Neutral Citation Number: [2023] EWHC 1285 (KB)

Case No: QB-2022-002243

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/06/2023

Before :

MR JUSTICE JULIAN KNOWLES

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Between :

NIKI CHRISTODOULIDES	**Claimant**
- and –	
(1) CP CHRISTOU LLP **(2) CHARLES HOLBECH**	**Defendants**

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Michael Rogers (instructed via **Direct Access**) for the **Claimant**
Nicole Sandells KC (instructed by **DWF Law LLP**) for the **First Defendant**
Benjamin Wood (instructed by **Kennedys Law LLP**) for the **Second Defendant**

Hearing dates: **5-6 December 2022**

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Judgment Approved by the court for handing down

Mr Justice Julian Knowles:

Introduction

1. This is a claim for professional negligence by the Claimant, Ms Niki Christodoulides, against her former solicitors and counsel (the First and Second Defendant respectively). Mr Costas Christou of the First Defendant was the solicitor with conduct of the case. The Second Defendant practices from chambers in Lincoln's Inn and specialises in Chancery work.

2. The Defendants have applied to strike out the Claimant's claim, and/or for summary judgment, pursuant to CPR r 3.4(2)(a) and (b) and/or CPR r 24.2 respectively. Their applications are dated 22 August 2022 and 21 September 2022. There is some overlap, although the Second Defendant pursues an additional argument specific to his case.

3. These rules provide:

> "3.4
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> (1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.
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> (2) The court may strike out a statement of case if it appears to the court –
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> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
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> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;
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> …
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> 24.2 The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –
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> (a) it considers that –
>
> (i) that claimant has no real prospect of succeeding on the claim or issue …"

4. Further or alternatively, the Defendants seek an order that the Claimant amend her Particulars of Claim, if I am of the view that there are any parts of the claim that have the potential to survive their strike out/summary judgment applications, but are as yet inadequately pleaded.

5. As is usual in this sort of case, neither Defendant has filed a Defence. However, it is right to record that they strongly deny the allegations of negligence levelled against them.

6. I have full audio recordings of the hearing which I have consulted when writing this judgment. As will become clear, there is a complex background to this case spanning many years. The materials I have had to consider are voluminous, and that has taken some time.

Factual background

7. This claim relates to litigation between the Claimant, whom I shall refer to as Niki, with no disrespect intended, and her sister, Androulla Marcou, whom I shall refer to as Andre, again with no disrespect being intended, over the property and estate of their late mother, whom I shall refer to as Agni, on the same basis.

8. The Claimant claims damages in excess of £8 million from the Defendants, plus interest.

9. The background is this.

10. Niki was unsuccessful following trial in two sets of litigation against Andre about their late mother's substantial estate, in 2016/17 and 2021 respectively. Two other sets of proceedings were settled.

11. Niki instructed the First Defendant to act for her in what I will call 'the Underlying Claim' in or around September 2012, and it in turn instructed the Second Defendant to act for her.

12. The Underlying Claim culminated in the judgment of Mr Recorder Lawrence Cohen KC on 10 February 2017 following a 10 day trial in December 2016 in the Central London County Court (*Christodoulides v Marcou*) (the Cohen judgment).

13. The Underlying Claim was, in fact, composed of two separate claims which were heard together (Claim Nos A10CL026 and B10CL246). These were:

    a. Firstly, a claim by Niki to prove in solemn form the will made by Agni dated 7 August 2012 (the Will). Such a claim is, in essence, an application that the court approve the validity of a will where that matter is in issue. (The vast majority of wills are proved in common form, where there is no question over their validity.) It was defended by Andre on the basis of a counterclaim to set aside the Will. Andre's case was that the Will had been procured by the undue influence of Niki over Agni and, so far as it was different, Niki's fraudulent calumny. Fraudulent calumny is where person A poisons the will maker's mind against person B by casting dishonest aspersions on person B's character, when person A knows the aspersions to be untrue or does not care if they are true, to reduce or eliminate person B's entitlement under the will: see *Sharpe v Ellis* [2022] EWHC 2462 (Ch), [361]-[367]. If this can be shown, then the Will can be set aside. Andre therefore counterclaimed to have a grant of letters of administration in her favour on the basis that there was an intestacy because Agni's Will was invalid. The

Recorder referred to Andre's claim as 'the Calumny Claim', and said that it was 'decisive of this part of the case' [at [1]).

b. Second, a claim by Niki to set aside a transfer by Agni of a property called Hazelmead, Arkley, in favour of both Niki and Andre, on the basis that its execution had been procured by the presumed or actual undue influence of Andre. The Recorder called this 'the Transfer Claim'. It was advanced on the basis of Niki's capacity to bring it is as the executor of Agni's Will or, alternatively, as a residuary beneficiary thereunder. Effectively, therefore, Niki was seeking to deprive Andre of her share of the beneficial interest in Hazelmead that their mother had transferred to Andre.

14. At [3] the Recorder explained that:

> "3. As for the Transfer Claim each alternative relied upon by Niki to give her capacity to sue depends on the Calumny Claim failing and Agni's Will not therefore being set aside. Procedurally, I have appointed Niki to represent Agni's estate for the purpose of this trial so that Agni's estate will be bound by the result whatever the outcome. Although I had hesitation in appointing Niki to a representative capacity because her personal interest inhibited the balanced view expected of a representative party, I accepted the encouragement of both parties when the issue was canvassed in closing submissions that Niki was the only party with an interest in upholding Agni's Will and it was desirable to appoint her so that there could be a final determination."

15. At [6] the Recorder summarised Andre's case on the Calumny Claim. It was, in essence, that Niki had poisoned Agni's mind against Andre by false allegations of theft and wrongdoing, resulting in the making of the Will in Niki's sole favour a few days before Agni's death. He said at [6.5]-[6.6]:

> "6.5. When Agni made a will excluding Andre from benefit a few days before her death and leaving everything to Niki, her intention [according to Andre] was still to ensure a more even distribution of her estate between her daughters. The exclusion of Andre was because Agni believed that Andre had stolen assets from her or, if it be different, helped herself to use the words of the professional will writer.
>
> 6.6. Agni's belief was based upon fraudulent misrepresentations by Niki that Andre had either stolen or taken a large amount of money from her. These fraudulent misrepresentations poisoned Agni's mind to exclude Andre."

16. At [7] the Recorder set out the essence of Niki's case:

> "7. Niki's response is to deny that she made any representations to her mother at all, at least any which she did not honestly believe were true. She tried to keep her mother calm and insulate and protect her from the distress caused by what Andre did. Agni excluded Andre from her will because that was her desire and, whatever she may have believed, it was not because Niki had poisoned her mind against Andre by fraudulent misrepresentations."

17. The Recorder summarised the Transfer Claim at [9]. It was Niki's case that Andre had procured the transfer of Hazelmead because ([9.5], [10], [12] and [14]):

> "9.5 Niki alleges that Andre was a solicitor. Agni respected and looked up to Andre. Andre procured the execution of the transfer by giving advice to her mother that if she did not execute the transfer, the house would be swallowed up in tax when she died. Andre exerted pressure on Agni to execute the transfer immediately.
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> …
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> 10. Andre completely disputes the factual basis of the claim.
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> …
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> 12. As to the allegations of advice, Andre accepts that she qualified and practised as a solicitor but she had, to her mother's knowledge, retired from practice at least 10 years before these events and she was not advising her mother at all. The only role she took on was the one of implementing her mother's wishes by preparing the transfer. She did not say that there would be any tax advantage in Agni giving her share of Hazelmead to her daughters — she believed that there would be no such advantage for IHT purposes as her mother, who had serious health problems, was unlikely to survive for even a year. Equally, reserving the ability to use Hazelmead would mean that the gift would not work for IHT purposes. She was simply implementing the desire of her mother to give away to both of her children many of her assets in her lifetime and enjoy the pleasure of giving.
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> …
>
> 14. So in summary, Andre says:
>
> 14.1. Her participation in the process of the transfer was as a daughter and not as an adviser — the fact that she happened to be a solicitor before she retired 10 years

> before the transfer is an irrelevance. She gave no advice and was under no duty to advise. All she did was to implement her mother's wishes by drawing up a transfer. She says that Niki has failed to satisfy the first requirement for the presumption to arise because there was no relationship of influence.”

18. The Recorder found against Niki on both parts of the Underlying Claim.

19. For now, it is sufficient to say that the Recorder found Niki to have been dishonest in a number of ways. Where there was a conflict between her evidence and Andre’s evidence, the Recorder accepted Andre’s evidence. That is the primary basis on which Niki lost the case. I will set out the detail later. Niki sought permission to appeal, however permission was refused by Morgan J. Again, I will return to this later.

20. Niki’s case before me is that she lost the Underlying Claim because of the Defendants’ negligence.

21. I turn to the second case, Number F10CL218, which I will call ‘the Asset Claim’. This culminated in the judgment of His Honour Judge Johns KC (HHJ Johns), of 9 February 2021 (the Johns judgment), again following a trial in the County Court at Central London. The judge ruled in favour of Andre and against Niki. By then, Niki had dispensed with the services of the Defendants. She was represented by Michael Rogers of counsel on a direct access basis, who also appeared for her before me.

22. Although neither Defendant represented Niki in the Asset Claim, she maintains a claim for negligence against them in respect of the loss of this case because, in summary, she says the negligent mistakes they made in the Underlying Claim fatally prejudiced her case (some four years later) in the Asset Claim.

23. HHJ Johns described the Asset Claim as follows (at [1]):

> “1. This is a dispute about the extent of the assets in the estate of Agni Iacovou (‘Agni’) who died on 9 August 2012. Her two daughters, the claimant Androulla Marcou (‘Andre’), and the defendant Niki Christodoulides (‘Niki’), are entitled to those net assets equally on her intestacy. Andre claims by these proceedings that those assets include £336,011.97 which Niki has treated as hers. Niki’s response is that £167,769.19 was given as a gift to her by Agni on 18 June 2012. The rest is money to which, she says, she was jointly entitled with Agni and which has now become hers by the right of survivorship.”

24. At [26] the judge said:

> “20. I start with the first sum and the question whether the £167,796.19 was a gift to Niki. I have reached the clear conclusion having heard the evidence that this sum was not a gift to Niki.”

25. The judge then went on to give his reasons for so concluding.

26. The principal basis on which the judge decided for Andre and against Niki was because he found that the latter's evidence was not to be trusted and that she was dishonest and manipulative. I will set out the relevant parts of the judgment later. For now, it is important to emphasise that whist the judge referred to the Recorder's assessment of Niki in the Underlying Claim (which he said had been 'scathing'), he made clear that he based his conclusions on his own, independent, assessment of her evidence, and he said so expressly.

27. There was a third claim in the County Court, relating to a property known as 450 West Green Road, London N15 (the WGR Claim). The Defendants were instructed to defend proceedings brought by Andre against the Claimant in respect of expenses incurred on and rents received from that property, which was owned by Niki and Andre in equal shares as tenants in common. The WGR Claim was to be heard at as part of the Underlying Claim trial, but insufficient court time meant that it was adjourned. It was later settled, and the terms of settlement were incorporated into a Schedule to the order of the Recorder following the trial of the Underlying Claim (Ex GRW1**).**

28. The Schedule is complicated and contained a large number of terms. In simple terms, it provided for the payment of various sums by Niki to Andre, in return for which Andre gave up her claim for the payment of certain sums of money, as well as other matters. It was, as Miss Sandells described it, the taking of accounts between the two sisters.

29. The fourth matter to which this negligence claim relates is a matter in the Chancery Division of the High Court. On or around 25 May 2016, the First Defendant was instructed by Niki to act for her in relation to an application by Andre dated 5 March 2015 regarding Niki's directorship of Tiebridge Property Company Limited (the Tiebridge Claim), pursuant to s 994 of the Companies Act 2006. This was settled by consent on 14 July 2016. The Second Defendant was not instructed in this claim, and the negligence claim against him does not concern it.

The Claimant's case in these proceedings

30. The gist of Niki's case is that: (a) it was through the negligence of either or both of the Defendants that she lost the two trials and that, but for their negligence, she would have won or may have done (ie, loss of a chance); and (b) through either or both of the Defendants' negligence, the WGR claim was settled on unfavourable terms without reference to her; and (c) through the First Defendant's negligence, the Tiebridge Claim was also settled on unfavourable terms.

31. The Particulars of Claim (POC) are dated 1 June 2022 and run to 19 pages. There are 26 Annexes. Mr Rogers confirmed to me that he was responsible for drafting the POC with Niki. The Annexes comprise a mixture of schedules and evidence. Niki drafted those. They run to many pages. For example, one schedule (entitled 'Missing documents and relevance') runs to 44 pages and another (entitled 'List of missing witnesses and relevance to case') runs to 17 pages and names over 50 such alleged 'missing witnesses'. am bound to say much of this material is not readily comprehensible. I shall return to this point later.

32. Paragraphs 4, 7 and 9 of the POC aver:

> "4. In or around September 2012, the Claimant instructed the First Defendant to act for her in relation to three claims concerning the validity of her mother's will, the transfer of her interest in the family home ("Hazelmead"), and her expenses concerning a property known as West Green Road ('WGR') (collectively 'the three claims').
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> …
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> 7. On 1st August 2013, Mrs Androulla Marcou, the Claimant's sister had issued a claim against her regarding WGR (claim numbers HC14D02382 and A10CL026). On 17th June 2014, the Claimant issued claims against Mrs Marcou concerning their mother's will and Hazelmead (claim numbers A10CL026 and B10CL246).
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> …
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> 9. On or around 25th May 2016, the First Defendant was further retained by the Claimant to act for her in relation to an application by Mrs Marcou dated 5th March 2015 regarding the Claimant's directorship of Tiebridge Property Company Limited ('Tiebridge') pursuant to section 994 of the Companies Act 2006 (petition number 1697 of 2015 in the Chancery Division of the High Court). The Second Defendant was not instructed in these separate proceedings."

33. Paragraph 12 avers:

> "For the avoidance of doubt, it is recognised that the earlier stages of the retainers and instructions fall outside of the relevant limitation period. This claim is concerned with the Defendants' acts and omissions during the preparation for the trial in 2016 and the conduct of the trial itself which took place in December 2016."

34. Paragraph 13 alleges:

> "The Defendants breached the implied terms of the retainers and instructions. Further or alternatively, the Defendants were negligent in breach of their duty of care in tort as set out below."

35. The particulars of negligence are then set out in [14]. There are a lot of them, and I do not propose to set them all out. For the avoidance of doubt, I have read them all. I think their flavour is fairly given by the following examples, some of which I will need to refer to later:

a. Paragraph 14(a):

> "a) The Claimant provided a large volume of documents to the First Defendant that were relevant to the central issues in the three claims. The First Defendant omitted to ensure that these documents were included in the final trial bundles, thereby materially prejudicing the outcome of the three claims. A comprehensive list of the missing documents is at annex 1. This includes an explanation as to why each of these items was of material relevance to an issue in the case.
>
> For the avoidance of doubt, it is averred that the First Defendant cannot simply rely on any Disclosure Lists, as it was their responsibility to ensure that such records were accurate, that they were updated if necessary and that all relevant documents made their way into the final trial bundle.
>
> The First Defendant attended a 3 - day meeting at the offices of Mrs Marcou's [ie, Andre] solicitor on 17th 18th and 20th November 2016 to put together the trial bundles, which was inappropriately attended by Mrs Marcou. The Claimant was not invited.
>
> The First Defendant allowed Mrs Marcou and her solicitor to dictate the process and the Claimant had no involvement whatsoever, leading to the negligent omission of the relevant documents.
>
> Whilst the primary duty for preparing the bundles lay with the First Defendant, the Second Defendant had an oversight role (having been instructed in 2014), and ought to have appreciated that there were many relevant documents that were not in the final trial bundles. A competent barrister acting in the Claimant's best interests would have drawn the omissions to the attention of the First Defendant. The Second Defendant failed to do so."

b. Paragraph 14(b):

> "b) Several documents that were eventually included in the final trial bundle had been edited and / or redacted by Mrs Marcou and / or her representatives, with some handwritten additions. A comprehensive list of the documents that had been edited and / or redacted and / or written on is at annex 2 with a note of the relevance of each of them to the issues at hand.

The Defendants ought not to have permitted the editing / redaction of documents and should have objected to such a course. Only clean copies of the documents ought to have been before the judge. This further materially prejudiced the outcome of the three claims.

For the avoidance of doubt, it is denied that Mrs Marcou's handwritten additions were translation corrections for the most part, as a number of words including inaccurate references to threats were added above the objections of the professional translator. In any event, this would not be a proper way to present translated documents to the court."

c. Paragraph 14(c) alleges that the Defendants misadvised Niki on the civil standard of proof required to prove fraudulent calumny and that this 'affected the Claimant's decision to continue with the proceedings.'

d. Paragraph 14(d) alleges:

> "d) During the course of the trial, the Defendants agreed a hands down settlement of the WGR matter in the absence of any instructions from the Claimant. The First Defendant wrongly informed the Second Defendant that the claim was only worth £5,000 (and was therefore not worth proceeding with), whereas it was in fact for the sum of £14,001.58. This was apparent from the Particulars of Claim and a letter of 25th April 2014, which is at annex 3. Additional sums had also been incurred in relation to the property since that time. The Defendants failed to take account of this or obtain instructions in relation to the same."

e. Paragraph 14(e):

> "e) The First Defendant omitted to obtain witness statements from several supporting witnesses who could have given relevant evidence at trial which would have made a material difference to the outcome. The First Defendant failed to contact any witnesses regarding the WGR matter at all. A list of these missing witnesses with a short summary of the useful evidence that they might have given is at annex 4."

f. Paragraph 14(j):

> "j) The Defendants completely failed to prepare the Claimant or any of her witnesses for the trial. None of the Claimant's witnesses was provided with a copy of their witness statement to read beforehand and they were not given access to the trial bundle. The Claimant did not

personally have sight of the trial bundle until she took the witness stand. This affected her credibility and that of her witnesses in the eyes of the judge and undermined the three claims."

g. Paragraph 14(k):

"k) The First Defendant was aware that the Claimant suffered from partial deafness in one ear. Despite this, they omitted to obtain relevant medical evidence from Addenbrookes Hospital or put in place appropriate reasonable adjustments (such as a hearing loop) in the courtroom. This was raised at the start of the trial hearing, but the Second Defendant failed to make any request for such adjustments. It was obvious that the Claimant was struggling to hear some of the questions put by counsel and the judge, and this seriously prejudiced how her evidence was viewed by the court."

h. Paragraph 14(m):

"m) The Defendants completely failed to agree a proper trial timetable in advance of the hearing and / or to warn the Claimant's witnesses when they needed to attend. This meant that whilst Mrs Marcou's witnesses all appeared in an orderly fashion, the Claimant's witnesses had to be contacted at the last minute and asked to attend court in a chaotic fashion. This led to a series of negative comments by the judge which prejudiced the Claimant's case, particularly in relation to Mr Constantinou who had work commitments."

i. Paragraph 14(n):

"n) The Defendants in liaison with Mrs Marcou's representatives agreed a chronology that omitted a number of points that were of central importance to the Claimant's claim. The Claimant was never consulted about the chronology or provided with a draft before it was submitted to the court. A copy of this document is at annex 7. At annex 8, the Claimant has summarised the omissions from the chronology that materially affected the outcome of the three claims."

j. Paragraph 14(o):

"o) The Defendants in liaison with Mrs Marcou's representatives agreed a list of issues which went well beyond the pleaded subject matter of the three claims and included admissions that were contrary to the Claimant's

instructions. The Claimant was never consulted on the contents of this list or shown a draft of the same before it was filed. A copy of the list is at annex 9.

At annex 10, the Claimant has summarised the points that were not covered in the pleadings or were unauthorised omissions. This included, for example the validity of a 'gift' document and the beneficial ownership of various joint accounts and financial instruments. The First Defendant wrongly advised the Claimant to include references to some of these non — pleaded issues in her witness statement.

The list of issues also encompassed an admission that the Cypriot law on wills and probate was assumed to be identical to the English law. This was incorrect, as a testator must give two thirds of their estate to their children under the relevant Cypriot law. The Defendants did not research this issue, consider obtaining expert evidence or consult the Claimant's Cypriot lawyer, Yiannis Constantinides. For the avoidance of doubt, this issue was not discussed at a meeting that took place with Mr Constantinides during the trial which largely focused on legal privilege. It would, in any event, have been too late to clarify the point at such a late stage.

This materially prejudiced the Claimant's case and caused Recorder Cohen QC to make findings on issues that were not within the scope of the claim. This outcome wholly undermined the Claimant's credibility in the subsequent proceedings (claim number F1OCL218, which concluded in 2021) brought by Mrs Marcou regarding whether certain gift and account monies belonged to their mother's estate [ie, the Asset Claim]."

k. Paragraph 14(p):

"p) In conference at court immediately before and during the trial, the Defendants wrongly advised the Claimant to state that monies held in the various joint accounts were there for 'administrative convenience', whereas her instructions were that joint beneficial ownership had passed to the Claimant and her mother. The Second Defendant used this phrase in court before the Claimant gave evidence.

This wording was directly relied on by Recorder Cohen QC and His Honour Judge Johns QC (in the subsequent proceedings) to support their findings that there was no

joint ownership and therefore directly affected the negative outcome of both trials.

A copy of the substantive judgement of HHJ Johns QC dated 9th February 2021 is at annex 11."

l. Paragraph 14(s):

"s) The Second Defendant failed to ask questions and make submissions regarding lies in Mrs Marcou's witness statement and in oral evidence when she denied that certain ground rents had been received since the transfer of the relevant properties, when in fact they had been paid to her husband. These ground rents were not gifted to the Claimant's son or held in trust by the Claimant, as Mrs Marcou had asserted."

m. Paragraph 14(x):

"x) On 11th December 2016, the First Defendant made a Part 36 offer to settle the case during the course of the trial. The Second Defendant was aware of the same. A copy of this letter is at annex 14. It was sent on a Sunday and bizarrely appeared to have been drafted on 22nd August 2016, as this date was contained within the text.

Whilst it is admitted that the First Defendant made vague suggestions that the case should be settled during a meeting with the Claimant at a hotel on or around 9th December 2016, the Claimant did not give the First Defendant any authority to make a specific offer or make any admissions as set out or at all.

Various admissions were made in the letter, including regarding the ownership of "Laiki" bank monies, which were contrary to the Claimant's earlier specific instructions. These admissions severely undermined the Claimant's credibility in the subsequent 2021 trial and materially affected the outcome."

n. Paragraph 14(y):

"y) The First Claimant failed to advise the Claimant that a sanction should have been applied against Mrs Marcou for serving her Bill of Costs late in the subsequent Detailed Assessment proceedings (relating to the three claims). In addition, the First Defendant omitted to advise the Claimant to prepare Points of Dispute with the assistance of a Costs Lawyer. This meant that the Claimant had no

option but to accept that Mrs Marcou was entitled to be awarded her costs in full on the indemnity basis."

o. Paragraph 14(z):

> "z) In the Tiebridge proceedings, the First Defendant applied improper pressure to compel the Claimant to settle the claim on the basis that they had insufficient time to prepare for the trial which was listed to commence on 25th July 2016. In early July 2016, the Claimant was informed that the First Defendant would simply withdraw if she continued to defend the claim_ A copy of the settlement agreement dated 8th July 2016 is at annex 15.2"

p. Paragraph 14(aa):

> "aa) The First Defendant failed to adhere to the terms of the Tiebridge settlement agreement in that they omitted to arrange for the transfer of Director's Loan monies in the sum of £47,710 to a joint account with Mrs Marcou's solicitors. This meant that these funds continued to be an issue up to and including the 2021 proceedings."

q. Paragraph 14(bb):

> "bb) The First Defendant failed to contact the liquidator (who was holding the relevant funds), meaning that a payment of £74,400 was not made by the due date in breach of clause 18.2 of the settlement agreement dated 8th July 2016 (which is at annex 15). This meant that the Claimant became liable to pay interest and legal costs to Mrs Marcou."

36. Paragraph 15 avers:

> "15. As a result of the breach of retainer/instructions and/or negligence in breach of duty on the part of the Defendants, the Claimant suffered loss and damage. The Claimant avers that, but for the aforesaid breaches she would have succeeded on the three claims and the 2021 proceedings, avoided any costs orders in favour or Mrs Marcou and recovered her own costs."

37. The particulars of loss and damage are then set out in [16]. Paragraph 16(a) alleges that if Agni's assets had been distributed according to the Will, Niki would have received the totality of her estate, which was valued at £6,144,185.19. Other amounts are also claimed, including in relation to the Johns Judgment on the Asset Claim in 2021.

38. Paragraph 17 alleges:

> "As a result of the breach of retainer and / or negligence in breach of duty on the part of the First Defendant only, the Claimant suffered loss and damage. The Claimant avers that, but for the aforesaid breaches she would have succeeded on the Tiebridge claim, avoided paying any of Mrs Marcou or the liquidator's costs or interest and recovered her own costs."

39. The loss and damage said to have arisen from this is set out in [18], including monies paid pursuant to the Tiebridge settlement in the sum of £139,019.03.

40. Paragraph 19 therefore claims:

> "The Claimant therefore claims damages in the total sum of £7,686,997.18 regarding both Defendants and additional damages relating to the First Defendant only in the total sum of £380,462.03"

41. As I have indicated, by its application notice dated 22 August 2022, the First Defendant has applied to strike out the Claim Form and Particulars of Claim, alternatively for summary judgment, on the basis that the claim is misconceived, and/or an abuse of process and so poorly pleaded that it ought to be struck out, alternatively that Niki has no real prospect of success.

42. The Second Defendant's application of 21 September 2022 is advanced on broadly the same basis. The Second Defendant advances an additional argument, however, namely that Niki is bound to fail in her claim against him because there was a settlement between her and him in September 2017 (when she had started to make complaints about the quality of his representation in the Underlying Claim), in which he agreed to accept a reduction of his outstanding fees in 'full and final settlement'.

43. Taking the evidence in relation to this last matter briefly at this stage, during 2017 there were numerous communications between Mr Christou, Niki, the Second Defendant and his clerks, concerning his outstanding fees for the Underlying Claim trial, which were substantial (£49,100 plus VAT).

44. The Second Defendant agreed to reduce his fees by £6600 plus VAT. When the money was eventually paid in September 2017, there were various communications from the Second Defendant and Niki using the phrase 'full and final settlement.' She had started to make complaints about the quality of his representation and it is his case that the settlement was in respect of any future claims against him she might make. He points out that a subsequent complaint by Niki to the Legal Ombudsman about him was discontinued on the basis that there had been a settlement.

Submissions

The First Defendant

45. Miss Sandells KC for the First Defendant said that, so far as her client was concerned, the following issues arise:

    a. Issue 1: Do the POC disclose any reasonable grounds for bringing the claim (strike out) or a real prospect of success on the claim (summary judgment) ?

    b. Issue 2: Are the POC an abuse in whole or in part?

    c. Issue 3: Has there been a failure to comply with a pleading rule sufficient to strike out the claim? Is there any prospect of rescue by amendment and should Mrs Christodoulides be given that opportunity? If so, on what terms ?

    d. Issue 4 : Is there any other compelling reason for the matter to go to trial ?

46. On these four issues, Miss Sandells submitted, in summary, as follows.

47. The POC do not disclose any reasonable grounds for bringing the claim nor does the case have reasonable prospects of success. Niki lost both sets of litigation not because of any negligence by the Defendants but because she was found by both judges to have been dishonest, up to and including giving evidence. With one or two exceptions, her witnesses also did not impress the judges. On the other hand, Andre's evidence was believed and preferred where it conflicted with Niki's evidence. Whilst factually fairly detailed, the cases were marked by direct conflicts of evidence, and the fact is that Andre was believed whilst Niki was not.

48. In relation to the Johns judgment, the Defendants did not act for Niki and so could not have committed any actionable negligence.

49. Miss Sandells said at [19(6)-(8)], [12] of her Skeleton Argument:

> "6. In his assessment of the witnesses, the Recorder concluded that Mrs Christodoulides was thoroughly dishonest and manipulative, for the reasons set out in {25}, based "purely on [Mrs Christodoulides'] own evidence" to him, and by reference to a dishonest application to the Cyprus Courts, untrue evidence sworn on oath, and the procuring of official documents to evidence a critical false assertion. He regarded the conclusion that she was dishonest as 'inescapable from the admitted facts', meaning admitted by her – see also {26}-{38} setting out those facts and the evidence;
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> 7. By contrast, he concluded that Andre was calm, sensible and convincing, but as much of her case depended on what was going on between Mrs Christodoulides and Agni, other evidence was more important {53};
>
> 8. As to Mrs Christodoulides' other witnesses, the Recorder concluded that: (a) Mrs Christodoulides's husband was much more balanced and measured than his

> wife but with limited knowledge on critical issues and where he did have knowledge on one occasion his explanation was so improbable it could not be accepted {46}; (b) Mrs Christodoulides' Cypriot lawyer, Mr Constantinides was in privilege difficulties and somewhat defensive. Some of his evidence could be accepted, but some did not sit comfortably even with Mrs Christodoulides' accepted evidence {47}; (c) Mrs Georgiou, a friend of Mrs Christodoulides and a witness to the Will, was sensible and reliable {48}; and (d) Mr Antoniou, the will writer who took instructions for the Will, was of undoubted integrity and although he had poor recollection of material details nevertheless what he did remember provided important if not critical pieces of that factual matrix {49};
>
> …
>
> 12. Where there were direct conflicts of evidence between Andre and Mrs Christodoulides, the Recorder invariably preferred the evidence of Andre – see {79}-{83} and particularly the comment that "this must either represent a deliberate lie by [Mrs Christodoulides] or by Andre", {84}, {87}, {91}, {92}. In reaching these conclusions the Recorder took into account that the Courtroom might be a much less alien place for Andre than for Mrs Christodoulides, so he did not merely make the determination on the basis that he preferred Andre's evidence, but on a close examination of the evidence and the contemporaneous documents – {79} – and concluded that Andre's evidence was much more probable 'before I even take into account my view of [Mrs Christodoulides'] character and the unsatisfactory nature of her evidence'" {87};

50. Paragraph 19 of Miss Sandells' Skeleton Argument lists 24 points extracted from the Recorder's judgment which she said showed clearly why Niki had lost, and that had been because of her lies and dishonesty. She concluded at [20]:

> "That analysis, when applied to POC 14, shows that this claim has no real prospect of success."

51. Miss Sandells then went through [14] of the POC in detail, for example, Niki's complaint about bundles and other trial documents not having been prepared properly. She submitted at [24] that:

> "… there is no explanation in Paragraph 14 as to which outcomes Mrs Christodoulides claims would have been different and how. Given the analysis of the Cohen Jmt above and the conclusion in {146} it is hard to envisage

> how the matters alleged by Mrs Christodoulides could have affected the outcome, let alone done so without challenging the findings of the Recorder."

52. The Recorder's conclusion in [146] was this:

> "In summary, my finding is as follows: Agni's mistaken belief that her will would effect a more even distribution of assets considering what Andre had helped herself to was induced by the fraudulent misrepresentations of Niki that Andre had stolen, helped herself or taken Agni's money and run— this is fraudulent calumny as Niki had successfully poisoned Agni's mind against Andre. I regard the subsidiary episodes relied on differently by both parties (Aris pocketing £1,000 of rents; wild dogs — Andre was questioning Agni's sanity and the oxygen cylinder) as properly viewed as incidents of this same course of conduct."

53. Miss Sandells also pointed out that some of what Niki is now asserting had been negligent was contradicted by other evidence – for example, she had not, as she now claimed, only seen the bundle at the trial, because there was other evidence that she had been actively involved in its preparation and had had it in advance of the trial.

54. Miss Sandells also had points in response to complaints about the WGR and Tiebridge settlements. Briefly, for example, she said that no complaint had been made at any stage at the time about WGR even though there had been an attempt to appeal the Underlying Claim, the order in relation to which it formed part. There was evidence clearly showing Niki's involvement in negotiating it. On Tiebridge she made the point that Niki had signed off on it in 2016 (well before the Underlying Claim trial) and continued to instruct the First Defendant thereafter.

55. On Issue 2, Miss Sandells said that the POC were an abuse of process as an impermissible collateral attack on the Cohen judgment. She relies on *Allsop v. Banner Jones* [2022] Ch 55, a case to which I will return.

56. On Issue 3, Miss Sandells said that the POC could not be rescued by amendment.

57. Finally, on Issue 4, Mr Sandells submitted that there was no other compelling reason for the case to go to trial.

The Second Defendant's case

58. As I have said, on behalf of the Second Defendant, Mr Wood sought to strike out the claim against his client on essentially the same basis as Miss Sandells, and also on the additional ground that there had been a full and final settlement between his client and Niki in or around September 2017 in respect of his outstanding fees (which he agreed to reduce) at a time when a complaint about his performance was in the offing. He said it was clear that a compromise of some type had been agreed between his client and Niki in September 2017, as demonstrated by the communications between Niki, Mr

Christou, the Second Defendant and his clerks (there does not appear to have been any communications directly between Niki and the Second Defendant; the First Defendant acted (or effectively acted) as her agent). I will turn to the detail later.

The Claimant's case

59. On behalf of the Claimant, Mr Rogers submitted as follows.

60. The POC set out a legally recognisable cause of action in a claim that has a real prospect of success. The pleading clearly explains the nature of the three claims (viz, the Underlying Claim, the Assets Claim and the WGR Claim), and also the Tiebridge Claim against the First Defendant only. The Claimant lost a chance of winning. Mr Rogers did not say she would have won, merely that she had been deprived of a chance of winning.

61. The numerous alleged breaches of duty are pleaded in detail in [14] and Niki's losses are set out in [16], [17] and [18]. It is necessary to read [14] with the attached 26 Annexes. For example, relevant documents that were wrongly omitted from the trial bundle (14(a)) are listed at Annex 1. The Defendants have focussed too narrowly on the Recorder's judgment: 'they blithely state that the Recorder made negative findings on the Claimant's credibility and that of her witnesses, but ignore how the Defendant's numerous errors cumulatively led to this conclusion.' (Skeleton Argument, [9]).

62. Mr Rogers' Skeleton went on to argue at [13]-[15] (I cite these by of example only – Mr Rogers had many points on the various Annexes in particular):

> "13. Annex 1 [S9] identifies numerous relevant documents that were omitted by the 1st Defendant. The material in the earlier pages [1-11] illustrates substantial disputes that arose between Mrs Marcou and her parents going back to 1990. These would have helped to rebut the fraudulent calumny allegation and support the Claimant's account by demonstrating that there were longstanding reasons for the parties' mother did not get on with [Mrs] Marcou and might have chosen not to reward her in the alleged will. [sic]
>
> 14. It became apparent on 12.3.10 [p.11,39, Annex 1, S9] that Mrs Marcou and her husband had continued trading on the previous company name since 1998 without her parents or the Claimant's knowledge. The parties' mother commented in 2010 [p. 12, Annex 1, S9] that Mrs Marcou was "helping herself". A bank mandate (4.1.08) [p. 9, Annex 1, S9] showed that Mrs Marcou had been excluded from her parents UK bank accounts. There are also documents to show that the Claimant was involved in the family's business and property affairs and was financially independent, contrary to Mrs Marcou's assertions.

> 15. The Minutes of a Board Meeting (30.10.07) [p. 8, Annex 1, S9] demonstrated that Mrs Marcou was still in practice as a solicitor in London 2007 whereas she asserted that she retired to Cyprus in 2003, undermining her credibility. In addition, Mrs Marcou was party to a false legal declaration to the Cypriot Ministry of the Interior concerning Vima Basca's application for work visa [p.14, Annex 1, S9]."

63. Mr Rogers further submitted (again by way of example):

> "23. Annex 2 [S53] provides a list of edited or redacted documents. This includes a section where Mrs Marcou had added a handwritten translation (p.45, Annex 2, S53] describing an alleged threat made by the Claimant's husband to the spouse of a witness which was used to undermine his credibility [S730], "*Are you threatening me, Yanni dear*". This was specifically noted by the Recorder at par. 46 of his judgment [C72].
>
> 24. The 145 pages of text message exchanges with Nektaria Christodoulaki had been edited [14(b) and p.45, Annex 2, S53 plus S395]. The 2nd Defendant also failed to use these messages to show that the witness was lying when she said that she could not read English (and therefore understand the disputes between Mrs Marcou and the parties' mother) [14(u)].
>
> 25. In addition, the translation of an affidavit from Mrs Panteli (Nektaria's mother in law) had been removed [p.46, Annex 2, S53 and S763]. This was relevant because it demonstrated that her family believed that Nektaria had an interest in a flat in Cyprus that formed part of the estate and queried whether she should withdraw her witness statement. This would have demonstrated that the witness was far from unbiased or lacking in loyalty to either sister."

64. Mr Rogers said that the Defendants also purport to misunderstand the Claimant's contention that their errors during the course of the first trial directly affected the outcome of the second trial, notwithstanding the fact that they were not instructed at that stage. This is clearly explained within the body of the POC at [14(o)] and [14(p)] and in Annex 10.

65. The claim that WGR was settled without instructions [14(d)] stands alone as a breach followed by a specific loss (the amount claimed). In fact, part of this allegation was withdrawn during the hearing in circumstances I will describe later.

66. The Tiebridge matters ([14(z), aa, bb & cc]) are clearly and coherently pleaded, with the relevant order and Settlement Agreement attached (Annex 15) (Skeleton, [49]).

67. Mr Rogers argued that the claim is not an abuse of process. That is because the power to strike out for abuse is an exceptional one. In civil cases 'it will seldom be possible to say that an action for negligence against a legal adviser or representative would bring the administration of justice into disrepute. Whether the original decision was right or wrong is usually a matter of concern only to the parties and has no wider implications': *Allsop v Banner Jones* [2022] Ch 55, [34(iv)], quoting Lord Hoffmann in *Arthur JS Hall & Co v Simons* [2002] 1 AC 615. He also emphasised other parts of these judgments (eg *Allsop,* [37]). He said if the Defendants were right, any case where a judge had made an adverse finding about honesty or credibility through negligence could never be the subject of a claim

68. He said there is nothing exceptional about this claim. There is no manifest unfairness (or indeed any unfairness at all) to the Defendants or anyone else and so there are no grounds for thinking that the administration of justice would be brought into disrepute.

69. On the 'full and final settlement' point, the Claimant's case is that she and the Second Defendant settled only their dispute over fees, as explained in her third witness Statement at [12], [14] and [15], against the backdrop of him threatening to sue for them earlier in 2017. It did not encompass this claim. The Second Defendant's 'broad assertion' that there was a settlement that encompassed the subject matter of these proceedings is 'based on his own subjective interpretation and not an objective evaluation of the circumstances', and is a proper matter for trial. There was no settlement agreement. Mr Rogers therefore said this was a matter that can only be determined by hearing oral evidence on the issue at trial, given the absence, for example, of a written settlement agreement.

Legal principles

The summary judgment test

70. There was little dispute about the test to be applied. In *EasyAir Limited v. Opal Telecom Limited* [2009] EWHC 339 (Ch), [15], Lewison J (as he then was) said:

> "1. The court must consider whether the [respondent to the summary judgment application] has a 'realistic' as opposed to a 'fanciful' prospect of success.
>
> 2. A 'realistic' [statement of case] is one that carries some degree of conviction. This means a [case] that is more than merely arguable.
>
> 3. In reaching its conclusion the court must not conduct a 'mini-trial'.
>
> 4. This does not mean that the court must take at face value and without analysis everything that [the respondent] says. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.

> 5. However, in reaching its conclusion the court must take into account 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.
>
> 6. Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without a fuller investigation into the facts at trial than is possible or permissible on an application for summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact, 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.
>
> 7. 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. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction."

71. There is an overlap between the test for real prospect of success under CPR r 24.2 and CPR r 3.4(2)(i)(a) and (b): see *White Book 2022* at 3.4.21, p147, where it is noted that the Court of Appeal has taken the view that if the particulars of claim disclose no reasonable grounds for bringing the claim, then they also show no real prospect of success.

Abuse of process/collateral attack in this context

72. It is permissible, in general, for a claimant to bring a professional negligence action against her former lawyers, arising out of litigation that she lost but which she says she

would have or may have won but for the lawyers' negligence. However, the rule is not absolute, and there are various considerations. In some circumstances, it may be an abuse of process to bring such a claim.

73. This topic was the subject of the Court of Appeal's decision in *Allsop*, in which a claimant sued his former solicitors and counsel following what he alleged to have been the unsatisfactory outcome of financial remedy proceedings in a matrimonial claim. Marcus Smith J gave the judgment, with whom Arnold LJ and Lewison LJ agreed.

74. As part of its decision, the Court of Appeal reviewed earlier cases, including the House of Lords' decisions in *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 on collateral attacks, and *Arthur JS Hall*, which established that advocates were no longer immune from suit on the grounds of allegedly negligent advocacy.

75. In *Hunter*, the claimants (the Birmingham Six) brought proceedings against the police claiming damages for injuries caused by assaults allegedly perpetrated by the police. The question of whether the police had indeed assaulted the claimants had been considered and determined in the course of a prior criminal trial, the point being relevant to the question of whether confessions made by the claimants had been extorted by violence. After an eight-day *voir dire* in the absence of the jury, during which the police officers and the claimants gave evidence, Bridge J held that the prosecution had discharged the burden of proving beyond reasonable doubt that the claimants had not been assaulted by the police, and that their statements had been voluntary and should be admitted into evidence. The claimants were convicted. It was contended that the subsequent civil proceedings, putting this conclusion in issue, constituted an abuse of the process of the court. Lord Diplock articulated the following proposition (at p541):

> 'The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made."

76. The following parts of the judgment in *Allsop* strike me as being relevant to this case.

77. At [27] Marcus Smith J said:

> "Collateral challenges to prior decisions ex hypothesi do not give rise to res judicata estoppel. For the purposes of this judgment, a collateral challenge is one where - no matter how similar the issue in question – the parties to the later dispute are different from the parties to the earlier dispute that is the subject of the collateral challenge. As a matter of principle, collateral challenges should not give rise to an estoppel because – even though a dispute or issue has been determined by an anterior final judicial

> decision - that decision was binding only as between A and B, whereas the later claim arises between A and C. In short, whereas B could allege that A is estopped from bringing a later claim as against B, C can make no such assertion, because C was not a party to the anterior decision. Generally speaking, where no res judicata estoppel arises, A is permitted to bring a claim without being fettered by what has been decided previously"

78. At [34(iii)] he said:

> "(iii) Lord Hoffmann [in *Arthur JS Hall*] considered that the question of collateral attack had a number of strands requiring separate examination (at p698). Of the *Hunter* principle, he noted that 'the courts have a power to strike out attempts to relitigate issues between different parties as an abuse of the process of the court', but that the 'power is used only in cases in which justice and public policy demand it' (at p702). He agreed with Lord Diplock's view that the categories in which a court had the duty to strike out proceedings as an abuse of process should not be exhaustively listed (at pp702-703):
>
>> 'I, too, would not wish to be taken as saying anything to confine the power within categories. But I agree with the principles upon which Lord Diplock said that the power should be exercised: in cases in which relitigation of an issue previously decided would be 'manifestly unfair' to a party or would bring the administration of justice into disrepute. It is true that Lord Diplock said later on in his speech, at p541, that the abuse of process exemplified by the facts of the case was: 'the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff has a full opportunity of contesting the decision in the court by which it was made.'
>>
>> 'But I do not think that he meant that every case falling within this description was an abuse of process or even that there was a presumption to this effect which required the plaintiff to bring himself within some exception. That would be to adopt a scheme of categorisation which Lord Diplock deplored. As I shall explain, I think it is possible to make some generalisations about criminal proceedings. But each case depends upon an

> application of the fundamental principles. I think that Ralph Gibson LJ was right when, after quoting this passage, he said in *Walpole v Partridge & Wilson* [1994] QB 106, 116A, that *Hunter's* case [1982] AC 529 decides 'not that the initiation of such proceedings is necessarily an abuse of process but that it may be'.

> The decision in *Walpole v Partridge & Wilson* [1994] QB 106 is considered further below."

79. He continued the quotation from Lord Hoffmann in [34(iv)]. I will not set this out now, but will come back to it later in relation to the Defendants' case on abuse of process.

80. Confirming the limits of the abuse doctrine at [36]-[37] Marcus Smith J said:

> "36 The *Hunter* principle is thus quite broadly based, as was also emphasised by Buxton LJ in *Laing v Taylor Walton* [2008] PNLR 11, at para 12:
>
> > 'The court therefore has to consider, by an intense focus on the facts of the particular case, whether in broad terms the proceedings that it is sought to strike out can be characterised as falling under one or other, or both, of the broad rubrics of unfairness or the bringing of the administration of justice into disrepute. Attempts to draw narrower rules applicable to particular categories of case (in the present instance, negligence claims against solicitors when an original action has been lost) are not likely to be helpful.'
>
> 37. The mere fact that an earlier judgment undergoes scrutiny in later proceedings will not render that later scrutiny an abuse of process. Indeed, as has already been noted (para 8 above), it will generally be the case in later professional negligence proceedings that the question will have to be asked, 'What would have happened to the (earlier) judgment, if the defendant had behaved as he or she should have done ?"

81. At [39] Marcus Smith J began his consideration of *Laing v Taylor Walton* [2008] PNLR 11. I will need to come back to this case later.

82. Summarising the principles that emerge from the earlier cases, at p86B-C, [44(i)] Marcus Smith J said:

> "The jurisdiction to strike out proceedings as an abuse of process is one that should not be tightly circumscribed by rules or formal categorisation. It is an <u>exceptional</u>

> jurisdiction, enabling a court to protect its procedures from misuse. Thus, a court is able to – indeed, has a duty to – control proceedings which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people: *Hunter* [1982] AC 529, 536 (para 30 above); *Bairstow* [2004] Ch 1, para 38 (para 35 above); *Laing* [2008] PNLR 11,para 12 (para 36 above)."

83. Referring back to the defamation example given by Lord Hoffmann, at p88A, he said at [44(v)]:

> "The fact is that subsequent civil litigation that calls into consideration an anterior civil decision may or may not be abusive depending on facts that may have nothing to do with relitigation in its strict sense or the adduction of 'new' evidence within the *Phosphate Sewage* test."

84. The reference to *Phosphate Sewage* is to the *ratio* of *Phosphate Sewage Co Ltd v Molleson* 4 App Cas 801, 814, where Lord Cairns LC held:

> "As I understand the law with regard to *res judicata*, it is not the case, and it would be intolerable if it were the case, that a party who has been unsuccessful in a litigation can be allowed to re-open that litigation merely by saying, that since the former litigation there is another fact going exactly in the same direction with the facts stated before, leading up to the same relief which I asked for before, but it being in addition to the facts which I have mentioned, it ought now to be allowed to be the foundation of a new litigation, and I should be allowed to commence a new litigation merely upon the allegation of this additional fact. My Lords, the only way in which that could possibly be admitted would be if the litigant were prepared to say, I will shew you that this is a fact which entirely changes the aspect of the case, and I will shew you further that it was not, and could not by reasonable diligence have been, ascertained by me before."

85. And, putting the test into a single sentence, at p88H-89A, ([45]) Marcus Smith J said:

> "In short, the doctrine of abuse of process is best framed, at least in the context of a 'collateral' attack on a prior civil decision, by reference to the test expounded by Lord Diplock and Morritt V-C: If the parties to the later civil proceedings were not parties to or privies of those who were parties to the earlier proceedings then it will only be an abuse of the process of the court to challenge the

> factual findings and conclusions of the judge in the earlier action if (a) it would be manifestly unfair to a party to the later proceedings that the same issues should be relitigated or (b) to permit such relitigation would bring the administration of justice into disrepute."

86. Coming back to *Laing*, a case on which the Defendants strongly relied, the case concerned a falling out between Mr Laing and Mr Watson about agreements they had made. The exact details do not matter. The judge after trial found for W and against L. There was no appeal by L.

87. L then sued his solicitors in a second action for negligence, alleging that in preparing the written agreements between L and W in 1999, they had failed to make them accurately reflect the actual agreement between L and W, and for other alleged failures. The solicitors applied to strike out the claim on the grounds it was an abusive attempt to relitigate the findings made in the first trial. The judge dismissed the application and the solicitors appealed.

88. After citing *Hunter*, Buxton LJ said in the following paragraphs (emphasis added):

> "12. *The court therefore has to consider, by an intense focus on the facts of the particular case, whether in broad terms the proceedings that it is sought to strike out can be characterised as falling under one or other, or both, of the broad rubrics of unfairness or the bringing of the administration of justice into disrepute. Attempts to draw narrower rules applicable to particular categories of case (in the present instance, negligence claims against solicitors when an original action has been lost) are not likely to be helpful.*
>
> …
>
> 19. In order to succeed in the new claim Mr Laing has to establish at least that (i) the underlying agreements between Mr Laing and Mr Watson were as alleged by Mr Laing; (ii) Mr Kelly [the allegedly negligent solicitor] knew that; (iii) in drafting the 1999 and 2002 Written Agreements Mr Kelly failed to reflect what the two protagonists had agreed; (iv) that failure caused Mr Laing loss, in the shape of the decision against him recorded by H.H. Judge Thornton. But H.H. Judge Thornton found in the first case that item (i) was not correct; so items (ii) and (iii) did not arise. Mr Laing's case in the new claim recognised that, and that it would be necessary to demonstrate that H.H. Judge Thornton's judgment on item (i) had been wrong.
>
> …

22. The second, different, and more significant difficulty is however that everything said to us and to Langley J. in criticism of H.H. Judge Thornton's judgment could have been said to H.H. Judge Thornton (and mainly was so said); and could have been deployed in the appeal from H.H. Judge Thornton that was never brought. What is sought to be achieved in the second claim is, therefore, not the addition of matter that, negligently or for whatever reason, was omitted from the first case, but rather a relitigation of the first case on the basis of exactly the same material as was or could have been before H.H. Judge Thornton.

…

25. I therefore conclude that it would bring the administration of justice into disrepute if Mr Laing were to be permitted in the second claim to advance exactly the same case as was tried and rejected by H.H. Judge Thornton. If H.H. Judge Thornton's judgment was to be disturbed, the proper course was to appeal, rather than seek to have it in effect reversed by a court not of superior but of concurrent jurisdiction hearing the second claim. That the second claim is in substance an attempt to reverse H.H. Judge Thornton is important in the context of wider principles of finality of judgments. In *Hunter*, at 545D, Lord Diplock said that the proper course to upset the decision of a court of first instance was by way of appeal. Where, wholly exceptionally, a collateral, first instance, action can be brought it has to be based on new evidence, that must be such as entirely changes the aspect of the case: see per Earl Cairns L.C. in *Phosphate Sewage v Molleson* (1879) 4 App. Cas. 801 at 814. The second claim in our case not merely falls short of that standard, but relies on no new evidence at all.

26. It is however argued that all of that is irrelevant, or at least not conclusive, where the second claim is, unlike the claim in *Phosphate Sewage*, not between the same parties. The appellant relied on, and Langley J. was impressed by, observations by Lord Hoffmann in *Hall v Simons* [2002] 1 A.C. 615 at 705H, on the status of claims of abuse of process in negligence actions against solicitors involved in earlier proceedings:

> "I see no objection on grounds of public interest to a claim that a civil case was lost because of the negligence of the advocate, merely because the case went to a full trial. In such a case the plaintiff accepts that the decision is res judicata and binding

> upon him. He claims, however, that if the right arguments had been used or evidence called, it would have been decided differently."

In the present case, Mr Laing perforce accepts that the decision of H.H. Judge Thornton is binding on him. The obligation to Mr Watson placed on him by that judgment is the loss that he seeks to recover in the second claim against TW. That judgment against him was only obtained by Mr Watson because of the negligence of Mr Kelly. Accordingly, the second claim does not seek to reverse the decision of H.H. Judge Thornton, but rather seeks to recover from TW the cost to Mr Laing of that decision.

27. I of course agree that it will not necessarily, or perhaps usually, be a valid objection to a claim for solicitors' negligence in or about litigation that the claim asserts matters different from those decided in that litigation. That is so not only of cases where the solicitors' have made what might be called administrative errors that have prevented the earlier proceedings from being properly pursued or their outcome challenged by the proper means (e.g. *Walpole v Partridge & Wilson* [1994] A.C. 106); but also where errors in assembling the evidence or understanding the law are alleged to have led to an incorrect result, as was the case in Hall v Simons itself. But the present case is significantly different from those just mentioned. The difference is that, as shown in [19] above, in order to succeed in the new claim Mr Laing has to demonstrate not only that the decision of H.H. Judge Thornton was wrong, but also that it was wrong because it wrongly assessed the very matters that are relied on in support of the new claim. That is an abusive relitigation of H.H. Judge Thornton's decision not by appeal but in collateral proceedings, and in substance if not strictly in form falls foul of the *Phosphate Sewage* rule.

28. Mr Laing sought to escape from this dilemma by arguing that his complaint was not that Mr Kelly's drafting had produced the error on the part of H.H. Judge Thornton, but rather that, without that error, the case would never have reached H.H. Judge Thornton: because if the documentation had been correctly drawn Mr Watson would have recognised that it represented what had been agreed, and would have signed, in particular, the 2002 Written Agreement as a true record of the relationship between himself and Mr Laing. Mr Marks assured us that that claim could be extracted from the pleading quoted in [9] above; and Langley J. at his [12] accepted that as the basis of the claim.

> 29. The difficulty about this approach, which may not have been put clearly to Langley J., is that it requires there to be rejected another finding of H.H. Judge Thornton, that the parties had indeed entered into Mr Watson's first agreement. Unless that finding can be dislodged, it is plainly absurd to say that Mr Watson would have accepted a draft of the 2002 Written Agreement in the terms now contended for by Mr Laing as a complete statement of the relationship between the two men. The need to reverse that finding thus makes this way of putting the second claim equally as abusive as a direct attack on the whole of the decision of H.H. Judge Thornton."

89. Moses LJ said at [35]-[39]:

> "35. I agree that the appeal should be allowed for the reasons given by Buxton L.J. The attempt to bring proceedings in contract and in tort against TW involves an impermissible challenge to the facts found by H.H. Judge Thornton and is, for that reason, an abuse of process.
>
> 36. I should explain why I conclude that the challenge is impermissible. Allegations of negligence during the course of litigation, against solicitors or advocates, will normally involve an attempt by a claimant to demonstrate that the previous conclusion of the court would have been different, absent negligence on the part of the lawyer. In many cases it will, indeed, be necessary to do so in order to prove causation and loss. The paradigm is the loss of a case due to negligent advocacy. But to bring such proceedings for negligence does not bring the administration of justice in to disrepute; Hall v Simons teaches to the contrary.
>
> 37. But such cases differ from the instant appeal in two important respects. Firstly, in the normal run of case, the impugned conduct of the lawyer is independent of the factual conclusions of the court; those conclusions are only relevant to prove causation and loss. His case does not, in reality, involve any challenge to the findings or conclusion of the court. He merely contends that, in the light of the negligence of which he now complains, the court's conclusions would have been different. But this not so in the present case. As Buxton L.J. has demonstrated (at [19] and [27]), the claimant cannot establish that his adviser's drafting of the agreements was negligent without challenging the judge's findings as to credibility and fact. To make good the allegations of negligence, Mr Laing must show that his account of the

> agreements is the truth. He must demonstrate that H.H. Judge Thornton's judgment of his credibility was wrong.
>
> 38. Secondly, generally in actions against legal advisers arising out of litigation, the losing party's allegations of negligence could not have been advanced in the case which he lost. They arise only after the case is concluded. But in the present case, the claimant had every opportunity during the course of the trial to raise, as he would have it, the inadequate drafting. The more Mr Marks Q.C. emphasised the strength of Mr Laing's position on the basis of the written evidence, the harder it became to understand why the errors of Mr Kelly were not fully aired at trial. On Mr. Laing's account the 1999 and 2002 written agreements were inadequate. Mr Laing had every opportunity at trial to explain that the inadequacies were due to the incompetence or misunderstanding of Mr Kelly.
>
> 39. Those two features demonstrate why the court should not permit this action to proceed."

Discussion

90. There is plainly a degree of complexity about this case and a great many points were made in the Skeleton Arguments and oral submissions. Hence, my failure to mention a certain point does not mean it has been overlooked. I have had to be selective in the points that I cover. Where I say that I accept without repeating a point made in a Skeleton Argument, or otherwise, that acceptance has come after due consideration.

91. I propose to number the issues according to Miss Sandells' numbering, above

Issue 1: Have the Defendants shown that the POC disclose no reasonable grounds for bringing the claim and/or that the Claimant's claim has no reasonable prospects of success ?

92. When considering this issue the starting point, it seems to me, is to keep a firm eye on the fact that Niki has been found to have been repeatedly and thoroughly manipulative and dishonest by two judges, after trials at which she: (a) was represented by different lawyers at each (including, at the Johns trial, her current counsel); (b) gave evidence that was tested in cross-examination; (c) having lost, sought to appeal the Underlying Claim to the High Court, when she was represented by experienced leading counsel; whereupon (d) she made no complaints of negligence in her application for permission to appeal; and (e) was refused permission to appeal in two separate judgments.

93. I do understand that part of Niki's case is that neither the Recorder nor HHJ Johns would have so found had the Defendants not been negligent, but so comprehensive were their findings about her lack of honesty, I cannot properly ignore them.

94. At a minimum, they must cause me to scrutinise carefully some or all of what Niki now said happened (especially in 2016/7 in the Underlying Claim), eg, that she was not

given the bundle until the day of the Cohen trial (POC, [14(j)]), or that WGR was settled without instructions ([14(d)]).

95. That is all the more so because, as I have said, none of what she now says went wrong was raised on the appeal to Morgan J. That was a stark omission. Furthermore, many of her allegations strike me as inherently implausible. The allegation about the bundle is one such (a point I will come back to); another is her claim that documents she wanted in the bundle were omitted ([14(a)]); yet another is her complaint about witnesses not being called ([14(e)].

96. WGR is a clear example of at least part of Niki's pleaded case plainly being untrue. The Schedule containing the WGR settlement is lengthy and detailed with specific sums of money being involved. It is obvious that Niki was involved in its drafting and must have approved it. That is all the more so since I was shown a letter by Miss Sandells from the First Defendant to Andre's solicitor dated 7 September 2016 about, *inter alia*, WGR which said, '… our client proposes a drop hands settlement …'. That email is reinforced by the following email (given to me during the hearing) dated 13 February 2017 from Mr Christou to Niki about the WGR settlement (I assume Dipesh was Andre's solicitor), which again clearly shows WGR was expressly settled on her instructions, contrary to what she now alleges:

> "Hi Niki
>
> Costas Christou
> 13 February 2017 18:54
> Niki Christodoulides
> 450 WGR draft settlement agreement
>
> Please take a look at draft below and call me please so I can finalise and send to Dipesh
> Thanks
> Costa
>
> From: Costas Christou
> Sent: 13 February 2017 18:46
> To: Costas Christou
> Subject:
>
> Dear Dipesh
>
> I confirm we agreed settlement terms for the 450 WGR account claim as follows:-
>
> 1 NC to pay AM £1837.49 out of NC's share of accumulated rents currently held by Star Estates and Lettings by the
> mechanism set out in para 5 below
>
> 2 NC to reimburse AM 50% of insurance premiums paid by AM to date from 2013 to 2017 totalling £3,298.37 out

> of NC's share of accumulated rents held by Star Estates and Lettings subject to production of proof of payment by AM of the insurance premiums including the 2016/17 insurance premium payment made by AM by the mechanism set
> out in para 5 below
>
> 3 AM agrees not to dispute any other items in the taking of the 450 WGR account claim including the 'Tiebridge' items set out below totalling £7267.88 (query in Tiebridge Settlement agreement recital 6 (e) and clause 10.1 make reference to £7,389.03?. Need to confirm which figure to use).
>
> …"

97. The email then went on in some detail into the accounting exercise between Niki and Andre to which I referred earlier.

98. Following the disclosure of this email, Mr Rogers (on instructions) withdrew the first sentence of [14(d)] of the POC ('During the course of the trial, the Defendants agreed a hands down settlement of the WGR matter in the absence of any instructions from the Claimant.' The rest of [14(d)] was maintained.

99. However, the rest of this email and the figures set out in it (which I will not quote) which Mr Christou set out in detail for Niki, and related emails between the two, are also inconsistent with her case that the WGR claim was worth £14000 to her and she was wrongly told it was only worth £5000, and that the lawyers simply sorted out matters between themselves without reference to her. There was a complicated and detailed accounting exercise between the sisters with sums moving in both directions. Niki was involved at every stage and was asked to provide comments (and did so). Miss Sandells said, and I agree, that the impression given by [14(d)] is misleading. Niki was very much involved in the negotiations.

100. This bears out the broader point that I made several times during the hearing that Niki was plainly heavily involved in the preparation of the case. She was not the sort of client who just left everything to the lawyers.

101. If Niki's complaints had any substance, the bulk of them would have been obvious to her at the time, and I would have expected they would have been raised on appeal, rather than years later in collateral proceedings. Furthermore, as I discuss later, the POC contain at least two matters which I consider undermine the veracity of the entire pleading.

102. I begin with the judges' findings about Niki's lack of honesty.

103. At [25] of his judgment Mr Recorder Cohen gave the following assessment of Niki's character and conduct, which I think can fairly be described as damning:

> "25. Niki was the second witness who gave evidence but hers is undoubtedly the principal witness evidence on her side and it is sensible to take it first. She was in the witness box for a little over two Court days and I have therefore had more than ample opportunity to assess her character and evidence. For reasons which I will explain, I find Niki to be a thoroughly dishonest and manipulative individual to whom integrity and truth are less important than achieving what she wants, even when she knows she is not entitled to it.
>
> Her dishonesty extends to:
>
> 25.1. Dishonestly making an application together with her mother to the District of Court of Limassol for relief to which she knew she was not entitled;
>
> 25.2. Swearing on oath to that Court to the truth of a written statement containing false statements of a critical kind which she knew to be untrue in order to make it appear that she was entitled to the relief when, in fact, she knew that she was not;
>
> 25.3. Procuring official documents to evidence a critical false assertion in the proceedings, namely that she lived permanently in Cyprus when she did not in fact live there.
>
> These findings are based purely on Niki's own evidence to me though the finding that her conduct was dishonest is my own conclusion which I regard as inescapable from the admitted facts. I will explain this very clear conclusion before turning to the disputed facts."

104. In his comprehensive analysis of the evidence, the Recorder thus identified a number of lies which he found Niki had told (including on oath in proceedings in Cyprus). He also found (at [46]) that Niki's husband had improperly tried to interfere with a witness, and commented that aspects of his evidence were 'so improbable that I cannot accept it.'

105. The Recorder's assessment of Andre at [53] was in marked contrast, as follows:

> "53. Andre was a calm and sensible witness who dealt with all questions some of which were difficult and personal put to her in a convincing fashion. Her evidence obviously needs to be compared to the contemporaneous documents but there is nothing in that process or her evidence in general which causes me to doubt her evidence. I would observe that although Andre is able to give evidence about what she saw, much of her case must inevitably depend on what was going on between Niki and

> Agni which Andre did not see or hear. In this respect, evidence other than Andre's is important."

106. In relation to the Transfer Claim he concluded at [84] and [87]

> "84. In my judgment, Andre's evidence as to when and how this transfer was executed is to be preferred and I accept it.
>
> …
>
> 87. In my judgment, Andre's version of when and how the transfer of Hazelmead was executed by Agni, namely in early October between the time of Pani's funeral and Andre's return to Cyprus is much more probable before I even take into account my view of Niki's character and the unsatisfactory nature of her evidence. I accept Andre's version."

107. He concluded at [146] in relation to the Calumny Claim:

> "146. In summary, my finding is as follows: Agni's mistaken belief that her will would effect a more even distribution of assets considering what Andre had helped herself to was induced by the fraudulent misrepresentations of Niki that Andre had stolen, helped herself or taken Agni's money and run— this is fraudulent calumny as Niki had successfully poisoned Agni's mind against Andre."

108. On 10 February 2017, in a separate judgment, the Recorder awarded Andre her costs on an indemnity basis. He said at [5]:

> "5. When it comes to whether this case has been taken quite out of the norm by the behaviour of Niki, in my judgment, the answer is too clear for words. My judgment catalogues behaviour of a dishonest kind by Niki throughout the period to which this claim relates and it has extended to giving false evidence in these and other proceedings and, indeed, in the witness box before me. In my judgment, Miss Selway [Andre's counsel] is correct that this case is most obviously entirely out of the norm and the appropriate order to make is costs on the indemnity basis."

109. Niki sought permission to appeal to Morgan J against the Recorder's liability judgment in both of its aspects (there were two Appellant's Notices). She was by then represented by well-known leading counsel, John McLinden KC, on a direct access basis.

110. In his First Witness Statement at [21], the Second Defendant says that although by then Niki had dispensed with his services, he nonetheless assisted Mr McLinden in preparing some of the documents in support of the applications for permission to appeal. In the evidence there is an email from Mr McLinden to the Second Defendant dated 17 March 2017 in which he wrote:

> "You have been very generous with your time and you have made an indispensable contribution to the challenge to the Recorder's judgment. I am very much in your debt for this, and I am anxious to retain your assistance."

111. I infer from this that Niki had not at that stage made any complaint to Mr McLinden about the quality of the Second Defendant's representation – for example, that he had not called numerous witnesses whom she wanted called. Mr McLinden would scarcely have been anxious to retain his services had she done so. I will return to this point.

112. Morgan J refused permission to appeal on both applications. There are two separate judgments.

113. His judgment on the Calumny Claim is: [2017] EWHC 2632 (Ch) and is dated 26 October 2017. He said at [11]:

> "11. Although Asplin J's order provided for both applications for permission to appeal to be dealt with at the same hearing, I heard full argument on Niki's application for permission to appeal (and the potential appeal, if permission were to be granted) in relation to the dispute about the will and I then indicated that I would give judgment on that application and/or on the appeal (if permission were granted) before dealing with the application for permission to appeal in relation to the dispute about the transfer. Ms Selway submitted that if the appeal in relation to the will failed, then the proposed appeal in relation to the transfer would be academic as the property in question would be owned 50/50 by Niki and Andre whether or not the transfer was set aside. Mr McLinden did not agree with that submission but in any event, the course which was taken has resulted in me giving this judgment before hearing argument on the application for permission to appeal in relation to the transfer."

114. There were a number of grounds of appeal, each of which Morgan J rejected. These were (see at [31]-[32]):

> "31. The grounds of appeal in this case are not concise. They extend to some 8 pages and do not distinguish between grounds of challenge to the judgment and argument in support of the grounds of challenge.

> 32. It seems to me that the grounds of challenge can be stated, concisely and in a logical order, as follows:
>
> (1) The Recorder allowed Andre to advance a case of fraudulent calumny and to lead evidence in support of it which went beyond her pleaded case;
>
> (2) The Recorder made findings of fact in relation to the case of fraudulent calumny which went beyond Andre's pleaded case;
>
> (3) If the Recorder had confined Andre to her pleaded case, that case would have failed;
>
> (4) The Recorder made findings in paragraphs [121.1], [121.2], [133], [142] and [144] which were not supported by the evidence;
>
> (5) The Recorder failed to distinguish as he should have done between money being "taken", "withdrawn" and "stolen";
>
> (6) The Recorder's assessment of Niki's dishonesty clouded his assessment of the evidence;
>
> (7) The Recorder failed to apply the correct legal principles and in particular failed to apply the principles as stated in *Re Hayward* [2017] 4 WLR 32 because he failed to analyse the legal consequences of his findings of fact;
>
> (8) In particular, in relation to the application of the relevant legal principles, the Recorder did not adequately consider whether Niki's statements caused Agni to make no provision for Andre in the will; and
>
> (9) The Recorder failed to consider the other possible explanations for Agni's decision to make no provision for Andre in the will."

115. It is to be noted, as I have already said, that notwithstanding their length, the grounds of appeal did not allege any negligence against the Defendants. That is so even though a substantial period had passed since the Cohen judgment and, as I have already referred to, some time before October 2017 she had been making criticisms of the Second Defendant's conduct of the case.

116. It seems to me that the passage of time between the Cohen judgment and the permission application gave Niki ample opportunity to raise with Mr McLinden much if not all of what she now says went wrong, so that they could be raised as grounds of appeal, including by way of applications to adduce fresh evidence. If her complaints have

substance, it is striking that she did not do so, but instead waited until June 2022 to issue this claim.

117. At [49] Morgan J said:

> "49. I have considered the detailed findings made by the Recorder. Based on those findings, there was plainly a very strong case that Niki's false representations to Agni were made for the purpose of inducing her mother to make a will which was adverse to Andre and favourable to Niki."

118. He concluded at [62]:

> "62. I have now considered all of the suggested grounds of appeal. Whether the grounds are considered individually or collectively, Niki does not have a real prospect of success on appeal and I will therefore refuse permission to appeal. This judgment is more lengthy than would be typical for a judgment refusing permission to appeal. I have dealt with the points thoroughly out of deference to the detailed and sustained submissions of Mr McLinden but the length of the judgment does not indicate that his points had a real prospect of success."

119. Following the hand down of that judgment, Morgan J heard submissions on the application in relation to the Transfer Claim. Again, there were no allegations of negligence. He gave judgment on 1 November 2017: [2017] EWHC 2691 (Ch). After exploring whether the proposed appeal was academic in light of his first judgment, the judge said at [17]:

> "17. When I take into account the possible outcomes of the appeal and the different ways in which the appeal might be dismissed, my overall assessment is that the appeal does not have a real prospect of success."

120. I turn to the Johns judgment.

121. Of Andre, the judge said at [27]:

> "27. I accept that evidence [from Andre] because of the view I formed of Andre as a witness. She was entirely straightforward. Mr Rogers counsel instructed for the Claimant made such attempts as were possible to show otherwise in cross-examination, but it was clear to me that her evidence was honest and generally reliable. There was no distorting hostility to her sister which, given the circumstances, did her credit."

122. At [28], [30]-[31] he described Niki and some of the evidence called by her in the following terms:

> "28. By contrast, and a further reason for rejecting the contention that the sum of £167,769.19 was a gift, is the view I formed of Niki as a witness. I felt unable to rely on her evidence. There was a strong distorting dislike of Andre. Niki's witness statement was full of grievances and attacks on Andre's character. The ground it covered went back to their time as children. And took in the conduct and character of George as well, Andre's son. The witness statement was often not easy to follow when it finally turned to the issues. All that was reflected in Niki's oral evidence. Further, she was reluctant to agree even with points which were plain. A notable example was the suggestion that she was angry with Andre following the events of 9 March 2012. She was not ready to agree with this, despite the 4 page complaint letter dated 13 March 2012 to the Bank of Cyprus in which she referred to herself as extremely angry at the manipulation and a clear intent to defraud. And despite an email of 23 March 2012 where she wrote of Andre: "I can't believe that the bitch had planned this from day one". To the idea that Andre might be added to the UK accounts she wrote: "no f**** chance". Yet further, as I will go on to make clear, significant parts of her evidence contradicted what she said in the earlier proceedings. It was also notable that she did not, in cross-examination, meet difficult questions head on. Recorder Cohen QC gave a scathing description of her as a witness. He described her as a thoroughly dishonest and manipulative individual to whom integrity and truth are less important than achieving what she wants, even when she knows she is not entitled to it. I have not relied on his assessment. But rather have arrived, after a similar opportunity, at a like conclusion that her evidence is not to be trusted.
>
> …
>
> 30. I was left uneasy on hearing evidence of others as to the signing of this letter by Agni on 18 June 2012. The purported witness to her signature, Mr Constantinou, was adamant in his cross-examination that he would have signed his name and then immediately added the date. But the evidence of Niki's own expert in document forensics, Miss Radley, is clear that the date has been added in a different ink. It is not done with the same pen. That evidence reflected that of another expert, Mr Handy, in the 2016 proceedings. And Mr Constantinou sought to improve his evidence in favour of Niki. He said for the

> first time on Monday 18 January 2021 during this trial that there were the usual comings and goings of Niki's children on the day he witnessed the letter and that Niki may have come and got him from outside. Both reflected evidence given by Niki and her children. Neither had been said by Mr Constantinou before. The first contradicted what he had said in 2016, namely that there was no one else around, and is an odd thing to say when there would have been nothing usual about Niki's son being at home on a Monday. He would normally be at school. The second did not sit comfortably with what he told me on Friday 15 January 2021, namely that Niki probably made the request by Whatsapp call. Further, his evidence that he witnessed the letter on 18 June 2012 is difficult to square with his evidence to the Recorder that Agni told him weeks before in Niki's house of having been tricked by Andre in relation to her money in Cyprus. Given that Agni did not return to the UK until 16 June 2012 following the upset caused by the events of 9 March 2012, that was the first opportunity for such a conversation. That evidence would point to the signing of the letter by Mr Constantinou being much later than 18 June 2012.
>
> 31. The detailed evidence of Niki's children as to seeing Mr Constantinou and Agni there on that day, 18 June 2012, is surprising. There was no convincing reason offered for what Christian referred to as a very vivid memory of that day. And it is a little surprising that he was there at all if this was 18 June 2012. Further, while Alicia suggested that Agni referred to a gift for their education and future, it seems she never enquired further about any such gift and her education was at an end by then anyway. This is, of course, a different explanation for the gift than pleaded in these proceedings. In my judgment, their desire to help their mother in her campaign against Andre has led to a later reconstruction of events. I should add that I have no electronic data supporting the date of 18 June 2012 as the date of creation of the document; only the convenient explanation from the previous proceedings of the absence of such data, namely that Niki no longer has the computer she created it on."

123. At [40] the judge found for Andre and against Niki.

124. Against that background, I have reached the clear conclusion that the POC disclose no reasonable grounds for bringing the claim and/or that the Claimant's claim has no reasonable prospects of success. On either or both bases, the Defendants' applications succeed.

125. It is easiest, I think, to start with the Johns judgment. I remind myself that the alleged losses said to arise from the Defendants' negligence run into the hundreds of thousands of pounds (POC, [16(h)-(k)]).

126. I set out [14(o)] and [14(p)] of the POC earlier, which set out Niki's case on how she says the Defendants were responsible for her loss of that case even though they did not by then represent her (and had not done so for a number of year). Her case on this aspect is also put thus in her second witness statement at [25]:

> "If the First and Second Defendants had not omitted relevant documents from the bundle, ignored relevant witnesses, allowed inappropriate editing of documents and wrongly made admissions on certain issues, then it is respectfully argued that such findings would not have been made by the Recorder which then coloured the subsequent judgment of HHJ Johns KC. The Defendants also ignore that the significant volume of missing evidence which was relevant to the credibility and reliability of Mrs Marcou which would also have affected the outcome."

127. Given the basis on which the judge found Niki to be a 'thoroughly dishonest and manipulative individual', which was multi-factorial and based in significant part on his own independent assessment of her behaviour, including how she had chosen to couch her case in her witness statement, and her attitude towards her sister, the bald assertion in [14(o)] that the way a list of issues had been framed in the Underlying Claim undermined her credibility before HHJ Johns, so that she lost the case, is simply untenable. In fact, it is not remotely arguable. Likewise, the allegation in [14(p)].

128. I flatly reject the suggestion that HHJ Johns' judgment was 'coloured' or in any way influenced by the Cohen judgment. He reached his own independent assessment of Niki's character based on the evidence that he had heard, unaffected by the Recorder's views, and he expressly said so ('I have not relied on his assessment.') It just so happened that the judge reached the same damning conclusion about Niki's dishonesty that the Recorder had.

129. It is difficult to prove a case was lost because of lawyers' negligence, as *Allsop* makes clear at [34(iv)]. To try and prove that a second case (where the claimant was not represented by the defendant lawyers) was lost because of what they negligently did or did not do at an earlier, separate, trial, whilst theoretically possible, strikes me as an exponentially harder task. This case does not come close. Moreover, as Mr Wood said, it was not within the scope of the Defendants' duty to Niki to protect her from loss in the Asset Claim arising from their engagement in the Underlying Claim.

130. The claim in respect of the Johns judgment therefore fails on this straightforward basis. The Defendants have demonstrated Niki has no realistic prospects of success in relation to it. Nothing the Defendants did or did not do in the Underlying Claim affected the outcome of the Assets Claim in any way. It was lost because the judge found Niki to have been dishonest.

131. I have reached the same conclusion in respect of the Underlying Claim. Niki lost the case because the judge found her to dishonest and not because of any negligence by her

lawyers. I quoted the key passages earlier but it is necessary to drill down a little further into the judgment.

132. Miss Sandells in [19] of her Skeleton Argument thoroughly analyses the Cohen judgment and I accept the substance of that analysis but do not repeat it. Instead, I propose to select by way of illustration a number of examples from the Cohen judgment to make good the conclusion I have reached.

133. In his assessment of the witnesses, the Recorder concluded that Niki was and had been dishonest and manipulative, for the reasons set out in [25], which I set out earlier, and emphasised this was a conclusion based 'purely on [Niki's] own evidence' to him, and by reference to a dishonest application to the Cyprus Courts, untrue evidence sworn on oath, and the procuring of official documents to evidence a critical false assertion. He regarded the conclusion that she was dishonest as 'inescapable from the admitted facts', meaning admitted by her. For example, and by way of illustration *(sic)*:

> "26. Niki's explanations of her conduct also require mention as they well represent her evidence more generally. Niki was wholly unable to acknowledge that there was or even might be anything wrong in her conduct. She was wholly unapologetic and proffered different explanations at different times in her evidence. There was one theme of her explanations which recurred time and again: Andre was to blame and Niki had been acting on her "instructions" though, with regard to the first episode I am about to describe, this cannot be the case.
>
> 27. As for the first episode which I use as the clearest possible example on which to base my findings, it starts with the retaining of Mr Constantinides as a Cyprus lawyer on 26 or 27 March 2012 and the application to the District Court of Limassol made by Niki and Agni for Niki's appointment as administrator of the estate of Pani. This was made on the basis that Pani died intestate. Rolled into this episode is also the execution of what has been called a Waiver or Renunciation. By this document executed by Agni on the after of 28 March 2012 after the Court hearing, Agni renounced in favour of Niki the entirety of her interest in the estate of Pani. In effect, this document was a transfer of Agni's interest by way of gift to Niki which, on the basis that there was an intestacy, was a transfer of a one third interest in Pani's estate. On the basis of the evidence provided to the District Court of Limassol, this gift was valued at approximately €870,000.
>
> 28. Mr Constantinides gave evidence before me which was completely clear in two respects which I accept: first, that he asked and was told by both Niki and Agni that Pani had left no will; secondly, that he told Niki in their first meeting on 26 or 27 March that to be eligible to be

appointed as an administrator, she must reside in Cyprus permanently - this is one of the first things he said.

29. As for representing to Mr Constantinides that Pani had left no will, Niki's evidence was that she did not remember saying this but she did not challenge Mr Constantinides' evidence directly. In my judgment, Mr Constantinides's evidence is to be preferred in his recollection as any lawyer making an application to the Court on behalf of a party wanting to administer an estate obviously needs to know whether or not there is a will. Niki's own evidence was that she knew her father had left a will the statement which I find that she made was a lie. Niki's attempt to explain what seems to have been a straightforward lie is that the executors had renounced their right to probate. It appears to be true that the executors named in the will had renounced their right to probate but I fail to see how this is the same as there being no will. There were beneficiaries named in that will who continued to retain an entitlement so that the disposition of Pani's estate was different from what would occur on intestacy. More people than on an intestacy had an interest in the estate. I can see no reason which can fairly be described as proper or honest why Niki did not tell her own lawyer the truth in answer to his question. The statement that Pani had died without a will was repeated in Niki's written statement to the District Court. That statement was sworn before the Registrar by Niki on 28 March 2012 so that this is an example of Niki lying on oath.

30. As for residence, Niki accepts that she knew that she needed to be a permanent resident in Cyprus to become an administrator ...

31. Niki attempted in cross examination to justify her statements to Mr Constantinides (and later to the Court in her sworn statement) by saying that she was a Cyprus resident and she was someone who went away a lot to work in England. In my judgment, this was a lie. Niki knew that she was not a Cyprus resident whether permanent or, indeed, in any other meaningful sense. She was a permanent resident in England where she had lived with her husband and children since 1995 …

32. Niki's deceit as to her residence was not only of Mr Constantinides but also of the Mukhtar.

33. The Mukhtar was the local official responsible for the area of Limassol in which Agni lived. Niki visited him on 27 March 2012 and she obtained a certificate from him as

> to her residence for the purpose of joining the electoral register and as to the heirs of Pani. This certificate could only have been obtained by Niki on the basis of her representation as to her residence in Agni's apartment. The purpose of obtaining this certificate was to present to the Court if needed to support her application to appoint her as administrator of Pani's estate. In my judgment, the seriousness of this lies not only in Niki's deceit but also its nature — it was procuring an official document to use as evidence which may be required for a Court process to make it appear that Niki's lie as to her residence was true.

134. At [34] the Recorder said that, 'The deceitful statements to the District Court of Limassol are important to recite', and he then went on to recite them in the following paragraphs.

135. It is also fair to say that the Recorder was not impressed by some of Niki's witnesses. For example, he concluded that: (a) Niki's husband was much more balanced and measured than his wife but with limited knowledge on critical issues and where he did have knowledge on one occasion his explanation was so improbable it could not be accepted [46]; (b) Niki's Cypriot lawyer, Mr Constantinides was in privilege difficulties and somewhat defensive. Some of his evidence could be accepted, but some did not sit comfortably even with Mrs Christodoulides' accepted evidence [47].

136. Miss Sandells referred me to this particular of negligence at [14(i)]:

> "(i) When the First Defendant prepared the witness statement of Costa Constantinou [Niki's neighbour], a copy of which is at annex 5, words were inserted in Greek by the First Defendant. This immediately undermined the credibility of the witness because he was unable to read those words. During examination in chief, the Second Defendant omitted to take any steps to remedy the issue by drawing the judge's attention to the fact that, whilst Mr Constantinou could speak and understand oral Greek, he would be unable to read the words."

137. I think that in light of this allegation, the Recorder's impression of Mr Constantinou was important. At [50] the Recorder described him as unsatisfactory, having unwillingly appeared under summons, and having been visibly uncomfortable. The Recorder also noted that he did not return to Court on time to resume his evidence after the short adjournment and in that time had sent a text message demanding more than the proffered conduct money. The Recorder's analysis of his evidence is mainly at [50]. It is notable that the Recorder was reinforced in his views by the difficulties in reconciling the evidence with the timeline and the documents, and concluded that in cross-examination Mr Constantinou, 'really did not bear out what is said in paragraph 9 of his witness statement' [143.2.4].

138. In contrast, Andre's witness, Nektaria, was described as decent and upright, displaying no bias of loyalty to either sister. The Recorder had no hesitation in accepting her

evidence ([55]). I regard as far-fetched the averment in [14(u)] that the Second Defendant's alleged failure to cross-examine her on text messages would have made any difference to the judge's assessment of her. Paragraph 55 makes this crystal clear:

> "55. Nektaria was Agni's niece and she was close to Agni who treated her as a mother once Agni's sister died. Agni undoubtedly spoke to her of some of the things that troubled her and I accept Nektaria's report. She did not display any bias of loyalty to one or other sister rather than to Agni. I found her to be a decent and upright young woman whose evidence I have not the slightest hesitation in accepting. She did not speak English and her evidence was taken through an interpreter. Although she had some very basic ability to read English, she could not and did not read texts or e mails in English. I should also note of her that there was considerable distraction with caring for a very young child in some of her conversations with Agni and that same distraction applied to her husband."

139. Crucially, it seems to me, where there were direct conflicts of evidence between Niki and Andre, the Recorder invariably preferred the evidence of Andre. An example is this:

> "81. Andre had a concern as to whether Pani was capable of understanding what he was doing. In my judgment, this was dealt with by her responsibly. Enquiry was made of Pani's doctor who advised that he was capable. A letter recording this which Andre thought (prior to disclosure) existed was actually produced by Niki on disclosure, thereby confirming the accuracy of Andre's memory. When it comes to the extraordinary story told by Niki that she signed Pani's name on the transfer on Andre's advice and instructions, this must either represent a deliberate lie by Niki or by Andre.
>
> 82. Niki explains in her 6th Witness Statement that Andre *told me that I was entitled to sign on behalf of my father as I was a signatory on his bank accounts*. I find this so improbable that I do not believe it. Niki is an intelligent and educated woman who was adept in being able to distinguish between concepts of ownership of a bank account and being signatory for administrative convenience, regardless of what the contractual documents might indicate. In my judgment, she was well able to understand that being a signatory on a bank account is a very different thing from being authorized to sign documents not related to the bank accounts. Indeed, she was not only able to understand this but, in my judgment, did understand it. This is not only an improbable explanation but when the characteristics of Niki are

> considered and I add to them the dishonest conduct of Niki which I have found elsewhere in this case, I have no hesitation in preferring the evidence of Andre, which I found to be convincing."

140. At [84] under the heading 'Execution of Transfer of Hazelmead' the Recorder said:

> "84. In my judgment, Andre's evidence as to when and how this transfer was executed is to be preferred and I accept it."

141. He continued at [87]:

> "87. In my judgment, Andre's version of when and how the transfer of Hazelmead was executed by Agni, namely in early October between the time of Pani's funeral and Andre's return to Cyprus is much more probable before I even take into account my view of Niki's character and the unsatisfactory nature of her evidence. I accept Andre's version."

142. The Recorder then went on to describe how Niki had taken her mother to a meeting at Bank of Cyprus to discuss a complaint Niki had made. The Recorder described Niki's account of that meeting as 'highly improbable' . He said at [124]-[125]):

> 124. The meeting for which there had been a break was (unbeknownst to Andre) a meeting at the office of the Bank of Cyprus (different from the branch) to discuss Niki's complaint. According to Niki, Agni asked Niki's husband to attend with them as without a man present she did not think that they would be taken seriously. The evidence of Niki and her husband is that in the meeting the complaint was discussed and her mother became upset. The meeting was calm in tone. The bank said that there was nothing that they could do as they had acted on instructions that Agni had given and signed.
>
> 125. In my judgment, the account given of this meeting by both Niki and her husband is highly improbable. My view is that in discussing a complaint by Niki that the Bank had conspired to defraud her mother and that someone at the bank was expecting a 'backhander' (presumably from Andre) this meeting was most unlikely to have been calm and civil in its tone. It would have been hard enough for an experienced lawyer to have achieved such a result. My judgment of Niki is a person who is wholly unable to restrain herself from forceful, intemperate and manifestly untrue allegations of the kind which the meeting was [to] discuss."

143. I could go on to give many more similar examples from the Cohen judgment, but I do not propose to lengthen the present judgment by doing so. As I have said I adopt but do not repeat all of the points in [19] of Miss Sandells' Skeleton Argument and her analysis of the Cohen judgment. It is plain beyond doubt that Niki lost the Underlying Claim because she was assessed to have been a dishonest liar both in Cyprus, and in England (including in her evidence), and not for any other reason.

144. Miss Sandells next turned at [21] et seq of her Skeleton Argument to Niki's allegations about documents, trial bundles, etc. Again, I accept the thrust of Miss Sandells' points but do not repeat them all. They demonstrate that the allegations do not provide a realistic prospect of success.

145. I have already pointed out that even on the face of it there are strong grounds to be sceptical of many of these claims given the late stage at which they have been raised. There is also this point: Niki is plainly an intelligent woman. If there had been the lack of preparation and other mistakes that she now claims at the time of the Underlying Claim then she would have said so. She would have said to the Defendants, for example: 'What happened to all these other potential witnesses that I told you about ?' Or, 'Please can I see a copy of the bundle well in advance of the trial so I can prepare ?' Or, 'I am struggling to hear the evidence, please raise it with the judge'.

146. The broad thrust of this group of complaints is that matters were either not presented, or not properly presented, so that the Underlying Claim was lost and WGR settled on unfavourable terms (see, in particular, POC, [14(a)], [14(b)],[14(d), [14(h)], [14(i)], [14(n)] and [14(o)], and the references Annexes, and [15]). In other words, the complaint is of negligent or inadequate trial preparation.

147. Taking the WGR claim first, the obvious answer to this complaint is that WGR was *settled* and not tried. It follows that complaints about inadequate trial preparation cannot have had any effect so far as that is concerned. And as I have already shown, Niki approved the settlement.

148. I also accept the point made by Miss Sandells that there is little or no explanation in [14] as to which outcomes Niki says would have been different or, crucially, how. In other words, that is a lack of a proper explanation of causation. For example, to repeat part of [14(b)]:

> "The Defendants ought not to have permitted the editing/ redaction of documents and should have objected to such a course. Only clean copies of the documents ought to have been before the judge. This further materially prejudiced the outcome of the three claims."

149. This point, even if true, did not play any role in the Recorder's decision, so far as I can see.

150. Given the analysis of the Cohen judgment that I have set out, and in particular the conclusion the Recorder reached in [146], it is very difficult to see how the matters alleged by Niki could have affected the outcome. She could not have won the Underlying Claim without overturning the finding that she dishonestly poisoned her

mother's mind against her sister. None of what she alleges by way of trial (mis)preparation comes close to doing so.

151. Nor do many of the Annexes to the POC assist Niki in advancing a case capable of overturning the findings about her dishonesty. For example, Annex 1 is a list of documents. It is referred to in [14(a)]. It is very difficult if not impossible to make sense of. Having been steeped in this litigation for many years now, Niki might know the points she is driving at, but it is hard for the outside reader to understand it. For example, the first entry lists the documents 'D.M Griffiths Piercy Solicitors Wills and Trusts Mr Panayiotis Iacovou and Mr Andreas Iacovou'. The relevance is said to be:

> "Wills and Trusts Mr Panayiotis Iacovou and Mr Andreas Iacovou Historical Deeds of Trusts with Paul Spyrou and George Christodoulou as executors of Will and Trusts going on for lifetime"

152. I simply do not know what this means. Nor does Niki's evidence shed any light on matters. Paragraph 4 of her first witness statement simply refers back to Annex 1 without further explanation. I could give many further such examples across most if not all of the Annexes.

153. There is also the point that Annex 1 lists documents running from 1981 to 2016. As I have said, the Underlying Claim consisted of the Will Claim and the Transfer Claim. Given the Hazelmead transfer was created and executed in late 2011, and the Will was dated 7 August 2012, it is hard to see how documents pre-dating Pani's (Agni's husband's) last illness in September 2011 (the occasion for the Transfer) and/or post-dating execution of the Will, could have had any prospect of materially impacting the outcome of the trial.

154. Paragraph 14(b) asserts that some documents added to the trial bundle were edited/redacted by Andre. However, it gives little assistance as to the nature of Niki's concerns. Instead, she relies on Annex 2, which lists the documents and their alleged relevance, but so far as I can see does not identify the edit or redaction to which objection is taken nor, again, how it would have affected the judges' assessment of Niki's dishonest nature.

155. Dealing next with allegations of negligence about advice on the burden of proof and costs issues, Miss Sandells said this at [39]-[42] of her Skeleton Argument, and I agree:

> "39. POC 14(c) criticises the Defendants' advice as to the standard of proof and says that the advice affected Niki's decision to continue with the proceedings. A similar point is made in POC 14(w) concerning costs and Andre's alleged Part 36 offers. It is not explained how. This was a probate claim. Mrs Christodoulides had three choices – drop the Will completely, fight to prove it, or compromise. It is clear from the POC that Mrs Christodoulides was not willing to drop the Will, indeed she still thinks it should have been proved. It is also her case that she was not prepared to settle, even on the terms alleged in Annex 14, a position reflected in the Cohen Costs Jmt.

> 40. There is also the difficulty that if, as she appears to assert, Mrs Christodoulides was telling the truth and believed in her own case, it is hard to see how further advice on the burden of proof or costs would have affected her decision to proceed. CPC cannot see how the exact burden of proof is relevant unless Mrs Christodoulides knew that she was lying but was prepared to roll the dice relying on a high burden of proof to get her home. If that is the case, her claim is an abuse, and any loss is caused by her own dishonesty. It will also be noted that Mrs Christodoulides was ordered to pay costs on the indemnity basis not because of Part 36 offers, but as a result of her dishonesty – see Trial Order 13, C/145, and paragraphs {2}-{5} of the Cohen Costs Jmt . It appears that the only offer made by Andre was given short shrift in any event.
>
> 41. Niki also faces the problem that the advice she asserts she was given on burden of proof was not materially wrong. She was seeking to prove the Will in solemn form and had been put to strict proof by Andre, and Andre's defence of fraudulent calumny did require cogent evidence the strength of which was heightened by the nature and seriousness of the allegation – see {16}and {17}.
>
> 42. Further, CPC fails to see how this allegation links to the POCL, which seek damages on the basis of fighting and winning the Will Claim."

156. I accept other points about costs made in Miss Sandells' Skeleton Argument: see at [43]. For example, [14(x)] of the POC asserts that a Part 36 offer was made by the First Defendant during trial without Niki's authority. Mr Walker, the First Defendant's solicitor answered this in his first statement of 22 August 2022, [35.6], as follows:

> "35.6 Paragraph 14(x) refers to an allegation which appears to be that, in summary, [the First Defendant] made an offer to Andre in the absence of instructions from the Claimant, in which a number of admissions were made. This allegation is false, as the offer was never sent as it was in draft (as the Claimant knows). The email confirming this is exhibited at pages 181-182 of GRW1. In any event, if it is assumed that the offer (erroneously referred to as a Part 36 offer) was sent, it would have been made 'without prejudice' as was made clear in the draft letter at annex 10 of the Particulars of Claim. As such, Andre could not have relied upon its contents at the Trial or later – and, obviously, did not since it was not sent. How this allegation relates to any damage claimed is entirely unclear. The Claimant makes no attempt to establish how the 2021 proceedings and the outcome of that trial were in any way impacted by the content of that letter, even if it could be established (as to which no attempt is made) that CPC owed the Claimant any duties in respect of the 2021 proceedings."

157. Paragraph [14(y)] alleges a failure to advise in respect of Andre's bill of costs. Mr Walker addressed this issue at [35.7]:

> "Paragraph 14 (y) is bound to fail and should be struck out. CPC ceased acting for the Claimant on 31 July 2018 following receipt of the Claimant's initial letter of complaint a day earlier. A copy of the Claimant's initial letter of complaint dated 30 July 2018 is exhibited at pages 183-192 of GRW1), which was followed by CPC's email and subsequent correspondence in response (pages 193-205 of GRW1). Accordingly, CPC had no involvement with either the Claimant or the litigation which followed 31 July 2018, including the cost proceedings subsequent to the trial of the Will Claim and the Transfer Claim."

158. I regret to say that these two matters (which I alluded to earlier) cause me a degree of scepticism about Niki's evidence. She put her name to the Statement of Truth on the POC on 1 June 2022 despite knowing – as she must have done – that these two paragraphs could not be true. It is a verifiable fact that: (a) the Part 36 offer was never sent; and (b) the First Defendant ceased acting on 31 July 2018. This gives me cause to doubt the veracity of everything she alleges in the POC.

159. Paragraph 47 of Miss Sandells' Skeleton Argument responds to other specific criticisms by Niki of the Defendants' conduct of the trial in [14] of the POC. I do not repeat [47] in full. I accept the substance of it. Again, a couple of examples will suffice to demonstrate the lack of real prospects of success in Niki's case.

160. Paragraph 14(c) asserts a failure to prepare witnesses. On my reading of it, nothing in the Recorder's judgment indicates that his view of Niki's credibility was affected by her familiarity (or not) with the trial bundles.

161. Furthermore, I note that, despite her assertion that she did not see the bundles until she 'took the witness stand', in her complaint letter to the First Defendant of 30 July 2018 Niki actually complained that she had had to prepare the bundles herself (*sic*, but italicised emphasis added):

> "Having specifically and in accordance with your instructions "to save costs" *and in my interest to prepare the bundles, I meticulously did so in your office over several days*, in order for you to index and number in preparation for deadlines. What has transpired having possession of the trial bundles , is the LEVEL OF REMOVAL OF SUBSTANSIVE EVIDENCE THAT SUPPORTED MY CASES and in significant RELEVANCE to the path Judge Cohen took. SO MUCH SO, that if this was now to be disclosed there would be CONTEMPT OF COURT and PERJURY in accordance with the transcripts of the trial in my possession. There would be NO RECOVERY of this FACT once the non-disclosures at trial ARE DISCLOSED."

162. There is also an email I was supplied with during the hearing from Niki to Mr Christou dated 27 November 2016 which is also difficult to reconcile with her case as it is now about not having had the bundles until trial:

> "Hi Costa
>
> I have sent all my notes on the bundles, which you can check, also if they assist Charles in understanding of them when he is working on them.
>
> …
>
> feeling good !!"

163. As for the complaint in [14(e)] about the First Defendant not getting witness statements from witnesses, as I remarked during the hearing, there is a distinct lack of any explanation from Niki why these witnesses were not called. Was it because a decision was taken they would not assist, or for some other reason ? I just do not know (although Mr Rogers said on instructions there had been no discussion about witnesses between his client and the Defendants), and the evidence is silent. The witnesses are just listed in Annex 4.

164. Paragraph 14(f) alleges a failure to serve a hearsay notice in respect of Vilma Basca. However, Ms Basca's statement was in the trial bundle for the Underlying Claim; both parties referred to and relied upon it; and no point seems to have been taken. Her absence as a witness was not referred to in any detrimental way by the Recorder and appears to have had no material effect on the outcome of the trial.

165. This complaint does not sit easily with Niki's case as it now is that she did not see the bundle until the Cohen trial.

166. I turn to the Tiebridge Claim, which concerns the First Defendant only. The final group of allegations in the POC relate to this ([14(z) to (cc)].

167. Niki's Tiebridge claim is addressed by Mr Walker in his first statement at [18] and [35.8], and it was also the subject of a separate Skeleton Argument from Miss Sandells. Mr Walker said:

> "18. The Tiebridge Claim was an application by Andre under s.994 of the Companies Act 2006 that the Claimant made unauthorised payments in her capacity as director of Tiebridge Property Company Limited (company number 06412884). Andre was a shareholder and director of that company. The Claimant issued a winding up petition in response. The Tiebridge Claim settled on 16 July 2016. A copy of the order recording the terms of settlement is exhibited at pages 121-148 of GRW1.
>
> …

35. The Particulars of Claim are incoherent, illogical and demonstrate a wholesale failure to plead a cogent case against CPC:

…

35.8 Paragraphs 14 (z), (aa), (bb), and (cc) relate to the Tiebridge Claim and alleged failings by CPC. These allegations should be struck out as they are so poorly particularised that CPC cannot respond to them. In the first instance, it is for the Claimant to plead the facts said to amount to CPC exerting 'improper pressure' to settle the Tiebridge Claim. Second, the Claimant must also plead a complete cause of action, including: (i) the extent of CPC's duties in relation to the Tiebridge Claim; (ii) the basis of CPC's instruction; (iii) how it is said that CPC breached said duties; and (v) (sic) how it is said to have caused the losses the Claimant asserts she is entitled to at paragraph 18 of the Particulars of Claim. For these reasons, these paragraphs should be struck out."

168. In her main Skeleton Argument at [48]-[50] Miss Sandells said:

"48. The final group of allegations in POC 14 (z) to (cc) relate to the Tiebridge Claim. That claim and the allegations are addressed by Mr Walker in his first statement, paragraphs 18 and 35.8. CPC is unable to take the matter much further. The Tiebridge Order (C/150) was signed by Mrs Christodoulides on C/152 on 8/7/16, and she executed the Schedule deed both personally (C/167) and as a director of Tiebridge (C/166). Thereafter she continued to instruct CPC up to and beyond the trial of the Underlying Claim without complaint of improper pressure. In any event, if CPC felt that it did not have time to prepare, it would have been professionally embarrassed had it not stated so and indicated that it would have to cease acting.

49. It is not understood how it can be CPC's fault that Mrs Christodoulides did not meet her own obligations under the Tiebridge Order. CPC refers to and relies upon the answer to these allegations in its Letter of Response at C/199 – see paragraphs 3.23 – 3.26 at C/205.

50. In light of the above, CPC submits that the claim discloses no reasonable grounds nor any real prospect of success on the claim and it should either be struck out or summary judgment granted, subject to Issue 4. If the Court is of the view that any part or parts in fact should survive, it is necessary to consider Issues 2 and 3."

169. Section 994(1) provides:

> “(1) A member of a company may apply to the court by petition for an order under this Part on the ground -
>
> (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
>
> (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.”

170. I agree this claim has no prospects of success. Much of what Mr Rogers had to say about this in oral submissions had not been pleaded and/or is not dealt with in the evidence. The Tiebridge order was signed by Niki on 8 July 2016, and she executed the Schedule deed both personally and as a director of Tiebridge. Thereafter, she continued to instruct the First Defendant up to and beyond the trial of the Underlying Claim (in fact, until she complained in July 2018) without any complaint of improper pressure or anything else. All of that is inconsistent with her claim now of negligent representation.

171. It seems to me the full answer to Niki’s complaint is in the First Defendant’s letter of response of 11 July 2022 to her letter of claim of 1 April 2022:

> “3.23. Allegations v) – y) relate to settlement of the Tiebridge Claim and events thereafter.
>
> 3.24. Our client was instructed in respect of the Tiebridge Claim to salvage the position following your former solicitors' late filing of your cost budget. Through our client's efforts, limited relief was granted improving your position. Our client was prepared to go to trial of the Tiebridge Claim and indeed procured counsel's estimated brief fees to bring the case to trial. The Tiebridge Claim settled on your instructions on the 8 July 2016 and you were happy that it did.
>
> 3.25. Miss Marcia Shekerdemian QC also advised you in the Tiebridge Claim. You were involved in the drafting of the settlement agreement. Our client fully advised you and you were aware of the relevant deadlines to make payment, and the consequences of not doing so. Any purported breaches of the Tiebridge Settlement are the result of your own conduct.
>
> 3.26. Payment of £74,400 pursuant to the Tiebridge settlement agreement was not made because the funds realised from the sales of 194 Seven Sister's Road, London N4 4NX and 217 Lordship Lane, London N17 6AA had not materialised. This

> was through no fault of our client. The solicitors responsible for the sale of the above properties were appointed by the liquidator of the Company. Our client was under no duty to ensure you complied with the terms of the Tiebridge Settlement, save for advising you of the relevant deadlines, which it did on several occasions."

172. In light of the above, I am entirely satisfied that the claim as a whole discloses no reasonable grounds nor any real prospect of success on the claim and it should either be struck out or summary judgment granted. Many of Mr Rogers' points struck me, as I remarked during the hearing, as being the sort of forensic points which can come up in any complex trial, where there is always another point that can be made; question asked; or document referred to. Miss Sandells said, on the question of whether documents had been negligently missed by the Defendants in the Cohen trial, that I had not been shown any 'killer document', and I agree.

173. Before moving on to the next issue, there is one further point I should mention. During the hearing I was taken by Miss Sandells to various parts of the transcript of the evidence given before Mr Recorder Cohen which she said disproved many or all of the allegations of negligence in [14] of the POC, and indeed made Niki's case worse. For example, in relation to Niki's complaint at [14(k)] about not having been able to hear the evidence, and that no request for reasonable adjustments had been made by the Second Defendant. Miss Sandells said the transcript showed this issue had been properly and appropriately dealt with at the outset by the Second Defendant, with him requesting reasonable adjustments, including asking (politely) the Recorder to speak up. Niki and Andre also moved forward from where they were sitting in court so they could hear more easily. Miss Sandells also said the transcript showed the question of Niki being able to hear properly had been raised by the Recorder during her evidence, when he was concerned she did not appear to be answering the question that had been asked, but no complaint had been made by Niki. Miss Sandells said the transcript showed that there had been no other complaint about this issue until Niki said in re-examination that she could not hear a question.

174. Another point made by Miss Sandells was that the transcript showed Niki had been content to start her evidence toward the end of the court day, rather than starting the following day (despite the Recorder's offer), which Miss Sandells said undermined Niki's allegation now that she had not been familiar with the bundles, etc, or had been otherwise unprepared, in a way which affected her case. Miss Sandells also pointed to Niki's statement toward the beginning of her evidence, 'This is going to be fun …', which Miss Sandells said was also inconsistent with Niki's case now that she had not been properly prepared by her lawyers to give evidence and had been prejudiced thereby. I was also shown an answer by Niki during her evidence early on Day 2 of the trial where she said:

> "When I received the bundle with Andre's witness statement, there were comments that we'd not come across in bundles so far."

175. It was suggested by the Defendants that this showed that Niki had had the bundles before the trial (contrary to her case now). Mr Rogers said, however, that it was unclear which bundle she had been referring to.

176. I asked for a schedule of Miss Sandells' references, which I was provided with after the hearing. Niki had the opportunity to comment on this schedule, and did so.

177. In the event, I have not found it necessary to refer to this schedule or the transcripts. Given this judgment is already long – probably too long - I think it would be disproportionate for me to start delving into the evidence. I have reached a clear conclusion based upon the judgments of the judges who heard that evidence, and they were obviously best placed to assess it. Furthermore, an issue arose at a very late stage – during the hearing - as to whether the transcripts I had been sent were accurate and there were different versions of transcripts later supplied to me. The whole picture was very confused. That confusion, obviously, did not clarify matters.

Issue 2 – is this claim an abuse of process ?

178. My conclusion on Issue 1 makes it strictly unnecessary to deal with the Defendants' abuse of process argument. However, it seems to me that this claim is indeed an abuse of process, for the following reasons.

179. I bear fully in mind all of the passages I set out at length earlier from *Allsop* and *Laing*, and especially those which emphasise that suing legal representatives for negligence arising out of failed litigation is not *automatically* an abuse of process. Mr Wood postulated the example of where a lawyer failed to spot a limitation issue and the client sues as a result, having lost the case – or at least a chance to win it - for that reason. However, there are particular features of the present case which have led me to conclude as I have.

180. It seems to me that the current case falls directly within the following principle, in [34(iv)] of Marcus Smith J's judgment in *Allsop* (at p80A onwards), quoting again Lord Hoffmann in *Arthur JS Hall* (emphasis added):

> "I agree that, as a practical matter, it is very difficult to prove that a case which was lost after a full hearing would have been won if it had been conducted differently. It may be easier to prove that, with better advice, a more favourable settlement would have been achieved. But this goes to the question of whether, in the words of CPR r 24.2, the plaintiff has 'a real prospect of succeeding on the claim'. The *Hunter* question, on the other hand, is whether allowing even a successful action to be brought would be manifestly unfair or bring the administration of justice into disrepute.
>
> …
>
> On the other hand, I can see no objection on grounds of public interest to a claim that a civil case was lost because

of the negligence of the advocate, merely because the case went to full trial. In such a case the plaintiff accepts that the decision is *res judicata* and binding upon him. He claims however that if the right arguments had been used or evidence called, it would have been decided differently. This may be extremely hard to prove in terms of both negligence and causation, but I see no reason why, if the plaintiff has a real prospect of success, he should not be allowed the attempt.

…

… in civil … cases, it will seldom be possible to say that an action for negligence against a legal adviser or representative would bring the administration of justice into disrepute. Whether the original decision was right or wrong is usually a matter of concern only to the parties and has no wider implications. There is no public interest objection to a subsequent finding that, but for the negligence of his lawyers, the losing party would have won. *But here again there may be exceptions. The action for negligence may be an abuse of process on the ground that it is manifestly unfair to someone else. Take, for example, the case of a defendant who publishes a serious defamation which he attempts unsuccessfully to justify. Should he be able to sue his lawyers and claim that if the case had been conducted differently, the allegation would have been proved to be true? It seems to me unfair to the plaintiff in the defamation action that any court should be allowed to come to such a conclusion in proceedings to which he is not a party. On the other hand, I think it is equally unfair that he should have to join as a party and rebut the allegation for a second time. A man's reputation is not only a matter between him and the other party. It represents his relationship with the world. So it may be that in such circumstances, an action for negligence would be an abuse of the process of the court.* (Emphasis added)

I would suspect that, having regard to the power of the court to strike out actions which have no real prospect of success, the *Hunter* doctrine is unlikely to be invoked very often. In my opinion, the first step in any application to strike out an action alleging negligence in the conduct of a previous action must be to ask whether it has a real prospect of success."

181. *Laing* at [12] (quoted earlier) is also relevant and directly applicable.

182. As I have said, the core of the Claimant's claim is that but for the alleged negligence of the Defendants she would have won the Underlying Claim, and later the Asset Claim, and that both judges would have found against Andre and for her.

183. It seems to me that given the core issue in both cases – namely, who was telling the truth, Niki or Andre ? – it would be manifestly and obviously unfair to Andre to allow Niki to pursue this claim. That is because the obvious logical corollary, were Niki to succeed, would be that the judges should have found Andre was not telling the truth, and would have done so but for her lawyers' negligence.

184. Therefore, it seems to me that there is a direct parallel between this case and the defamation example postulated by Lord Hoffmann. The outcome of this case would have a direct adverse impact upon Andre's standing and reputation, and her relationship to the world, even though she is not a party to it. That would be unfair to her because it would impugn her reputation, and would bring the administration of justice into disrepute. One need only consider, for example, the Recorder's statement at [81] to see why this is so:

> "When it comes to the extraordinary story told by Niki that she signed Pani's name on the transfer on Andre's advice and instructions, this must either represent a deliberate lie by Niki or by Andre"

185. If Niki prevailed Andre would suddenly find herself effectively declared dishonest in proceedings where she had played no part and had had no right to defend herself and her reputation.

186. I think it would both be unfair if not hopeless to have Niki's honesty re-assessed again in these proceedings (as it would have to be) when it has already been considered in the Cohen judgment and the Johns judgment. Both judges concluded there was ample evidence to support the finding of fraudulent calumny and/or dishonesty on Niki's part. To seek to go behind those findings in the circumstances would, I conclude, be inherently abusive of the process of the Court because primarily of the effect on Andre, and is in any event likely to bring the administration of justice into disrepute. Furthermore, I do not see, forensically, how Niki's honesty could properly be re-assessed in Andre's absence.

187. I also consider that there is a public interest in the Recorder's rejection of Niki's application to prove the Will in solemn form being regarded as final. Wills are only admitted to solemn form probate after the Court is satisfied that they are valid by trial. A grant of probate is a document of public record, used to support the administration of a deceased's estate. There is a strong public interest in the finality and reliability of a grant of probate that militates against allowing it to be challenged collaterally. Here, if Niki were to win, there would be both a grant of letters of administration being used in the public domain to administer Agni's estate and a judgment effectively declaring that the Will was in fact valid and that those letters of administration should not have been granted. I do not consider that would be good for the reputation of the administration of justice, and it would be manifestly unfair to Andre.

188. The same point applies to the Transfer Claim. The transfer of Hazelmead was registered, and I understand it was sold in 2019 (see pp206-211 of GRW1). I assume that registration was relied on when it was sold following the Recorder's order. There is, accordingly, a strong public interest in upholding the finality and reliability of the Land Register, which is a public record of land ownership. Again, were Niki to succeed, there would both be a record of the transfer on the Land Register, and the root of the purchaser's title would be based on that registered transfer, while at the same time there would be a civil judgment holding that the transfer was in fact not valid. Again, that would bring the administration of justice into disrepute, and so would constitute an abuse of process.

189. Next, Niki's claim against her former lawyers is very different from a typical negligence claim against former lawyers, where a legal argument or some crucial piece of evidence has been overlooked, and it can be shown that this may have affected the outcome of the underlying claim.

190. In the present case, Niki went toe to toe with her sister. Each accused the other of acting in such an underhand way as to facilitate their late mother's transferring assets in their own interests. In the Calumny Claim, Niki tried unsuccessfully to establish that Andre had in fact stolen from their mother. In the Transfer Claim, Niki tried unsuccessfully to establish that Andre had used undue influence to overcome their mother's free will and force her to transfer Hazelmead to Andre.

191. Andre was believed and she was held to have acted properly towards Agni in all essential issues. Other witnesses called by her were believed. On the points that mattered, Niki was not believed. Her husband's evidence was rejected. Even in the Asset Claim, HHJ Johns was driven to the conclusion in respect of Niki's children, whom she had called to give supportive evidence, that 'their desire to help their mother in her campaign against Andre has led to a later reconstruction of events' (at [31]).

192. The only way that Niki could succeed in the present claim is to show that she had a real and substantial chance of proving to that Andre had, in one way or another, behaved extremely reprehensibly towards their late mother. Hence, I think there is force in the point made on behalf of the Defendants that despite Niki's protestation in her second witness statement at [8], that she is 'not seeking to challenge the judgments of the Recorder or HHJ Johns KC in any way' the reality is that that is precisely what she is seeking to do by this claim, and what she would have to do in order to succeed. She would have to show, for example, that she was not guilty of fraudulent calumny and that she had not been dishonest.

193. To have the allegations Niki makes against Andre ventilated in any context would be serious. It seems to me that to have such allegations ventilated when (a) they have already been successfully defended once; and (b) they relate to one's relationship with one's late mother; (c) the person accused is a retired solicitor; and (d) the person accused has no role to play in the relitigation of these issues, would be seriously unfair.

194. Second, the Underlying Claim was not 'ordinary' litigation that affected only the parties to it, given that it was concerned with the proving of a Will and the possible unravelling of a transfer of property.

195. Especially in the case of the Will, and as indicated above, the task undertaken by the learned Recorder was for the benefit not only of the parties but determined how Agni's estate ought to be administered (and whether the Will ought to be admitted to probate).

196. For all of these reasons, to allow this claim to proceed would bring the administration of justice into disrepute and so it is an abuse of process and so is struck out on that basis.

197. For this Court to reconsider issues determined by the Recorder (and later re- considered in the Claimant's refused permission to appeal application), and by HHJ Johns, would require the court to make determinations which would undermine the finality of both of these decisions, which was in essence that Agni died intestate and Andre was entitled to half her estate.

198. Similar points can be made in respect of the Transfer Claim, which dealt with the validity of a publicly registered transfer of land recorded on the Land Registry. It is understood that Hazelmead was sold in 2019 (see pp206-211 of GRW1). To allow the claim to proceed would jeopardise the legitimacy of the sale, transfer and registration of the property and bring the administration of justice into disrepute.

199. Finally, there is the separate point made by Mr Wood – which he said was a 'knockout blow' - and which I accept – namely, that given that Niki expressly does not challenge the findings of the Recorder and HHJ Johns that she and her claims were dishonest, she should not now be permitted to sue for the loss of her opportunity to succeed on those dishonest claims: *Perry v Raley Solicitors* [2020] AC 352, [26]-[27]. As a matter of policy, the law does not permit that.

Issue 3 - Has there been a failure to comply with a pleading rule sufficient to strike out the claim? Is there any prospect of rescue by amendment and should Niki be given that opportunity? If so, on what terms?

200. It is not strictly necessary for me to decide this issue given I have found for the First and Second Defendants on Issues 1 and 2 and found the claim to have no prospects of success and that it is an abuse, however I will address it briefly.

201. CPR r 16.4(1) states that, 'Particulars of claim must include (a) a concise statement of the facts on which the claimant relies'. This requirement is expanded upon in [5.33] of the *King's Bench Guide 2022*:

> "5.33 The parties should therefore and in addition to complying with the specific provisions of the CPR and the PDs, comply with the following guidelines on preparing a statement of case;
>
> (1) a statement of case must be as brief and concise as possible,
>
> (2) a statement of case should be set out in separate, consecutively numbered paragraphs and sub-paragraphs,

(3) so far as possible each paragraph or sub-paragraph should contain no more than one allegation,

(4) the facts and other matters alleged should be set out as far as reasonably possible in chronological order,

(4) the statement of case should deal with the claim on a point-by-point basis, to allow a point-by-point response,

(6) details of the main allegations should be stated as particulars and not as primary allegations,

(7) where a party is required to give particulars of an allegation or reasons for a denial, the allegation or denial should be stated first and then the particulars or reasons should be listed one by one in separate numbered sub-paragraphs,

(8) a party wishing to advance a positive claim must identify that claim in the statement of case,

(9) any matter which, if not stated, might take another party by surprise should be stated,

(10) where they will assist, headings, abbreviations and definitions should be used and a glossary annexed; such headings should be in a form likely to be acceptable to the other parties so that they may also use them. Contentious headings, abbreviations, paraphrasing and definitions should not be used,

(11) schedules or appendices should be used if this would be helpful, for example where lengthy particulars are necessary, and any response should also be stated in a schedule or appendix,

(12) evidence should not be included in statements of case. Lengthy extracts from documents should not be set out. If an extract has to be included, it should be placed in a schedule or appendix."

202. In the context of a professional negligence claim, in *Pantelli v. Corporate City Developments* [2011] PNLR 12, [11], Coulson J (as he then was) said:

"11. CPR r 16.4(1)(a) requires that a particulars of claim must include 'a concise statement of the facts on which the claimant relies'. Thus, where the particulars of claim contain an allegation of breach of contract and/or negligence, it must be pleaded in such a way as to allow the defendant to know the case that it has to meet. The

> pleading needs to set out clearly what it is that the defendant failed to do that it should have done, and/or what the defendant did that it should not have done, what would have happened but for those acts or omissions, and the loss that eventuated. Those are 'the facts' relied on in support of the allegation, and are required in order that proper witness statements (and if necessary an expert's report) can be obtained by both sides which address the specific allegations made."

203. In other words, and again in the context of a professional negligence claim, in *Andrews v. Messer Beg* [2019] PNLR 23, [20], Stephen Jourdan QC sitting as a High Court judge said:

> "The function of a pleading which asserts a claim, including an additional claim, is to set out a concise statement of the facts on which the claimant relies as giving the claimant a cause of action against the defendant: see CPR r 16.4 . The claimant should state all the facts necessary for the purpose of formulating a complete cause of action against the defendant. Such a pleading needs to give the defendant such reasonable and proportionate information about the facts alleged as is required to enable the defendant to understand the case he has to meet and to prepare his defence."

204. I agree with Mr Wood (Skeleton Argument, [84]) that the requirement that there is a fully and properly pleaded cause of action which the defendant can understand, also has another important objective. That is that if it is not met, the case cannot be tried. For example, the court will be unable to identify what the issues are; what case the evidence is being advanced to support; or what issues the documents are relevant to.

205. I have already commented that I find many of the 26 Annexes to the POC impossible to follow, and I have little doubt that the trial judge would be in the same position.

206. At [64] of his witness statement (and its 26 sub-paragraphs), Mr Hague, the Second Defendant's solicitor, set out the shortcomings (in particular) in those parts of Niki's POC that concern breach and causation. For example, among the points he makes, the ones about [14(m), (n) and (o)] of the POC (which I set out earlier) are as follows:

> "64.12 Paragraph 14(m) proceeds on a fundamental misunderstanding of the trial process, the role of an advocate and the role of the judge to oversee and ensure the fairness of proceedings. It is incoherent and has no causal connection with the alleged loss and damage. It is entirely detached from the factual findings in the 2017 Judgment itself.
>
> 64.13 Paragraph 14(n) also ignores the reality of the trial process and the fact that the trial judge in the Underlying

> Claims reached his conclusions on the basis of the evidence and not of the chronology (which is not and was not evidence).
>
> 64.14 The Claimant has not identified how the alleged failure to consult her on the list of issues (as pleaded at paragraph 14(o)) affected the outcome of the Underlying Claim. Insofar as the Cypriot laws of inheritance are concerned, the Claimant has not pleaded that the Second Defendant was ever instructed to have researched this issue and so the allegation of breach is without legal or factual foundation. Bluntly, the 2017 Judgment makes quite clear that it was the lies that the Claimant told that undermined her credibility, rather than anything done or omitted to be done by the Second Defendant."

207. I agree with the substance of Mr Hague's points in [64]. I also agree with this paragraph from Mr Wood's Skeleton Argument ([87]):

> "87. Put shortly, and in addition to the points made by Mr Hague in his statement, it is submitted that the Particulars of Claim are the antithesis of a concise statement of facts that would enable Mr Holbech to understand the claim that he has to meet and to enable the Court to identify the issues and give appropriate directions for a proportionate determination of the claim."

208. So far as amendment is concerned, Miss Sandells fairly took me to the notes in the *White Book* 2022 at 3.4.17, p143, where there is reference to 'the importance of giving C an opportunity to amend a defective claim (*Kim v Park* [2011] EWHC 1781 (QB))'.

209. However, as she rightly said, the Claimant in this case has had ample opportunity before this hearing to amend her POC, whose deficiencies were pointed out to her soon after they were filed and served.

210. For example, in his second witness statement of 24 November 2022, Mr Walker, the First Defendant's solicitor, said this:

> "5. As set out in paragraph 32 of my first witness statement on 17 August 2022, my firm wrote to the Claimant offering her the opportunity to amend her Particulars of Claim. At the same time, unissued draft copies of CPC's application were sent so the Claimant could understand CPC's issues with her Particulars of Claim and deal with them in any amendment. A draft consent order permitting the Claimant to amend her pleading was provided and the Claimant was informed that if she agreed and signed the consent order, CPC would withdraw the Application. A copy of that letter and the draft consent order are at pages 1 - 4 of GRW2.

> 6. The Claimant did not respond to the above correspondence within the time in which CPC needed to either file its Defence or make the Application, or by the date of 26 August suggested in the letter. Accordingly, on 22 August 2022, a copy of the Application was served on the Claimant by post. It was also emailed to the Claimant on the same day. A copy of the covering letter serving the Application is at page 5 of GRW2.
>
> 7. The Claimant has in fact never responded to the suggestion that she have another go at her Particulars, despite engaging on the issue of listing of the Application and filing evidence in response. It is concerning that CPC's proposal that the Claimant be allowed to amend her Particulars of Claim without the need to make an application of her own to the court, has been ignored. It indicates that the Claimant does not appreciate the difficulties with the claim as currently pleaded and has no desire to engage with the Defendants in clarifying her claim.
>
> …
>
> 9. … She does not appear willing to engage with the Defendants' concerns and maintains her Particulars are properly pleaded and set out a viable claim. Her witness statement is largely a repetition and re-hashing of the current Particulars, and the Annexes, without engaging with the problems the Defendants have identified. As a result, CPC is not able to narrow the issues or drop any of the grounds of its Application."

211. It follows that even if the claim had survived Issues 1 and 2, I would have struck out the POC for their inadequacy and I would in the exercise of my discretion have refused the Claimant leave to amend given the opportunities she has been given before now to do so. I would have grave reservations that any opportunity to amend would produce a coherently pleaded case.

Issue 4 - Is there any other compelling reason for the matter to go to trial?

212. There is no other reason why this case should go to trial.

The Second Defendant's compromise issue

213. Given that I have ruled in the Second (and First) Defendant's favour on the other issues, I can take this issue comparatively briefly.

214. I have concluded that this claim is barred against the Second Defendant on the basis of what I find to be a clear and unambiguous full and final settlement of Niki's grievances

against him in September 2017, whereby he agreed to accept a reduced amount than the amount owing in return for which she agreed (implicitly) not to pursue her then already existing negligence complaint against him.

215. In his first witness statement at [33] the Second Defendant explains that that he was owed £49,100 plus VAT from the time of his last involvement in the Underlying Claim (and received a payment of £5,000 plus VAT in March 2017) until Niki made a further, final payment in respect of his fees in September 2017. That occurred in the following circumstances.

216. By July/August 2017, the Second Defendant and his clerks were pressing the First Defendant for payment of what he was owed from the trial which had, by then, concluded nine months earlier. On 16 August 2017 Mr Christou emailed one of the clerks about the fees, in the course of which he said:

> "Niki has also raised a number of queries regarding Charles fees which I am in the process of discussing with her in order to send you a letter by tomorrow."

217. Mr Christou wrote to the Second Defendant on 17 August 2017, saying that:

> "I am also put in a very difficult and potentially impossible situation as it was I who introduced you to [Niki] believing that you were the best man for the job"

218. Mr Wood said that implicit in this was that, by then, Mr Christou no longer thought that the Second Defendant had been the 'best man for the job'.

219. On 30 August 2017, as the Second Defendant explains, Niki sent an email complaining about his work to the First Defendant, which was forwarded to him on 30 August 2017. It read:

> "Dear Charles
>
> Niki's email below with mistakes on chronology document'
>
> Niki is referring to the agreed chronology.
> Kind regards
>
> Costas
>
> Mistakes/misrepresentations on Chronology Selway submitted at trial & appeal
>
> Having read the Chronology submission, which presented in a way to maximise nails in my coffin, i would also feel bleak at chances 'if what was presented was me' ! It is the 'variations of the truth' that AM [presumably Andre] presents and wins her cases having the max impact.

> Variations of the truth is in real terms a "lie" and directs a picture that is actually "not the truth"
>
> I am surprised that Charles name is at bottom of this list, (if he ever contributed to it or checked it,) given the evidence in bundles he had.
> It is certainly presented as a "joint compilation on" which just further damages with maximum impact."

220. There then followed a lengthy document prepared by Niki in which she made detailed and strong criticisms of the Agreed Chronology to which the Second Defendant had put his name.

221. This complaint about the Chronology is mirrored in [14(n)] of the POC and Annex 8.

222. The Second Defendant responded to Niki's complaint about the Chronology in early September. He rejected her criticisms. On 5 September 2017 he emailed Mr Christou:

> "Please make the point to Niki that I have spent some hours on this (obviously unpaid) and that I am not prepared to spend any more time debating the Chronology."

223. It was against this backdrop that later that month Niki agreed to pay, and the Second Defendant agreed to accept, a reduction of £6,600 plus VAT in respect of his outstanding fees expressed on both sides to be 'in full and final settlement'. What happened was as follows.

224. The Second Defendant says at [28]-[33] of his first witness statement:

> "28. I responded to the First Defendant by way of a Note on the Claimant's 'Mistakes on Chronology' (pages 37 to 40 of "CH1"). This document was last modified on 5 September 2017, and must have been sent to the First Defendant on that date. The purpose of the Note was to rebut the allegation that I had been at fault in any way in respect of the Chronology and/or that to make the point that the Chronology had not made any difference to the outcome of the case or the Judge's findings that the Claimant had acted dishonestly. At paragraph 1, I wrote:
>
> > 'I refer to Niki Christodoulides' document alleging 'mistakes' in the Agreed Chronology. She claims that I could not have agreed such "VARIATIONS OF THE TRUTH" which, she says, was presented in a way to maximise nails in her coffin. She equates these variations of the truth with a "lie", and expresses surprise that I had agreed to the Chronology which directed a picture that was not actually the truth. She alleges that this allowed

Andre to present and win her case with the "max impact". In other words, she appears to be alleging that the Chronology made a material difference to the outcome of the case.'

29. The position, as at the beginning of September 2017, was, therefore, that I was fully aware that the Claimant was making criticisms of my conduct of her case, as justification for her failure to pay my fees. I also knew, from my knowledge of the Claimant's personality and previous conduct, that, if we did not reach an agreement, she would most likely raise further complaints or criticisms as reasons for not paying my fees, in full or in part. Indeed, I was concerned that the Claimant might make a complaint to the Legal Ombudsman, or even bring proceedings in professional negligence.

30. I was, therefore, anxious to procure that a full and final settlement should be concluded between the Claimant and myself, which would ensure that there were no further claims or complaints made by the Claimant against me in respect of my conduct of her case.

31. I refer to an annotated fee note produced by New Square Chambers, of which I was a member in September 2017 (pages 43 to 55 of 'CH1'). It can be seen from this note that I had given a deadline for payment, to expire on 8 September 2017. On 11 September 2017 the Claimant offered to pay me £40,000 plus VAT. I counter-offered saying that I would accept £45,000 plus VAT. In the event, I agreed on 13 September 2017 a fee reduction of £6,600 plus VAT 'as a Gesture of Goodwill'.

32. I asked my fee clerk to stipulate that the reduction was agreed as a gesture of goodwill because I wished to make it clear that I was not accepting that I had been at fault in any way in my conduct of the Claimant's case, notwithstanding the Claimant's allegations to the contrary.

33. My strong recollection is that I set out (perhaps in an e-mail or text message to the First Defendant, if not in a telephone conversation with the First Defendant) that my agreement to a reduction in my fees was 'in full and final settlement' of any claims by the Claimant. Those words came from me, rather than from the First Defendant or the Claimant. As will be seen, these words were picked up, and accepted, by the First Defendant and the Claimant, who agreed a full and final settlement."

225. There were then various messages between the parties (but not then directly between Niki and the Second Defendant) in the course which the details of the proposed settlement were ironed out. After negotiations, the upshot was the Second Defendant agreed to accept £51,000 (inclusive of VAT) which represented about a 13.4% reduction in the amount he was owed.

226. It is sufficient for present purposes to quote the following from the Second Defendant's first witness statement in which he quoted Niki using the phrase 'full and final settlement':

> "38.3 Text message from the Claimant to the First Defendant dated 12 September 2017 (14:50):
>
> > 'Costa make sure you have in writing full and final settlement pls'
>
> 38.4 Email from the Claimant to the First Defendant dated 12 September 2017 (22:19):
>
> > 'Dear Costas
> >
> > I confirm I have sent online 2 payments
> >
> > £50,000
> >
> > £1,000
> >
> > Total £51,000 in full and final settlement as agreed for Charles Holbech…'
>
> 38.5 Text message from the First Defendant to the Second Defendant dated 13 September 2017 (07:03):
>
> > "Morning Charles Niki confirms money sent in two batches £50K plus £1K total £51K in full and final settlement please can you acknowledge receipt"

227. On 27 March 2018 Niki wrote to the Second Defendant directly (*sic*):

> "Hope you are well, I am writing to you directly in the hope of clarity I am seeking further to an email that was forwarded to me 6/9/17 that you sent to CP Christou titled 'Note on Niki Chritodoulides' Mistakes on Chronology'. In your point: 17 and 18 you have made a point of non - payment and only receiving £5,000. When I asked Costas, at the time, his response was 'no idea why'. Furthermore my quite aggressive email against you which Costa asked my permission to forward to you, was due to a letter of threat for unpaid legal costs That was forwarded to me

several weeks after you sent to him, so I was unaware of any complaints prior to this .

Furthermore, I had received a call from Costa … In order to assist, I immediately transferred £51,000 directly into [your] bank account as the agreed "full and final settlement". I have requested from Costas a confirmation letter of this "final settlement paid in full", which to date has not been forthcoming.

I am kindly requesting a schedule of payments you have received along with the invoices, as I would like to cross reference the payments I have sent to Costa for your fees to date, given your email claims you have received only £5,000, which is contrary to the payments I have sent for your services.

I appreciate that to date, I have had to adhere to, as advised by my solicitor, the protocol of communication to you can only be done through my solicitors (CP Christou). However you have accepted a direct payment into your joint account and I need this clarity and confirmation, to dispel what has been playing on my mind for a while now. Whilst I have myself struggled with the source of legal fees and sleepless nights, I acted immediately to attend to yours and to help you recover from a dire situation.

I await your kind response and assistance in the clarity I seek and can only be achieved by your personal confirmation of this information. As I have in the past (Morelands Solicitors/Tiebridge) having made enquiries to the 2 barristers directly that I paid the solicitors, discovered they were never paid for their services, I would very much like to avoid a repetition of such an event.
For this reason I would like to maintain your response as confidential to me , and not to cause offence to Costa if the invoices and payment receipts you confirm, represent my payments to you through CP Christou.

Furthermore, during the course of the appeal , it had come to my attention that several disclosures were omitted from the trial bundles, and specifically of relevance to the path of Recorders Cohen analysis at trial. In your description of him "building bricks" and had formed an opinion against me and in support of Andre's case, my point to you at the time was he could not cement the bricks and to show him the evidence to take them down ! It has transpired that the possible reason: you could not ,was that it was unavailable to you in the trial bundles and not disclosed. In light of this I will need to have your confirmation if these material

facts were not submitted and those that were, and unreadable, if you had requested clear copies for trial given the contents, of which you needed to rely upon for my representation, were unreadable. In particular:-

1) The omittance of the full Witness Statement of Wilma Bacsa.
2) Unreadable txts between Nectaria and NC
3) Pages with blacked out disclosures of screen shots of texts.
4) Date and time of text crossed out by marker pen.
5) The schedule listing the content, translations and time on these texts were omitted in bundle but handed to you by Costa whilst standing and cross examining Nectaria at trial. Of which there were texts between her that disproved her claim of not reading or understanding my texts.
6) If you raised the question of the unreadable content and requested clear copies for the evidenced content you would need to rely on.
7) The recorded and translated transcript of Anna Panteli and the affidavit from the interpreter was not disclosed in full.
8) The amended and full translation of Harry Panteli as requested by AM and DBP, again with affidavit from interpreter was not disclosed, but the disclosures included AM crossings out and edits by pen, and submitted twice and numbered as a continuation in numerical pages. Was this not raised to my solicitor.

I will require your kind response to the above specific points, although there were many more that were not included, and therefore you were possibly
unaware of.

Finally at this stage I seek confirmation from yourself, that the appointment requested from Costas Christou, with regards a meeting with Mr Yiannis Constantinides (from Cyprus and Agni solicitor) and was scheduled to take place before the trial, and arranged for the morning of the trial before entering the court, was not attended by you and the importance of it in preparation of a Witness and what to expect in a UK trial."

228. In 2020, Niki complained to the Legal Ombudsman about the Second Defendant. The Ombudsman rejected the complaint, stating in his decision letter dated 16 March 2020 that:

> "I have decided to discontinue our investigation into Mrs Christodoulides's complaints … The compelling reason here is that Mr Holbech has made an offer to Mrs

> Christodoulides in full and final settlement of this matter, which she has accepted."

229. I turn to my conclusions.

230. It is clear that a 'full and final settlement' of *something* was reached between Niki and the Second Defendant in September 2017. That is common ground. The question is: What of ? Or, more precisely, the question for me is whether the Second Defendant has shown that Niki does not have a realistic prospect of showing it was *not* the full and final settlement of *any* claim for negligence that she might bring against him in the future.

231. I consider this is an issue that I can and should resolve now. Given the meaning of the settlement is to be determined objectively, the subjective views of either Niki or the Second Defendant are irrelevant and I do not think live evidence in this case would assist. The editors of *Chitty on Contracts* (34th Ed) say at [15-054]:

> "The court is concerned both to identify the 'objective meaning of the language which the parties have chosen' and to ascertain 'what a reasonable person… would have understood the parties to have meant'. It can thus be seen that the courts are not concerned to identify the subjective understandings of the parties to the contract or the meaning which they subjectively ascribe to the terms in dispute and such evidence is therefore inadmissible. Thus the agreement must be interpreted objectively. In *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896, 902, Lord Hoffmann said:
>
> > "Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract'."

232. That is all the more so, as Mr Wood rightly said, when she was effectively negotiating through an agent (Mr Christou).

233. Hence, I consider that I am in as good a position as the trial judge would be to determine what was meant by the parties when they agreed a 'full and final settlement'. In other words, I am 'satisfied that [I have] 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, [so] it should grasp the nettle and decide it': *Easyair*, [15(7)].

234. There are points in Niki's third witness statement which cause me a fair degree of scepticism about her evidence, as a whole and what she believed in September 2017. She gave the following evidence in response to [28] of the Second Defendant's first witness statement:

> "I had some concerns about the chronology, this had not translated into a contemplated professional negligence claim or indeed any form of complaint in 2017. The numerous issues that are raised in the present claim did not come to my attention until the appeal or thereafter in 2018. I had just had sight of the chronology following my counsel Mr McLinden KC discussing the Chronology submission at trial and noticing some errors. I thought that it was reasonable to discuss these with [the First Defendant] ahead of the hearing of the appeal.

235. In response to [30] of the Second Defendant's first witness statement, she said in her third statement:

> "This does not make sense, given that I was yet to discover the factual basis for my present claim as I have explained above, *apart from some general concerns about the chronology. These issues cannot possibly have been in the contemplation of the parties at the time* and it is therefore a nonsense to allege that the settlement covered anything other than the Second Defendant's outstanding fees."

236. Niki's position is that, 'The full and final settlement referred to was in the context of resolving the Second Defendant's issue of fees and related only to the dispute over his fees and not the issues that form the subject matter of this claim' (third witness statements, [14] and [15]). This is a reference to correspondence from the Second Defendant's chambers in and around July 2017 indicating that proceedings might be issued if the outstanding fees were not forthcoming soon. Niki asserts that she could not have intended to settle any claim that she might have against the Second Defendant because, 'It was only after taking possession of the trial bundles and starting to read did I discover the matters of claim' (third witness statement, [15]).

237. I cannot readily see how this last statement can be correct. For example, as I have already pointed out, many of her complaints relate to what happened at the trial in December 2016 – for example, witnesses whose names she had supplied not being called, and what she regarded as the chaotic and unsatisfactory way her case had been presented (going well beyond just the Chronology – the only thing she appears to have been expressly complaining about in September 2017). All of that, and much else besides of which she now complains, would have been known to her at the time of the trial, or shortly after, and it is not the case that in September 2017 she was yet to discover the basis of her claim, or that she needed the bundles to do so.

238. In short, on her own case as it is now, Niki must have known from the point of the Cohen judgment at the latest that she had been badly let down by her lawyers, and that lots of things had gone wrong for which she blamed the Second Defendant. She would also have known by early September 2017, when he refuted her claims, that he did not accept her criticisms of the Chronology.

239. Turning to the interpretation of the agreed 'full and final settlement', that is a broad phrase. As Mr Wood pointed out, Niki does not suggest that she – through the First Defendant – expressly reserved the right to bring a claim against the Second Defendant. In fact, to do so would be inconsistent with her assertion that she knew nothing of nearly all the issues about which she now complains. The words 'full and final settlement' were not subject to any qualification.

240. An important question, it seems to me, is what consideration Niki gave as part of the settlement she accepts she agreed in return for the Second Defendant agreeing to give up a significant proportion of the fees to which he was otherwise entitled.

241. The consideration could not have been the lesser sum she paid. It has been the law for centuries that payment of a lesser sum on the day in satisfaction of a greater sum cannot be any satisfaction for the whole: *Pinnel's Case* (1602) 5 Co Rep 117, approved by the House of Lords in *Foakes v Beer* (1884) 9 App Cas 605. *Foakes v Beer* was considered by the Supreme Court in *MWB Business Exchange v Rock Advertising* [2019] AC 119, [18], which declined to overrule it. As Mr Wood said, she obviously did not pay early, so that could not have been the consideration.

242. I think the obvious objective inference to be drawn from the evidence is that Niki wanted the Second Defendant to reduce his fees – or, more precisely, that she was not prepared to pay him what she owed - because by August/September 2017 she was unhappy with his services, and particularly the Chronology, and blamed him for her loss, and in return for him reducing his fees she agreed she would not sue him.

243. It seems to me there is a logical inconsistency in Niki's case before me that she was agreeing a settlement in light of a threat by the Second Defendant to sue for his fees, when her stance all along was that she was not going to pay in full (as indeed she did not).

244. Giving up a claim, even one that is legally doubtful, is good consideration, and so by objectively agreeing to give up her claim against the Second Defendant, Niki was giving good consideration for the reduction in fees from which she benefitted: see *Simantob v. Shavleyan* [2019] EWCA Civ 1105. The facts of that case were complicated but concerned $1,500,000 which the respondent had agreed to pay the appellant, and whether that agreement had been varied.

245. Simon LJ gave the judgment. He said at [29]

> "29. The Judge approached the issues by posing three questions: first, whether there was a variation which provided for a full discharge of the respondent's obligations under the Settlement Agreement; second, whether that variation was supported by good consideration ; and third, whether the respondent repudiated the varied agreement and, if so, what were the consequences ?
>
> …

> 31. The second question was addressed in the judgment [of the judge at first instance] from [119]. The Judge reviewed a number of authorities, including *Foakes v Beer* (1884) 9 App Cas 605; *Williams v Roffey Bros* [1991] 1 QB 1 (CA); *In Re Selectmove Ltd* [1995] 1 WLR 474 and the recent decision of the Supreme Court in *MWB Business Exchange Centres Ltd v. Rock Advertising Ltd* [2018] UKSC 24. He accepted that he was bound by authority to conclude that the payment of a lesser sum than the amount of a debt due cannot be a satisfaction of the debt unless there is some added benefit to the creditor. At [129], the Judge asked himself whether the appellant stood to gain from the variation of the Settlement Agreement in some other way than the agreement to provide the $800,000 in cheques."

246. He went on to conclude the judge had been right to conclude the giving up of a valid defence had been good consideration in the bargain which had been struck. *Chitty* summarises the operative principle at [6-051] as follows:

> "The compromise of a claim which is doubtful in law is binding as a contract. Making or performing a promise to give up a doubtful claim can constitute consideration for a counter-promise since it involves the possibility of detriment to the person to whom the latter promise is made and that of benefit to the person making it."

247. For these reasons, I conclude the Second Defendant has shown that Niki has no realistic prospect of establishing that the full and final settlement of the Second Claimant's fees preserved her right to bring this later professional negligence claim against him.

248. For the avoidance of doubt, whilst I have noted the Legal Ombudsman's decision, I have not taken it into account, but reached my own conclusion on the evidence before me.

249. But even if I am wrong about that, the Second Defendant (and the First Defendant) have prevailed in any event on Issues 1 and 2, and so my conclusion on this issue does not affect the final outcome.

Conclusion

250. There will be summary judgment for the Defendants under CPR r 24(2)(a)(i). Further or alternatively, the Claimant's statement of case is struck out under CPR r 3.4(2)(a) and (b).