source material about how the shows organised by third parties were progressing. We did not say that the tickets had been sold by us or that the shows had been confirmed or on sale. SAS were always aware that this was no more than data on how these shows were doing, tickets sold and likely costs. These were figures on what was a likely number of tickets to be sold and profits to be made if the shows went ahead on our end.*
> *[47] I will not cover each representation off as most are a repeat of the same position and SAS failing to acknowledge at the outset that we always said to them that until the investment money is raised and artist booked, there was no guarantee of booking an artist. The main issues were around Snoop Dogg concerts which I have gone into more detail below.*
>
> *...*
>
> *[52] Regarding* [the Snoop Dogg Representations] *there was no inducement, these were contractual monies that SAS had already agreed to commit. Any representations made were gamesmanships* (sic) *to ensure that SAS meet their contractual obligations."*

32. Thereafter, the Second Claimant contends that Mr and Mrs Anderson made a series of representations to the Second Claimant, including

a. By email from Mrs Anderson on 16 April 2020 that Dr Dre had been lined up to be a special guest at the Snoop Dogg concerts ("the Special Guest Representation");

b. On 23 April 2020, that Eminem had agreed to perform at two stadia in the United Kingdom, for which purpose profit and loss projections were produced ("the Eminem Representations");

c. On 6 July 2021, that the Eminem concerts had to be postponed due to COVID-19, but on 10 January 2022 that the delayed concerts would be announced in early May 2022 ("the Eminem Delay Representations"):

d. Thereafter, that further funds were required to fund the Eminem concerts, as demonstrated by profit and loss sheets that they provided ("the Eminem Further Funding Representations");

e. On 3 July 2020, that the Barbadian musician, Robyn Rihanna Fenty (known as Rihanna), had agreed to perform a UK tour organised by MTL for July 2021, in respect of which profit and loss projections were provided ("the Rihanna Representations");

f. Thereafter, that further funds were necessary to fund the concerts by Rihanna ("the Rihanna Further Funds Representations");

g. In or around September 2021, that they had successfully bid to organise a concert by Edward Christopher Sheeran MBE ("Ed Sheeran") ("the Ed Sheeran Representations");

h. Thereafter that further funding was needed for the Ed Sheeran concerts ("the Ed Sheeran Further Funds Representations").

33. The Second Claimant contends that each of these representations was untrue, though does not rely on any other than the Snoop Dogg Projections Representations and Sales Representations in its summary judgment application.

34. The payments which the Second Claimant alleges that it made in reliance in whole or in part on the Snoop Dogg Projections Representations and Sales Representations were:

Date	Amount	Artist to which the payment relates	
17.10.19	£209,600	Snoop Dogg	
21.1.20-22.1.20	£115,985	Snoop Dogg	
21.4.20	£224,160	Snoop Dogg and Dr Dre (as special guest)	
21.5.20	£521,500	Eminem	
2.10.20	£497,000	Rihanna	
7.12.20	£51,050	Eminem	
21.1.21	£229,000	Rihanna	
22.3.21	£438,900	Eminem	
11.11.21	£475,000	Ed Sheeran	
2.2.22	£428,250	Eminem	
18.3.22	£415,250	Eminem	
25.3.22	£1,078,987	Ed Sheeran	
7.6.22	£154,577	Ed Sheeran	
21.6.22	£312,000	Eminem	
TOTAL	£5,151,259	Note: The sum of £6,699,659 referred to as the gross payment made by the Second Claimant to the Defendants is the sum of this figure and £1,548,400, the first three tranches of the first facility, payment of which predated the representations relied on in this application.	

35. In so far as the payments were made prior to 22 March 2021, they were made to MTL; from that date, they were made to MTE (see paragraph 83 of Mr McConnell's statement).

THE RELEVANT LAW

36. CPR 24.2(a)(ii) provides that the court may give summary judgment against a defendant on the whole of the claim or on a particular issue if it considers that the defendant has no real prospect of successfully defending the claim or issue and there is no other compelling reason why the claim or issue should be disposed of at a trial.

37. The principles to be applied on such an application are well established and are conveniently set out in the White Book at paragraph 24.2.3, where the authors summarise the principles formulated by Lewison J, as he then was, in Easyair Ltd v Opal Telecom Limited [2009] EWHC 339 (Ch):

    a. The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success - Swain v Hillman [2001] 1 All ER 91;

    b. A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable - ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8];

    c. In reaching its conclusion the court must not conduct a "mini-trial" - Swain v Hillman;

    d. This does not mean that the court must take at face value and without analysis everything that a party says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents - ED & F Man Liquid Products v Patel at [10];

    e. However, in reaching its conclusion the court must consider not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial - Brompton Hospital NHS Trust v Hammond (No.5) [2001] EWCA Civ 550;

    f. Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case - Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 3;

    g. On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question

and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it - ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725.

38. To this statement of principles might be added:

a. The burden of proof lies upon the party applying for summary judgment - ED & F Man Liquid Products v Patel; and

b. If the applicant produces credible evidence in support of the application the respondent becomes subject to an evidential burden of proving some real prospect of success, for which purpose of the standard of proof is not high – it suffices merely to rebut the applicant's statement of belief that there is no real prospect of success – Sainsbury's Supermarkets Ltd v Condek Holdings Ltd [2014] EWHC 2016 (TCC).

39. Given that this is an application that depends upon the Claimants proving that the Defendants have no real prospect of success in defending the assertion that the Defendants were dishonest, it is important to bear in mind both the test to be applied in making a finding of dishonesty and the caution about making findings of dishonesty (or findings that a person has no real prospect of success of defending an allegation of dishonesty - close to, but not exactly the same thing).

40. The test for dishonesty is set out in the unanimous judgment of the Supreme Court in Ivey v Genting Casinos UK Ltd [2017] UKSC 67:

> *"When dishonesty is in question, the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people."*

41. The care to be taken in considering allegations of dishonesty on disputed facts and the need to avoid conducting an inappropriate mini trial were neatly summarised by Sir Geoffrey Vos in Allied Fort Insurance Services Ltd v Ahmed [2015] EWCA Civ 841:

> "*[81] although summary judgment is not precluded in a case in which the honesty of one or more of the parties is in issue, particular caution should be exercised before depriving a party of the opportunity of rebutting allegations of dishonest conduct."*

42. Both the significance of a finding of dishonesty and the risk of a court wrongly depriving a party of the opportunity to proceed to full oral hearing because it considered an argument to be hopeless were considered by Sir Igor Judge PQBD in Wrexham Association Football Club Ltd v Crucialmove Ltd [2006] EWCA Civ 237, cited with approval by Sir Geoffrey Vos in Allied Fort v Ahmed:

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

Of course, Sir Igor Judge was making a statement of principle. On the facts of the case in front of him, he found that the first instance judge was entitled to give summary judgment on an allegation of fraud. In contrast, in Allied Fort, Sir Geoffrey Vos considered that the judge had overstepped the bounds in doing so.

43. In King v Stiefel [2021] EWHC 1045 (Comm), Cockerill J considered the authorities relating to the evaluation of evidence in a summary judgment application and concluded:

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

> *[22] So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up*."

44. The elements of the tort of deceit are not in dispute. As it is put at [17-01] in Clerk & Lindsell on Torts, 24th Edn:

> "*where a defendant makes a false representation, knowing it to be untrue, or being reckless as to whether it is true, and intends that the claimant should act in reliance on it, then in so far as the latter does so and suffers loss the defendant is liable."*

45. In considering the state of mind necessary for the finding of fraud, the Defendants refer me to the decision in Derry v Peek (1889) 14 App Cas 337. The test is subjective and involves determining whether the false representation was made either by the representor knowing at the time when he makes the representation that it was false or by the representor recklessly, which is to say, "*without belief in its truth*" or "*careless as to whether it was true or not*" (p 374 of Derry v Peek). It is not enough that the statement was made carelessly, in the sense of not making investigations that he might have done, or without reasonable ground for believing it to be true: "*A man who forms his belief carelessly, or is unreasonably credulous, may be blameworthy when he makes a representation on which another is to act, but he is not, in my opinion, fraudulent in the sense in which that word was used in all the cases from Pasley v. Freeman down to that with which I am now dealing*" - per Lord Herschell in Derry v Peak at p. 369.

46. As the Defendants point out, a claimant must proved that the defendant acted in reliance on the defendant's false representation:

> *"To entitle a claimant to succeed in an action in deceit, he must show that he acted (or in a suitable case refrained from acting) in reliance on the defendant's misrepresentation. If he would have done the same thing even in the absence of it, he will fail. What is relevant here is what the claimant would have done had no representation at all been made*" - Clerk & Lindsell on Torts, 24th Edn at [17-36].

47. The Claimants make certain further points in respect of proving intention and reliance/loss:

(a) Intention is rebuttably presumed once fraudulent misrepresentation is established - see Goose v Wilson Sandford & Co (No.2) [2001] Lloyd's Rep. P.N. 189 at [47], per Morritt LJ:

> *"If a fraudulent misrepresentation is found to have been made it will give rise to a rebuttable presumption of fact that the representor intended the representee to act in reliance on it… There is obvious sense in such a presumption for if the representor did not intend the representee to act on the faith of his statement why did he lie."*

(b) Intention to induce a claimant into acting is established not only if the defendant positively intends that this should be the case, but also if a defendant appreciates that it is likely that the claimant will do so - Shinhan Bank Ltd v Sea Containers Ltd [2000] CLC 1473.

(c) Provided that intention is established, it does not matter whether the defendant acts in precisely the way that the defendant intended, since the intention to deceive by inducing some action is sufficient - Goose at [48].

(d) Provided that the representation is a material one, once a fraudulent misrepresentation with intention to deceive is proven, then there is a rebuttable presumption that the claimant did in fact rely on that representation - Dadourian Group International Inc v Simms [2009] EWCA Civ 169 at [99]-[100], and Zurich Insurance Co Plc v Hayward [2017] AC 142 per Lord Clarke at [26]-[38]. It is for the defendant to establish that there was no such reliance.

(e) That presumption is very difficult to rebut where the claimant has in fact acted as the defendant intended – Zurich v Hayward at [37]:

> "*a party who has practised deception with a view to a particular end, which has been attained by it, cannot be allowed to deny its materiality or that it actually played a causative part in inducement.*"

(f) The fraudulent representation need not be the sole, dominant or even decisive cause of the claimant's actions; it need only play "*a real and substantial part*" in inducing the claimant's actions - Dadourian at [99]

(g) As a result, and given the difficulty of establishing what would have occurred in a hypothetical scenario in which different representations were made, the relevant question is whether the claimant was in fact induced by the lie, not what a claimant would have done in other circumstances - The Chevron North America [2002] 1 Lloyd's Rep 77, per Lord Millett at [105]:

> "*Whether, if a full disclosure of the truth had been made he would, or would not have acted differently is a question to which English law does not require an answer, it is sufficient that he might have done so."*

(h) The court applies what is sometimes called a "fair wind" principle, which recognises that it will resolve uncertainties about what would have happened by making reasonable assumptions which err if anything on the side of the victim of the wrongdoing where it is the wrongdoer's fault that the court does not know what would have happened but for the breach of duty – see for example Yam Seng PTE Ltd v International Trade Corporation Ltd [2013] I Lloyd's Rep 526 per Leggatt J at [188].

SUBMISSIONS - THE FIRST CLAIMANT'S CASE

48. The First Claimant's application is put on the basis that the First to Third and the Fourth Defendants have no real prospect of defending a claim for deceit. In order to succeed in that argument, the First Claimant must show that:

a. a representation was made that was false;

b. the relevant Defendant was party to the making of that representation;

c. the relevant Defendant knew that the statement was false or was reckless as to its falsity when it was made;

d. the First Claimant acted in reliance on the false representation; and

e. the First Claimant suffered loss as a result of that reliance.

49. The First Claimant contends that the bank statements and invoices provided by Mr and Mrs Anderson were forgeries. They rely upon the fact that this is not denied by the Defendants within the Amended Defence and that therefore pursuant to CPR 16.5(5), the Defendants are therefore taken to admit the Claimant's case that these were forgeries. In any event, the disclosure of bank statements pursuant to Order of 21 October 2022 shows that the documents provided by Mr and Mrs Anderson are false. Further, as to the forgeries Claimant relies upon evidence from the alleged counterparties to some of the invoices that they are false and evidence on the face of some of the invoices that they are false.

50. The Defendants do not adduce either evidence or argument as to why the court should not find the documents to be false. Whilst this does not of course dispense with the need

for the First Claimant to show, as part of its case for summary judgment, that the documents were in fact false, the absence of any positive case advanced by the Defendants to refute the Claimant's case is a relevant factor if the Claimant shows a prima facie case of falsity – see Sainsbury's Supermarkets Ltd v Condek Holdings Ltd cited above.

51. If the court is satisfied that the documents provided by the Defendants to the First Claimant were in fact false, the court can readily infer that those who supplied the documents knew that they were false. After all, their falsity lies in the fact that they are forged documents, used for the benefit of the Defendants in support of obtaining money from the First Claimant. So long as it is shown that the relevant Defendant knew that documents were being submitted to the First Claimant, the natural inference, in the absence of any alternative explanation from the particular Defendant, is that they knew that they were false.

52. The First Claimant contends that, as a result of the false representation that the documents were genuine, it made the "Third Lowry Payment."

53. The Defendants have positively raised various defences:

    a. That Mrs Anderson was unaware that false documents had been provided and that therefore, at the very least, any case against her should fail;

    b. That, in any event:

        i. the Defendants had not intended that the First Claimant rely upon the allegedly false documents; and/or

        ii. the First Claimant did not in fact rely upon the allegedly false documents;

    c. That the First Claimant has not suffered any loss as a result of the alleged deceit because of the repayment of £500,000 made by MTEL. In oral submissions, Mr Atkins KC described this as "*the principal issue*" on the Claimant's application.

54. On the first issue, that of Mrs Anderson's knowledge of what was going on, paragraph 28(7) of the Amended Defence, responding to paragraphs 24 to 28 of the Particulars of Claim where the First 2021 Lowry Representations are pleaded, states that "*Mrs Anderson did not participate in, know about at the time, or authorise any of Mr Anderson's alleged actions. She was copied into Mr Anderson's emails sending the*

Documents, but this was routine and she did not consider the emails at the time as she was extremely busy on other matters." At paragraph 9 of her witness statement, she adds to this: "*Right now, I cannot recall what emails were or were not sent by my husband to the Claimants. Just because I was copied does not mean I consented to what was sent or certainly not that I checked the accuracy of what was being sent. Most of the time I would not even look at what was sent, I simply did not have time. Yes, my husband and I talked about different opportunities and the investors we were working with to put on shows. I cannot recall exactly what was said and when right now in full details*." It is on this basis that the Defendants deny that Mrs Anderson was party to any of the alleged misrepresentations.

55. But the First Claimant contends that there is abundant evidence that Mrs Anderson was just as much a party to the production of false documents as was Mr Anderson, In Mr Nugent's statement of 24 August 2023, the following messages amongst others are referred to.

a. On 1 April 2021, Tom Hunt of the First Claimant contacted Mrs Anderson to request some missing invoices. On the same day, Mrs Anderson emailed Mr Hunt as follows:

"*Hi Thomas,*
Will get the 2 invoices sent over and find the additional invoice for Manchester Arena (I actually think they sent a £10k first in error and then sent the £20k after so I'll get Gala to find."
The Claimant notes that the Manchester arena invoice is one that it shows was not genuine.

b. On 4 April 2021, Mrs Anderson emailed Mr Hunt as follows:

"*Hi Tom*
Yes we can provide these but as explained to Rob this bank account is now closed so we had to request statements from the bank which were then posted to us. We are currently in Dubai meeting with venues so we wouldn't be able to scan these until we are home after the 16th. We would have requested these with the others if we'd known they were required.
We are due to make a payment to the artist next week. So will need to send any remaining pieces once we return.

We will have the outstanding 2 invoices over to you by Tuesday and the correct full £20k invoice also.

Thanks"

c. On 6 May 2021, Scott Fletcher, a director of the First Claimant, and Mrs Anderson exchanged WhatsApp messages:

Mr Fletcher: "*Hiya Just checking you got my email On another note - how you getting on with rob so we can sort the Dre deal in any case*"

Mrs Anderson (Saved on the relevant device under the name "Sophie Musicalize"): "*Ben is just waiting on a few of the statements and then can scan and send over to rob"*

Mr Fletcher: "*Ok cool - final bids on my deal Monday so should have a clear plan my end by mid next week"*

Mrs Anderson: "*He has everything relating to your investment*"

Mrs Anderson:: "*Just waiting to show the rest of the funding from ourselves and the other investor*"

Mr Fletcher: "*I honestly think we have an amazing opportunity*"

Mrs Anderson: "*We had a zoom with the Maldives this morning*"

Mrs Anderson: *"Really exciting opportunity to build an annual event there"*

d. On 13 August 2021, Mrs Anderson emailed Mr Nugent saying, "*as mentioned the next instalment of £500,000 is due so can we get that across to Musicalize."*

Mr Nugent replied on the same day: "*Prior to sending over any additional funds for this specific project I think Scott had asked for confirmation of the dates of the shows and also for us to finalise the full 'audit' of the payments made including the ones made by you/Ben personally. If you are able to send all these over so we can get that ticked off asap we will then be able to send over the next instalment*."

e. On 23 August 2021, Mr Fletcher and Mrs Anderson again had an exchange of WhatsApp messages:

Mr Fletcher: "*What's happening with sorting this documentation ? Not heard anything off Nuge - are we making progress?"*

Mrs Anderson : "*We landed back from Greece yesterday"*

Mrs Anderson: "*We re requested the missing invoices as couldn't find them so the companies are sending today* "

Mrs Anderson: "*Then just need to sort the payment for dr see as they are chasing how."*

Mrs Anderson: "*The bulk info for everything else we are compiling"*

Mrs Anderson: "*Should be end of the week* "

Mrs Anderson: "*Dr dre**"

Mrs Anderson: "*Otherwise Tom has everything for that show"*

Mrs Anderson: "*And we'll start sending over the other historical stuff"*

Mr Fletcher: "*Ok good we really do need to get it all pulled together now"*

Mrs Anderson: "*Will have new dates for Dre tomorrow*"

Mrs Anderson: "*We have a zoom with them to finalise* "

Mr Fletcher: "*Ok great have we sorted all the documentation now - been another two weeks…. "*

Mrs Anderson: "*They have all Invoices now just sending last Couple of statements*"

Mrs Anderson: "*Then they have everything"*

…

f. On 15 September 2021, Mrs Anderson emailed Mr Nugent from the email address Sophie@musicalize.co.uk under the signature "Sophie Anderson, director, Musicalize") stating:

"*Now the full paperwork is confirmed by Tom can we please request the payment before Friday*."

g. On 16 September 2021, Mrs Anderson and Mr Fletcher had further exchanges of messages:

Mrs Anderson: "*Also Tom has everything and has confirmed everything reconciles"*

Mr Fletcher: "*Hi Im in Uk until 24th so land in dubai that evening I think how long are you there for?"*

Mr Fletcher: "*Brilliant - just about to get on flight to dubai so let's try and finalise*

everything tomorrow and transfer the cash

and later:

Mrs Anderson: "*Just pulling the information on each Project, some companies are*

only just reopening so requesting invoices has taken a while and getting the most recent
agreements from the investors as we've updated with every reschedule same as with
yourself and we just prioritised getting dre finished as there are payments due"
Mrs Anderson: "*Will definitely face everything prior to Maldives"*
Mrs Anderson: "*Have*"*

h. On 17 September 2021, Mrs Anderson and Mr Fletcher had a further exchange of messages:

Mr Fletcher: "*So anytime after 5pm please Uk time"*
Mrs Anderson: "*No problem, we'll do once we are back from school run and kids have had dinner, I've sent the payment details over to rob, I didn't hear back so should I send to you?"*
Mr Fletcher: "*Hi You should have had a doc from Tom - can you confirm your agreement"*
Mr Fletcher: "*I've also asked rob about paperwork for the new advance - by our call we should have that too. Do we now have dates agreed!*"
Mr Fletcher: "*Can we see copy of new agreement with artist please* "
Mr Fletcher: "*Chat later"*
Mr Fletcher: "*Scott"*
Mrs Anderson: "*I already replied to Tom and confirmed* "
Mrs Anderson: "*New dates were in the email also*"
Mrs Anderson: "*I'll get a copy of the latest agreement over"*
Mr Fletcher: "*Ok great just forward me everything please so I can review before our*
call"

56. The First Claimant contend that these messages show a close connection between the author and the provision of the invoices and other documents requested by the First Claimant. The email of 15 September 2021 is said to be particularly significant because it shows an express acknowledgement of the link between the provision of the documents by the Defendants and the payment of monies by the First Claimant.

57. It is notable that Mrs Andreson has neither denied that messages stated to be from "Sophie Musicalize" are in fact from her, nor said that she relied on anyone else (in

particular Mr Anderson) for the content of those messages. The messages show that the author has close involvement in the presentation of the documents to the First Claimant which were being requested by the First Claimant and which, in the email of 15 September 2021, Mrs Anderson expressly acknowledged to be a precursor to a payment being made by the First Claimant. The Claimant contends that the only inference that can reasonably be drawn from this information is that Mrs Anderson was as involved in providing the relevant documents referred to in the exchanges as was Mr Anderson. Given that they are in fact false and have been forged, it is argued that the only reasonable inference also is that Mrs Anderson knew of this when using them in support of the request for draw down.

58. Turning to the second issue, that of reliance on the allegedly false documents, the First Claimant's starting position is that the emphasis on the question of whether it was intended that a representee rely on a representation is not the correct approach to determining whether the representation may be actionable, notwithstanding the passage at [17-01] of Clerk and Lindsell cited above. Rather, it suffices that the claimant show that the defendant appreciated that it is likely that the claimant would do so - see Shinhan Bank Ltd v Sea Containers Ltd cited above. But in any event, the reality of the position here is that the only reason for the Defendants to have made the representations about the authenticity of the documents was to cause the First Claimant to believe in their truth. As Morritt LJ said in Goose v Wilson Sandford & Co (No.2), if the defendant had not intended a false representation made fraudulently to be relied on, why would it have been made?

59. Indeed, on this issue, as on the previous issue, the First Claimant says that the email exchange on 13 August 2021 and the email of 15 September 2021, referred to above, are highly telling, not only linking Mrs Anderson closely to the provision of the false documents to the Claimant but also showing that she realised that the purpose of the documents was to secure a payment by the Claimant.

60. The Defendants however say that the provision of the documents related not to the advance of £500,000 in respect of the Dr Dre concerts but rather in respect of a much larger investment in events promoted by the Defendants. At paragraph 28 of his witness statement, Mr Anderson says:

> *"[19] The people behind Lowry and SAS are extremely intelligent people and whilst maybe not having experience in the music sector, had been successful in*

> *other business ventures and were worth millions of pounds on an individual basis. Both SAS and Lowry went into these investments with their eyes fully open. They knew the risks and they also knew the rewards. They knew we were capable and had already produced many concerts over the years we had been trading and were impressed by what we had achieved to date.*
>
> *…*
>
> *[28]…the documents Lowry says were forged by me had been requested by Lowry in the context of the £10,000,000 investment that Lowry wanted to make, not in support of the Dr Dre conversations and opportunity (i.e. the £500,000 that was advanced by Lowry). In May 2021, Lowry told us that its offer to invest £10,000,000 was subject to an audit being carried out, which would include evidence of the payments already made by Musicalize to suppliers/ artists/promoters and provision of relevant bank statements. Mr Fletcher told us repeatedly over the course of the subsequent months that this was the reason for seeking the proof of spending and bank statements. Whatever the status of these documents (as to which I make no admissions), Lowry has not placed any reliance on them to advance the £500,000. The payment of £500,000 was delayed to September 2021 to line up with the discussions we were having at the time with the venue, it had nothing to do with the documents sent to Lowry."*

The Defendants contend that the First Claimant is a sophisticated investor who "*had undertaken or had the benefit of a third party's extensive due diligence and research into Sophie and me and our companies."*

61. The Defendants also point out that the First Claimant had agreed to lend the £500,000 which was the subject of the Third Lowry Payment before the allegedly false invoices and bank statements were provided to them. This is consistent both with the argument that these documents were supplied to support the prospective £10 million investment and with the argument that they were of no relevance to the First Claimant advancing the sum of £500,000.

62. Even if the court suspected that the First 2021 Lowry Representations played a part in the First Claimant's decision to pay the sum of £500,000 to Musicalize/MTEL in September 2021, it is clearly the case that the First Claimant relies on other representations, including the Second 2021 Lowry Representations. As it is put in the Defendants' skeleton argument, "*the alleged Second Lowry Representations were*

closer in time to when the agreement was concluded and the monies advanced than the Invoices and Bank Statements. In the circumstances, it is impossible for the court to assess on a summary basis and in isolation the materiality (or lack of it) of the Invoices and Bank Statements in inducing Lowry to enter into the Third Lowry Agreement. The court ought to hear this part of the claim together with the rest of it at trial, when the evidence can be comprehensively considered and tested in cross-examination."

63. The First Claimant responds that, even without the presumption referred to in Goose v Wilson Sandford & Co (No.2), the evidence is powerful in support of the contention that the First Claimant in fact had regard to the documents provided by the Defendants before it made the Third Lowry Payment. It is irrelevant that the First Claimant had agreed to pay over that sum prior to the allegedly false representations being made. The First Claimant would not have been obliged to make the payment (and would not in fact have done so) had it been aware that the invoice and bank statements were false. The presumption merely adds further weight to the argument that the court should be satisfied that the Defendants have no real prospect of success in an argument that the payment was not made in reliance on the false documents.

64. On the final issue raised by the Defendants in respect of the First Claimant's claim, namely that the First Claimant has not suffered any loss as a result of the alleged deceit because of the repayment of £500,000 made by MTEL, the Defendants' position is as follows:

a. The Third Lowry Payment was paid into an account in the name of MTEL;

b. The freezing injunction included within its ambit that account;

c. In order to obtain the release of the MTEL account, Mr and Mrs Anderson gave the following undertaking as part of the order of 4 November 2022:

"The Second and Third Respondents undertake to procure that Musicalize Touring Events Limited makes a payment of £500,000 to the client bank account of the Claimant's solicitors with the account details set out below, such payment instruction
to be given to the bankers of Musicalize Touring Events Limited by 4pm on Monday 7
November 2022."
The order went on to provide:

"Upon procurement of payment of £500,000 to the Applicant in accordance with the undertaking set out in Schedule C to this Order, this prohibition will cease to apply to the legal interest in any money in the account numbered 78201632 at National Westminster Bank plc, sort code 60-09-16."

d. The sum of £500,000 was paid to the First Claimant on or around 7 November 2022.

e. By its acknowledgement of service, dated 9 November 2022, Musicalize admits the claim in full. Mr and Mrs Anderson by their acknowledgements of service, also dated 9 November 2022, admit the claim in part. The Defendants contend that this is an admission of the claim in debt for £500,000 brought by the First Claimant in respect of the Third Lowry Payment. Indeed, the Admission forms filed by Mr and Mrs Anderson admit their liability for the £500,000 sum which they contend that they have repaid.

f. Accordingly the repayment of the sum of £500,000 in accordance with the undertaking discharged the debt claim and the First Claimant has no extant claim in respect of the payment of £500,000.

65. In support of their argument as to the right of a debtor who owes multiple debts to appropriate the repayment to the particular debt, the Defendants cite Chitty on Contracts, 35th Edn at [25-058] and [25-059] (the same text as [24-058] and [24-059] of the 34th Edn cited in the Defendants' skeleton argument):

"25-058… the debtor may, when making a payment, appropriate the money paid to a particular debt or debts, and if the creditor accepts the payment so appropriated, he must apply it in the manner directed by the debtor …
25-059. It is essential that an appropriation by the debtor should take the form of a communication, express or implied, to the creditor of the debtor's intention to appropriate the payment to a specified debt (or debts), so that the creditor may know that his rights of appropriation as creditor cannot arise. It is not essential that the debtor should expressly specify at the time of the payment, which debt or account he intended the payment to be applied to. His intention may be collected from other circumstances showing that he intended at the time of the payment to appropriate it to a specific debt or account. The intention of the debtor to make the appropriation must, however, be clearly established on an objective view of all the circumstances of the case as known to both parties."

The Defendants contend that the admissions as to the repayment of the loan amount to an appropriation of the payment to that loan.

66. In so far as the First Claimant claims that it brings a claim in deceit as well as in debt, the Defendants contend that the pleaded loss from the deceit is the sum of £500,000 but that this has been repaid; hence there is no loss and the claim must fail.

67. The First Claimant contends in response that the Defendants' appropriation of the payment of £500,000 is not to the claim of the First Claimant in respect of the Third Lowry Payment but rather to the general indebtedness of the Defendants to the First Claimant. This is said to be apparent from paragraph 14(1) of the Defence, where it is said, "*It is admitted that Lowry advanced a total of £1,591,200 and SAS a total of £6.7 million. However, the Andersons have paid back £500,000 to Lowry and transferred £200,000 to SAS as their share of the investment pursuant to the First SAS Agreement. These amounts should be credited against any sums found to be owing to Lowry, respectively SAS*." This language does not purport to appropriate the repayment to the specific investment on 20 September 2021 made pursuant to the third loan agreement.

68. In any event the First Claimant acknowledges that the provenance of the £500,000 that was paid pursuant to the undertaking to is unclear. Another company, ARJ Capital Overseas FZ LLE ("ARJ"), based in the United Arab Emirates, has also sought and obtained a freezing injunction against some of the Andersons' companies and they argue that they may have a proprietary interest in some or all of the £500,000 permitting them to trace the funds into the First Claimant's hands. If ARJ were able to do this but the purported appropriation were to have the effect contended for by the Defendants, the First Claimant would be left with no basis on which to seek judgment in respect of and therefore to recover the Third Lowry Payment (or the traceable part of that monies if ARJ cannot prove a proprietary remedy in respect of the full sum).

69. Yet further, the First Claimant points out that its claim against Musicalize is in tort as well as in debt. The repayment of the principal advanced would not act so as to discharge the tortious claim, not least because, although the loss suffered by the First Claimant may have been the sum advanced, namely £500,000 at the time the advance was made, its loss now is greater because of its inability to have use of the money in the interim, giving it a right to claim interest. Thus the payment of £500,000 does not discharge the claim in tort.

SUBMISSIONS - THE SECOND CLAIMANT'S CASE

70. Again, the Second Claimant puts its application for summary judgment on its claim in deceit. It seeks judgment against the Second to Fifth Defendants.

71. The application was originally put on the basis of several of the representations in the Particulars of Claim. In the event, at the hearing of the application, the Second Claimant limited its argument to the Snoop Dogg Projections and Sales Representations.

72. In order to succeed, the Second Claimant must show that:

    a. One or more representations were made that were false;

    b. The relevant Defendant was party to the making of that representation;

    c. The relevant Defendant knew that the statement was false or was reckless as to its falsity when it was made;

    d. The Second Claimant acted in reliance on the false representation; and

    e. The Second Claimant suffered loss as a result of that reliance.

73. The Second Claimant contends, as recorded above, that it was provided with ticket sales figures and consequent profit and loss projections. In support of the contentions both that the figures were reported as sales being achieved by the Defendants and that Mrs Anderson knew that the representations were being made, Mr McConnell refers in his witness statement to the following:

    a. An email dated 8 October 2019 from Mr Anderson which gives a link to access a live ticket update spreadsheet and provides details of the sales of tickets. There is no suggestion in that email that the sales are being achieved by a third party for an event that is not being organised by the Defendants.

    b. A WhatsApp exchange on 15 October 2019 shows Mr Anderson purporting to market the Snoop Dogg tour. For example at 05:49:34, he is recorded as saying, "*Tickets have been updated in the spreadsheet. With it being a live spreadsheet I think I'm going to add another tab to show week on week progress just so you can see the trends. We're expecting another boot around pay day and have some marketing in place to support this*." There is absolutely no suggestion that these are ticket sales being achieved by anyone other than the Defendants. Further the statement "*we're expecting another boot around pay day and have some marketing in place to support this"* is only consistent with the Defendants

themselves being involved in marketing the event, even though it is now the Defendants' case that they had nothing to do with the events to which the sales figures and profit and loss projections related.

c. An email message of 16 October 2019 from Mr Anderson to Mr Reid of the Second Claimant is particularly striking, In response to a query about the detail of the ticket sales figures that were being produced, Mr Anderson said:

> *"I'm still working through these ticket demarcations. The reason it's not as simple as just saying "X = Y" is because when we finally signed off the ticket demarcations with the ticket companies and venues we obviously wanted to maximise the earning potential. As an example for Birmingham Arena we put in the initial spreadsheet that there would be 6100 tickets @ £45.50 but the venue presented us with a slightly different configuration which meant splitting the seated sections effectively into A & B sections so it's meant that we'll now have less than 6100 @ £45.50 but the revenue won't be affected negatively because we now have an extra set of seats @ £58.50 that weren't on the original P&L.*
>
> *I just need a solid hour or so to sit down and go through all the final venue manifests and do the tallying job. I've had to clear my diary for tomorrow to work on a few things in the office so I'll do that then.*
>
> *Re: your question about how tickets sales are comparing to other shows, I'd say we had a solid week 1. The first time we bought 50 Cent over in 2015 we sold 8,000 tickets in the first week at The O2 Arena (he was exclusively playing London). When he came over last year it took almost 6 weeks to reach that same level of ticket sales (he had more regional shows). The spikes in ticket sales will be dictated by things like: pay days, artist promotion, Xmas gifts, radio and press promo, social media marketing etc and other factors. We'll be closely watching things over the next week or so as the end of October / beginning of November is where we expect to see the next big spike*."

d. A WhatsApp message on 25 October 2019, where Mrs Anderson is asked about the progress of ticket sales and in her reply refers to "*updating this evening around 7pm".*

e. A WhatsApp message on 6 November 2019, where Mrs Anderson refers to updating ticket information.

f. A WhatsApp exchange between Mr and Mrs Anderson and the Second Claimant in which Mrs Anderson refers on 5 September 2020 to the "*updated Snoop figures."*

g. A WhatsApp exchange on 17 September 2020 where Mrs Anderson states *"…The latest agreement is now fully executed so drawdown would be next week into the same details as previous. Ben will send over the latest ticket figures tomorrow when we get the latest update.*"

h. A WhatsApp message on 31 May 2022, where Mrs Anderson says, "*our tickets are still on sale currently."*

74. Indeed, the Second Claimant invites me to look through the hundreds of WhatsApp messages in the bundle. They contend that there is not a single reference that would make one suspect that the figures related to anything other than events being organised by the Defendants.

75. The Second Claimant contends that these representations were palpably untrue because the Defendants now admit that they were not in fact selling tickets for a tour for Snoop Dogg at the time that the representations were made. Further, Mr and Mrs Anderson obviously knew they were untrue because they knew that they were not in fact selling tickets for a Snoop Dogg tour at the relevant time.

76. I have noted above that the Defendants admit within the Defence that documents were provided by way of loss and profit projections and figure for the sale of tickets, but it is asserted that these were not representations of sales being achieved by the Defendants and/or the projected profit and loss from such sales.

77. As for the assertion that the Snoop Dogg Projections and Sales Representations were untrue, the Defendants put their case thus in their skeleton argument:

> *"[82] (1) The Relevant Ds deny that the representations were made as claimed by SAS. Insofar as they consist of oral statements, these are contested by the Relevant Ds and can self-evidently not be resolved without a trial.*
> *(2) Where the alleged representations were written or partly in writing, they need to be read and construed in the wider context of the oral conversations taking place*

contemporaneously as well as against the relevant matrix of fact. The court is not in a position to engage in that exercise at this stage;

(3) As to the profit and loss projections, these were no more than educated estimates of what might be achieved if the concerts were organised within the parameters anticipated by the Relevant Ds. They were not representations of fact or guarantees as to the outcome or profits;

(4) The Relevant Ds also deny that the representations were false. The profit and loss projections were Mr and Mrs Anderson's best estimate of what such concerts might achieve and they were true to the best of their belief;

(5) Further or alternatively, insofar as any of the representations are found to have been false, Mr and Mrs Anderson believed, at the time of making them, that they were correct. In particular they had the intention to organise each concert that they had contracted to do and reasonably believed that they could do so…"

78. In oral submissions, the Defendants' case in respect of the fact of the representations or their truthfulness was not further developed.

79. On the issue of inducement, the Second Claimant contends, like the First Claimant, that the court can presume that representations which were obviously made to induce them to make payments were in fact part of the cause of such payments being made. Whilst the Second Claimant accepts that its case as to the payments induced by the Snoop Dogg Projections and Sales Representations goes beyond payment made specifically relating to that tour, its case is that the repeated representations about ticket sales and profit projections were intended to and did in fact induce the Second Claimant to invest monies in other projects beyond the Snoop Dogg tour. The representations lulled the Second Claimant into a sense of security, in that the investments are in a tour which seemingly is selling well and will be profitable. It is obvious that an investor who invests in one project will be likely to look to the success of that project before investing in further projects with the same party.

80. In reply, the Defendants invite the court to conclude that this is a case where judgment should not be entered on the alternative basis that they have a real prospect of successfully defending the claim on the basis that some or all of the alleged payments made by the Second Claimant were not induced by the Snoop Dogg Sales Representations and/or the Snoop Dogg Projections Representations and/or there are other compelling reasons why the claim should be disposed of at trial.

81. On the issue of inducement, the Defendants say within their skeleton argument at [82]:

> *"(6) The representations did not induce SAS to enter into the alleged agreements, as SAS was also a sophisticated investor who was committed to funding the concerts based on its own assessment of the market and the musical preferences of its directors;*
> *(7) None of the losses claimed by SAS can be attributed with any confidence to any of the specific representations claimed. "*

82. In oral submissions, Mr Atkins KC developed these arguments for the Defendants:

a. As is apparent from the table of payments made and the events to which they related, the Second Claimant is relying on the Snoop Dogg Projections and Sales Representations as having induced payments in respect of events relating to other artists. However the Second Claimant also relies on a series of other allegedly untrue representations which are not the subject of the summary judgment application. The court should be cautious about concluding that payments made in relation to events that are connected with the Snoop Dogg tour were induced by those representations. Rather, it should permit the Defendants to explore the thinking of the Second Claimant through the processes of disclosure and witness evidence in order to reach informed conclusions on the extent to which (if at all) the Snoop Dogg Projections and Sales Representations induced the Second Claimant to invest in events relating to other artists, since it is perfectly possible that these representations were irrelevant to the decision to invest in other events.

b. Some of the payments (for example the payment of £209,600 made on 17 October 2019) were monies that the Second Claimant had contracted to pay to the Defendants prior to the earliest representation relied on by the Second Claimant. Although the actual payment of the sum post-dated the making of the earliest of the alleged Snoop Dogg Projections and Sales Representations, the Second Claimant could not succeed in an argument that such a representation had induced it to make a payment when it was already contractually committed to making that payment before the alleged representation was made.

c. The Second Claimant's case includes the assertion that other actionable representations were made. If those are to be permitted to go to trial it is more convenient to hear all issues at the same time.

83. As the Second Claimant points out, this position is contradicted by Mr Anderson's own statement at paragraph 52 where he refers to the representations as being "*gamesmanships to ensure that"* the Second Claimant met the payments that were due. Putting aside for the moment the question as to whether a party can be liable in deceit for taking steps to achieve a payment to which it was contractually entitled, Mr Anderson's own words demonstrate that he was seeking to cause to bring about the payment of monies by the Second Claimant, the very inducement that he denies in the first sentence of the same paragraph. The mere fact that other representations might also be operative does not prevent the statements made by Mr Anderson from being a partial cause of their intended effect, namely the payment of monies. This position is not weakened by the fact that at least some of the payments were of sums that the Second Claimant was contractually bound to pay. The mere existence of such contractual liability does not prevent the inducement from being actionable if they in fact played a part in the Second Claimant's decision to pay the money over.

DISCUSSION – THE CLAIM OF THE FIRST CLAIMANT

84. I have no hesitation in concluding that the Defendants (or some of them) provided documents to the First Claimant that were forged. I say so for the following reasons:

a. The First Claimant's evidence shows that the bank statements produced by the bank were different from those produced by the Defendants in a way only consistent with one or the other set being forgeries.

b. The invoices provided by the Defendants are not credible because they in some cases contain obvious errors on their face and in some cases have been disavowed by the alleged authors as false.

c. The Defendants have not denied that they (or some of them) have falsified the documents.

85. As to the contention that Mrs Anderson was unaware that her husband was producing or causing to be produced false documents, I again have no hesitation in rejecting what is said as lacking reality. The material set out in Mr Nugent's statement and summarised above shows repeated examples of Mrs Anderson herself (or, at the very least, the user

of her account) being involved in arranging for documents to be sent and in seeking payment on the back of those documents.

86. One plausible explanation of the messages purporting to come from Mrs Anderson but her in fact being unaware of the use of false documents would be that they did indeed come from her but that she had supplied them because she had believed them to be true. That might be so if her husband had misled her about the provenance of the documents. However, at no point in her evidence does she suggest that this was the case. Another plausible explanation might be that someone had taken control of her social media and email accounts and sent out messages in her name of which she was ignorant. Again she does not suggest this to be so in her evidence. If either of these scenarios were true, it is very difficult to see how Mrs Anderson could not at the very least have a suspicion to this effect if not have positive proof that it were so. Her failure to provide any material consistent with these "innocent" explanations leads me to the conclusion that each is fanciful and can be disregarded.

87. It follows that I am satisfied that I can safely draw the natural inference that Mrs Anderson herself sent these messages and can exclude as fanciful the proposition that she did so because she was misled by her husband.

88. The representations which I have referred to were made in the name of Musicalize. The emails from Mr and Mrs Anderson used the name "Musicalize" and the false invoices were in that company name. Those documents induced payments to MTEL. I am satisfied that, in making the representations, Mr and Mrs Anderson were acting on behalf of both of those companies. It follows that both are liable for the representations.

89. I turn then to the question of inducement and reliance on the false representations. The First Claimant is clearly correct in its argument that these documents were provided in circumstances where they were either intended to cause the First Claimant to believe in their truth and to make payments in consequence of that belief or at the very least were likely to have that consequence. The email exchange between Mrs Anderson and Mr Nugent on 13 August 2021 and Mrs Anderson's email of 15 September 2021 are particularly telling evidence of Mrs Anderson's realisation and indeed intention that the First Claimant rely on the messages. No investor who is receiving documents which purport to show how its investment is being applied would be liable to disregard that material. Rather, the material would be liable to have exactly the effect that it was

doubtless intended to have, namely, to show that the person in whom the money is being invested is using it wisely.

90. I am not dissuaded from the conclusion that the First Claimant relied on the First 2021 Lowry Representations in making the Third Lowry Payment either by the argument that the First Claimant was a sophisticated investor or by the argument that other representations are more likely to have induced that payment. I am perfectly willing to accept for the sake of the summary judgment application that the First Claimant can be considered a sophisticated investor. It is highly likely that an investor in its position would have relied on a variety of sources of information in deciding to continue to invest in the Defendants. Where the documents produced by the Defendants included material which purported to show how the money being invested by the investor was being applied, it is entirely natural and indeed overwhelmingly probable that that material would play a part in the investor continuing to invest. It is true that other factors are likely to have played a part. However the Defendants' argument that the court cannot be satisfied for the purpose of a summary judgment application that the First 2021 Lowry Representations were one of the factors in the lending appear to come close to arguing that, because there are so many different representations and factors in the process of making a decision to advance monies, no single factor can be said to be causative of that decision, because the investor may have made the same decision even if one excludes any individual factor. That conclusion cannot be correct. It is inconsistent with authority (see for example Zurich v Hayward and Dadourian Group v Simms) and is in any event contrary to any logical analysis. Where a number of factors are in play when a person is making a decision, the mere fact that no single factor is considered decisive does not lead to the conclusion that none of the factors led to the decision being made; rather it leads to the conclusion that they all led to the decision. To conclude otherwise would lead to the chilling consequence that, the more lies a fraudster tells in order to defraud their victim, the harder it is for the victim to say that any particular lie induced the payment over, and therefore the harder it would be for the victim to prove their case. In fact of course the opposite is true – the more persuasive lies a person tells, the more they are likely to influence the person to whom they are told. So long as the particular inducement with which the court is concerned was operative on the mind of the representee in the sense of being, as Arden LJ put it in Dadourian, "*a real and substantial part"* part of the overall reason why the representee

acted as they did, the claim is not defeated by evidence that other factors were also operative.

91. The Defendants' representations here were of a kind both intended to and liable to cause the First Claimant to advance more monies. The First Claimant did so and on the material before the court was induced to so by the Defendants' lies. Even if there were not positive evidence of inducement (which there is, as identified above) there is no material to displace the presumption of reliance on those lies. I am satisfied that the relevant Defendants have no real prospect of success in a defence that the lies did not induce the payment.

92. On the issue of the effect of the repayment of £500,000, there are several difficulties with the arguments advanced by the Defendants:

    a. As the passage from Chitty on Contracts at [25-058] and [25-059] cited above makes clear, the appropriation must be made when the debt is paid, such that it only has effect if the creditor accepts the payment. The payment was divorced from the alleged appropriation here, since the payment was made on or about 7 November 2022, yet the alleged act of appropriation was only made by the service of Acknowledgement of Service dated 9 November 2021.

    b. In any event, given the arguable proprietary claim that ARJ may have, it is in my judgment simply not possible for the Defendants to appropriate the payment of £500,000 to the Third Lowry Payment, since the evidence may later show that the source of those monies is some other advance by a third party.

    c. Whilst a claim in tort can be discharged by a waiver of the tort, that is only the case where the waiver involves the creditor choosing to exercise a right inconsistent with the tortious claim (see Clerk & Lindsell on Torts, 24th Edn at [29-03]). I do not see that the acceptance of the return of the principal sum advanced to an allegedly fraudulent recipient of funds amounts to a waiver of the right to sue that alleged fraudster in tort, since there is no inconsistency in the First Claimant saying both that they have advanced money which is liable to be repaid and saying that they would not have advanced the money but for some deceit.

    d. In the alternative, the claim in tort might have been discharged through an accord and satisfaction. Yet I see no basis for it being said that the First Claimant

> here has agreed to a discharge of the claim in tort in respect of the advance simply because it has accepted repayment of the principal debt the original payment of which was (arguably) induced by the (alleged) tort. Interest has been a part of the claim from its outset. Presumably, the argument of some kind of accord and satisfaction would require the court to find either that the First Claimant had abandoned a claim to interest in accepting the repayment or that the repayment was paid and was accepted with the intention that it satisfy the claim for damages, but not the claim for interest on those damages. I see no basis for concluding that either of these was what the parties intended. Rather, it was simply a payment on account of the alleged indebtedness.

93. It follows that I accept the First Claimant's argument that the repayment of the sum of £500,000 does not in some way discharge the Defendants' liability in respect of the Third Lowry Payment. Of course, as the First Claimant accepts, it must give credit for the receipt of that sum (in so far as it is not subsequently obliged to pay it over to a third party such as ARJ). But that does not prevent this court from entering summary judgment on the underlying claim, whether in tort or in debt.

DISCUSSION – THE CLAIM OF THE SECOND CLAIMANT

94. It is not in dispute that the material provided by the Defendants to the Second Claimant in respect of the proposed Snoop Dogg tour by way of the Snoop Dogg Projections and Sales Representations was neither a statement of sales achieved by the Defendants nor a statement of projected profits from such sales - see paragraph 41(7) of the Amended Defence. Rather it is alleged to have been based on the sales and projected profits from a third party who was organising such a tour. Accepting for the purpose of this application that the Defendants have a more than fanciful prospect of showing that it be the case (a proposition which I accept with some hesitation), the issue arises as to whether the Second Claimant was nevertheless misled by the material provided to it.

95. I have set out a considerable amount of the text, within the Defence, the statement of Mr Anderson and Defendants' skeleton argument. This is because the documents leave me puzzled as to the case that the Defendants are seeking to establish in respect of what the communications that the Second Claimant relies on as the Snoop Dogg Projections and Sales Representations are actually supposed to have involved. It is implicit in the Defendants' case that the Second Claimant knew it to be the case that those representations did not relate to events being organised by the Defendants. However

the pleading says nothing about whether the Second Claimant is said to have known that the figures being provided related to an event being organised by a third party, even though this is clearly central to the Defendants' case.

96. The first sentence of paragraph 46 of Mr Anderson's witness statement states that "*It would have been clear from the surrounding conversations that what might have looked like representations about us having sold the tickets and projections about profit and loss were simply figures based on open-source material about how the shows organised by third parties were progressing."* However, Mr Anderson does not say what would have made that clear. For example, Mr Anderson does not say that he, Mrs Anderson or anyone else told the representatives of the Second Claimant that the figures related to an event being organised by someone else. This is a strange omission if in fact it is the Defendants' case that the Second Claimant were told the true provenance of the figures.

97. Indeed, it is not easy to see how this is said to align with the Defendants' business model as stated in paragraph 18(8) of the Defence. There is nothing in that model to suggest that a potential investor such as the Second Claimant would be provided with information about how an event organised by a third party was progressing and nothing to suggest that a person who was given information about the progression of ticket sales would think that the figures being given related to an event organised by someone other than the Defendants. The most plausible basis for the Defendants' case that the Second Claimant either knew or must have known that the ticket sales figures came from an entirely separate event to the one being planned by the Defendants would have been if the Defendants had told them this. But if this were so, I would expect a clear account that such a conversation had taken place, not a statement such as "*It would have been clear from the surrounding conversations..."*

98. This is precisely the kind of situation in which the court is entitled to look with some care and simply not accept what is being said at face value. For it to be true that the Second Claimant knew the representations to relate to an event other than one organised by the Defendants, the Defendants would have to adduce some kind of evidence to rebut the natural presumption from all of the material set out above that they were making representations about an event that they were organising. Without more to explain them, the communications produced by the Second Claimant clearly imply that the tour to which the ticket sales and profit and loss projections related were being organised by the Defendants. Indeed at least some of them (for example the email from Mr Anderson

of 16 October 2019) expressly refer to the organisers as "we". If it is the Defendants' case that the Second Claimant knew the truth to be otherwise, it would have been the simplest thing in the world for them to state the reasons why this was so and to give some detail of the communications that demonstrated this. Given that the Defendants must know the detail of the circumstances in which the Second Claimant's representatives were expressly told of this, and given their failure to plead any express communication to this effect, I am driven to the conclusion that an argument that the Defendants may have told the Second Claimant the true position (which as I say is not their expressly pleaded case) has no reality to it.

99. In the alternative, it is necessary to consider the argument that, for some reason, it must have been apparent to the Second Claimant that the figures did not relate to actual sales being achieved by the Defendants. But there is simply no detail of what was said in the "*surrounding conversations*" from which it is said that the true position was or should have been apparent. Equally, paragraph 82(2) of the Defendants' skeleton argument, dealing with the same issue, does not engage with this issue. There is no material as to what "*the wider context of the oral conversations taking place contemporaneously*" or "*the relevant matrix of fact*" is supposed to mean. If the Defendants have material from which they argue that the court could conclude that the Second Claimant either must have known or at the very least probably did know the true position as to the alleged sales, they have failed to provide it. If they do not, it would be unsurprising if the court concluded that the argument being advanced is fanciful rather than realistic. Further, the business model asserted at paragraph 18 of the Defence does not include within it any explanation as to why a potential investor would think that sales figures related to a concert or tour being organised by someone other than the Defendants.

100. In short, there is no material from which I can conclude that the Defendants' argument that the Second Claimant either did realise or must have realised that the sales figures related to anything other than an event being organised by the Defendants. The Defendants have had every opportunity to deal with this issue, since the Second Claimant's case that these figures were misstated to be a representation as to sales being achieved by the Defendants, rather than sales being achieved by a third party, is clearly put both in the Particulars of Claim and the evidence in support of the summary judgment application. The only rational conclusion to draw is that the reason for the Defendants having failed to give an evidential basis for their case that the Second

Claimant knew (or should have known) that the sales figures it was being shown related to sales by a third party is because there is no evidence that would bear scrutiny in support of that contention.

101. It follows that I am satisfied that the Defendants have no real prospect of defending the Second Claimant's argument that the representations made by the Defendants were untrue since they did not relate to sales by them but rather (at best) sales by a third party.

102. I have noted that both Mr and Mrs Anderson made representations that the tour was being organised by the Defendants rather than a third party. This led to payments to MTL and latterly MTEL. Since Mr and Mrs Anderson were directors of and authorised to speak on behalf of each of those companies, I conclude that the representations were made on behalf of both companies and both, as well as Mr and Mrs Anderson, are liable for any claim in deceit. This of course is consistent with my finding in respect of the First Claimant's claim.

103. Whilst of course the Defendants deny that the Snoop Dogg Projections and Sales Representations were made in the terms alleged by the Second Claimant, it cannot seriously be argued on behalf of the Defendants that, if they were made, they were true. It is obvious that if, as I find to be the case, the Defendants represented that they were achieving sales that were in fact being achieved by a third party, that was untrue. It must equally be untrue that the Defendants would have made the projected profits on the back of such sales since no such sales were being made.

104. I turn to consider whether the Second Claimant shows no real prospect of the Defendants resisting a finding that such statements were made fraudulently. This of course has to be assessed in the context of my finding that there is no real prospect of showing that the statements were in fact true. It must follow from my analysis of the evidence above that the assertion that the Second Claimant knew that projections related to sales by a third party was itself untrue. However, it is necessary to be cautious in drawing the conclusion that, just because a party may have told a lie about the true nature of a document, that that lie was dishonest and intended to defraud the person to whom it is made.

105. The Defendants' skeleton argument says that, even if the statements were untrue, they were not made dishonestly - see paragraph 82(5) cited above. I bear in mind the caution to be exercised in concluding that a party has no real prospect of success in resisting a

finding of dishonesty, as expressed powerfully by Sir Igor Judge PQBD in Wrexham Association Football Club Ltd v Crucialmove Ltd cited above. But in this case, I am satisfied that the only proper inference that can be drawn is that the lies in the Snoop Dogg Projections and Sales Representations were made dishonestly by Mr and Mrs Anderson and that they have no real prospect of defending that allegation for the following reasons:

a. The natural consequence of giving figures for sales and profit projections in the context of organising the tour was that the person to whom they were given would believe them to be a true representation of the position relating to the tour and would be more disposed to invest in the tour in consequence.

b. The Defendants were looking for further payments of money by the Second Claimant when the representations were made;

c. Any person in the position of Mr and Mrs Anderson must have realised that the provision of such figures would have made it more likely that the Second Claimant would continue to invest in the tour; indeed, as Mr Anderson makes clear at paragraph 52 of his statement, the representations were made with the purpose of ensuring that the Second Claimant honoured its existing contractual obligation to pay money to the Defendants.

106. By the objective standards of ordinary people, it is clearly dishonest to state something to be the case which is not in fact so in circumstances where the person to whom the statement is made is likely to invest money in consequence of the statement. Conversely, the consequence of my finding that the Defendants have no real prospect of showing that they communicated the true nature of the Snoop Dogg Projections and Sales Representations is that they have no real prospect of showing that they were honest in their dealings with the Second Claimant, since an honest person would have made the true nature of the material clear.

107. There is clear evidence that the Second Claimant was induced to make payments by the Snoop Dogg Projections and Sales Representations.

a. Given the dealings between the parties, the natural inference from the lies in the Snoop Dogg Projections and Sales Representation is that they were made in order to encourage the Second Claimant to make payments to the Defendants;

b. I have mentioned above the passage at paragraph 52 of Mr Anderson's statement. That is the clearest evidence that the representations were intended to have this effect.

108. I accept that other material (including other statements by the Defendants) may have influenced the decision making of the Second Claimant. I have dealt above in the context of the claim of the First Claimant's application with the argument that, where other factors are at play in a person's mind, the court must look at whether the particular representations with which the court is concerned can be said to be causative of the actions of the representee. However, I see no real prospect of the Defendants showing that the Snoop Dogg Projections and Sales Representations failed to play, in Arden LJ's words, "*a real and substantial part"* in the decision of the Second Claimant to advance further monies. I repeat the point made at paragraph 90 above that the mere fact that many representations may have been acting on the mind of the representee does not blunt the effect of any particular representation; if anything, a whole series of representations as to the success of a project is likely to make the representation more influential on the mind.

109. It is further a striking feature of this case that the Snoop Dogg Projections and Sales Representations are alleged to have induced not only payments pursuant to the contract relating to that particular tour but other payments unrelated to Snoop Dogg. That necessarily makes the inducement more remote from the payments that were made. But I do not see that it means that the court should conclude that they were no longer effective inducements. Again, the effect of a series of inducements is likely to be cumulative. A representation that tickets for one event are selling well is inevitably going to lead the investor to think that the representor is operating a business model that is worth investing in. That was the purpose of the representations and it was their natural effect, both in respect of inducing investment in the Snoop Dogg tour and in inducing the Second Claimant to invest in later tours.

110. The further argument advanced by the Defendants is that, since the monies invested by the Second Claimant were monies that it was contractually liable to pay, a representation between the making of the contract and the making of the payment cannot be operative on the mind of the representee because the payment is made pursuant to a contractual liability rather than pursuant to the inducement. If this is said to be a proposition of law, no authority has been advanced in support of it. I do not

accept it to be accurate. It runs contrary to the proposition in The Chevron North America cited above that whether an inducement is operative is not a question of what would have happened in a counter factual situation but rather whether it in fact acted on the mind of the representee. On the other hand, if the Defendants' proposition is that it has a real prospect of success of showing that the payments would in fact have been made in any event because of the Second Claimant's contractual liabilities, I do not accept this to be the case. The decision to make payments was for reasons identified above clearly a consequence in part of the representations. There is no prospect of the Defendants showing that the representations were not operative in the Second Claimant making those decisions.

111. Finally, the Defendants contend that the issues in respect of the Snoop Dogg Projections and Sales Representations should be allowed to go to trial because such a trial will in any event be needed to determine the Second Claimant's arguments that there are other operative representations by the Defendants which were also operative on the payments that they made. But, as the Second Claimant says, the result of summary judgment being entered on these claims may lead to a position in which the Second Claimant does not choose to pursue its claim in respect of other representations. Apart from anything else, if the Defendants have no real prospect of success in defending the claims that are the subject of this application, the Second Claimant may conclude that it is not cost efficient to pursue this litigation further. I agree with the Second Claimant that the mere fact that there may be further claims to be pursued in this litigation does not mean that the court should fail to make determinations on a summary judgment application in respect of some of the issues. It is clearly consistent with the Overriding Objective of the Civil Procedure Rules to narrow issues where appropriate. That would be the result of the court entering judgment on issues where, in truth, the Defendants have no real prospect of successfully defending the claim.

CONCLUSION

112. The First and Second Claimants are entitled to summary judgment on their claims as set out within the notice of application. The Second Claimant advances alternative cases within its application based on the assumption that either all representations made from the beginning of the Snoop Dogg Projections and Sales Representations were causative of their loss or alternatively that only representations made after July 2021 were causative. As I have indicated, the Second Claimant advanced its claim on the former

basis. It succeeds for the reasons that I have indicated. It follows that the Second Claimant is entitled to judgment on the figure of £5,151,259, representing all payments made after the Snoop Dogg Projections and Sales Representations started to be made.