Claim No. KB-2023-000774

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

BETWEEN:

(1) RICHARD (RAZIEL) DAVIDOFF
(2) HANNAH (HANNI) DAVIDOFF
(3) TAMARA DAVIDOFF
(4) DEBBY DAVIDOFF

Claimants

-and-

NICHOLAS HARGRAVE

Defendant

REPLY TO DEFENCE

The Claimants join issue with the Defendant on the entirety of his Defence, save for the admissions it contains or as expressly referred to below.

Unless otherwise stated, references to numbered paragraphs below relate to paragraphs of the Defence.

The parties

1. In respect of paragraph 1:

    1.1. The Fourth Claimant has worked for companies within the ABC Estates group for 11 years in roles including sales, lettings, management and investment. She has been based in the group's Hendon office. A plan for the Fourth Claimant to open a new branch in St Johns Wood was curtailed by a diagnosis of serious, life-changing illness. The Fourth Claimant now works mostly on ABC Estates' investment and marketing functions. The Third Claimant has worked for ABC Estates for nine years in the Service Charge Accounts team. She is now in charge of that team. In this role

the Third Claimant liaises both with ABC Estates' clients and external Chartered Accountants.

1.2. ABC Estates is not a company or incorporated entity. The Re-Re-Amended Particulars of Claim ("RRAPOC") make clear that the companies concerned are known collectively as ABC Estates. Not all companies under the ABC Estates umbrella are themselves titled with "ABC". The ABC Estates group does not contain all the companies with which the Claimants are connected. Within the ABC group are a number of different companies that use the trading name of "Aldermartin, Baines & Cuthbert". This is unwieldly for everyday use and is abbreviated for the group as ABC Estates or ABC Real Estate. For eight years the group ran a continuous advertising campaign on LBC Radio which typically used "Aldermartin, Baines & Cuthbert", "ABC Estates" and "ABC". The public therefore knew the group under these interchangeable names as one trading group. Where this Reply refers to "ABC" alone it should be understood as a reference to the ABC Estates group.

1.3. Many businesses operate through portfolios of companies. The field of property is no different. Directors and persons with significant control ("PSC") will naturally change. The Claimants' positions as directors and PSCs are part of their working business lives and reflect the nature of corporate-based business. The corporate structure of the group of companies is not "opaque, confusing or lacking in transparency".

1.4. The pleading in paragraph 1.3 that the ABC website (https://www.abcestates.co.uk) does not name key individuals or identify the companies that fall under the umbrella is of no relevance. The website publicises and promotes ABC Estates' business generally. It is not a company directory. The absence of ABC Block Management Limited ("ABC BML") on the website is not probative of any fact or matter. Such company names as are included from time to time on the website change to reflect company activity: at present a number of companies within the group are dormant and their activities have been transferred to ABC Hendon Ltd. As to other companies within the ABC Estates group and changes in company officers and shareholders, these change as business and personal interests change.

Paragraph 1.3 above is repeated. The asserted inference of obfuscation as to company connections and control is baseless.

1.5. As to paragraph 1.4, the third sentence of paragraph 1.2 above is repeated. Further:

1.5.1. Paragraph 1.4.1 is not understood. The Defendant pleads that persons other than the Claimants are directors or PSCs of the companies. The Claimants fail to see the relevance of this. As the Defendant accepts, the First Claimant is a director of all five companies. In any event, PSCs will change such that a person may have been a PSC in the past but no longer is.

1.5.2. Paragraph 1.4.2 appears to insinuate that a change of name by deed poll is probative of dishonesty. That is wrong and is rejected. The First-Tier Tribunal Property Chamber (Residential Property) ("FTT") did not make any adverse finding as to the variations in names used by the First Claimant or by the temporary change of name, openly admitted by the First Claimant as having been to hide his involvement in a property purchase. That admission appears in a paragraph starting "*There are some allegations* [of the applicant lessee] *that may be simple to dispose of.*" The matter of a temporary change of name by deed poll has been raised previously by applicants in a number of hearings to suggest implication of fraud. Each time the Judge has confirmed that nothing wrong had been done or should be inferred.

1.5.3. As to paragraph 1.4.3, the First and Second Claimants are those persons pleaded by the Defendant and are properly listed with Companies House, as are the relevant addresses. The names pleaded by the Defendant are the First and Second Claimants' given Jewish names and maiden name. It is not understood why the Defendant would regard this as a relevant matter.

1.5.4. In respect of paragraph 1.4.4, paragraphs 1.5.1 and 1.5.3 above are repeated.

1.5.5. The Claimants do not understand the use of "a different individual" in paragraph 1.4.5. As that paragraph then accepts, the Tamara Davidoff who was a director of ABC BML for nearly six years between January 2016 and October 2021 and the Tamara Davidoff who has been a director of that company since October 2023 are one and the same person, i.e. the Third

Claimant. The break in the directorship was forced by the Defendant's campaign against the Claimants and their business. The First Claimant replaced the Third Claimant for that period.

1.5.6. The relevance of paragraphs 1.4.6 to 1.4.12 is not understood. In paragraph 1.4.12 The discrepancy in the date of birth listed for the Fourth Claimant at Companies House was simply a clerical error that has now been notified to Companies House.

2. As to paragraph 3:

2.1. In respect of paragraph 3.1, the final sentence of paragraph 1.3 above is repeated.

2.2. In respect of paragraph 3.3:

2.2.1. The Claimants note the Defendant's pleading in paragraph 3.3.1 of Mr Govan as having been an employee of "ABC Estates", which is not a corporate entity, as above, and could not employ Mr Govan, but a is group name. This tends to confirm association of the companies under the umbrella of ABC Estates with the group name.

2.2.2. Paragraph 3.3.4 suggests a contradiction between the pleading in the case brought by the Claimants and companies within, and trading as, ABC Estates (and under other ABC trading names). The suggestion is illogical. In the context of serious financial loss the financial sensitivity to harmful defamatory reviews of ABC Estates as a small local brand, rather than a national brand, has no connection with the averment that substantial numbers of publishees will know that each of the Claimants worked and works in the family business of ABC Estates.

2.2.3. Given the obvious point that gossip within the Claimants' community about the matters sued on in their action against Mr Govan and about the matters in this action will be different in nature and extent, paragraph 3.3.5 is a very doubtful pleading.

2.3. As to paragraph 3.4:

2.3.1. In respect of paragraph 3.4.1's reference to Mr Doshi being "a former consultant at ABC Estates" paragraph 2.2.1 above is repeated as to association with the unincorporated group name of ABC Estates.

2.3.2. Paragraphs 2.2.2 and 2.2.3 above are repeated in respect of paragraph 3.4.4.

2.4. Reliance by the Defendant in paragraph 3.5 on Mr Govan's untested assertion that he had lied about being the poster behind his false allegations only because he feared the Claimants' litigation pressure is objectionable and should never have been pleaded. The Claimant's will rely on paragraph 3.5 in aggravation of damages.

2.5. The Claimants are unaware of any witness statement given Mr Govan in an FTT claim, as pleaded in paragraph 3.6. Even if Mr Govan did enter a witness statement in a form implied by the Defendant it is no more likely to be truthful than were his admitted false and anonymous allegations in Google Reviews.

2.6. The Claimants understand paragraphs 3.8, 3.9, 3.10 and 3.11 to be pleading the truth or potential truth of the defamatory statements published by Messrs Govan and Doshi. Since the defendants in those actions were shown to have posted under false names and admitted in statements in open court that the allegations they published were false, it is objectionable for the Defendant to plead otherwise. In addition, paragraph 3.8's reference to junior counsel for Mr Govan and Mr Doshi omits to mention that their counsel was of 24 years call at the time; and the implication in paragraph 3.10 that Messrs Doshi and Govan were subjected to unreasonable costs by the Claimants' lawyers and thereby bullied into false admissions is again objectionable and should not have been pleaded. Paragraphs 2.4 and 2.5 above are repeated.

The publication complained of

3. As to paragraph 5:

3.1. Paragraph 5.3.1 makes an assertion in absolute, and accordingly wrong, terms. Whether the reasonable reader will click on links depends on the circumstances. The circumstances in this case indicate that the reasonable reader would do so, as pleaded in the RRAPOC.

3.2. In respect of paragraph 5.3.2, the words of the *Sad Tale* quote tweet include a statement ("*Where a deeply unethical and dishonest firm have capitalised on the unsophisticated methods of those who spoke out*") that does not explain and leaves hanging what is meant by "capitalised" or "unsophisticated" – which latter term is not explained by reference merely to Google reviews, which the Defendant implicitly accepts in his pleading at paragraphs 3.6 to 3.9 – or how the allegedly "*deeply unethical and dishonest firm*" did so capitalise. Indeed, the reasonable reader was faced with a curiosity: a firm had won a libel case, as stated in the quoted tweet, securing an apology, but by deplorable means which remain unstated. This is not comprehensible to the reasonable reader. The prominent link provided the means to understand the *Sad Tale* tweet.

3.3. Paragraph 5.3.3 is wrong. Paragraph 3.2 above is repeated.

3.4. Paragraph 5.3.4 is wrong. The entire quoted tweet was an active link occupying half of the quote tweet. This took the reader to a Leasehold Knowledge Partnership ("LKP") tweet which itself provided a prominent link (of again half the space of the tweet) to the LKP article.

Defamatory meaning

4. Paragraph 6 is denied. Paragraph 3 and its sub-paragraphs above are repeated.

Particulars of Reference and True Innuendo

5. The assertion in paragraph 7 of the alternative innuendo case is denied as being an abuse of process. The innuendo case is necessarily relatively lengthy given the activities of the Defendant and the manner in which he published his prior statements about the Claimants and the words complained of ("WCO"). Further:

5.1. Paragraph 7.1 misrepresents the Claimants' pleading. The bases of reference are set out in detail (and with hyperlinks to the material cited) in RRAPOC paragraphs 9 to 23. The application, and whether further or in the alternative, of each paragraph and sub-paragraph to the Claimants separately and/or collectively is part and parcel of the RRAPOC, most obviously by reference to RRAPOC paragraphs 1, 21, 22 and 23. The Defendant's pleading of confusion is done on a false basis.

5.2. As to paragraph 7.2, it is not understood what "selective quotation" is intended to mean. As to matters adverse to the Claimants, paragraph 5.3 below further refers.

5.3. Paragraph 7.3 appears to argue bad reputation and/or (by a side door) facts and matters as to truth, by reliance on words not sued on and/or on alleged specific misconduct. This is impermissible.

5.4. Paragraph 7.4 is denied. Paragraph 5.1 above is repeated.

6. Paragraph 10 is wrong. There is no admission of anything. RRAPOC paragraph 11 simply makes the point that, pending disclosure, the Claimants cannot present their full case. The facts of the Defendant's followership and analytics are known to the Defendant but not known to the Claimants.

7. In respect of paragraph 11, paragraph 5.1 above is repeated.

8. As to paragraph 12:

8.1. Paragraph 12.1 wrongly alleges a breach of r.16.4(1)(a) and PD 53B para 4.2(4)(b). These require "*a concise statement of the facts on which the claimant relies*" and "[identification of] *the relevant extraneous facts*" respectively. In respect of the reference innuendo pleaded, these are satisfied.

8.2. The objection in paragraph 12.3 is redundant. Companies related to ABC Estates (or ABC) are referred to throughout the following paragraphs of the RRAPOC.

8.3. Paragraph 5.3 above is repeated in respect of paragraphs 12.4.1 and 12.4.2. Further, as to the pleading in paragraph 12.4.2 of the expulsion of ABC BML from membership of the Association of Residential Managing Agents ("ARMA"), and without prejudice to the averment in paragraph 5.3 above, the Defendant admits (at paragraph 36) that he contacted ARMA about the FTT judgment. The Claimants reasonably infer that he did so with the intention of seeking and urging the expulsion. The First Claimant avers that the FTT and the ordinary courts make hundreds of findings each year adverse to managing agents but that these findings do not lead to expulsion from ARMA. The sanction was brought about by the Defendant's actions, not by the FTT findings themselves.

8.4. Paragraph 5.3 above is repeated in respect of paragraph 12.5. Further, and without prejudice to the averment in paragraph 5.3 above, paragraph 12.5 refers to an article but (unlike the RRAPOC) avoids pointing out that the article was a LinkedIn post of the Defendant's. In that post the Defendant makes clear his antagonism towards ABC Estates and the First Claimant, stemming from the Defendant's dispute with them (admitted in paragraph 33). In his LinkedIn post the Defendant opines on his regret that he did not when working in Downing Street "agitate on the subject of leasehold." The Defendant's wish to agitate and his dispute with ABC Estates are, in the First Claimant's reasonable belief, the explanation for the Defendant's actions in respect of ARMA, as above, and in respect of other avenues he chose to use to attack ABC Estates, as to which see further paragraph 8.5.

8.5. Paragraph 5.3 above is repeated in respect of paragraphs 12.6, 12.7, 12.8, 12.9, 12.10, 12.11 and 12.12. Further, and without prejudice to the averment in paragraph 5.3 above, in respect of paragraph 12.6's reference to ARLA Propertymark's ("ARLA") opening an investigation into companies related to the Claimants, it is the Claimants' reasonable belief that the Defendant also approached ARLA. Similarly, and without prejudice to the averment in paragraph 5.3 above, the Claimants aver that the Defendant pressed for or caused, as the case may be, the publication of the articles referred to paragraphs 12.6 to 12.11 and the Early Day Motion ("EDM") referred to in paragraph 12.12. These matters will be pursued as necessary following disclosure.

Serious Harm

9. As to paragraph 25:

9.1. In respect of paragraph 25.1, paragraphs 3 and 5 to 8 above are repeated.

9.2. Paragraph 25.2 is not understood. Harm to a person's reputation is not tied to their business's financial position. In any event it is a matter for the Claimants as to who should be a party to the action.

9.3. In respect of paragraph 25.3, paragraphs 1 and 8 and their sub-paragraphs above are repeated.

9.4. In respect of paragraphs 25.4, 25.5 and 25.6, paragraph 5.3 above is repeated.

10. As to paragraph 26:

    10.1. In respect of paragraph 26.4, paragraph 5.3 above is repeated.

    10.2. In respect of paragraph 26.7.3 the refusal to respond to a Part 18 Request seeking the information specified in that paragraph was proper. The information sought was not "*reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet*" as PD 18 requires.

Defence of Public Interest under s4, Defamation Act 2013

<u>Public interest</u>

11. Paragraph 27 is denied. The WCO did not seek to raise or examine issues generally of leasehold management or any other issue of public interest related to the interests of freeholders, leaseholders, agents or any other interest related to property. The WCO merely attacked and defamed the Claimants. The Defendant did this because he wished to agitate against the Claimants after having been in dispute with them. Paragraph 8.4 above is repeated.

12. Paragraph 28 is denied. The Claimant's action against Messrs Doshi and Govan was not a SLAPP. The suggestion that it was a SLAPP is absurd. In any event, the tweets pleaded in paragraph 13 and its sub-paragraphs of the RRAPOC, in which the Defendant attacked the Claimants pre-dated the SLAPP consultation. The *Sad Tale* tweet was merely a continuation of the Defendant's campaign against the Claimants and was unrelated to any public interest. The dispute between the Defendant, as leaseholder of a property managed by an ABC Estates company, began in 2019.

13. Paragraph 29 is denied. The fourth, fifth and sixth sentences of paragraph 12 above are repeated.

<u>Subjective belief</u>

14. Paragraph 30 is denied. The Defendant's belief was not reasonable.

15. Paragraph 31 is denied. The concern of the Defendant was to harm the interests of ABC Estates with which he had been in dispute. The Claimants did not issue proceedings against Messrs Doshi and Govan to "draw attention away from adverse findings" but to vindicate

their names after the false reviews posted by the pair, which they succeeded in doing. *Norwich Pharmacal* orders to unmask the defendants in that case were sought by application of 26th February 2020 (further orders were subsequently applied for and obtained to identify the defendants from IP addresses). Preparatory steps in the litigation were on foot, therefore, before the earliest of the FTT decisions referred to in paragraph 34 and long before the FTT decision (of August 2021) that the Defendant relies on in paragraphs 12.4 to 12.11 and 35; and even longer before the expulsion of ABC BML from ARMA (November 2021) and ARLA's reported decision to open an investigation, as pleaded in paragraphs 12.4.1 and 12.4.2. In respect of the ARMA and ARLA matters, the newspaper and online reports generated in the wake of the August 2021 FTT decision and the EDM – as to which the Defendant admits contact with ARMA before its expulsion decision and which the Claimants reasonably believe are matters and actions to have otherwise been instigated and/or encouraged by the Defendant – paragraphs 8.3 to 8.5 above are repeated.

16. Paragraph 32 is admitted and averred.

17. As to paragraph 33:

    17.1. The developer-freeholder of the Falcon Road property had instructed ABC BML to manage the block approximately a year before the Defendant bought his flat. After about a year later the developer asked the First Claimant to act as a nominee director for the resident management company (RMC), Boccel Management Ltd ("Boccel"). The First Claimant agreed to do so for a fee of £500 + VAT per year.

    17.2. 75% of the financial value of the total schedule challenged by the leaseholders was ruled in ABC/Boccel's favour. Nearly all matters that ABC BML had control over and dealt with were ruled in its favour. The issues upheld in favour of the lessees primarily related to matters that were outside of ABC BML's control but lay in the control and remit of the developer. Indeed, at the CMC the Judge suggested that the lessees should add the freeholder as a party to the case. The lessees chose not to follow the Judge's advice and pursued Boccel only.

    17.3. The Claimants admit the fact of the FTT findings but dispute the findings. There was no commercial sense in an appeal. The cost of doing so was prohibitive since

judgement was only against Boccel as RMC and Boccel had no money with which to fund an appeal.

18. In respect of paragraphs 34 and 35, the Claimants admit the fact of the FTT findings but dispute the findings and dispute the Defendant's characterisation of them. In any event, the Defendant is put to strict proof that he read the judgments cited before he published the WCO and that he had them in his mind when he published the WCO.

19. The Claimants note the Defendant's admission in paragraph 36 that he contacted ARMA and therefore, it is reasonably inferred, brought about ARMA's expulsion decision. The pleading in paragraph 31 as to the "decisions of…professional bodies" is therefore a 'bootstraps' argument: the Defendant relies on decisions of others he brought about himself. In any event, the Defendant is put to strict proof that he considered ARMA's decision before he published the WCO and that he had it in his mind when he published the WCO.

20. In respect of paragraph 37, the second sentence of paragraph 19 above is repeated as to the Defendant's own actions in causing or encouraging the publications he pleads that he read and believed to be in the public interest. In any event, the Defendant is put to strict proof that he read the publications cited before he published the WCO and that he had them in his mind when he published the WCO.

21. As to paragraph 38:

    21.1. In respect of paragraphs 38.1 to 38.1.4, paragraph 2.5 above is repeated. The Defendant does not say when or how he received the witness statement. Further, the Defendant pleads no steps he took to verify the information in the witness statement or what reasoning he applied to its reliability given his knowledge of (i) Mr Govan's prior dismissal from ABC Estates Limited (not ABC Hendon Limited) and the likelihood of Mr Govan being embittered towards the Claimants and having an axe to grind (ii) the admitted lies told by Mr Govan in the course of the Claimants' litigation against him or (iii) the contents of the statement Mr Govan made in open court. In any event, the Defendant is put to strict proof that he read the witness statement before he published the WCO and that he had it in his mind when he published the WCO.

21.2. In respect of paragraph 38.2, the Defendant does not say when or how he received the witness statement. Further, the Defendant pleads no steps he took to verify the information in Sharon Paul's witness statement or what reasoning he applied to its reliability given his knowledge of Ms Paul's prior dismissal and the likelihood of Ms Paul being embittered towards the Claimants and having an axe to grind. In any event, the Defendant is put to strict proof that he read the witness statement before he published the WCO and that he had it in his mind when he published the WCO.

22. The Claimants repeat paragraphs 21 and its sub-paragraphs above in respect of paragraph 39.

23. As to paragraph 40, paragraphs 15 to 22 above are repeated. Further, the Defendant does not say what the outcome of the police complaint was.

24. In respect of paragraphs 42 to 45, the final sentence of paragraph 15 and paragraphs 19 and 20 above are repeated

25. Paragraph 46 appears to plead a public interest in the Claimants' decisions not to appeal FTT decisions or challenge them through the media. This is not understood as being a basis for an allegedly reasonable belief in public interest publication. (Neither any of the Claimants nor any company within ABC Estates was a party to the Burch Road judgment.)

26. Paragraph 47 is not understood. ABC Estates is a family business. The Claimants are a family.

27. Paragraphs 48 and 49 betray the Defendant's impulse to attack the Claimants and disbelieve everything they say. That is not compatible with a reasonable belief in publication of the WCO being in the public interest. The Claimants' action against fake reviews was because the reviews were false and defamatory.

28. As to paragraphs 50 and 51, paragraphs 15 and 19 above are repeated. The Claimants' action against Messrs Doshi and Govan could not have been part of a 'strategy' to obscure bad publicity (such 'strategy' is denied) as it pre-dates every decision, action and publication that the Defendant pleads in that respect – other than the Defendant's own dispute with ABC Estates. So far as articles and parliamentary activity is concerned, it is the Claimants'

belief, reasonable particularly in light of the Defendant's admission of having contacted ARMA, that the Defendant encouraged these matters himself.

29. As to paragraph 52, the final sentence of paragraph 28 above is repeated. Further:

    29.1. In respect of paragraphs 52.1 to 52.4, paragraphs 11 to 29 above are repeated.

    29.2. In respect of paragraph 52.5, it is a matter for the Claimants who they choose to sue, including the Defendant who, they must suppose, is not "unsophisticated", is well connected and an activist. Even were Sir Peter Bottomley's statements and activities even actionable for being defamatory, they were all made and done under Parliamentary Privilege, so far as the Claimants are aware.

30. Paragraph 53 is not sensible. The Defendant's *Sad Tale* tweet made very serious allegations about the Claimants. The Claimants and ABC Estates would have been able to, and should have been given the opportunity to, respond to and refute the allegations. The Defendant published the *Sad Tale* tweet because he bore animus to the Claimants and their family business, not because he reasonably believed in any public interest in its publication.

31. As to paragraph 54 and its sub-paragraphs, the Claimants admit the fact of the FTT findings but dispute the findings and dispute the Defendant's characterisation of them.

32. The Claimants repeat paragraph 15 above in respect of paragraph 55. The challenges to individuals brought by the Claimants are through the proper process of law for having made false and defamatory statements. The actions of the Claimants in properly defending their reputations are caused by fake reviews, not by any objectionable, aggressive pursuit of others for ulterior reasons. That the action against Messrs Doshi and Govan cannot fit the Defendant's assertions as to motive destroys the Defendant's arguments of disagreeable strategy.

Honest Opinion and Truth under ss. 2 and 3 of the Defamation Act 2013

33. The meaning pleaded at paragraph 56 is denied.

34. It is denied that the meaning is an expression of opinion.

Particulars of Truth and facts relied upon in support of an honest opinion defence

<u>The structure of the companies</u>

35. In respect of paragraph 62 and its sub-paragraphs, paragraph 1 and its sub-paragraphs above is repeated.

Hammer & Chisel Ltd

36. Paragraph 64's reference to employees is wrong. The staff of ABC Estates is comprised of self-employed contractors. Further:

    36.1. Paragraph 63.1: what the First Claimant told the FTT was correct. Mr Reed's role was to deal with all major works projects across ABC Estate's portfolio. Hammer & Chisel ("H&C") had, unexceptionally, subcontracted the job such that Mr Reed met the subcontractor to show him what works were required. The pleading that "Therefore, the First Claimant was stating that Mr Reed met individuals who worked for Hammer & Chisel Ltd" is an (erroneous) construction of the Defendant's alone.

    36.2. Paragraph 63.2: the Claimants cannot answer for Mr Reed's statement but it is reasonably assumed that his response reflected the fact that none of the Claimants/owners of ABC Estates are owners of H&C and that he therefore answered correctly.

    36.3. Paragraph 63.3: since Mr Reed is not one of the Claimants or an owner of ABC Estates he could not be expected to know off-hand such matters of detail about the companies such as their registered addresses. It is most likely that when asked under pressure Mr Reed tried to give the answer to the best of his knowledge.

    36.4. Paragraph 63.4: the answers were correct. H&C is an arms-length contractor to ABC Estates. H&C rented an ABC Estates tenanted investment property. The let was suggested by the accountant who knew the Managing Director of H&C – Russell Walters – and was aware that the investment property was available and would be suitable.

    36.5. Paragraph 63.5: what is cited of the First Claimant's answer is correct.

37. As to paragraph 64, it is denied that the First Claimant or Mr Reed lied. H&C is an arms-length company to ABC Estates. Further:

37.1. Paragraph 64.1: Russell Walters is two steps removed from the Claimants/owners of ABC. Jan Reid has never been a director or owner of ABC; she was a self-employed secretary. Mr Walters was a further step removed from ABC. Mr Walters appointed a nominee director to act for him. This practice is widely adopted in the UK for a great variety of reasons. So far as the First Claimant understands the position, the accountant would have used a company formation company to set up H&C using QA Nominees as the first Director. They would have taken care of all of the relevant paperwork to set up the company correctly. The director's name would then have been changed from QA Nominees to the client in question's name once all the formalities had been dealt with. The further use of a nominee director does not contradict Mr Reed's comments that Mr Walters asked for a recommendation for an accountant and was provided with the recommendation.

37.2. Paragraph 64.2: H&C rented the office studio at 57 Green Lane from Woodland Investments Ltd. It does not follow that the next door house being owned by the First Claimant indicates that the First Claimant ran H&C. By the time of the 2018 accounts H&C had given up its tenancy.

37.3. Paragraph 64.3: H&C's marketing of itself is nothing to do with the Claimants.

37.4. Paragraph 64.4: This pleading is not understood. Mr Walters can be a Retail Manager and operate in a second business. As to Mr Reed meeting H&C workers, paragraph 36.1 above is repeated.

38. Paragraph 65 is denied. Paragraph 37 and its sub-paragraphs are repeated. Further:

38.1. Paragraph 65.1: 'Tony' was the subcontractor used by H&C.

38.2. Paragraph 65.2: so far as the First Claimant understands the position it is this. Mr Reed obtained 3 quotes initially. The first was from Barry Dodd Maintenance in the sum of £124,729 + VAT for the 9 blocks on the Estate. He then got quotes from Sinclair Builders and from Kaloci in the sums of £48,500 and £44,679 + VAT, respectively. Mr Reed then engaged with H&C and their subcontractor, ELD. ELD quoted £4,000 per block which was negotiated down to £3,500 per block. Due to clerical error this figure of £3,500 per block was multiplied by just 6 blocks giving a figure of £21,000 + VAT. However it was subsequently flagged and the correct quote

would have been for £31,000 + VAT which was more in line with the quotes from Sinclair Builders and Kaloci. As the Defendant states, the profit was for H&C and not the Claimants or ABC Estates. ELD was not a contractor that ABC Estates had approached directly. ELD was the subcontractor of H&C and it was not an option for ABC Estates to bypass H&C and deal directly with their subcontractor. H&C undercut all of the other builders. It is clear that the tenants would prefer to pay H&C £38,750 rather than paying BDM £124,729 or paying Sinclairs or Kaloci £48,500 or £44,679 respectively. The First Claimant was appraised of the costs savings being achieved by using Mr Reed's recommended company. The Claimants aver that even if H&C were a company related to the Claimants – it is not – it is difficult to see why it would be dishonest or unethical for a building company that is related to the freeholder or the managing agent tendering for work provided quotes from independent companies have also been obtained.

38.3. Paragraph 65.3: Mr Reed had an arrangement with H&C that he received a commission based on a percentage of H&C's profit. The profits were H&C's, not ABC Estates'. When Mr Reed told the first Claimant that he had paid himself commission from monies payable to ABC Estates, the First Claimant objected because Mr Reed had paid himself commission directly as if it was a payment to H&C. He should have waited for H&C to be paid and obtain the correct level of commission from H&C, as per his arrangement. There were no secret profits made by the Claimants.

38.4. As to paragraph 65.4:

38.4.1. Paragraph 65.4.1: the percentage Mr Reed referred to was for his services to the contractors for administration. Mr Reed had originally agreed 15% for this service but wished to increase that figure to 20%.

38.4.2. Paragraph 65.4.2: paragraph 65.4.1 above is repeated.

38.4.3. Paragraph 65.4.3: Mr Reed often referred to sums as his Additional Billing Cost and took a perverse pleasure in referring to it as ABC. Mr Reed wished to be made a partner or shareholder or director of the ABC companies and frequently asked for this. The Claimants never agreed to this.

38.4.4. Paragraph 65.4.4: paragraph 65.4.3 above is repeated.

38.4.5. Paragraph 65.4.5: this pleading merely confirms that Mr Reed would in his own time (as a self-employed person) offer services to other companies, preparing their quotes and invoicing for the services in exchange for a percentage of the jobs won.

38.4.6. Paragraph 65.4.6: this paragraph is denied. The First Claimant was aware of Mr Reed's arrangements with a number of contractors. This was something that Mr Reed was entitled to do. Mr Reed's work for ABC was as a self-employed contractor. The first Claimant and ABC Estates were unconnected to the work Mr Reed did for other firms, and neither received any remuneration for that work by Mr Reed.

38.5. As to paragraph 65.5:

38.5.1. Of the first sentence, the First Claimant did not attend the meeting pleaded. That meeting was between Mr Reed and a contractor. Mr Reed's email updated the First Claimant following the meeting. At this time ABC Estates was reviewing Mr Reed's annual consultation contract. The First Claimant was of the opinion that the new contract for the forthcoming year should reduce Mr Reed's work for ABC and thereby the remuneration he would earn from ABC. Mr Reed was free to allocate more of his time to offering his services to other companies and increase his income from them instead, to maintain his level of income. In this context Mr Reed's email bounces between an update of the meeting's discussion and his thoughts and proposals for the forthcoming year. The email must be understood in that context.

38.5.2. Of the second sentence, Mr Reed was keen to increase the use of this format and dedicate more time to this side of his work. Indeed he tried to convince the First Claimant on a number of occasions to set up his own limited company dedicated to doing repairs and maintenance on this basis, arguing on different occasions that this was common practice in the industry: a local competitor Block Management firm, BLR, has C2 Maintenance Ltd; another

big local firm called Urang had Urang Builders Ltd; First Port who are one of the largest block management firms have their own cleaning firm, gardening firm, repairs & maintenance firm etc. If the first claimant ran H&C there would be no need for Mr Reed to keep pointing this out and encourage the claimant to set up a company in this manner. The First Claimant believes that the email the Defendant refers to may include this form of discussion. The First Claimant cannot locate the email.

38.5.3. Of the third and fourth sentences, Mr Reed was advising the First Claimant that he aimed to be made a director of H&C and thereby negotiate a share of the company as part of his negotiating position. This was part of the wider context of Mr Reed reducing his time contracting for ABC.

38.5.4. Of the fifth sentence, Mr Reed was keeping the First Claimant up to date on his wider negotiations and plans. This was not something for the First Claimant to action. The commissions referred to relate to commissions from ABC to Mr Reed. Mr Reed charged the builders either 15% or 20% of contracts they won in exchange for doing their paperwork. But ABC paid Mr Reed 16% of the fees that he generated for ABC for the work he did for it. This work was the supervision or administration of major works projects, for which ABC charged 10% of the project value, and for insurance works which also attracted a charge of 10% of the project value. Mr Reed wanted to increase his commission from 16% to 25%.

38.6. As to paragraph 65.6, the "ABC" in the company name does not relate to Aldermartin, Baines & Cuthbert but to "Flat A, Flat B & Flat C" at 25 The Broadway. The First Claimant is not the freeholder or leaseholder at that site, and the company concerned is not one of the Claimants' group of companies. The First Claimant was asked by the client to act as a nominee director in exchange of an annual fee of £500 + VAT. The estimate provided was one of a number of quotes obtained from independent companies. Each of the leaseholders was given the opportunity to nominate their own contractor of choice so as to test the market price. If H&C was able to undercut the other companies then that is competitive, adding value. It is

irrelevant whether H&C uses subcontractors for its work. Subcontracting is quotidian and normal.

38.7. In respect of paragraphs 65.7 and 65.8, the final three sentences of paragraph 38.6 above are repeated. Paragraph 65.8 is therefore denied.

38.8. In respect of paragraphs 65.9 and 65.10, so far as the Claimants can answer for Mr Reed's visit after his appointment of H&C they expect that H&C's contractors would have visited beforehand after obtaining the keys to the property. A clerical error caused the initial invoice, which was intended to be an interim invoice for a deposit of 50% so that the contractor could order and erect scaffolding and buy materials. The invoice was in error drafted for the full sum. The error was noticed and flagged at a later date.

38.9. In respect of paragraph 65.11, Sinclair Builders did not win the tender and did not do the work at the property.

38.10. Paragraph 65.12: Mr Reed drafted the original quote for H&C and also drafted the revised breakdown. If a client requested more information Mr Reed would have reverted to the contractors to seek clarification or further detail. On receipt of this information he would have typed up the details as part of his services to H&C.

38.11. Paragraph 65.13: before the works commenced ABC advised the client not to proceed with the works in that format and on that basis. However the client stated that they understood the risk and were happy to proceed anyway and to carry that risk. The client chose at that early stage to forward fund circa £25,000 of the works in the full knowledge of the facts. As such when the FTT ruled that the client would only recover £25,000 of the project costs from the lessees the client was not shocked or surprised and had already forward funded the shortfall over a year in advance of the FTT ruling. After the ruling the First Claimant emailed the client and offered to tender his resignation. The client responded that they were perfectly happy with the First Claimant and ABC and did not want us to resign. ABC's tenure continues.

38.12. Paragraph 65.14: H&C uses sub-contractors. ABC and the clients were happy to use H&C as long as they added value by doing the work at a keener price. This is not a "secret profit" for ABC but a genuine profit for H&C.

38.13. Paragraphs 65.15 and 65.16: H&C's was the cheapest quote obtained. In the usual manner each of the leaseholders was invited to nominate their own contractor of choice so as to ensure that the market price was tested. Paragraph 65.16 is therefore denied.

38.14. Paragraphs 65.17 and 65.18: the Defendant is well aware that after the first s.20 consultation was carried out some of the leaseholders objected, leading to an FTT hearing. The FTT ruled that the s.20 consultation was correctly carried out. It was agreed to make the project more affordable and split it into two phases which was the only reason for re-tendering. CJAP offered the best price for the first phase of work and were awarded the contract accordingly. This shows that where H&C could not undercut the open market rates they would not be given the contract. The Defendant's assertion of manipulation of the tendering process by H&C not winning every contract appears to be an attempt to overcome the difficulty for him of evidence of fair and open market competition.

38.15. Paragraph 65.19: this paragraph is denied. This was work that Mr Reed had agreed he would do directly with H&C. As to the repetition of paragraph 64.4.5 (understood to be paragraph 65.4.5) paragraph 38.4.5 above is repeated.

39. As to paragraph 66, Mr Reed had the discretion to run the department as he saw fit. He was in a position of trust with approximately 30 years experience in the industry. This arrangement allowed the First Claimant the freedom to focus on his core mission to build the portfolio. If it be implied that the First Claimant, or any of the Claimants, were controlling hands of Mr Reed it is denied.

40. As to paragraph 67:

40.1. Paragraph 67.1 is denied. H&C was an arms-length company independent of the First Claimant.

40.2. Paragraph 67.2 is denied. H&C was a genuine building company that, unexceptionally, used subcontractors.

40.3. Paragraph 67.3 is denied. H&C was only awarded a works contract where it was able to add value by undercutting other contractors' quotes. When it was awarded

contracts the work was carried out by H&C. In virtually all cases the work was done to a satisfactory standard. When there were any snagging issues H&C always returned to site and took care of the snagging issues at their cost. As such there was no increase in price to leaseholders and by dint of the fact that they did the work, shows that it was a genuine building company.

Landlord Repairs & Maintenance Services Ltd

41. Paragraph 68 is admitted and averred.

42. Paragraph 69 is denied. Further:

    42.1. Paragraph 69.1: the address referred to is the ABC's accountant's address. Thousands of companies are registered to that address. Part of an accountant's standard service when they set up a limited company for their clients is to have their office address listed as the registered address. This does not create any connection between the companies so registered.

    42.2. Paragraph 69.2: paragraph 37.1 above is repeated.

    42.3. Paragraph 69.3: Platts accountants act for thousands of clients and companies. The use of the same firm of accountants does not imply that the Claimants have an interest in those other companies.

    42.4. Paragraph 69.4: the relevance of this pleading is not understood. In any event, how the company chooses to market itself (or not) is a matter for it and is nothing to do with the Claimants.

    42.5. Paragraph 69.5: Landlords Repairs & Maintenance has only been given works contracts when it has offered the cheapest price. As in every s.20 Consultation the leaseholders are each invited to nominate their own contractors of choice to tender so that the price can be tested in the open market. All works by Landlord Repairs & Maintenance have been carried out to a reasonable standard.

Valens Contractors Ltd

43. Paragraph 70 and its sub-paragraphs together: Mr Reed's wife uses a nominee director. That nominee director is also used by ABC Estates. That fact creates no link between the business

other than that Mr Reed's wife asked for a recommendation for a nominee director, who would be happy to act for them. The Claimants emphasise that ABC continues to instruct numerous contractors to carry out numerous contracts but no longer uses Valens Contractors Ltd.

44. Paragraph 71 is denied. There has been no attempt by the Claimants to disguise anything. There is no corporate connection between the Claimants or ABC and Valens Contractors Ltd. Valens was independent and arms-length of the Claimants and their interests. Further:

    44.1. Paragraph 71.1: the Claimants do not know why Mr Reed denied any personal relationship to Valens. There was nothing to be gained by Mr Reed's denial: the position was that Valens had substantially undercut the other open market quotes by thousands of pounds. When the First Claimant learned of the false denial he immediately told Mr Reed to correct himself and set the record straight.

    44.2. Paragraph 71.2: the First Claimant understands this pleading to assert dishonesty on his part as to Mr Reed's working status within ABC Estates. This is denied. ABC Estates has around 40 members of staff none of whom are employed on a PAYE basis. The group's staffing has always been structured by means of self-employed contractors. HMRC has scrutinised ABC Estates, which included two HMRC officials attending ABC's office, inspecting all of the contracts, the monthly invoices for the consultation fees, the monthly payments and interviewing the staff about work practices and protocols. HMRC confirmed that it was satisfied that ABC is correctly structured by way of self-employed contractors. The only change to the relevant legislation since HMRC's investigation has been the introduction of IR35 which sought to prevent this type of structuring for companies that have more than 50 employees. This does not apply to ABC as it has only 40 staff spread between a number of different companies.

45. In respect of paragraph 72, the point is repeated that businesses can and frequently do use subcontractors.

46. Paragraph 73 is denied. Paragraphs 43 to 45 and their sub-paragraphs are repeated.

<u>Flats A-E, 8 Burch Road, Northfleet DA11 9NG v Floorweald Limited</u>

47. Paragraph 74 is admitted.

48. Paragraphs 75 to 77 together are denied. There were numerous visits by the contractors who carried out numerous repairs to the roof. Every time an additional leak was reported the contractors re-attended the site. There were occasions when the contractors asked for access to the top floor flats so that they could locate the source of a leak that had been reported. The leaseholders would not allow access on a number of occasions. The builder sent ABC videos taken on his phone showing that the attic area above the top floor flat and below the roof was dry. These videos were forwarded to the freeholder at the time. On one occasion the freeholder attended site with the builder to try and gain access to the top floor flat to see the leak but again they were not granted access. The first sentence of paragraph 18 above is repeated.

49. As to paragraph 78, ABC had handed back management of the property long before the matter was challenged and brought to the FTT. When the freeholder advised ABC that the matter was going to court ABC offered to prepare a witness statement and collate the relevant evidence and attend the FTT to give evidence on his behalf. This was chargeable under the contract. The freeholder did not want to incur costs in this manner and said that it was happy to deal with the matter itself.

<u>(1) Rebecca Maharaj (2) Irene Lo Porto v Richard Davidoff, 112 Blackheath Road, London, SE10 8DA</u>

50. Paragraph 79 is admitted.

51. As to paragraph 80, the leaseholders' initial application to the FTT to have the first Claimant appointed on their behalf as the Court Appointed Manager was on the basis that the freeholder had done almost no maintenance to the building for many years and the building had deteriorated very badly. Mr Dobson was a surveyor known to the freeholder. When the leaseholders applied to the court to appoint the First Claimant as the Court Appointed Manager, the freeholder put forward a report by Mr Dobson of the works he proposed to do to bring the property back up to standard and suggested the cost would be in the reason of £10,000. The Claimants emphasise that the Court Appointed Manager's role is primarily to fulfil the freeholder's repair and maintenance covenants; the covenants include an obligation to bring the property up to standard after having been neglected for years and

then to maintain it to a good standard thereafter. There is no requirement in the lease to do only cosmetic works that do not deal with the underlying issues. The initial budget was drafted based on the estimate provided by Mr Dobson, the freeholder's surveyor, and before ABC had had an independent Chartered Building Surveyor attend the property and draft a specification of works detailing exactly what works actually needed to be done in order to bring the property up to standard. As the freeholder did not pay his 40% contribution to costs, there were insufficient funds in the bank to progress matters.

52. As to paragraph 81, as soon as ABC was appointed it instructed Mr Dobson to progress with the project he had set out in his report. Oddly, Mr Dobson declined the instruction. The Claimants aver that Mr Dobson knew the works were not deliverable at the price he had calculated. The scaffolding alone for the front and rear elevations cost in the region of £10,000, i.e. the entirety of Mr Dobson's estimate. The First Claimant wrote to the FTT notifying it that Mr Dobson declined to take the instruction and asked permission to instruct an alternative independent Chartered Building Surveyor. Two independent surveyors were put forward. The FTT gave authority to instruct an alternative surveyor. Paul McCarthey MRICS was instructed to attend site and draft a specification of what needed to be done to bring the dilapidated property up to standard.

53. In respect of paragraph 82, the Management Order that appointed the First Applicant as the Court Appointed Manager conferred "*The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.*" At that time, the First Claimant did not deal with the day-to-day management of properties. The group had around 150 buildings under management and approximately 40 staff dealing with the day-to-day management of them. The First Claimant's role and focus was pitching for and securing new business. In the circumstances the First Claimant was "unable to perform these functions and obligations". In any event the First Claimant deemed the work under the Order to be "more conveniently done by an agent". He therefore believed that he acted correctly when he appointed ABC BML to act as his agent. The First Claimant did so using the standard Terms & Conditions that are used for open-market clients on commercial terms in line with the open market rate. The day-to-day management fees were reflective of the fees agreed by the FTT. The First Claimant therefore acted in good faith in the appointment of ABC BML and in dealing with service charge funds.

54. Paragraph 83 is wrong. The FTT allowed the First Claimant to charge £1,875 + VAT as the basic day to day management fee. This equates to £2,250 inclusive of VAT. This is the figure stated in the contract between the First Claimant and ABC BML. The management fee was not illegitimately high as asserted by the Defendant.

55. In respect of paragraph 84, the FTT allowed fees of 10% for a surveyor to supervise the works and 5% for the manager to do the administration element of the works. A combined 15% is broadly an industry standard. The staff who dealt with the day to day management of the property treated it as any other property in the portfolio and raised charges in accordance with the standard terms and conditions that apply to clients. They did not realise that a different billing structure should be implemented and therefore were acting in good faith at the time they raised their invoices in the usual manner.

56. As to paragraph 85, the final sentence of paragraph 55 above is repeated. Further, in other instances in which leaseholders have challenged the reasonableness of an out-of-hours service and associated costs the FTT has ruled in ABC's favour, confirming that it is a standard service in the industry, that the service is chargeable as an extra fee and that ABC's standard fees are reasonable. Judge Latham's ruling departed from ABC's reasonable understanding that an out-of-hours service was standard practice for which an acceptable charge could be made.

57. In respect of paragraph 86, at the initial hearing the freeholder tried to convince the FTT that it was not necessary to appoint a manager as he was then willing to carry out works to the building. The FTT felt that the freeholder was not fit to carry out the repair and maintenance duties and appointed the First Claimant as the court appointed manager. The freeholder then asked the First Claimant to adopt Mr Dobson's report as a cost saving exercise so that he did not have to incur additional fees for a new surveyor to inspect the property. The First Claimant advised the FTT that he was happy to adopt the Dobson Report as a cost saving excercise. At that time neither the FTT nor the First Claimant had inspected Mr Dobson's report or the breakdown of the estimate in any detail. Mr Dobson's report suggested all the necessary work could be done for £10,000. It became clear that was a very serious under-estimate. The works required were as stipulated in the terms of the lease as well as current legislation, neither of which could be complied with under Mr Dobson's report. The newly appointed surveyor drafted a specification to do what was necessary to comply with the

lease and the current legislation. He did not have regard to or base his specification on Mr Dobson's report that had been drafted at the request of the freeholder to suit his wish to do the barest minimum.

58. As to paragraphs 87 and 88 together:

58.1. As is usual, ABC BML conducted a s.20 consultation and each of the leaseholders was invited to nominate their own contractors of choice so that they could all quote on a like-for-like basis based on the Specification of Works drafted by the surveyor. This enabled ABC BML to market test the price for the specification of works. The quotes were high compared to the initial inadequate estimate suggested by Mr Dobson, but the work was commensurate with the quotes. The property had been neglected for many years; that was why the lessees had applied to the court for a new Manager. At the first meeting the First Claimant had with the leaseholders, before they nominated him for the role of Manager, he made clear that there would be a spike in the service charge costs due to the need to do the proposed works. The leaseholders advised that they had withheld their service charge payments for some time because they did not trust their freeholder. They had funds in their account earmarked for such works. The Specification of Works was in the First Claimant's view entirely proper, containing only necessary works. However, the First Claimant was aware that the Specification of Works was far higher than Mr Dobson's estimate. He sought to find a suitable solution that was cost effective and affordable. ABC BML staff decided to spread the work over 2 years and do the external envelope of the building in phase one and the internal work as phase two.

58.2. When the s.20 consultation was first carried out, Valens Contractors did not quote as their contractors were busy on another job. Once the decision had been taken to go back to market to find a cheaper solution, the Valens team were available and quoted £34,650. This was by far the cheapest quote obtained and as such added value to the leaseholders accordingly.

59. In respect of paragraph 89, complaint by the leaseholders was made before the work was split into two phases and before ABC BML went back to market and got a cheaper quote form Valens. ABC BML had taken advice from solicitors about steps that could be taken about an absence of funds in the service charge account arising from the freeholder's failure to pay his

40% of the budgeted costs. The solicitors advised that funds could be borrowed from the reserve fund account and drew a distinction between a "reserve fund" account which allows use to cover a short-term shortfall in service charges, and a "sinking fund" which is specifically earmarked for major works and could not be used for a temporary shortfall in the service charge account. As such ABC BML acted in good faith when it used funds from the reserve fund account as it expected the shortfall to be made up when the freeholder made payment of their 40% share of costs.

60. Paragraph 90 is wrong: no payments were made to the freeholder. Further:

    60.1. Paragraph 90.1: the Claimants aver that had the accountants' fee been paid from the service charge account the FTT would have been satisfied on the point. The criticism was of use of funds from the reserve fund account. This was contrary to the solicitors' advice received.

    60.2. Paragraph 90.2 is wrong. The First Claimant was asked by the Judge at the hearing about transfers on the bank statements. The First Claimant did not immediately know the answers but undertook to find out over the lunch break. He did so and was sent copies of the relevant invoices. These were given to the Judge. The Judge accepted this as frank answering of his question.

    60.3. In respect of paragraph 90.3, paragraph 56 above is repeated, 'handover fee' replacing 'out-of-hours service'.

    60.4. Paragraph 90.4: the FTT stated quite clearly that the freeholder was wrong not to have paid and gave the First Claimant permission to sue the freeholder for the funds despite the fact that the First Claimant's appointment as the Court Appointed Manager had concluded. As such when the First Claimant forward-funded the refund to the leaseholders it was only a brief cash flow issue as the freeholder swiftly made payment to avoid being taken to court. The assertion of unethical conduct is denied.

<u>46 Falcon Road RTM Company Ltd v Boccel Management Limited</u>

61. Paragraph 91 is admitted.

62. As to paragraph 92, the developer-freeholder sought quotes and interviewed various managing agents. The developer was not known to any of the Claimants prior to this. ABC provided references to the developer who checked them and was satisfied. The developer instructed ABC as an arm's-length instruction. About a year later the developer rang the First Claimant and said that his solicitor had advised him that he, the developer, should no longer be the director of the RMC, and he asked if the First Claimant would agree to stand as a nominee director for a modest fee. £500 + VAT p.a. was agreed. The First Claimant was duly notified to Companies House but continued to take instruction from the developer on any matters that arose.

63. In respect of paragraph 93, the developer was in the process of trying to sell the freehold. He would expect to achieve a better price if he had control of the building management rather than if the leaseholders set up a Right To Manage company. Because of this, the developer asked the First Claimant to oppose the RTM application, something he was entitled to do.

64. As to paragraph 94, the FTT directions had allowed for either party to request an oral hearing. The First Claimant did so in a timely manner. The FTT overlooked the request for whatever reason and when that became apparent the First Claimant raised a query. The FTT acknowledged their error and scheduled a hearing accordingly. The First Claimant withdrew the objection as by that time he had not received a reply from the developer explaining which address was not recognised on the Notice of Claim, as to which paragraph 65 below further refers.

65. In respect of paragraph 95, the Defendant knows that the developer-freeholder had emailed the First Claimant to state that he, the developer, did not recognise the address that one of the Notices had been posted to. This was the basis of the objection raised by the First Claimant at the request of the freeholder. The First Claimant emailed and asked the developer to clarify which address and/or which company he did not recognise but received no reply. The First Claimant chased for a reply a number of times. The emails were shown to the FTT and the Defendant. The Defendant is therefore well aware that the First Claimant was acting on the instructions and at the request of his client the developer-freeholder.

66. As to paragraph 96, as the Defendant knows, the FTT first indicated that as the accountants had been instructed their costs were correctly considered to be "incurred" and it would be correct to hold back the funds to cover the invoice when it was provided with the accounts.

The FTT subsequently wrote to the leaseholders advising them that they could not force the accountants to speed up or provide the accounts any more quickly or force ABC BML to produce the accounts by any particular date.

67. In respect of paragraph 97, the First Claimant made it clear to the FTT that he was acting on the instructions and at the request of the developer-freeholder who was trying to sell the freehold and had hoped to sell the freehold before the RTM took control. The actions were of no benefit to the First Claimant. The actions were solely driven by the client's requirements and for the client's benefit. There was nothing unethical or improper for the freeholder to challenge an RTM application and acted in accordance with the law and current legislation.

68. The assertion in paragraph 98 that the Statement of Case of the Respondent in that matter was untruthful is denied. Paragraphs 36 to 40 and their sub-paragraphs above are repeated.

69. The assertion of dishonesty in paragraph 99 is denied. Paragraphs 36 to 38 and their sub-paragraphs above are repeated.

<u>Davidoff & Others v Google</u>

70. Paragraph 100 is admitted, save that the Claimants are not experienced litigators in the sort of litigation implied in that paragraph, and the First Claimant does not conduct litigation of that sort himself.

71. Paragraph 101 is admitted.

72. Paragraph 102 is denied save for the admissions made below. Further:

    72.1. Paragraph 102.1: the application concerned numerous false reviews using false names but either from the same or similar IP addresses or using similar forms of words. The majority of these reviews referred to alleged facts that were false.

    72.2. Paragraph 102.2: the Claimants' aver that the point intended was that "Stuart Conway" was not a real person but an alias used by someone posting multiple fake reviews in order to drive down ABC's overall rating on Google. It is admitted, however, that ABC BML's expulsion from ARMA and the First Claimant's expulsion from the IRPM were true statements and the Claimants' evidence to the contrary, via and under the signature of their solicitor, should not have been made. It is added

that Mr Justice Nicklin said of Mr Lewis, the solicitor, "*Nevertheless, I accept that Mr Lewis would not have knowingly misled the Court. It is likely that this error occurred because he had simply failed to carry out sufficient (or any) research or to take adequate instructions from his clients.*"

72.3. Paragraph 102.3: paragraph 72.2 above is repeated.

72.4. Paragraph 102.4: paragraph 72.2 above is repeated.

<u>Alleged false positive reviews</u>

73. Paragraph 103 and its sub-paragraphs are admitted.

74. As to paragraph 104, an ABC negotiator who showed property to prospective applicants asked them to post a positive review of his service. They were happy to do so but not having done one before asked for guidance about what they should write. The negotiator provided a sentence for them to copy and paste. It appears that one of the prospective applicants copied and pasted the full wording, including the suggestion to "*Write the following:*". The reviews themselves were not false, they reflected each prospective applicant's experience. Further:

74.1. Paragraph 104.1: paragraph 74 above is repeated. The review was not posted on the instructions of the Claimants.

74.2. Paragraph 104.2: it appears each of the three persons copied and pasted the same review. As each of the three people were shown the property together and had the same experience there is nothing false about their reviews.

74.3. Paragraph 104.3: paragraph 104.2 above is repeated.

74.4. Paragraph 104.4: the facts of the persons pleaded by the Defendant are admitted. Any implication of dishonesty of the Claimants is denied. The family were shown a property and were asked to post a review. Many agents (and others in all fields of business) do this. It appears that each did post a review, as to which paragraph 74.2 above is repeated.

<u>Allegedly securing false vindication</u>

75. In respect of paragraph 105, paragraphs 2 and 35 to 73 and their sub-paragraphs are repeated.

76. In respect of paragraph 106:

76.1. Paragraph 106.1 is admitted.

76.2. It is admitted that the Defendant's presentation of the law in paragraph 106.2 is correct. The reference to perjury was wrong and a mistake. As to intimidation, the Claimants aver that correspondence with potential parties to an action (whether such parties are in person or their lawyers written to) will inevitably be robust. The Claimants point out, however, that the (erroneous) reference to perjury was to the actions of Messrs Doshi and Govan, not to any conduct of the Defendant. It is difficult to see what point the Defendant makes in that respect as to an allegation of intimidation of him.

76.3. In respect of paragraph 106.3, the second sentence of paragraph 76.2 above is repeated.

JOHN STABLES
5RB

STATEMENT OF TRUTH

The Claimants believe that the facts stated in this Reply are true. The Claimants understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNEDMark Lewis…………………………………………………….

NAME: Mark Lewis

POSITION: Partner

DATE: 6 February 2024