



[2023] EWHC 2299 (Ch)

IN THE HIGH COURT OF JUSTICE

Claim No. BL-2023-000646

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

B E T W E E N :

Date: 22 September 2023

Before :

**James Pickering KC
(sitting as a Deputy High Court Judge)**

Between :

MOMENTA HOLDINGS (PPI) LTD

Claimant

and

(1) CHEVAL LEGAL LTD

(2) STEVE MCGARRY

(3) PHILIP RYAN

(4) DGM ADMINISTRATIVE SERVICES LTD

Defendants

William Buck (instructed by **Rosenblatt**) for the **Claimant**
Daniel Feetham KC and **Adam Riley** (instructed by **Pinder Reaux**) for the **Defendants**

Hearing date: 4 and 5 July 2023

APPROVED JUDGMENT

James Pickering KC (sitting as a Deputy High Court Judge):

PART I: INTRODUCTION

PART II: THE BACKGROUND

PART III: THE STRIKE OUT APPLICATION

PART IV: THE INTERIM INJUNCTION APPLICATION

PART V: CONCLUSION

PART I: INTRODUCTION

1. “*Plevin*¹” claims are claims made by members of the public seeking to recover premiums paid in respect of PPI policies on the basis of undisclosed commissions. The nature and volume of *Plevin* claims is such that they are amenable to being run on a large scale.
2. In early 2020, Cheval Legal Ltd (“**Cheval**”) (which is an SRA regulated law firm) and Momenta Holdings (PPI) Ltd (“**Momenta**”) (which carries on the business of outsourcing professionals, including professionals in the legal sector) entered into an arrangement of sorts in relation to the pursuing of *Plevin* claims. The precise terms of that arrangement are in dispute but it is uncontroversial that while it was Cheval (as the SRA regulated body) which directed litigation strategy and was (as it was described to me) the “front of house”, it was Momenta (with its supply of legal professionals) which undertook the day to day running of the claims and (as it was also described to me) the “leg work”.
3. By early this year, however, the relationship between the parties had broken down and, on 5 May 2023, Momenta issued the present claim against, amongst others, Cheval. It is within the context of that claim that Momenta has applied for an interim injunction

¹ Named after the case of *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61

pending trial (“**the Interim Injunction Application**”) and Cheval has in turn applied to strike out Momenta’s claim in its entirety (“**the Strike Out Application**”).

4. It is these two applications which are the subject of this judgement.

PART II: THE BACKGROUND

The initial discussions

5. In about 2017, informal discussions began between Momenta, a funder called Spectra Legal Ltd (“**Spectra**”) and Stephen McGarry, a practising barrister (who was involved as counsel in the original *Plevin* case) as to ways in which *Plevin* claims could be pursued on a large scale.
6. Those discussions continued and by early 2019 there was a plan for – in broad terms – an unspecified authorised law firm to offer the relevant legal services to clients (the potential *Plevin* claimants) but with the claims being run at an operational level by Momenta. According to Momenta, it was also envisaged that costs and any surplus profits would be shared between them.

The incorporation of Cheval and the alleged JVA

7. On 9 July 2019, Cheval was incorporated. Various directors were appointed including Philip Ryan², a solicitor and, in due course, Mr McGarry³.
8. By early 2020, Cheval was on the verge of becoming authorised by the SRA, at which time the various discussions as to the pursuing of *Plevin* claims continued, albeit now between Momenta and the recently formed Cheval.
9. In February and March 2020, various further discussions took place. According to Momenta, it was in the course of these further discussions that a legally binding joint

² Mr Ryan was appointed as a director on the date of incorporation, namely, 9 July 2019

³ Mr McGarry was appointed as a director on 15 November 2019

venture agreement was entered into as to the pursuing of *Plevin* claims. As per the previous discussions, Cheval would be the front of house but with Momenta processing the claims on an operational level. Again, as per the previous discussion, after the deduction of relevant costs, any profits would be shared equally between Cheval and Momenta. Further, according to Momenta, any funds received (whether from Spectra as the funder, or as the fruits of any successful claims) would be held in the first instance by Cheval (as the SRA regulated law firm) for both parties in accordance with the above terms as to sharing. Cheval, of course, disputes all of the above.

OA1

10. On 16 April 2020, Cheval obtained authorisation from the SRA. As part of that process, it would appear that Cheval had had to declare to the SRA that it intended to run thousands of *Plevin* claims, that it was a start-up with no operational staff, and that accordingly it would be relying on Momenta for the provision of staff to run the anticipated claims. According to Momenta, it was at about this time that it was informed by Cheval that the SRA required sight of a written agreement consistent with what it had been told. Work therefore began on the drafting of what became known as an outsourcing agreement although, according to Momenta (but disputed by Cheval) the primary purpose of that document was purely to appease the SRA and was not intended to override the pre-existing JVA which had been agreed shortly before.
11. In any event, in June 2020, work began. Cheval gave access to some 164 *Plevin* claims which Momenta then uploaded and began processing. Shortly after, in July 2020, the first tranche of funding from Spectra was received.
12. On 28 August 2020, the outsourcing agreement required by the SRA was finally signed by both Cheval and Momenta (“**OA1**”) with Cheval being described as the owner of various claims and Momenta as the provider of services in relation to those claims. Schedule 8 to OA1 was entitled “Remuneration” and provided for the sharing of any “Claims Surplus” in a certain way. On any basis, however, the language used was not in keeping with the JVA which Momenta says had been entered into a few months earlier.

Further tweaks

13. By late 2020/early 2021, tensions began to appear in the relationship between Cheval and Momenta, particularly over the basis on which Momenta was to invoice Cheval. According to Momenta, it was agreed that there would be various “tweaks” as to how it would be paid, albeit subject to a final reconciliation, the net result of which was that it allowed debts owed to it by Cheval to accrue.

OA2

14. In late 2021, Cheval wished to raise additional working capital with a claim leads funder. It would appear, however, that OA1 was no longer thought to be suitable as a result of which, on 11 January 2022, a new outsourcing agreement (“**OA2**”) was signed. Again, language hardly consistent with the JVA was used – indeed, clause 20.3 comprised an entire agreement clause, while clause 20.4 expressly stated that the agreement “shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement”. Further, schedule 8, which again was entitled “Remuneration” provided:

“The Owner will reimburse Provider for the costs it incurs as agreed between the parties in running the cases provided by the Owner.

In addition, Owner will pay Provider a bonus from its share of the proceeds at the end of a case in the event that such positive proceeds exist notwithstanding that the parties agree to a portfolio approach in the early months of this Agreement given that the Owner is running lower value claims than had been anticipated at the outset because they were included within a portfolio of cases it purchased.

Given that the landscape is constantly shifting, the parties agree to revisit and revise this Schedule 8 every 3 months from the date of this agreement.”

The breakdown in the relationship

15. Shortly after the signing of OA2, matters came to a head. As for Cheval, it alleged that Momenta had mishandled claims and was in breach of OA2. As for Momenta, it alleged that Cheval had failed to pay to it sums which were properly due. In addition, Momenta alleged that Cheval had been improperly overpaying DMG Administrative Services Ltd (“DMG”), a claims management company set up by Mr McGarry and Mr Ryan.
16. In any event, on 6 March 2023 Cheval blocked Momenta’s access to its systems (apparently without warning), thereby effectively bringing the parties’ relationship with each other to an end.

The present proceedings

17. On 5 May 2023, Momenta issued the present claim by way of a claim form, together with Particulars of Claim seeking various relief including, in broad terms, the recovery of monies to which it claimed to be entitled. At the same time, it also issued an application for interim injunctive relief to prevent the dissipation of the funds in Cheval’s client account pending the final determination of the claim (in other words, the Interim Injunction Application). Shortly after, the court listed the hearing of the Interim Injunctive Application for 18 May 2023.
18. On 15 May 2023, Cheval applied for an adjournment of the above hearing. On 16 May 2023, that application was heard by Mr Justice Adam Johnson who made no order on that application - such that the hearing would still take place on 18 May - albeit indicating that it would be open to Cheval to renew its application to adjourn at that hearing.
19. Shortly before the above hearing, the matter immediately before the court was compromised by way of a consent order which, on 18 May 2023, was approved by Richard Farnihill (sitting as a Deputy High Court Judge). As part of that consent order, Cheval offered an undertaking (which the Court accepted) under which it undertook not to dissipate the funds in its client account subject to certain specific exceptions pending the hearing of the return date. At the same time, a timetable for evidence was directed.

20. On 30 May 2023, Cheval served on Momenta an application seeking to strike out the entirety of Momenta’s claim and/or seeking reverse summary judgment in respect of the same (in other words, the Strike Out Application). In due course, it was directed that the return date of the Interim Injunction Application and the Strike Out Application should be heard together with a time estimate of 3 days (plus 1 day of judicial pre-reading) – in other words, the matter now before me.
21. To complete the tale, on 16 June 2023 Cheval’s solicitors sent to Momenta’s solicitors a Letter Before Action indicating that, regardless of the outcome of the present proceedings, it intended to bring proceedings of its own against Momenta. On the same date, Cheval sent Momenta a draft press release setting out its position including the above proposed issue of proceedings of its own.

PART III: THE STRIKE OUT APPLICATION

The strike out jurisdiction

22. CPR 3.4(2) provides as follows:

“The court may strike out a statement of case if it appears to the court –

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order...”
23. In short, striking out a statement of case (or part of a statement of case) pursuant to CPR 3.4(2)(a) is appropriate where the relevant pleading “discloses no reasonable grounds for bringing... the claim”, while striking out pursuant to CPR 3.4(2)(b) applies where

there has been some form of abuse⁴. In either case, it is an important tool which enables the court to ensure that litigation is carried out in an appropriate way. It is also of course an extreme measure in that, where applied, it may bring to an end a claim (or part of a claim), and prevent the underlying issue being determined at trial. It goes without saying that establishing that a claim “discloses no reasonable grounds” or “is an abuse of the court’s process” is a high hurdle for any applicant to overcome.

The summary judgment jurisdiction

24. CPR 24.2 provides (so far as relevant) as follows:

“The court may give summary judgment against a claimant... on the whole of a claim or on a particular issue if –

(a) it considers that -

(i) that claimant has no real prospect of succeeding on the claim or issue...and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

25. The relevant principles on an application for summary judgment are well established and are neatly summarised in the frequently cited decision of Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 399 (Ch), [15] (which was itself approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA 1098, [34]). In *Easyair*, Lewison held at [15] (with underlining added):

“The correct approach on applications by defendants is, in my judgment, as follows:

i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: *Swain v Hillman* [2001] 2 All ER 91;

⁴ I make no mention of CPR 3.4(2)(c) as there appears to be no suggestion from Cheval that Momenta has failed to comply with a rule, practice direction or court order.

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

iii) In reaching its conclusion the court must not conduct a “mini-trial”: *Swain v Hillman*;

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

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

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63 ;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is

likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.”

26. Again, therefore, summary judgment is an important tool which, in broad terms, enables the court to allow only those claims to proceed to trial which have a “realistic” prospect of success; and to weed out claims (or parts of claims) which do not have a “realistic” prospect of success.

The present case

27. Applying the above principles to the present case, I have to decide whether (for the purposes of the strike out application) Momenta’s Particulars of Claim disclose no reasonable grounds for bringing the claim and/or amount to an abuse of the court’s process and/or (for the purposes of the summary judgment application) Momenta has no realistic prospect of succeeding on the claim and, further, that there is no compelling reason why the case should be disposed of at trial.
28. Having read and heard the clear and comprehensive written and oral submissions on behalf of Cheval, its case can be summarised as follows:

(1) Momenta’s case that there was a prior oral agreement giving rise to a JVA which then survived OA2 is unrealistic on the facts and, in any event, doomed by the existence in OA2 of the entire agreement clause. Realistically, so Cheval says, OA2 is the only agreement which governs the relationship between the parties.

(2) If it is right that OA2 is the only agreement which governs the relationship between the parties, it follows that no JVA can have existed and nor, therefore, can any fiduciary relationship have arisen (not least because of clause 20.4 of OA2 which expressly says as much). If this is the case, so Cheval says, it follows that those parts of Momenta’s claim which rely on the existence of a trust must be bound to fail.

(3) Moreover, on the basis that OA2 is the only agreement which governs the relationship between the parties, it also follows (pursuant to Schedule 8, paragraph 2) that the “Claims Surplus” is to be calculated not on a “case by case” basis (as pleaded by Momenta) but instead on a “portfolio basis”. If this is the case, so Cheval says, because the costs of running the portfolio exceeded the money coming in, no such Claim Surplus arises such that no money is due to Momenta and the entirety of the claim must fail in any event.

(1) Momenta’s case that there was a prior oral agreement giving rise to a JVA which then survived OA2

29. As to (1) above, Cheval first asserts (in broad terms) that Momenta’s case that there was a prior oral agreement giving rise to a JVA which then survived OA2 is unrealistic on the facts. OA2 is clearly incompatible with a JVA so why, so Cheval rhetorically asks, would the parties have entered into OA2 on such terms if they had already agreed a JVA and, moreover, intended that JVA to continue?
30. I can see the force in the above submission. The difficulty for Cheval, however, is that what was (and was not) discussed and agreed between the parties in around February or March 2020 is a question of fact which is hotly disputed, as demonstrated by the competing witness statement evidence filed on behalf of both parties. Nor is this a case where the correspondence (or at least the correspondence disclosed to date) clearly indicates that one or the other party’s case is obviously right. Realistically, in my view, such an issue cannot be properly determined without the benefit of cross-examination as part of a full trial. Indeed, while it is never a straightforward task for a party who wishes to assert the existence of an oral agreement incompatible with any written agreement, having read the witness statement evidence I cannot properly say that Momenta has no real prospect of succeeding on this issue.
31. That, however, is not sufficient for Momenta as, even on its own case, OA1 and then OA2 were entered into which on any basis were incompatible with a JVA. As explained above, however, it is Momenta’s case that it was always intended that the JVA would survive OA1 and OA2, the primary purpose of which was simply to appease the SRA.

Again, however, while I recognise that the above argument may not be straightforward to run, having seen the witness statement evidence in support (and having noted that there is nothing in the correspondence which clearly indicates that one party or the other is obviously right), I certainly cannot say that Momenta has no real prospect of succeeding on that issue either. On the contrary, this too, in my judgment, is an issue which can only be properly determined following cross-examination at trial.

32. Of course, even if Momenta is able to establish on the facts that the parties did enter into a JVA and, further, that when OA1 and OA2 were entered into it was intended that the JVA would survive in each case, it would still have to deal with the existence of the entire agreement clause in OA2 (and OA1 before that). As to this, Momenta frankly accepts that the entire agreement clause in OA2 is a bar to its claim and hence, in paragraph 55 of the Particulars of Claim, seeks rectification of the same by the removal of clause 20.3.
33. In response, counsel for Cheval took me to a number of the authorities relating to rectification including *Chartbrook v Persimmon* [2009] 3 WLR 267 (in which at [48] Lord Hoffman set out the 4 criteria which need to be established for such a claim to be made out) and *UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH* [2014] EWHC 3615 (Comm) (in which at [838] Males J stated that “convincing proof is required to counteract the cogent evidence of the parties’ intention as displayed by the contract itself”). In short, so it was submitted, the courts look with considerable circumspection at any plea that a concluded contract does not represent the true intentions of the parties.
34. Applying the above law to the present case, counsel for Cheval then went on to submit that the evidence filed by Momenta in support of the injunction application did not come close to giving rise to a serious triable issue on this point. In particular, so it was submitted, there was no evidence of a common intention, let alone a continuing common intention operable as at the date of the contract. On this basis, so it was said, Momenta had no real prospect of succeeding on the rectification issue.
35. As to the legal principles to be applied, I agree with Cheval that the burden of proof is very much on Momenta to make out its rectification claim and nothing less than

convincing proof will be required. Having said that, however – and having seen how Momenta puts its case in the Particulars of Claim and the evidence – I do not think it can be said that Momenta has no real prospect of succeeding on this issue. I also take into account that while many documents have already been disclosed, formal disclosure has not yet taken place and that while I have seen witness statements prepared for the present interim applications no witness statements for trial have yet been produced and nor, of course, has there been any cross-examination. At trial, Momenta may or may not succeed on its rectification claim; but at this present (and relatively early) stage I certainly cannot say that the claim is fanciful or otherwise unrealistic.

36. With the above in mind, and turning then to the relief sought by Cheval in the Strike Out Application, it seems to me that the application to strike out must fail. On its face, Momenta's Particulars of Claim plead a series of claims which do indeed disclose a cause of action. Whether those claims will or will not in due course succeed is a different matter, but it certainly cannot be said, in my judgment, that that which is pleaded is, on its face, anything other than legally coherent or (to the extent that it was being argued) an abuse of the court's process.
37. Further, in relation to the summary judgment application, as indicated above, while I agree that the task for Momenta – to show that the parties entered into a JVA on certain terms and that that JVA then survived both OA1 and OA2 – will be less than straightforward, I certainly do not think that it can be properly said that at trial it has no real prospect of doing so.
38. The above findings are of course sufficient to dispose of the summary judgment application. For the sake of completeness, however, I should add that the fact that Cheval has indicated a clear intention to issue proceedings of its own against Momenta in any event is highly significant. If such proceedings are indeed issued, they would no doubt result in Momenta responding by way of a Defence along the same lines as now being advanced in its claim. In short, therefore, it seems that those issues will have to be litigated in any event. In my judgment, this is a compelling reason for the purposes of CPR 24.2(b) for the matter to be disposed of at trial. Indeed, not only will the relevant issues have to be tried anyway, if summary judgment were to be granted now, there is

a risk that at the trial of Cheval's proposed proceedings the court would reach an opposite conclusion thereby resulting in conflicting judgments.

39. In short, therefore, it seems to me that the summary judgment application must fail too.

PART IV: THE INTERIM INJUNCTION APPLICATION

40. By the Interim Injunction Application, Momenta seeks to freeze sums received by Cheval in its client account (subject to certain specified exceptions). As stated above, on 18 May 2023 Cheval offered an undertaking which the court accepted under which it undertook not to dissipate the funds in its client account (subject to certain specified exceptions) pending the present return date. In the absence of Cheval being willing to offer to continue that undertaking (which it is not), Momenta now seeks an order from the court in the same form.

41. It is important to distinguish between a proprietary freezing order and a non-proprietary freezing order. A proprietary freezing order arises where an applicant seeks to freeze property which he or she asserts to be his or her own. The purpose of the underlying proceedings will generally be to establish his or her entitlement to the relevant property; and the purpose of the interim freezing relief will be to preserve that property pending the final determination of the underlying proceedings. In relation to proprietary freezing orders, *American Cyanamid* principles will apply. It will be necessary for the applicant to show that there is a serious issue to be tried, that damages would not be an adequate remedy, that a sufficient cross-undertaking in damages has been offered, and that the balance of convenience favours relief being granted.

42. A non-proprietary freezing order, on the other hand, arises where an applicant seeks to freeze property which he or she does not own but which belongs to the defendant. The underlying proceedings will generally be seeking some form of money judgment against the defendant; and the purpose of the interim freezing relief will be to prevent the defendant from dissipating his or her property thereby potentially thwarting the claimant in his or her attempts to enforce the money judgment. In relation to non-proprietary freezing orders, more stringent principles apply. It will be necessary for the applicant to show that he or she has a good arguable case, that there is a real risk that

but for the relief the defendant would dissipate his or her assets, and the court must be satisfied that it is just and convenient in all the circumstances to grant the relief in question.

43. In the present case, part of Momenta's underlying case is that the monies paid into Cheval's client account are effectively held on trust for the benefit of the joint venture between them. This being the case, so it argues, it has a proprietary interest in that fund. The interim relief it now seeks, therefore, is a proprietary freezing order such that standard *American Cyanamid* principles apply. It seems to me that this must be right.
44. First, therefore, I have to consider whether there is a serious issue to be tried in relation to the substantive underlying matter. For the reasons given in relation to the Strike Out Application, I find that there is.
45. Next, I have to consider whether or not damages would be an adequate remedy. In relation to this, Cheval has been frank and quite openly explained that it needs the funds for various reasons. In short, therefore, if no relief is granted, the funds will be used by Cheval such that the trust fund (if that is what it is) would be substantially depleted, potentially in full. Nor does Cheval have substantial assets elsewhere (as explained above, it was incorporated relatively recently for the specific purpose of the current project). In short, therefore, if successful in the underlying matter – and in the absence of some form of freezing relief being granted – it seems that damages would not be an adequate remedy.
46. As for the cross-undertaking in damages, such an undertaking has been offered by both Momenta and its parent, Momenta Solutions Ltd. I have also been shown evidence of the solvency and asset position of both companies. Even taking into account the doubts expressed on behalf of Cheval (in particular as to the inclusion in the relevant accounts of the debt said to be due from Cheval), it seems to me that the cross-undertakings offered are indeed adequate in the circumstances.
47. Finally, then, I come to the question of the balance of convenience. As to this, I again note that, in the absence of interim relief being granted, the funds in the client account are likely to be used, either substantially or in full. This being the case, if I were not to

grant relief, there is a high likelihood that Momenta's claim, if successful, would become effectively pointless. This of course is a compelling reason for granting interim injunctive relief. On the other hand, I note that Cheval is continuing to operate the business and has asserted that if I make an interim injunction it will effectively cripple and potentially destroy that business altogether. This is of course a compelling reason for refusing to do so.

48. I have to say that I have not found this balancing exercise an easy one but, after careful consideration, I am of the view that justice will best be served by granting interim injunctive relief but on modified terms.

49. By the current undertaking, Cheval agreed that it would not (with underlining added):

“...until the return date or sooner order cause or permit any deduction, payment or other dissipation of any monies which are received into its client account from any party against whom a claim, whether by correspondence, litigation or otherwise has been made on behalf of a client or former client of [Cheval] listed in Schedule 1 by reference to the client/file numbers in [Cheval's] claims management system (“the Claims”) save that, in relation to any specific Claim, it may deduct therefrom:

i. The monies payable to the client;

ii. The monies payable to Spectralegal Finance 3 DAC or its assigns, in relation to that Claim only, pursuant to the litigation funding agreement under which litigation funding was provided for the Claim;

iii. Any fees of counsel solely relating to that Claim;

iv. Any Court costs directed in relation to that Claim; and

v. Any further deductions agreed by the Claimant...”

50. As can be seen, therefore, the undertaking offered by Cheval (and as agreed to by Momenta and approved by the court) was not an absolute prohibition on using the trust fund. Indeed, certain specific deductions were permitted to be made.

51. At the hearing – and indeed in correspondence afterwards – I received submissions on behalf of Cheval inviting me, in the event that I were minded to grant interim injunctive relief, to allow certain further deductions to be made. In particular, so it was argued, I should also allow the payment of counsels’ fees and adverse costs as well as ordinary legal and business expenses.
52. As to ordinary legal and business expenses, if this were a non-proprietary freezing order, such an exception would of course be standard. As stated above, however, it seems to me that we are in proprietary freezing order territory. This being the case, different considerations apply and I do not think it would be right to allow Cheval to pay for its ordinary legal and business expenses from what could be (if Momenta’s underlying claim is found to be correct) effectively a trust fund. As to counsels’ fees and adverse costs, however, it seems to me that these are all direct costs of running the business being carried on by the JVA – effectively, they are the expenses incurred in generating the trust income itself. It therefore seems to me to be both right in principle and pragmatic to allow these latter deductions to be made.
53. In conclusion, therefore, I will grant interim injunctive relief on similar terms to the undertaking previously given. Importantly, however, I will also allow deductions from the fund generally in relation to counsels’ fees and adverse costs.
54. As per the previous undertaking, I will direct that Cheval should report to Momenta on a weekly basis, such report to include details of all deductions made including of course the ones now permitted by this order.
55. The previous undertaking at paragraph 1(v) also permitted “any further deductions agreed by [Momenta]”. That provision will of course remain although it will be expanded to expressly state (the obvious) that also allowed will be any further deductions as agreed by Momenta or, in the absence of such agreement, the Court. In particular, while I will not reserve the matter to myself, I indicate that should Cheval wish to make a deduction which does not expressly fall within the terms of this order (and to which Momenta refuses to give its consent), I will be content to hear the matter

on short notice (and with a relatively short time estimate given my familiarity with the matter).

PART V: CONCLUSION

56. In conclusion, therefore:

(1) I dismiss the Strike Out Application.

(2) I will allow the Interim Injunction Application and, in particular, will continue the previous order on materially the same terms, albeit subject to the further important modifications outlined above.

57. I conclude by expressing my gratitude to all counsel and their respective instructing solicitors.

JPKC
September 2023