Neutral Citation Number: [2021] EWHC 206 (QB)

Case No: QA-2020-000166

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM SENIOR MASTER FONTAINE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/02/2021

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

EXECUTIVE AUTHORITY FOR AIR CARGO AND SPECIAL FLIGHTS — **Appellant**

- and –

(1) PRIME EDUCATION LIMITED
(2) TEVFIK SEKERCI
(3) SERA JANE SEKERCI
(4) PRIME EDUCATION HAVACILIK LIMITED SITKETI
(5) YORK PROPERTY SUITES — **Respondents**

- -
- -

Philip Coppel QC (instructed by **MS-Legal Solicitors**) for the **Appellant**
Farhaz Khan (instructed via Direct Access) for the **First, Second, Third and Fifth Respondents**

Hearing date: 29 January 2021

Approved Judgment

Covid 19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The deemed date for hand down is 10am Friday 5 February 2021

- -

MR JUSTICE SAINI

This judgment is in 8 parts as follows:

I. Overview

1. This is an appeal against part of an Order of Senior Master Fontaine ("the Senior Master") made on 30 July 2020. By that Order, the Senior Master dismissed the Appellant's application dated 7 October 2019 seeking summary judgment against the First, Second, Third and Fifth Defendants (the Fourth Defendant is yet to be served out of the jurisdiction in Turkey).

2. The Senior Master's reasons for dismissing the application were provided in a detailed reserved judgment handed down on 22 July 2020: [2020] EWHC 1985 (QB) ("the Judgment"). The Senior Master also gave a short further judgment in relation to consequential matters on 22 July 2020 ("the Additional Judgment") in which she declined to make certain declarations in favour of the Appellant.

3. The appeal before me is limited to an appeal against the dismissal of the summary judgment application made against the First Defendant. No issue is taken in relation to the refusal of summary judgment as regards the other Defendants, whose cases will go to trial. This is a point of some significance in this appeal.

4. Permission to appeal on a number of grounds was granted by Ellenbogen J on 19 November 2020, with directions for an expedited hearing of the appeal. Ellenbogen J refused to vacate the trial window, which remains 4 May 2021 to 30 July 2021. In terms of the procedural history, Morris J on 19 December 2018 made a Freezing Order against the Defendants without notice, and this was continued by Order of Yip J dated 11 January 2019, following an application to discharge it: [2019] EWHC 522 (QB). I will refer to this judgment further below.

5. This appeal first came on before me for hearing on 18 January 2021. On that day the Third Defendant, Mrs Sekerci, was acting in person and sought leave to represent the other Defendants. Mrs Sekerci applied for an adjournment of the appeal so that she could instruct Counsel, using funds frozen under the Freezing Order.

6. The adjournment application was opposed by the Appellant, the Executive Authority for Air Cargo and Special Flights ("EACS") and there had been a dispute about the quantum and terms on which the frozen funds could be used for that purpose. After oral argument from Mrs Sekerci and Leading Counsel for EACS, I acceded to Mrs Sekerci's application. The nature of the issues in this case would have made it a challenging appeal for a lay person to conduct. I adjourned the hearing of the appeal for a short

period and directed a release of funds for the instruction of Counsel. Counsel (who did not appear below) was duly instructed and he has ably represented the Defendants in the appeal. His concise submissions, and those of Leading Counsel for the First Defendant, (who also appeared below), have been of substantial assistance to me. The hearing was conducted remotely by MS Teams.

7. Turning to the appeal, the headline complaint made by EACS is that, on the basis of what it argues were the uncontroversial facts before the Senior Master, the First Defendant had no answer to the claim for a judgment in the two sums of €13,439,788.74 and £1,871,560, plus interest. That claim is advanced on both a contractual and proprietary basis.

8. The First Defendant seeks to uphold the Senior Master's decision but also seeks permission to cross-appeal on a distinct issue concerning the Senior Master's interim conclusion on the invalidity (by reason of lack of consideration) of a purported amendment to an original contract, which was the main basis for EACS's claims.

9. I should record that the hearing before the Senior Master was conducted by telephone over a full day and involved a substantial number of documents. It was clearly a heavy application. I was told there were technical difficulties and interruptions on several occasions. This was a time when judges and counsel had just started remote hearings and we were all facing real challenges.

10. To compound these difficulties, it seems to me (based on the documents before me) that the Senior Master was not assisted in managing the hearing by the number and range of arguments being advanced, some of which were pursued and dropped, and some of which had not been foreshadowed by the parties (and involved matters of law which required consideration of authorities which were not put before her).

11. The Senior Master produced an admirable judgment in these challenging circumstances. As I indicated to Leading Counsel for EACS at the hearing, I did not consider many of the criticisms made of the Judgment (or the suggested failure of the Senior Master to deal with certain issues) to be well-founded.

12. On the limited points where the appeal has been revealed to have some substance, it is on the basis of arguments which (while open to EACS on the material and documents below and within the scope of permission) have been put to me in a rather different (and more developed) form to that in which they were advanced before the Senior Master.

II. The Facts

13. My summary of the facts is based on the witness statements and main documents in the bundles before me. There are a large number of statements, and I have sought to provide what may be regarded as a highly simplified summary. The Senior Master's Judgment contains a fuller exposition.

14. Many of the factual assertions made by the witnesses (particularly those made by the Defendants) are substantially disputed. Nothing I record in my summary is intended to reflect any conclusions on my part in respect of matters which will need to be resolved at trial. As appears below, however, certain matters are common ground and I have focussed upon those.

15. EACS is an executive agency of the government of Libya. Its original purpose was to provide flights for senior government ministers and officials. On the evidence before me, EACS enjoys separate legal personality under Libyan law, and it is accepted that it is an entity with the ability to sue and be sued under the law of England and Wales.

16. The First Defendant ("Prime Education") is a company registered in England, incorporated on 20 June 2008. The Second and Third Defendants, who are husband and wife, (I will refer to them below as "Mr Sekerci" and "Mrs Sekerci", respectively) are the sole directors of Prime Education. Mr Sekerci is also the company secretary.

17. The Fourth Defendant ("PE Turkey") is a Turkish company (incorporated in 2012) of which Mr Sekerci is a director and 50% shareholder, the other 50% shareholder being his business partner, Burhan Conoglu. The Fifth Defendant ("York Property") is a company registered in England and Wales, of which Mr and Mrs Sekerci are the sole directors.

18. In or around 2012, the remit of EACS was extended and it took on the responsibility for Libyan pilot and aviation engineer training. This required EACS to create a pool of pilots and engineers beyond that which had been required for EACS in fulfilling its original mandate. Libya's two state-owned airlines, Libyan Airlines and Afriqya, were also intended to benefit from the expanded pool of pilots and engineers.

19. EACS decided to train between 180 and 250 individuals (the precise figure is in issue). These people would need to attend aviation schools outside Libya, there not being any such facilities within Libya. They would also need to have necessary language skills in English before undertaking such courses.

20. Prime Education's business was to run international education and training programmes from the UK. PE Turkey was established to run education and training projects from Turkey. On the evidence before me, both Prime Education and PE Turkey provided such services for a variety of organisations in Libya and across the Middle East. It appears that Prime Education was first put in touch with EACS through the commercial attaché of the British Embassy in Libya in about 2014.

21. On 17 December 2015, EACS and Prime Education entered into a written contract ("the 2015 Agreement"). The 2015 Agreement was signed on behalf of EACS by a Mr Jamil Shubana ("Mr Shubana"), the general manager and CEO of EACS, and by Mr Sekerci on behalf of Prime Education. I note that the company stamp of EACS, with the words "EACS General Director", appears under Mr Shubana's signature, description and date. The 2015 Agreement was made in both Arabic and English language versions.

22. I will set out the main provisions of the 2015 Agreement below but will first provide a broad summary of its effect. The 2015 Agreement provided that Prime Education would supply civil aviation educational and training consultancy and management services within the European Union, including the UK, to EACS. These services would be provided to persons nominated by EACS, in return for fees to be paid by EACS to Prime Education. In practice, Prime Education was intended to act as an intermediary between EACS and the educational institutions which would provide the training to the students and it would handle the financial dealings with the educational institutions, as well as paying living allowances and so forth to students.

23. For this purpose, EACS was to provide funds in advance to Prime Education, so that it would be able to give assurances to the educational institutions that it was in a position to pay course fees, accommodation costs and living expenses of the students. The funds would also be used to pay fees required for obtaining visas for the students. Prime Education (referred to as "PE" in the agreement) was required to set up a "designated clients account for EACS".

24. Page 9 of the 2015 Agreement dealt with account management of the "Clients Account" and provided as follows:

> "A clients account is designed to hold clients' money and is protected if anything happens to the funds. For example, when EACS deposit the project value funds into the clients account, and if PE was to cease trading for whatever reason, the funds in the clients account will be protected and will always legally be the money of EACS..."

It continues:

> "PE will have control of the bank account, and the money in it, however PE will be bound by strict UK laws and regulations on our conduct on this account. Withdrawals from the account will be for payments for education providers, accommodation fees and student wages. All withdrawals will be approved as per a payment schedule to be initially agreed for payments made to education and accommodation providers. This schedule will be agreed upon signing of contracts."

25. The 2015 Agreement also provided terms and conditions for the "Clients Account" which included the following:

> "Funds in this account can only be used on behalf of our client (EACS) and cannot be used by PE.
> ...
> If PE was to cease trading, sell the company or become bankrupt, the client account funds will be protected and returned to EACS.
>
> For any foreign payments, GBP will need to be transferred to PE's trading account (business current account) and then international payments sent from there...
>
> A monthly statement of the account will be sent to EACS.
>
> ..."

26. EACS's responsibilities under the 2015 Agreement included being able to show that each student had enough money to cover course fees and living costs. In this regard it provided:

> "The evidence PE will use to satisfy this requirement will be for EACS to transfer the full course fees to the clients account held

> by PE. PE will then transfer the required course fees to the course provider for each student. Receipt of these funds will be detailed in the CAS/visa support letter. The course fees for the remaining course period will be held in the clients account held by PE until payment is requested by the course provider (month 13 of the course, prior to enrolment)."

And similarly:

> "EACS must show that they [the students] have money for living costs for per month, per student, for the course duration. All of these funds will be held in the clients account held by PE (in the UK) and a statement of account will be used as evidence for visa application purposes...".

27. The 2015 Agreement specifically addressed what was to happen if the agreement was "cancelled" by either party:

> "If this contract is cancelled by PE after the contract has been signed and the invoice paid by EACS, PE will refund the full monies received from EACS back to EACS. If EACS cancels the contract after it has been signed and monies have been transferred to PE, PE will refund all course fees, accommodation fees and student salaries but will not refund any fees due to PE. If EACS cancels the contract once the students have started their studies, only the course fees, accommodation fees and student salary balance remaining will be refunded back to EACS. No PE fees will be refunded."

28. The 2015 Agreement set out a "tariff of fees" divided into: visa support; health insurance; and student management. Prime Education was to administer "student salaries":

> "All students' salaries will be held in the clients account controlled by PE and transferred to the students on monthly/quarterly basis (whatever is required by EACS...)".

29. In relation to course fees and course accommodation, the 2015 Agreement provided that Prime Education would sign contracts with the individual course/accommodation providers:

> "We must adhere to the differing terms and conditions of each provider and these terms will be passed onto EACS. Payments made from the clients account will be in accordance with the signed course/accommodation providers."

30. The 2015 Agreement took effect shortly after signature and as described below it is common ground that very substantial sums were in due course paid to Prime Education by EACS.

31. On EACS's evidence, Mr Shubana was dismissed as CEO/General Manager of EACS by the Prime Minister of Libya in about October 2016 and Khalil Taher Gammoudi ("Mr Gammoudi") was appointed as its CEO. At that time, Mr Gammoudi asked Captain Al Banghazi, General Manager of EACS, to investigate EACS's dealings with Prime Education, as it appeared that EACS had paid over very large sums of money to Prime Education but had received very little in return.

32. Captain Al Banghazi sets out in evidence the results of his review of EACS's financial and banking records in a schedule of payments made to Prime Education between 25 January 2016 and 31 March 2016, and the results of his enquiries with the aviation schools named on the invoices from Prime Education.

33. It is common ground that pursuant to the 2015 Agreement, EACS transferred to Prime Education's nominated account sums totalling €15,218,008.75 and £1,946,040 ("the Transferred Money"). It is also not in dispute that these transfers were intended to be the course fees payable to the relevant educational establishments, as well as student living allowances and so forth. Of those sums, EACS accepts that Prime Education has paid the sum of €444,500.00 to educational establishments pursuant to the 2015 Agreement, but states in its evidence that the remainder of the money advanced is unaccounted for.

34. Captain Al Banghazi reported his initial findings to Mr Gammoudi, who wrote to Mr Sekerci by email on 6 and 27 November 2016, asking for an account of what had happened to the funds advanced, and what was happening with regard to placing students with flying schools. No reply was received. Mr Gammoudi made further attempts to contact Mr Sekerci by telephone and left voicemail messages but did not, on EACS's evidence, receive any response.

35. Prime Education's Euro bank statements from March to May 2016 show payments totalling €8,000,000 made to PE Turkey as follows: on 30 March 2016 €2,000,000, on 28 April 2016 €500,000 and on 5 May 2016 €5,500,000. It is apparent from the bank statements that most if not all of the money passing through Prime Education's account during this period came from EACS.

36. Captain Al Banghazi then sought the assistance of the Libyan Foreign Ministry which contacted the Libyan Embassy in London on 29 March 2017. An employee of the Cultural Attaché's office, Mr Osama Raghi ("Mr Raghi"), was able to contact Mr Sekerci and arranged for him to attend a meeting at the Cultural Affairs Bureau on 25 April 2017. The report from Mr Raghi to EACS following that meeting was that Mr Sekerci had said that:

> "(i) He was continuing to hold the money from EACS, from which [Mr Raghi] understood it would still be in [Prime Education's] client account;
>
> (ii) he was still trying to arrange the courses;
>
> (iii) there had been a problem in that HSBC had frozen [Prime Education's] accounts due to concerns about source of funds;

> (iv) [Prime Education] was bringing a legal case against HSBC to unfreeze the funds, and expected to have access to the funds shortly; and
>
> (v) he would provide a full written report on the project within 10 days."

37. Captain Al Banghazi's evidence is that he does not recall receiving the report which had been promised, but the evidence is that it is possible that such a report may have been sent to the Libyan embassy in London (although it has not been possible to locate a copy). A representative from the Libyan Embassy told Captain Al Benghazi that after a number of unsuccessful attempts to contact Mr Sekerci he was unable to assist further.

38. Captain Al Banghazi then made various reports to banking, legal and government authorities in Libya. Criminal investigations have been commenced in Libya arising out of the matter. In October 2017 the "Litigation Directorate" of the Libyan Government instructed English solicitors to pursue the matter.

39. Captain Al Benghazi refers to the filed accounts of Prime Education. I note that these record that the company had debtors totalling £11,756,821.00, comprising an interest-free loan to PE Turkey, with no fixed date of repayment, of which £11,179,822 was outstanding; and a loan to York Property amounting to £448,847, of which the full amount was outstanding, and again the loan was interest-free and had no fixed date of repayment.

40. The accounts also show funds due to creditors totalling £13,222,620 (primarily funds received from EACS) and cash at the bank totalling £1,583,386, so that it appeared that the funding for the loans to PE Turkey and York Property must have come from the funds transferred by EACS.

41. The explanation of events put forward on behalf of Prime Education, Mr and Mrs Sekerci and York Property before the Senior Master, was set out in the witness statements of Mr Sekerci and Mrs Sekerci. In summary, they accepted that between 15 February 2016 and 18 May 2016, EACS transferred the total sum of €15,218,008.75 to Prime Education's Euro account at HSBC by way of four separate payments, and the total sum of £1,946,040 to Prime Education's sterling account at HSBC by way of six separate payments.

42. Mr Sekerci explains that practical problems were experienced by Prime Education from March 2016 onwards. On the evidence, these appear to fall into two categories: (i) difficulties with dealing with the Libyan students, comprising the inability of the students to provide the correct documents to comply with the requirements to obtain visas and for the courses for which they were to be enrolled, and the conduct of some of the students who were rude and abusive to their staff; and (ii) HSBC were blocking significant numbers of payments out of the euro account, the account in which the Transferred Money was held.

43. The Defendants' evidence is that as a result of these problems Prime Education sought Mr Shubana's agreement to transfer the funds received from EACS to PE Turkey in March 2016. Mr Sekerci states that Mr Shubana's agreement was obtained during discussions at some point in March 2016, but he does not know the exact date. He says

that Prime Education had Mr Shubana's express agreement to the funds moving to Turkey by the time the first tranche of money was transferred to PE Turkey at the end of March 2016. The communications with EACS were with Mr Shubana and a Mr Lutfi, and were by telephone conversation only.

44. In the period from March to May 2016 Mr Sekerci says he was concerned that the project was running into difficulties for the reasons set out above, and the delivery of the project was changing from that which had been anticipated at the outset. After further oral discussions with Mr Shubana in May 2016, Mr Sekerci says he arranged a face-to-face meeting with Mr Shubana in Istanbul, which took place in July 2016. Mr Shubana arrived in Turkey on 16 July 2016 and stayed for a number of days, and met Mr Sekerci and Mr Conoglu at PE Turkey's offices.

45. Mr Sekerci's evidence is that that prior to this meeting he sent a letter to Mr Shubana dated 1 June 2016 setting out in detail the problems caused by the students including the abuse directed at staff, and with EACS's conduct in performing the contract. The copy of the letter exhibited is not dated.

46. Mr Sekerci states that during the discussions with Mr Shubana in Turkey a written amended agreement ("the Amended Agreement") was drawn up and signed by both parties on 22 July 2016, whilst Mr Shubana was still in Turkey. His evidence is that both he and Mr Shubana signed the signature pages and also signed every page of the document, and they each retained one copy. The exhibits appear to show that this is correct but there is no EACS stamp on the document.

47. The Amended Agreement is at the heart of the pleaded defence to the claim and is relied upon to justify all aspects of what the Defendants did with the Transferred Money in 2016 and 2017. It is not in dispute that its terms present a striking departure from the terms of the 2015 Agreement. The financial terms, in particular, significantly weakened the protections enjoyed by EACS under that earlier agreement.

48. The terms of the Amended Agreement include the following:

(a) Its terms amended the terms of the 2015 Agreement .

(b) The amendments were made due to "a number of changes in circumstances".

(c) The terms on page 9 of the 2015 Agreement (the Client Account Terms, to which I made reference above) were replaced with the following:

> "EACS's funds will NOT be held in the clients account and EACS has no right to access or request the bank statements of [Prime Education]. All funds will be held in the accounts in the name of Prime Education and its subsidiaries....".

(d) A new Cancellation Policy provided:

> "If EACS cancels this contract for any reason, [Prime Education] will NOT refund any monies to EACS and will continue the contract only for any students who are enrolled on a course of study at the time of cancellation.... Any monies held by [Prime

> Education] for those students who have not yet enrolled in the course of study will not be refunded to EACS and will become cancellation penalty monies paid to prime education the cancellation of the contract. Any balance of funds held at the time of cancellation by [Prime Education] will then become the cash assets of [Prime Education] and EACS will no longer have any entitlement to the funds held."

49. Although it will ultimately be a matter for trial, it would be fair to observe that the changes allegedly effected to the 2015 Agreement by the Amended Agreement are commercially strange, to say the least. They appear to give Prime Education the ability to keep for itself potentially large sums (the "balance of funds") when EACS cancels the 2015 Agreement for any reason. The amendments also on their face substantially erode the protection of client money enjoyed by EACS under the 2015 Agreement.

50. I am not alone in having formed these provisional views and note that Yip J, when refusing to discharge the Freezing Order observed [2019] EWHC 522 (QB) at [17]-[19]:

> "It is fair to say that this agreement is an extraordinary one....The purported effect of those amendments is to remove the security for the monies to be held as student disbursements which would have been included in the original agreement and to allow the first defendant to retain all the monies held if the claimant cancelled the contract for any reason. This is particularly extraordinary in circumstances where the value of the student disbursements was so significantly in excess of the fees chargeable by the first defendant. It frankly appears fanciful that the claimant could genuinely have intended that the first defendant should stand to obtain a windfall measured in millions of pounds."

51. EACS's evidence before the Senior Master was that the first time they heard of the Amended Agreement was after the claim was issued (indeed their Particulars of Claim and evidence for the Freezing Order made no mention of anything other than the 2015 Agreement). They dispute the legitimacy and validity of the Amended Agreement. I note that Captain Al Banghazi's evidence was that when Mr Sekerci met the representative of the Libyan Cultural Affairs at the Libyan Embassy in London in April 2017 to explain the position in relation to the 2015 Agreement, Mr Sekerci did not mention the Amended Agreement, but rather confirmed that Prime Education was continuing to hold the relevant sums on behalf of EACS.

52. Before the Senior Master, EACS argued that even if Mr Sekerci's account as to how the Amended Agreement came to be made was true, there were certain formalities that needed to be carried out under Libyan law for a government contract (including a contract that ended an earlier contract) to be binding and that these were not complied with.

53. In his evidence, Mr Sekerci confirmed that of the sum of €15,218,008.75 received from EACS into Prime Education's Euro account the following transfers were made:

1. €12,819,000 was transferred to a Euro account in the name of PE Turkey in the period from 30 March 2016 to 21 March 2017;
2. €444,500 was transferred to ESMA (a French aviation College);
3. €1,333,720 was paid to the students attending the course at ESMA in France; and
4. The remaining €620,788.75 of the amount not transferred to PE Turkey included other fees incurred by Prime Education, including bank charges and fees payable to Prime Education.

54. Of the sum of £1,946,040 received from EACS by Prime Education into its Euro account:

(a) £1,395,480 was transferred to PE Turkey on 8 September 2017; and
(b) £495,411.04 is held in Prime Education's account.

55. Mr Sekerci's evidence is that the majority of the transfers from the HSBC Euro account (€10.5 million) had been made by the end of July 2016 and that the money sat in PE Turkey's account whilst waiting for projects in Spain, Greece and the UK to commence.

56. Mr Sekerci also states that whilst the 2015 Agreement had required that the funds received from EACS be held in a client account, this and other obligations regarding the funds were removed under the Amended Agreement, as was any obligation to refund such sums if EACS cancelled the contract.

57. Of substantial significance in this appeal is Mr Sekerci's evidence that the money transferred from Prime Education to PE Turkey did not remain in PE Turkey's account but that he:

> "...considered it prudent to invest the money and assets to be owned by PE Turkey and specifically PE Turkey decided to purchase and develop two prime sites in Istanbul which we considered to be a good investment."

58. Mr Sekerci gives details of two projects which were included in the investments referred to, namely:

(a) land and buildings on a site at 1215 sok. 34210 Bagcilar, Istanbul, Turkey; and
(b) land and buildings on a site at Mahmutbey Cad 34210 Bagcilar, Istanbul, Turkey.

59. He calculates the current equivalent Euro value of the Turkish lira amount invested in these two projects as €8,562,524 but says that as a result of falling Turkish exchange rates this would have given a Euro equivalent value of €11,723,561.50 in January 2018. Mr Sekerci's evidence is that the intention was always to liquidate or leverage the assets as and when the money was required to progress the project. He says that the entirety of the funds was not invested immediately but spent across the two-year period and the construction works.

60. Mr Sekerci's case, as I describe in more detail below, is that these property investments were permitted under the Amended Agreement he had signed with Mr Shubana. That is the case of all the Defendants who have participated in these proceedings thus far.

61. To complete the relevant procedural chronology, on 7 December 2018 EACS's Solicitors sent a letter by special delivery to Prime Education demanding the return of all sums transferred i.e., €14,773,508.75 plus £1,946,040.00, less the ESMA Payments together with interest within 7 days. This has never been paid and the claim was issued on 20 December 2018.

62. On 20 December 2018 Mr Seckerci sent an email to EACS's Solicitors stating he remained willing to deliver the project and referring to an alleged amendment. There followed the grant of a Freezing Order by Morris J on 21 December 2018, continued by Yip J on 8 January 2019, as described above.

63. The summary judgment application was issued on 7 October 2019, after pleadings had closed.

III. The Senior Master's Judgment

64. Before the Senior Master, EACS argued that on the facts Prime Education was in breach of the 2015 Agreement, in breach of fiduciary duty and/or held monies on constructive trust. The case as to alleged wrongdoing was put in a number of ways: Prime Education did not keep the Transferred Money in a separate client account; it misappropriated the Transferred Money by using it other than for meeting the cost of courses and accommodation for students as requested by EACS; it used the Transferred Money other than on behalf of EACS; it failed to protect the Transferred Money for the benefit of EACS; it wrongfully used the Transferred Money to make interest free and unsecured loans to PE Turkey of €11,179,822 and to York Property of not less than £448,847.

65. EACS claimed against each of Mr and Mrs Sekerci that they had: induced Prime Education to breach its contract with EACS; procured and/or knowingly and/or dishonestly assisted in a breach of trust by Prime Education; and conspired and combined with Prime Education, each other, PE Turkey and York Property to use unlawful means (including misappropriation of money with intent to defraud) with the intention and effect of harming EACS.

66. EACS claimed against York Property that it had: dishonestly received from Prime Education sums of money in breach of trust by Prime Education, alternatively knowing that those sums were in breach of trust; and conspired and combined with Prime Education, Mr and Mrs Sekerci and PE Turkey to use unlawful means (including misappropriation of money with intent to defraud) with the intention and effect of harming EACS.

67. The relevant Defendants responded that the Amended Agreement constituted a complete answer to the claims. EACS replied that the Amended Agreement was invalid and unenforceable for a number of reasons, and that the Defendants did not attempt to suggest that there is any defence to the claim under the terms of the 2015 Agreement. They argued there was accordingly no real prospect of success nor any compelling reason to permit the claim against any of the served Defendants to proceed to trial.

68. The issues before the Senior Master resolved themselves into the single question whether the Defendants had a real prospect of success in their defence relying on the Amended Agreement. There is no dispute that the Senior Master identified the correct legal principles that apply to Part 24 applications, citing Easyair Ltd v Opal Telecom

Ltd [2009] EWHC 339 (Ch). Although EACS had relied upon Libyan law in its Particulars of Claim, before the Senior Master the parties agreed (as they have before me for the purposes of the appeal) that English law governs both the 2015 Agreement and the Amended Agreement (if valid).

69. Five sub-issues were argued before the Senior Master concerning the validity of the Amended Agreement: (i) there was no consideration for the Amended Agreement; (ii) the Amended Agreement effected a penalty; (iii) there was no authority for the Amended Agreement; (iv) the Amended Agreement was *ultra vires*; and (v) the Amended Agreement lacked the necessary formalities. The Senior Master was not assisted by the fact that certain additional issues arose late in the hearing, including promissory estoppel.

70. Certain of these issues required the Senior Master to examine issues of Libyan law and no complaint is made as regards her impressive and concise analysis and conclusions in this regard. The Senior Master held that the following issues were not suitable for summary determination: EACS's capacity and *vires* and formal validity in relation to the Amended Agreement, in particular (i) whether English law or Libyan law applies to these issues; (ii) if Libyan law applies, the lack of agreement between the experts as to the issues and the consequences; (iii) if English law applies, the need for further submissions in relation to the consequences in respect of these issues; and (iv) in relation to the issue of NAB approval, the unsatisfactory state of the factual evidence. The Senior Master was right to observe that none of these issues can be described as giving rise to a "short point of law or construction" nor was the court "satisfied that it ha[d] before it all the evidence necessary for the proper determination of the question" in respect of the issue of National Audit Board (NAB) approval (see Easyair at [15 (vii)]).

71. The Senior Master went on to dismiss the entirety of the summary judgment application against all Defendants, but insofar as relevant to this appeal, she concluded:

(a) that Prime Education had no real prospect of demonstrating that there was any consideration given for the Amended Agreement (para. 108). But (as explained in the Additional Judgment) the Senior Master declined to make a declaration to this effect determining the issue with finality (given that there was to be trial in any event of several issues including the closely related promissory estoppel point);
(b) that "there would just about be a real prospect of success" in a defence of promissory estoppel, namely that by EACS orally agreeing to the terms of the Amended Agreement, it impliedly agreed that it would not seek recompense for breaches of the 2015 Agreement (paras. 109-110); and
(c) in relation to the non-contractual claims against the Defendants, "given [the] conclusion that [Prime Education] has a real prospect of success in its defence relying on the Amended Agreement, and/or there is a compelling reason to proceed to trial, it would clearly not be possible to enter summary judgment against [D2, D3 and D5] because the claims against those Defendants are parasitic on the claim against [D1]" (para. 144).

IV. Grounds of Appeal

72. There are five grounds of appeal against the order, with a measure of inter-relationship between them. I have re-ordered the grounds into what I consider to be a more logical form as follows:

(i) In considering whether there was a repudiatory breach of the 2015 Agreement (whether amended or otherwise), the Senior Master only considered Prime Education's sending the Transferred Money from its client account in the UK to its bank account in Turkey, overlooking the repudiatory breach by Prime Education in removing it from that Turkish bank account in order to fund the PE Turkey's speculative Turkish property development and for which Prime Education offered no defence (**Ground 1**).

(ii) In deciding that there would "just about be a real prospect of success" in a defence of promissory estoppel, the Senior Master overlooked whether it would be unconscionable/inequitable for EACS to withdraw the promise (an essential requirement for a defence of promissory estoppel) and otherwise misapplied the principles relating to promissory estoppel (**Ground 2**);

(iii) The Senior Master overlooked the absence of a defence to EACS's proprietary claim against Prime Education, even though this was the primary basis of its claim against Prime Education and was unaffected by a promissory estoppel (**Ground 3**).

(iv) The Senior Master contradicted herself by concluding that there was a real prospect of success in the Defendants relying on an oral agreement, but no real prospect of success in the Defendants relying on a written agreement that the Defendants had alleged simply recorded the oral agreement (**Ground 4**).

(v) The Senior Master, having concluded that the Defendants had no real prospect of demonstrating that the Amended Agreement was supported by consideration, wrongly refused to declare that the Amended Agreement was unenforceable for lack of consideration (**Ground 5**).

73. In relation to this last point, Ellenbogen J refused permission to appeal on this ground (but she expressly directed the appeal judge should have the ability to consider this issue as part of the other grounds). Prime Education cross-appealed (at least originally) against the Senior Master's conclusion that the Amended Agreement was not supported by consideration.

74. As I have indicated above, the summary judgment claim on appeal concerns only the claim for relief against Prime Education. In these circumstances, I proceed on the basis of the following assumptions for the purposes of this appeal:

(1) There will be a trial as to whether any of the causes of action (inducement, conspiracy and receipt-based claims) are established against the Second, Third and Fifth Defendants

(2) This trial will involve a factual investigation of the performance of the 2015 Agreement, the entry into the Amended Agreement (and its claimed oral predecessor), the alleged promissory estoppel, and the honesty and states of mind of the individual Defendants involved in the transfers of the funds.

(3) The trial will involve investigation of Mr Shubana's role and the approval (or not) of the Amended Agreement in Libya by the relevant regulatory bodies. (The Senior Master noted (Judgment, paras. 153-154) the current gaps in the evidence in this regard).

75. It is against this background that I must decide whether EACS should at this stage be entitled to summary judgment on at least its money and proprietary claims against Prime Education.

V. The Repudiation Ground

76. As I observed during oral argument, Ground 1 (Ground 3 in the skeleton for EACS) should be addressed first. That is because it proceeds on the assumption that there was some form of valid oral or written amendment to the 2015 Agreement, consistently with Prime Education's case. The question is whether *assuming* these points in its favour, it has any answer to a claim for damages for repudiatory breach of either the 2015 Agreement or the Amended Agreement (but in reality, it is only the latter agreement which is material at this stage, taking Prime Education's case at its highest).

77. Before addressing this ground in more detail, I should record that Counsel for Prime Education argued as a preliminary objection that this ground as presented in the skeleton of EACS (more specifically the issue of repudiation of the Amended Agreement) was not the subject of Ellenbogen J's grant of permission.

78. I reject this submission. Ellenbogen J granted permission to pursue what was then Ground 3 (repudiatory breach), which reflects the way in which Ground 1 (which I have summarised above) was presented in the skeleton argument seeking permission to appeal (a document to which Ellenbogen J made specific reference at para. 4 of her reasons for granting permission). The grant of permission and judge's reasons set the parameters for the appeal.

79. It is of significance that Ellenbogen J was made expressly aware of the Respondents' objection to this point being run by EACS. It was made in clear terms in the Respondents' Statement of Objections as to why permission should not be granted. The judge nevertheless granted permission for it to be pursued and it would be wrong in those circumstances for me to prevent EACS from relying upon it.

80. In my judgment, EACS holds an extant grant of permission to argue this point and no application was made to set it aside at any stage. Further, I note (as set out below) the Defendants have submitted evidence explaining their defence on the facts to this specific claim. I do not have a concern that this point is a new one and that there would be some unfair procedural surprise on the part of the Defendants.

81. I would add that, even if I could prevent the point being argued, it does not seem to me appropriate and consistent with the overriding objective to simply leave the matter to be re-argued on a fresh summary judgment application.

82. I now turn to the substance.

83. Based on the facts which are not controversial (and even assuming in its favour that the Amended Agreement was valid), in my judgment Prime Education has no answer to a

simple contractual claim for damages based on repudiation of either the 2015 Agreement or the Amended Agreement. In short, the suggestion that it was lawfully permitted in reliance on the Amended Agreement to appropriate substantial funds to invest them in a speculative Turkish property venture ("the Property Purchases") is fanciful.

84. My reasons for this conclusion are as follows:

(1) Even if the Amended Agreement was legally effective (and supported by consideration) and/or there was a representation giving rise to a promissory estoppel, all that either of those would have achieved was to permit Prime Education to remove the Transferred Money from the UK client account and send it to an account of either Prime Education or PE Turkey in Turkey in order to pay the aviation colleges from there.

(2) In this regard, it is significant that on the Defendants' own case, the Amended Agreement provided:

> "All funds will be held in accounts in the name of Prime Education and or its subsidiaries."

(3) Despite this, in his witness statement. Mr Seckerci stated that he: "...considered it prudent to invest the money in assets to be owned by [PE Turkey] and specifically [PE Turkey] decided to purchase and develop two prime sites in Istanbul...". He also explains that 53 million Turkish lira (all of it from the Transferred Money) had been so used, amounting in January 2018 to €11,723,561.

85. Accordingly, even if there was a legally effective amendment to the 2015 Agreement, this misuse of the Transferred Money constituted a clear repudiatory breach of the very terms of the Amended Agreement relied upon. Leading Counsel for EACS was right to focus on this as his best point on appeal.

86. Further, even if EACS had impliedly agreed not to seek recompense for Prime Education breaching the 2015 Agreement (by removing the Transferred Money from the client account so as to allow Prime Education to place it in an account in Turkey and run the project from there - the putative representation upon which the Defendants founded their defence of promissory estoppel), in my judgment this could not protect Prime Education from the separate and distinct breach in its taking the money out of the Turkish bank account to fund speculative property development in Turkey.

87. I put my provisional views as to this contractual breach (constituted by the Property Purchases) to Counsel for Prime Education, and he made valiant efforts in seeking to persuade me why this was a lawful use of the funds. Ultimately, my conclusion remained that here was no realistic prospect of success in relation to the arguments he made to me.

88. In his attractively and well-structured submissions, Counsel for Prime Education relied upon two main points. First, he submitted that the complaint about the Property Purchases raised a factual matter which was not the subject of the summary judgment application and had accordingly not been properly addressed in evidence (but should

be dealt with at trial together with the fuller factual investigation). Second, he made an argument concerning construction of the Amended Agreement, which made this use of the funds lawful (or at least arguably lawful for CPR Part 24 purposes).

89. As to the first argument, I reject the submission that the Property Purchases were not a matter in issue. First, I refer to para. [14] of Yip J's judgment where she expressly recorded after referring to the Property Purchases that: "...it is the claimant's case that the first defendant has accordingly misappropriated monies held on trust for the claimant and that each of the other defendants have knowingly and actively participated in such misappropriation". So, before the application was made clear notice as to the case was given. Second, EACS also relied expressly on the Property Purchases in support of its summary judgment application. I refer for example to EACS's Solicitor's evidence that: "That the Defendants have, without the knowledge or consent of the Claimant, "invested" the balance of the Transferred Money in illiquid assets (a Turkish real estate development)…". The evidence of Captain Al Banghazi was to the same effect.

90. Each of Mr and Mrs Sekerci were also in no doubt this was an issue to be addressed because they provided evidence relying upon the Amended Agreement as their justification for the Property Purchases. I take just one example from Mr Sekerci's evidence where he says: "Furthermore, we would not have subsequently invested the money in the Turkish development projects from March 2017 onwards if we had not entered into the Amendment Agreement (which permitted us to do that)...". Mrs Sekerci's evidence was to the same effect.

91. So, Prime Education's own case in evidence and argument has always been that the Property Purchases were lawful under the Amended Agreement (that is also their essential pleaded case in the Defence). It has also been an issue and indeed a central issue from the time of Yip J's judgment. That leads me to the second submission of Counsel for Prime Education concerning construction of the Amended Agreement.

92. First, Counsel took me to page 9 of the 2015 Agreement and asked me to compare it to the new terms (as regards holding of monies) in the Amended Agreement and said that this change was of significance. This significance was said to be in support of a submission that one should construe the term "held in the accounts in the name of Prime Education and its subsidiaries" (in the Amended Agreement) as impliedly investing Prime Education with a discretion (to be exercised in accordance with *Wednesbury* principles) to make use of the funds in good faith for any purpose, as long as it could then meet fees. Reliance was also placed (for context) upon the cancellation provisions of the Amended Agreement. There was rightly no suggestion however that at the time of the Property Purchases around March 2017 that the Amendment Agreement had been cancelled (thus enabling Prime Education to make free use of the funds).

93. I have no hesitation in rejecting these submissions. I also do not accept that any relevant factual investigation is material to a construction of the agreement which is the sole basis relied upon for saying the Property Purchases were lawful. In short, an obligation which requires funds to be "held in the accounts in the name of Prime Education and its subsidiaries" is plainly inconsistent with a construction which imports some form of implied power to remove and use the funds (however wise the proposed investment may be).

94. These words are simple and mean what they say: they provide a measure of protection to EACS which would be undermined by giving Prime Education freedom to remove and to speculate with the funds.

95. Accordingly, even if the "trust-like" obligations imposed on Prime Education under the 2015 Agreement as regards monies transferred to it had arguably been superseded by the looser obligations of the Amended Agreement (an issue under Ground 3 below), Prime Education has no arguable lawful basis for the use of the funds for property speculation. Its defence in relation to the Property Purchases is truly fanciful.

96. In my judgment, those Property Purchases were acts of repudiation of both the 2015 Agreement and the Amended Agreement and such breach was accepted in substance by EACS's letter of 7 December 2018, demanding a return of the sums transferred to Prime Education. At that time, EACS was not aware of the precise misapplication of the funds by way of Property Purchases but that does not preclude termination for breach under well-established contractual principles: *Chitty on Contracts* (33rd Edition) Vol.1 at para. 24-014.

97. This is sufficient to make good Ground 1 and to entitle EACS to judgment for damages for breach of contract in the sums €13,439,788.74 and (subject to a qualification) £1,871,560, plus interest thereon. These were sums paid over in reliance on intended performance of Prime Education's obligations. The precise quantification of the latter sum is still the subject of a dispute, which I address at the end of this judgment.

98. I have paused to consider whether judgment should not be entered on this basis given there will be a trial of the other claims. However, I do not consider it is appropriate to deny a claimant judgment in respect of an unanswerable claim. Ultimately, no convincing argument was made to me to suggest that there was any proper legal answer to the contractual claim which might emerge at trial. Prime Education's own case as to the nature of the amendments to the contractual arrangements, and the common ground on the facts, lead to it being in breach.

VI. Additional Grounds

99. Given my decision on the Repudiation Ground, and given there is to be a trial in any event of certain claims, I will address the other grounds more briefly.

100. As to Ground 2, in my judgment it is a matter for trial whether in relation to the defence of promissory estoppel it would be unconscionable/inequitable for EACS to withdraw the claimed promise. This point is academic at this stage because (as I describe below) there will be a trial on the issue of consideration and promissory estoppel only arises if that point fails.

101. I should also record that I reject the submission that the Senior Master's treatment of the promissory estoppel issue was unsatisfactory. The issue was raised in the course of a reply submission by Counsel then acting for Prime Education. Leading Counsel for EACS accepted that the points he raised before me in the appeal (concerning equity and the suspensory effect of estoppel) were not raised before the Senior Master in the detailed way argued before me. The Senior Master cannot in these circumstances be criticised for "overlooking" points which Leading Counsel cannot in fact say with any certainty were raised before her.

102. As to Ground 3, if the Amended Agreement is valid, it is arguable (and a matter for trial) that the monies held were not subject to a proprietary claim given the radical amendments made to the status of these sums, when compared to the 2015 Agreement.

103. As I identify below, whether the Amended Agreement was supported by consideration remains an issue for trial, for the reasons identified by the Senior Master in the Additional Judgment. If the Amended Agreement was binding, I consider it arguable that the monies transferred were not subject to fiduciary or trust obligations even if they were subject to contractual restraints as to use. There was a major change in the protection regime for the funds between the 2015 Agreement and the Amended Agreement and arguably the funds were no longer impressed with the protections of a trust nature. That is for trial. That issue is also properly dealt with at the same time as the receipt-based claims against the other Defendants.

104. As to Ground 4, this complaint is based on para. 131 of the Judgment which is said by EACS to contain a contradiction:

> "If the Defendants' case rested entirely on this oral agreement the court might have come to the conclusion that, although oral evidence should usually be heard only at trial, if the Court were to conclude that evidence relating to the alleged oral agreement is not credible, it could nevertheless grant summary judgment. However, the subsequent written agreement gives sufficient support to the credibility of the alleged prior oral agreement, in my judgment, for the purposes of passing the threshold test of a real prospect of success in reliance such that I will not grant summary judgment in respect of those payments, alternatively that there is a compelling reason for that issue to proceed to trial, namely for oral evidence to be given."

105. I detect no contradiction within this paragraph. What the Senior Master says is logical. Insofar as the complaint is that there was a contradiction between the conclusion that there was an oral agreement and the finding that the later written agreement (said to codify the oral agreement) was not supported by consideration, the Senior Master was not dealing in this paragraph with the issue of consideration for the oral and written agreements. She was making a more basic and logically sound point.

106. I reject Ground 4, which it was accepted did not in any event lead anywhere in terms of disposal of this appeal.

VII. Consideration

107. This issue arises in relation to Ground 5 (where permission was refused by Ellenbogen J but she allowed it to be revisited by the appellate judge as an adjunct of other grounds) and also on Prime Education's application for permission to cross-appeal.

108. In summary, having conducted a comparison between the terms of the 2015 Agreement and Amended Agreement (paras. 99-104), the Senior Master concluded (para. 108) that Prime Education did not have any real prospect of success in demonstrating that there was consideration given for the Amended Agreement. The Senior Master came to this conclusion applying the well-known authorities and considered, amongst other cases,

Williams v Roffey Bros [1991] 1 QB 1 and Rock Advertising Ltd v MWB Business Exchange Centres Ltd [2018] UKSC 2; [2019] 1 AC 119.

109. However, in the Additional Judgment, the Senior Master refused to make any declaration making her conclusion on this issue a final decision. It is common ground that the effect of the two judgments was that the Senior Master decided this issue could be revisited at trial, together with the related promissory estoppel issue.

110. The Senior Master explained her reasons for this decision as follows in her Additional Judgment:

> "6. In applying the overriding objective, the court has to look at the fairness of dealing with the issue of consideration on its own as a basis for granting summary judgment. It was not a pleaded issue. Although I accept that summary judgment applications do not have to be made on the basis of pleaded issues, but it would not be appropriate, in my view, in such complex case to make a final determination on a case which has not been pleaded and to which the defendants have not had the opportunity to respond in their defences.
>
> 7. Further, the way in which the issue of consideration was introduced, namely that it was not identified in any satisfactory manner in the evidence, nor the subject of any proper explanation until the claimant's skeleton argument was served, was unsatisfactory in respect of a claim of this value and legal complexity. Although, again, I accept that would not necessarily mean that the court could not take the view it could be a ground for summary judgment, but that was not the basis on which the application was formulated. The issue was not identified in the application notice, which means it is possible that sufficient notice was not given as required by CPR 24 (although that was not a point I had to determine as I did not grant summary judgment on the issue), For those reasons Mr Head on behalf of the defendants had submitted that it was inappropriate for the court to accept it as a ground for the application, and I refer to that submission in the judgment, but I decided that, because Mr Head had been able to make submissions on that issue, that I should deal with it. But it was not intended to be a standalone issue, and in the circumstances in which it was advanced, it seems to me that what Mr Coppel proposes, namely to grant summary judgment on that issue alone, would be unfair in those circumstances, and that was the view I took in the judgment.
>
> 8. But in any event, if one considers the practical consequences, there will still have to be a trial of the proceedings. If one or both of the parties asks the court to determine certain issues as preliminary issues that can be done, if appropriate. But the problem with that approach is that, because the argument on promissory estoppel requires the amended agreement to be valid

> on other grounds, that would mean the issue of validity would also have to be considered.
>
> 9. The trial would have to then consider the issue of expert evidence on Libyan law, unless that issue was conceded and I cannot see that the issue of consideration itself, which did not take up a great deal of time in argument or in determination, as can be seen from the judgment, would add very much to the time in court because of the fact that promissory estoppel would still be a live issue. It is, in my view, simply not satisfactory to deal with the issue in the way that Mr Coppel suggests.
>
> 10. I reach that conclusion with some reluctance because I accept what Mr Coppel has said about the position that the claimants find themselves in, where funds for the State of Libya are no doubt in short supply and this is a considerable sum of money that could be used for the people of Libya. That issue could have been addressed by bringing the application in a different way or by going straight to trial more quickly and it seems to me that the way the matter has come before the court, it is not appropriate for me to deal with the matter in the way that Mr Coppel has proposed. I reach the same view on the issue of the request to make a declaration. There was no application for a declaration. There is no claim for a declaration. It would be inappropriate for me to make a declaration on the application as it came before me in my view."

111. EACS complains that the Senior Master was in error in not making a declaration. Prime Education complains that the Senior Master was wrong to determine that there was no realistic prospect in relation to the consideration issue. I reject both complaints. Prime Education's cross-appeal is unnecessary because no final determination was made (as Counsel for Prime Education accepted at the hearing) and, for the reasons explained below, in my judgment there was no arguable error in the Senior Master's refusal to grant a declaration.

112. The issue of principle which arises in this part of EACS's appeal may be described as follows. When a judge determining a summary judgment application makes certain findings of fact or law on the evidence presented at that time (such as deciding a party does not have a realistic prospect of succeeding on a sub-issue), but she ultimately concludes not to grant the application itself, is she obliged to make a declaration as to those findings on the sub-issues? The effect of such declarations is intended to be to bind the parties and remove the sub-issues from the proceedings.

113. In my judgment, a Judge is under no such obligation. Whether she decides to make such a declaration on the sub-issue or simply leaves the issue for the trial judge will be a fact-specific case management decision to be undertaken following assessment in accordance with the Overriding Objective, and as an exercise of discretion.

114. The fact that a declaration has not been sought in the application is an important but not determinative factor, as well as the fact that the applicant could have, but did not, seek determination of a preliminary issue on the matter in respect of which it now asks for a

declaration. Also relevant is the fact that the sub-issue may be a matter on which the Judge considers there might potentially be more detailed factual and legal argument which was not possible in the CPR Part 24 hearing.

115. I would add that where there is to be a trial in any event, and the sub-issue which the Judge has determined on an interim basis is closely related to other factual or legal issues which the trial judge will examine in more detail, it seems to me that it would be generally unwise for the interim hearing Judge to make any binding declarations. What may seem correct on the evidence and argument on an interim application, may turn out to be wrong following the mature reflection available at trial.

116. As stated above this is a form of case management question involving the exercise of a wide margin of discretion on the part of the Judge. The party complaining on appeal must accordingly show one or more of the following types of error before an appeal court will interfere:

(i) a misdirection in law;

(ii) some procedural unfairness or irregularity;

(iii) that the Judge took into account irrelevant matters;

(iv) that the Judge failed to take account of relevant matters; or

(v) that the Judge made a decision which was "plainly wrong".

117. Applying these general principles, in my judgment, there was no arguable legal error revealed by the Senior Master's reasoning. This was unimpeachable as a discretionary decision in the context of case management. I consider two particular factors were important:

(1) First, given the fact that there is going to be trial of the facts surrounding the Amended Agreement (specifically, the promissory estoppel issue), it was appropriate for the Senior Master not to make a final decision on a closely related issue which would lead to a declaration and which (on fuller investigation at trial of the practical benefits alleged to arise under the Amended Agreement) might be unsafe.

(2) Second, the Senior Master was also right to exercise caution given the way in which the point was raised: it had not been pleaded and identified as a standalone point although it was in evidence. The Senior Master was faced with an unattractive "moving feast" of submissions on points which had not been sufficiently pre-warned or explored. She was entitled to conclude it was unfair to give summary judgment on this point in such circumstances.

118. For the avoidance of doubt, the question of consideration remains open for argument and final determination at trial.

119. As explained by Lord Sumption at [18] in Rock Advertising, the role of consideration in modern contract law and the application of the decisions in Foakes v Beer (1884) 9 App Cas 605 and Williams v Roffey are not straightforward matters. Any final decision

in this claim as to whether the Amended Agreement (or the earlier claimed oral agreement) was supported by consideration (or some form of "practical benefit") will need to be made following a fuller exploration of the facts at trial, and the application of the authorities to the facts so found.

VIII. Conclusion

120. Judgment will be entered in favour of EACS for damages for breach of contract in the sums €13,349,788.74 and (subject to a qualification) £1,871,560, plus interest thereon. A late dispute has emerged in relation to the quantification of the latter sum. I will finalise the precise amount following argument at a hearing in relation to consequential matters.

121. The remainder of the claims against Prime Education and the other Defendants will need to be determined at trial and I propose to make further directions for the rapid resolution of the claim. Those such as the Defendants to this claim who have been subject to draconian Freezing Orders since December 2018, are entitled to have a trial of the claims against them as soon as possible.